

What's new in this version?

Version 2009.1, released November 24, 2008

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 7a Wizard Help topics, which is available from the 7a Wizard menu.

Repayment Terms

- The Base Rate for Notes with variable interest rates in Repayment Terms Options 2, 3, 4, 5, and 7, has been modified to include the LIBOR Base Rate.
- Repayment Terms for Notes with variable interest rates (Options 2, 3, 4, 5, and 7) have been modified to tie the initial base to the base rate that was in effect on the first business day of the month in which the application was received by SBA rather than on the date the application is received.
- The definition of Prime Rate and LIBOR Base Rate include a statement clarifying that they are based on the rate in effect on the first business day of the month.
- The interest rate Ceiling and Floor options clarify that the initial interest rate is based on the first business day of the month in which the loan application was received by SBA and the final disbursement rate is based on the first business day of the month in which final disbursement occurs.

Technical Correction

- Non-Citizen Ownership—Wizard operations have been modified to allow the non-citizen paragraph to be used more than once. The following notation has been added to the Boilerplate in the Additional Conditions II, Non-Citizen Ownership section:

Note: Paragraph (9) and (10) may be repeated if necessary

Version 2009, released November 3, 2008

This section highlights the major differences between version 2007.1 and version 2009 of the Boilerplate and Wizard. This listing can also be found during operation of the Wizard in the “What’s New” section of the 7a Wizard Help topics, which is available from the 7a Wizard menu.

In addition, references to the SOP in the shaded comment areas have all been reviewed and updated to reflect current SBA requirements and page numbers from SOP 50-10(5). The following Boilerplate sections have been modified:

Note for Pre-Qual

The note has been deleted in its entirety as SBA no longer has pre-qualification loans.

Loan Information Section

A. Guarantee Fee

The www.pay.gov internet address has replaced the mail address as mandatory for paying the Guarantee Fee unless the lender pays by ACH, for loans with maturity of more than 12 months, including CAIP Loans.

B. Ongoing Servicing Fee

The Ongoing Servicing Fee has been defaulted to the current SBA rate of 0.550.

D. Required Forms

SBA Form 1050: reference to ‘each disbursement’ was deleted.

SBA Form 159(7(a)): the word ‘representative’ was replaced with ‘agent.’

The sentence requiring submission of SBA Form 159(7a) to SBA was deleted in its entirety.

E. Contingencies

The disbursement time period was changed to allow a variable disbursement period based on the specific loan with a maximum of 48 months:

"Completing disbursement no later than [**number of months**] months from the approval date of this Authorization, unless the disbursement period is extended by proper SBA procedures. (The final disbursement period cannot exceed 48 months from the approval date of this Authorization. Any undisbursed balance remaining after 48 months will be automatically cancelled by SBA); and,"

F. Note Terms

Subsidy Recoupment Fee. For loans with a maturity of 15 years or more, the paragraph name "Additional payment charges apply" was renamed "Subsidy Recoupment Fee."

State Specific Language

The State Specific language for Pennsylvania was modified to require confession of judgment clauses in the Note for borrowers resident in Pennsylvania.

G. Use of Proceeds

A provision was added prohibiting loan splitting:

"The loan must be made for a sound business purpose and must benefit the small business, and one 7a loan may not be split into two 7a loans merely to benefit the lender. 13 CFR 120.120 and 120.130(e)."

In addition, instructions regarding SBA Form 1050 were revised, referencing new SOP procedures:

"Lender must document that Borrower used the loan proceeds for the purposes stated in this Authorization. Lender and Borrower must complete and sign SBA Form 1050 at the time of first disbursement. Lender must document the first and all subsequent disbursements by attaching required documentation to the original SBA Form 1050 and must maintain the documentation in the Loan file, following procedures described in SOP 50-10(5)."

H. 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 Mandatory Provision—The following mandatory provision was added:

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

I. Additional Conditions

1.a Flood Insurance

The second and third flood insurance subparagraphs were modified to reflect that if any portion of a building that is collateral for the loan is in a flood hazard area, flood insurance is required:

The third flood insurance subparagraph was modified to allow for a waiver of flood insurance in limited circumstances, when the loan includes personal property but not the business real estate as collateral and Lender is unable to obtain flood insurance or the cost of the insurance is not economically feasible:

"(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, Lender must require Borrower to obtain available flood insurance for the Personal Property Collateral. Lender may waive SBA's requirement for flood insurance for the Personal Property Collateral when the building is not collateral for the Loan, but only if Lender, using prudent lending standards, puts a written determination into the Loan file that flood insurance is either not available or not economically feasible."

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

"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 Lender and SBA."

1.b. and 1.c., Real Estate 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 of" was changed to "action or failure to act by" as follows:

REAL ESTATE: "If full replacement cost insurance is not available, coverage must be for maximum insurable value. Insurance coverage must contain a MORTGAGEE CLAUSE (or substantial equivalent) in favor of Lender. This clause must provide that any action or failure to act by the mortgagor or owner of the insured property will not invalidate the interest of Lender."

