

## THIRD PARTY LOANS

**§ 120.920 The first lien position.**

The Borrower must obtain one or more Third Party Loans totaling at least as much as the 504 loan. Third Party Loans usually have the first lien position. They cannot be guaranteed by SBA.

**§ 120.921 Terms of Third Party loans.**

(a) *Maturity.* A Third Party Loan must have a term of at least 7 years when the 504 loan is for a term of 10 years and 10 years when the 504 loan is for 20 years. If there is more than one Third Party Loan, an overall loan maturity must be calculated, taking into account the maturities and amounts of each loan. If there is a balloon payment, it must be justified in the loan report and clearly identified in the Loan Authorization.

(b) *Interest rates.* Interest rates must be reasonable. SBA must establish and publish in the FEDERAL REGISTER a maximum interest rate for any Third Party Loan from commercial financial institutions. The rate shall remain in effect until changed.

(c) *Other terms.* The Third Party Loan must not have any early call feature or contain any demand provisions unless the loan is in default. By participating, a Third Party Loan lender waives, as to the CDC/SBA financing, any provision in its deed of trust, or mortgage, or other documents prohibiting further encumbrances or subordinate debt. In the event of default, the Third Party Lender must give the CDC and SBA written notice of default within 30 days of the event of default and at least 60 days prior to foreclosure.

(d) *Subordination.* A Third-Party Loan lienholder must subordinate to the CDC/SBA lien any future advance in excess of the outstanding principal balance and accrued interest of the Third Party Loan at the time of such advance except expenditures for collection, maintenance, and protection of the Third Party Loan lienholder's lien position.

(e) *Escalation upon default.* A Third-Party Lender may not escalate the rate of interest upon default to an amount greater than the maximum

rate set forth in paragraph (b) of this section.

**§ 120.922 Pre-existing debt on the Project Property.**

In addition to its share of Project cost, a Third-Party Loan may include consolidation of existing debt on the Project Property. The consolidation must not improve the lien position of the Lender on the pre-existing debt, unless the debt is a previous Third-Party Loan.

**§ 120.923 What are the policies on subordination?**

(a) Financing provided by the seller of Project Property must be subordinate to the 504 loan. SBA may waive the subordination requirement if the property is classified as "other real estate owned" by a national bank or other Federally regulated lender and SBA considers the property to be of sufficient value to support the 504 loan.

(b) A Borrower is eligible for a 504 loan even if part of the Project financing is tax-exempt. SBA's lien position must not be subordinate to loans made from the proceeds of the tax-exempt obligation.

**§ 120.924 Prepayment of subordinate financing.**

The Borrower must not prepay any Project financing subordinate to the 504 loan without SBA's prior written consent.

**§ 120.925 Preferences.**

No Third Party Lender shall establish a Preference.

**§ 120.926 Referral fee.**

The CDC may receive a referral fee from the Third Party Lender if the CDC secured the lender for the Borrower under a written contract. The Borrower cannot pay this fee. If a CDC charges a referral fee, the CDC will be construed as a Referral Agent under part 103 of this chapter.

## 504 LOANS AND DEBENTURES

**§ 120.930 Amount.**

(a) Generally, a 504 loan may not exceed 40 percent of total Project cost

plus 100 percent of eligible administrative costs. For good cause shown, SBA may authorize an increase in the percentage of Project costs covered up to 50 percent. No more than 50 percent of eligible Project costs can be from Federal sources, whether received directly or indirectly through an intermediary.

(b) Generally, the minimum 504 loan must be \$50,000, although, upon good cause shown, SBA may permit a 504 loan as small as \$25,000. The amount of the Debenture must equal the amount of the 504 Loan plus administrative costs.

(c) Upon completion of the Project, the Debenture amount will be reduced by the amount that the unused contingency reserve exceeds 2 percent of the anticipated Debenture.

**§ 120.931 504 lending limits.**

The outstanding balance of all SBA financial assistance to a Borrower and its affiliates under the 504 program covered by this part must not exceed \$750,000 (\$1,000,000 if one or more of the public policy goals enumerated in § 120.862(b) applies to the Project).

**§ 120.932 Interest rate.**

The interest rate of the 504 Loan and the Debenture which funds it is set by the SBA and approved by the Secretary of the Treasury.

**§ 120.933 Maturity.**

The term of a 504 Loan and the Debenture which funds it shall be either 10 or 20 years.

**§ 120.934 Collateral.**

The CDC/SBA takes a junior lien position (usually a second lien) on the Project collateral. In rare circumstances, collateral other than the Project collateral may be accepted by SBA. Sometimes secondary collateral is required. All collateral must be insured against such hazards and risks as SBA may require, with provisions for notice to SBA and the CDC in the event of impending lapse of coverage.

**§ 120.935 Deposit.**

At the time of application for a 504 loan, the CDC may require a deposit from the Borrower of \$2,500 or 1 percent of the Net Debenture Proceeds, which-

ever is less. The deposit may be applied to the loan processing fee if the application is accepted, but must be refunded if the application is denied. If the small business withdraws its application, the CDC may deduct from the deposit reasonable costs incurred in packaging and processing the application.

**§ 120.936 Subordination to CDC.**

SBA, in its sole discretion, may permit subordination of the Debenture to any other obligation of the CDC, except debt incurred by the CDC to obtain funds to loan to the Borrower for the Borrower's required contribution to the Project financing.

**§ 120.937 Assumption.**

A 504 loan may be assumed with SBA's prior written approval.

**§ 120.938 Default.**

(a) Upon occurrence of an event of default specified in the 504 note which requires automatic acceleration, the note becomes due and payable. Upon occurrence of an event of default which does not require automatic acceleration, SBA may forbear acceleration of the note and attempt to resolve the default. If the default is not cured subsequently, the note shall be accelerated. In either case, upon acceleration of the note, the Debenture which funded it is also due immediately, and SBA must honor its guarantee of the Debenture. SBA shall not reimburse the investor for any premium paid.

(b) If a CDC defaults on a Debenture, SBA generally shall limit its recovery to the payments made by the small business to the CDC on the loan made from the Debenture proceeds, and the collateral securing the defaulted loan. However, SBA will look to the CDC for the entire amount of the Debenture in the case of fraud, negligence, or misrepresentation by the CDC.

**§ 120.939 Borrower prohibition.**

Neither a Borrower nor an Associate of the Borrower may purchase an interest in a Debenture Pool in which the Debenture that funded its 504 loan has been placed.