



SBA Procedural Notice

TO: All SBA Employees	CONTROL NO.: 7000-166
SUBJECT: New Streamlined 504 Loan and Debenture Closing Procedures	EFFECTIVE: 4-25-2007

A. New Standard 504 Loan and Debenture Closing Forms.

1. 504 Debenture Closing Checklist (SBA Form 2286).
2. Interim Lender's Certification (SBA Form 2288).
3. Third Party Lender Agreement (SBA Form 2287).
4. Borrower and Operating Company Certification (SBA Form 2289).

B. **Modification of Existing 504 Loan and Debenture Closing Forms.**

1. CDC Certification (SBA Form 2101). The form for CDC Certification has been modified as follows:
 - Eliminated paragraph 1 of the current form because this topic is addressed in the Opinion of CDC Counsel.
 - Moved paragraph 2 of the current form to paragraph 3 in the revised form and amended it to add a certification that project costs shown on the Servicing Agent Agreement are consistent with the Authorization and with the Interim Lender's and/or Third Party Lender's closing statements.
 - Added new paragraphs 1, 2, 4, 5 and 18 to facilitate the streamlined closing process.
 - Added new paragraph 17 to address the requirement that a Customer Identification Program be performed for Borrower.
 - Modified and clarified the wording in paragraphs 6.d. and 7.
2. Opinion of CDC Counsel (Appendix D of Authorization Boilerplate). The form of legal opinion has been modified as follows:
 - Revised paragraphs B.20-23 to reference the new standard closing documents.
 - Revised paragraph B.23 to reference a legal opinion concerning any guarantors, not just the borrower.
 - Added paragraph H.3 to be used when the Interim and Third Party Lender are different, to make a representation regarding the amount the principal balance of the Third Party Lender Loan will not exceed.
 - Modified paragraph H.4 to change the representation regarding the amount of the Third Party Lender Loan from an exact amount to a "not to exceed" amount.

C. New 504 Loan and Debenture Closing Procedures.

1. Reduction in the number of documents CDC is required to submit and SBA counsel is required to review. CDC must submit and SBA Counsel must review documents listed on the new standard closing checklist, and SBA Counsel no longer receives or reviews the following documents:
 - *CDC certificate of good standing and organizational documents.* SBA instead relies on the CDC Counsel opinion as to the type and validity of the CDC's organization and good standing and on the validity and enforceability of closing documents signed by the CDC.
 - *Borrower and Operating Company organizational documents.* SBA instead relies on the opinion given by the CDC Counsel as to the organizational structure of, and the validity and enforceability of documents executed by, the borrower, operating company and guarantors. CDC Counsel may perform his or her own review of such documents and provide an opinion, or may rely upon an opinion rendered by counsel for such entity.
 - *Third Party Lender's and Interim Lender's loan documents.* SBA instead relies on the new standardized Third Party Lender Agreement and Interim Lender Certification to obtain necessary information and certifications to assure compliance with 504 loan program requirements.
 - *Documents supporting the CDC Certification.* SBA relies solely on the CDC Certification to obtain the information and certifications to assure compliance with 504 loan program requirements, rather than also reviewing the documents referred to in and relied on by the CDC to prepare the CDC Certification.

2. Revision of the submission requirements for expedited closings. Currently, Priority CDCs (as defined in 13 CFR §120.802) are required to submit a full closing package for expedited closings, but SBA Counsel reviews only eight documents unless the package is selected for audit. SBA revises these procedures as follows:
 - ***Expedited closing package.*** Priority CDCs must submit to SBA Counsel, and SBA Counsel would review, only the following 12 documents in an expedited closing package:
 - (1) 504 Debenture Closing Checklist (SBA Form 2286).
 - (2) Authorization, with all modifications noted or attached.
 - (3) CDC Board Resolution (SBA Form 1528).
 - (4) Note (CDC/504 Loans) (SBA Form 1505).
 - (5) Development Company 504 Debenture (SBA Form 1504).
 - (6) Servicing Agent Agreement (SBA Form 1506).
 - (7) Interim Lender Certification (SBA Form 2288).
 - (8) Third Party Lender Agreement (SBA Form 2287).
 - (9) Borrower and Operating Company Certification (SBA Form 2289).
 - (10) CDC Certification (SBA Form 2101).
 - (11) Opinion of CDC Counsel (Appendix D to the 504 Authorization Boilerplate).
 - (12) Evidence of lien priority for lien on Project Property.

