

§ 1336.67

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(2) Potential economic development criteria;

(3) Indication of business viability;

(4) The need for RLF financing; and

(5) The ability to properly utilize financing.

(b) *Application process.* The application package includes forms, instructions, and policies and procedures for the loan application. The package must also include instructions for the development of a business and marketing plan and a financing proposal from the applicant.

(c) *Loan evaluation criteria and procedures.* The loan evaluation must include the following topics:

(1) General and specific business trends;

(2) Potential market for the product or service;

(3) Marketing strategy;

(4) Management skills of the borrower;

(5) Operational plan of the borrower;

(6) Financial controls and accounting systems;

(7) Financial projections; and

(8) Structure of investment and financing package.

(d) *Loan decision-making process.* Decision-making on a loan application includes the recommendations of the staff, the review by the loan review committee and the decision by the Board.

(e) *Loan closing process.* The guidelines for the loan closing process include the finalization of loan terms; conditions and covenants; the exercise of reasonable and proper care to ensure adherence of the proposed loan and borrower's operations to legal requirements; and the assurance that any requirement for outside financing or other actions on which disbursement is contingent are met by the borrower.

(f) *Loan closing documents.* Documents used in the loan closing process include:

(1) *Term Sheet:* an outline of items to be included in the loan agreement. It should cover the following elements:

(i) Loan terms;

(ii) Security interest;

(iii) Conditions for closing the loan;

(iv) Covenants, including reporting requirements;

(v) Representations and warranties;

(vi) Defaults and remedies; and

(vii) Other provisions as necessary.

(2) *Closing Agenda:* an outline of the loan documents, the background documents, and the legal and other supporting documents required in connection with the loan.

(g) *Loan servicing and monitoring.* The servicing of a loan will include collections, monitoring, and maintenance of an up-to-date information system on loan status.

(1) *Collections:* To include a repayment schedule, invoice for each loan payment, late notices, provisions for late charges.

(2) *Loan Monitoring:* To include regular reporting requirements, periodic analysis of corporate and industry information, scheduled telephone contact and site visits, regular loan review committee oversight of loan status, and systematic internal reports and files.

**§ 1336.67 Security and collateral: Responsibilities of the Loan Administrator.**

The Loan Administrator may require any applicant for a loan from the RLF to provide such collateral as the Loan Administrator determines to be necessary to secure the loan. (Section 803A(b)(3))

(a) *As a Credit Factor.* The availability of collateral security normally is considered an important factor in making loans. The types and amount of collateral security required should be governed by the relative strengths and weaknesses of other credit factors. The taking of collateral as security should be considered with respect to each loan. Collateral security should be sufficient to provide the lender reasonable protection from loss in the case of adversity, but such security or lack thereof should not be used as the primary basis for deciding whether to extend credit.

(b) *Security Interests.* Security interests which may be taken by the lender include, but are not limited to, liens on real or personal property, including leasehold interests; assignments of income and accounts receivable; and liens on inventory or proceeds of inventory sales as well as marketable securities and cash collateral accounts.

(1) *Motor vehicles.* Liens ordinarily should be taken on licensed motor vehicles, boats or aircraft purchased hereunder in order to be able to transfer title easily should the lender need to declare a default or repossess the property.

(2) *Insurance on property secured.* Hazard insurance up to the amount of the loan or the replacement value of the property secured (whichever is less) must be taken naming the lender as beneficiary. Such insurance includes fire and extended coverage, public liability, property damage, and other appropriate types of hazard insurance.

(3) *Appraisals.* Real property serving as collateral security must be appraised by a qualified appraiser. For all other types of property, a valuation shall be made using any recognized, standard technique (including standard reference manuals), and this valuation shall be described in the loan file.

(c) *Additional security.* The lender may require collateral security or additional security at any time during the term of the loan if after review and monitoring an assessment indicates the need for such security.

**§ 1336.68 Defaults, uncollectible loans, liquidations: Responsibilities of the Loan Administrator.**

(a) Prior to making loans from the RLF, the Loan Administrator will develop and obtain the Commissioner's approval for written procedures and definitions pertaining to defaults and collections of payments. (section 803A(b)(4))

(b) The Loan Administrator will provide a copy of such procedures and definitions to each applicant for a loan at the time the application is made. (section 803A(b)(4))

(c) The Loan Administrator will report to the Commissioner whenever a loan recipient is 90 days in arrears in the repayment of principal or interest or has failed to comply with the terms of the loan agreement. After making reasonable efforts to collect amounts payable, as specified in the written procedures, the Loan Administrator shall notify the Commissioner whenever a loan is uncollectible at reasonable cost. The notice shall include recommendations for future action to be

taken by the Loan Administrator. (section 803A(c) (1) and (2))

(d) Upon receiving such notices, the Commissioner will, as appropriate, instruct the Loan Administrator:

(1) To demand the immediate and full repayment of the loan;

(2) To continue with its collection activities;

(3) To cancel, adjust, compromise, or reduce the amount of such loan;

(4) To modify any term or condition of such loan, including any term or condition relating to the rate of interest or the time of payment of any installment of principal or interest, or portion thereof, that is payable under such loan;

(5) To discontinue any further advance of funds contemplated by the loan agreement;

(6) To take possession of any or all collateral given as security and in the case of individuals, corporations, partnerships or cooperative associations, the property purchased with the borrowed funds;

(7) To prosecute legal action against the borrower or against the officers of the borrowing organization;

(8) To prevent further disbursement of credit funds under the control of the borrower;

(9) To assign or sell at a public or private sale, or otherwise dispose of for cash or credit any evidence of debt, contract, claim, personal or real property or security assigned to or held by the Loan Administrator; or

(10) To liquidate or arrange for the operation of economic enterprises financed with the revolving loan until the indebtedness is paid or until the Loan Administrator has received acceptable assurance of its repayment and compliance with the terms of the loan agreement. (Section 803A(c)(2)(B))

**§ 1336.69 Reporting requirements: Responsibilities of the Loan Administrator.**

(a) The Loan Administrator will maintain the following internal information and records:

(1) For each borrower: The loan repayment schedule, log of telephone calls and site visits made with the date