PERSONAL PROPERTY: "If full replacement cost insurance is not available, coverage must be for maximum insurable value. Insurance coverage must contain a LENDER'S LOSS PAYABLE CLAUSE in favor of Lender. 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 Lender."

1.e. Life Insurance

This paragraph was modified to reflect the requirement that Lender must assure that the Borrower pays the life insurance premium, as follows:

"Lender must obtain a collateral assignment of each policy with Lender as assignee, and Lender must also obtain acknowledgment of the assignment by the Home Office of the Insurer. Lender must assure that Borrower pays the premium on the policy."

2. Environmental Requirements

The Environmental Requirements provisions have been substantially modified to reflect changes in SOP 50-0(5), specifically deleting the option for loans under \$25,000 and requiring an environmental investigation for all commercial real property collateral. Paragraph 2.a., which now applies to all loans, now reads:

"a. Lender may not disburse 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 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 "B", Chapter 4, Paragraph 3 (Environmental Policies and Procedures) and applicable appendices."

4.a. Verification of Financial Information

The second 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 Lender closes the loan before receiving the tax transcript from IRS. The updated language refers Lender to SOP 50-10(5) for the proper procedures as follows:

"If Lender does not receive a response from the IRS or copy of the tax transcript within 10 business days of submitting the IRS Form 4506-T, then Lender may close and disburse the loan provided that Lender sends a second request following precisely the procedures detailed in SOP 50-10(5) and Lender performs the verification and resolves any significant differences discovered, even if the Loan is fully disbursed."

4.h. Agreement of Franchisor

Subparagraph 2 was edited for grammar, taking out the word "That".

Subparagraph 4 was modified to reflect updated language from SOP 50-10(5) and for clarity and reads as follows:

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

8.c. Construction Provisions

A new provision was added to reflect the new requirement for a post-construction certification if an 'as completed' appraisal was required:

"Prior to closing, if an "as completed" appraisal was obtained prior to construction, Lender 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 from the original plans and specifications."

Construction Financing Options:

Options 1 and 2 describing the level of documentation and oversight for construction were updated with the new \$350,000 threshold and have been renamed as follows:

**Option 1—Construction Financing with SBA Guarantee—
Construction Component \$350,000 or less**

**Option 2—Construction Financing with SBA Guarantee—
Construction Component more than \$350,000**

9. and 10. Non-Citizen Ownership of the OC or EPC

Two options have been added to reflect that Lenders may verify non-citizen status with US Citizenship and Immigration Services after loan approval but before disbursement:

NON-CITIZENS (MANDATORY if applicable)

Use Option 1 for Non-Citizens with 50% or more ownership of the Operating Company or Eligible Passive Company and Option 2 for Non-Citizens with 20-49% ownership of the Operating Company or Eligible Passive Company. See SOP 50-10(5), pages 116-119, Subpart "B", Chapter 2, Paragraph 3.e.

Note: Paragraph (9) and (10) may be repeated if necessary

Select one of the following 2 options

Option 1 – Mandatory for Non-Citizens with at least 50% ownership of the OC or EPC

9. Prior to first disbursement, Lender must verify with US Citizenship and Immigration Services, using Form G-845, that **[Name]** has Lawful Permanent Resident status.

Option 2 – Mandatory for Non-Citizens with 20-49% ownership of the OC or EPC

10. Prior to first disbursement, Lender must verify with US Citizenship and Immigration Services, using Form G-845, that **[Name]** has Lawful Permanent Resident status or legal alien status.

11. Certifications and Agreements

a. Pari Passu financing

The word "first" was taken out of subparagraph (1) in 2 places to reflect that the shared lien position could be a lower position than first position.

APPENDIX A and B

Appendix A and B include the standard collateral provisions for the 7a, 504, EWCP and CAPLines Authorizations. Appendix B deals exclusively with real property liens, the 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. For 504 Loans, notice required to CDC and SBA CLSC.
- e. Written waiver of homestead required. (Residential property only.)
- f. Statement of non-homestead required. (Residential property only.)
- g. Written waiver of Business Homestead required if real property collateral is owned by an individual or an individual and spouse.
- h. 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.
- i. Written waiver of redemption rights is required. (Non-residential property only.)
- j. Survey, certified to lender, is required, or prior survey and affidavit of no change acceptable to lender.
- k. 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.

APPENDIX B

Appendix B was updated based on a survey of SBA field counsel, and the text describing the Appendix was revised. The resulting list of provisions by state was updated on pages 3 – 5. The real property collateral programming of the options by state was updated based on the updated list of state provisions.

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'.

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.

APPENDIX D

The environmental certification was updated to correct erroneous references to the CDC instead of the Lender.

More Information

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