

# BUCKS GUARANTEED



2014

## Loan Program Application Guidelines

This document provides program guidelines for the Bucks Guaranteed Program. For additional information on this program and others please contact the Bucks County Industrial Development Authority at 267-880-6071.



## BACKGROUND

### Description

In order to foster increased bank lending and leverage increased private investment in both equity and debt while reducing capital outlays from public financing programs, where demand traditionally outstrips available resources, Bucks County will establish a loan guarantee program backed by funds held by the various county economic development agencies or lenders.

An initial amount of \$2 million will be made available to the Bucks County Industrial Development Authority (BCIDA) to establish the fund of which no more than 75 percent can be committed to guarantee any one loan.

Borrowers utilizing the county loan guarantee program will be required to pay an origination fee and annual fee for the use of the guarantee, along with a rate of interest or other method of payment as determined by the BCIDA, consistent with prudent lending and underwriting practices. As a general rule, the interest or payment collected during the life of the loan guarantee will be returned to the Bucks Guaranteed program fund to be used to support additional loan guarantees. All other fees received will be used by the BCIDA to administer the loan guarantee program and for general administrative purposes.

Loan Guarantees will target high wage economic clusters and sub-clusters at the county level, where Bucks County in particular has a clear and demonstrated competitive advantage to grow and expand businesses and provide workers with good jobs at living wages. The primary economic clusters pursued will include Life Sciences, especially in the areas of bio-medical, medical device manufacturing and health care; Advanced Materials; Information Technology; Diversified Manufacturing and Energy. These clusters are projected to be the fastest growing job generators in Bucks County over the next 10 years.

Examples of acceptable uses for this program include reuse of greyfield and brownfield sites that require remediation as well as Main Street and downtown redevelopment related to smart growth; improvements to critical infrastructure, and related activities.

## CHAPTER 1: ELIGIBILITY FOR BCIDA GUARANTY LOAN PROGRAM

### I. INTRODUCTION

This section discusses the steps necessary to determine if an Applicant is eligible for a BCIDA guaranteed loan. The eligibility issues that apply to the lender or the structure of the loan are discussed elsewhere.

Eligibility should be determined as early in the loan making process as possible. The small business must meet the eligibility requirements at the time of application and must continue to meet these requirements through the closing and disbursement of the loan.

### II. SUMMARY OF ELIGIBILITY REQUIREMENTS

- A. The Small Business Applicant must:
  - 1. Be an operating business;
  - 2. Be organized for profit;
  - 3. Be located in Bucks County, Pennsylvania; and
  - 4. Directly or indirectly create jobs in Bucks County, Pennsylvania.
  
- B. Lender must certify that credit is not available elsewhere on favorable terms and must document its file with how the BCIDA guaranty has allowed them to extend more favorable terms to the Applicant, such as a lower interest rate, longer maturity, etc.;
  
- C. The following businesses are not eligible:
  - 1. Business Located in a Foreign Country or Owned by Undocumented (Illegal) Aliens;
  - 2. Pyramid sales distribution plans;
  - 3. Businesses engaged in any illegal activity;
  - 4. Private clubs and businesses which limit the number of memberships for reasons other than capacity;
  - 5. Government-owned entities (except for businesses owned or controlled by a Native American tribe);
  - 6. Businesses principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting;
  - 7. Businesses with an Associate who is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude;
  - 8. Businesses in which the lender or any of its Associates owns an equity interest;
  - 9. Businesses which present live performances of a prurient sexual nature; or derive directly or indirectly more than 5 percent of their gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature;
  - 10. Businesses primarily engaged in political or lobbying activities;
  - 11. Speculative businesses (such as mining, commodities trading or oil wildcatting);
  - 12. Franchises; and
  - 13. Restaurants.

### III. ELIGIBILITY REQUIREMENTS

- A. The Small Business Applicant Must Demonstrate a Need for a Guaranty on the Loan.
  - 1. The lender must determine that the Small Business Applicant is unable to obtain the loan on favorable terms without the BCIDA guaranty.
  - 2. The lender must substantiate the factors that prevent the financing from being accomplished without BCIDA support and retain the explanation in their loan file.
- B. Ineligible Types of Businesses
  - 1. BCIDA may not guarantee a loan to an Applicant for the benefit of an ineligible affiliated business.
  - 2. BCIDA cannot guarantee a loan to any of the following types of businesses:
    - a) Businesses organized as a non-profit (for-profit subsidiaries are eligible)
    - b) Business Located in a Foreign Country or Owned by Undocumented (Illegal) Aliens
      - i. Businesses are not eligible if the business is:
        - (a) Located in a foreign country with no activities in the United States; or
        - (b) Owned in whole or in part by undocumented (illegal) aliens.
      - ii. Businesses are eligible if the business:
        - (a) Is located in Bucks County;
        - (b) Operates primarily in Bucks County; and
        - (c) Makes a significant contribution to the Bucks County economy through the:
          - i. Payment of taxes to Bucks County; or
          - ii. The creation of jobs in Bucks County, Pennsylvania.
          - iii. The proceeds must be used exclusively for the benefit of Bucks County operations. As a result the business and its employees are subject to local taxes.
          - iv. Businesses involved in international trade are subject to U.S. trade restrictions.
          - v. Businesses owned by legal permanent residents are eligible. See Paragraph III.C., below.
  - 3. Businesses Selling Through a Pyramid Plan. Pyramid or multilevel sales distribution plans are not eligible for BCIDA assistance.