- *Quality assurance.* Priority CDCs must submit a regular closing package of all 25 documents on the checklist only if SBA Counsel selected the package for a Quality Assurance Review (QAR) (formerly known as “audit”). CDC or CDC Counsel must submit this full package for QAR by the close of the third business day of the request by SBA.
3. Implementation of new standard procedures for submission of closing documents, transfer of collateral documents, and handling of post-closing documents.
- *Notification of planned closings and transfer of loan file.* CDCs must notify SBA Counsel of upcoming loan closing package submissions by e-mailing to SBA Counsel 30 days before the District Office deadline for CDCs to submit closing packages, a list of the loans it plans to submit for closing that month. The CDC is responsible for making a request to SBA’s Sacramento Loan Processing Center to transfer the loan files to the District Office in time for the District Office’s closing submission deadline.
 - *Submission of closing package.* CDCs must use only the standard closing checklist and submit documents in the order of the checklist. All SBA offices and all CDCs would be required to use the same standard checklist.
 - *Submission of debenture sale documents to the CSA.* CDCs must hold all original loan documents until notification that SBA has completed review and approved the debenture for sale. Once SBA Counsel approves a debenture for sale, SBA Counsel must notify the CDC and the CSA via e-mail, and the CDC then must send to the Central Servicing Agent (CSA) the required debenture closing documents in one package.
 - *Post closing loan file transfer.* After closing, the District Office must send the loan file to the appropriate Commercial Loan Servicing Center (CLSC) within 30 days of the sale date.
 - *Collateral transfer.* CDCs must transfer all original collateral documents, using the closing checklist as the collateral listing. The CDC is responsible for providing the final collateral listing and the original documents to the appropriate CLSC within 30 days of the debenture sale.
 - *Post closing loan documents.* The CDC must receive from the CSA and send to the appropriate CLSC, copies of post-closing documents (e.g., the Note Amortization Schedule, the Debenture, the Debenture Amortization Schedule. These documents should be transferred with the collateral if they are received prior to the transfer. Any documents received after the transfer to the CLSC must be listed and forwarded to the CLSC upon receipt by the CDC.

4. Implementation of new standard procedures for performance of quality assurance reviews (QAR) and audits.

- *Quality Assurance Reviews (QAR).* SBA Counsel must perform a QAR on a random selection of expedited closing packages submitted by Priority CDCs. SBA Counsel will give the CDC until the close of the third business day to submit all 25 documents on the checklist for that loan, which SBA Counsel then will review using the same standards as if the package had been submitted by a non-Priority CDC.
- *Complete File Reviews.* SBA Counsel must review a random selection of all 504 loan and debenture closings. SBA Counsel will give the CDC until the close of the third business day following SBA Counsel's request to submit its entire closing file, including any documents used in connection with the loan and debenture closing that do not appear on SBA's standard checklist.

D. Amendment of SOPs to Reflect New 504 Loan and Debenture Closing Procedures.

The following SBA SOPs are being changed effective August 1, 2007. (For CDCs electing to participate before August 1 in accordance with "E" below, the SOP changes will be effective beginning on the date of such election):

- Loan Processing SOP 50-10 (4), Subpart H, Chapter 22, "Closing," paragraphs 1 through 4 (pp. 487-491) and paragraph 8 (p. 500), have been changed to include a detailed description of the new closing process, the requirements for a closing package, and the responsibilities of CDCs, SBA Counsel, and the CSA at closing and post-closing.
- Loan Processing SOP 50-10(4), Subpart H, Chapter 13, "The Sources of Project Financing," paragraph 2.d., has been changed to correct the name and number of a critical loan closing form to "Servicing Agent Agreement" (SBA Form 1506) from "Use of Proceeds" (SBA Form 1429).
- Legal Responsibilities SOP 70-50 (3), Chapter 4, "Loan Closing," paragraphs 4 through 5 (pp. 30-31.9 plus new Appendix 4d), have been changed to include a detailed description of SBA Counsel responsibilities at closing and post-closing, including quality assurance reviews, complete file reviews, and a new SBA Counsel opinion for debenture closing.

E. Implementation

The effective date for the implementation of 504 Streamlined Closing will be **August 1, 2007**. From that date forward, all loan packages must be submitted using the new forms and procedures. SBA will train CDCs and their attorneys through the use of ReadyTalk during the month of May. Interested CDCs may elect to employ the new forms and procedures for loan packages submitted to SBA starting on June 1. In such event, the CDCs must notify the District Counsel and Bynum Rudisill (bynum.rudisill@sba.gov) by e-mail prior to opting in.

District Offices must share this Notice with the CDCs operating within their geographic areas.

Questions regarding this notice should be directed to Bynum Rudisill, District Counsel, North Carolina District Office, at (704) 344-6596, ext. 1107, or Michael Simmons, Department of Financial Law and Lender Oversight, Office of General Counsel, at (202) 205-6402.

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General Counsel

Expires: 4-01-2008