4. **Businesses Engaged in Gambling**
  - a) Small businesses that obtain more than one-third of their annual gross revenue for the prior year, including rental income, from legal gambling activities are not eligible.
  - b) Small businesses are eligible if they obtain one-third or less of their annual gross revenue, including rental income, from:
    - i. Commissions from official State lottery ticket sales under a State license; or
    - ii. Gambling activities licensed and supervised by state authority in those states where the activities are legal.
    - iii. If the purpose of the business is gambling, such as a pari-mutual betting racetrack or a gambling casino, it is not eligible, regardless of the percentage of gross revenue derived from gambling.
5. **Businesses Engaged in any Illegal Activity.** BCIDA must not approve loans to borrowers that are engaged in illegal activity or who make, sell, service, or distribute products or services used in connection with illegal activity, unless such use can be shown to be completely outside of the borrower's intended market.
6. **Businesses Which Restrict Patronage.** Businesses that restrict patronage for any reason other than capacity are not eligible. For example, a men's only or women's only health club is not eligible.
7. **Government-Owned Entities, Excluding Native American Tribes**
  - a) Municipalities and other political subdivisions are not eligible.
  - b) Special Requirements Applicable to Native American Businesses
  - c) A Native American tribe is a Governmental entity and is not eligible. A small business owned in whole or in part by a Native American tribe is eligible if:
    - i. It establishes that it is a separate legal entity from the tribe and submits the documents authorizing its existence; and
    - ii. The tribe waives sovereign immunity with respect to the collateral for the loan and collection of the loan from the borrower, OR agrees to a "sue and be sued" clause specifically naming U.S. Federal courts as "courts of competent jurisdiction." Lenders may seek the advice and assistance of the Bureau of Indian Affairs (BIA) personnel when dealing with loans collateralized by Indian lands held in trust.
8. **Businesses Engaged in Promoting Religion**
  - a) An Applicant is not eligible if it is principally engaged in teaching, instructing, counseling or indoctrinating religion or religious beliefs, whether in a religious or secular setting.

- b) An Applicant is not ineligible merely because it offers religious books, music, ceremonial items and other religious articles for sale.

9. Businesses with an Associate of Poor Character

- a) The BCIDA cannot provide financial assistance to businesses with Associates who are incarcerated, on probation, on parole, who are currently under indictment for a felony or a crime of moral turpitude, or who are presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or have been arrested within the last 6 months for any offense, other than a summary offense such as a motor vehicle violation.
- b) An application can be accepted for processing if the individual indicates an arrest record, but was acquitted or the indictment was dismissed and the individual is not incarcerated, on probation or on parole for any offense.
- c) An individual with a deferred prosecution is treated as if the individual is on probation or parole. Such an applicant is not eligible.
- d) To determine eligibility under this section, the BCIDA requires that every proprietor, general partner, officer, director, managing member of a limited liability company (LLC), owner of 20 percent or more of the equity of the Applicant, Trustor (if the Applicant is owned by a trust), and any person hired by the Applicant to manage day-to-day operations (collectively, "Associates") must be of good character.

10. Businesses Providing Prurient Sexual Material

- a) A business is not eligible for BCIDA assistance if:
  - i. It presents live or recorded performances of a prurient sexual nature; or
  - ii. It derives more than 5 percent of its gross revenue, directly or indirectly, through the sale of products, services or the presentation of any depictions or displays of a prurient sexual nature.
- b) By law BCIDA must consider the public interest in granting or denying financial assistance. The BCIDA has determined that financing lawful activities of a prurient sexual nature is not in the public interest. The lender must consider whether the nature and extent of the sexual component causes it to be prurient.

11. Speculation

- a) Speculative businesses are not eligible. This prohibits loans to an Applicant for:

- i. The sole purpose of purchasing and holding an item until the market price increases; or
    - ii. Engaging in a risky business for the chance of an unusually large profit.
  - b) Speculative businesses include, but are not limited to:
    - i. Wildcatting in oil;
    - ii. Dealing in stocks, bonds, commodity futures, and other financial instruments;
    - iii. Mining gold or silver in other than established fields;
    - iv. Research and Development; and
    - v. Building homes for future sale
  - c) Non-speculative businesses which are eligible include:
    - i. A business, such as a grain elevator, that uses a commodity contract to lock in a price;
    - ii. A farmer who uses a commodity contract to lock in the sale price of his or her harvest;
    - iii. A business engaged in drilling for oil in established fields; and
    - iv. A business engaged in building a home under contract with an identified purchaser.
- 12. Franchises. Businesses that operate under a franchise agreement or similar agreement (such as a franchise development agreement, or a license or membership agreement that provide for the operation of the business under a particular name, trade or style) are not eligible for financing under the BCIDA Guaranteed Loan Program.
- 13. Restaurants. Restaurants and other establishments where meals are served to customers, whether eat-in or take out, are not eligible for financing under the BCIDA Guaranteed Loan Program.
- C. Businesses Owned by Non-US Citizens. BCIDA can provide financial assistance to businesses that are at least 51 percent owned and controlled by persons who are not citizens of the US provided the persons are lawfully in the US. The processing procedures and the terms and conditions will vary, depending upon the status of the owners as assigned by the United States Citizenship and Immigration Services (USCIS). BCIDA requires all participating lenders to comply with the U.S. Department of the Treasury regulations for Customer Identification Programs for banks, savings associations, credit unions, and certain non-Federally regulated banks found at 31 CFR 1020.220.
  - 1. Businesses owned by Naturalized Citizens are eligible and the naturalized citizens are not subject to any special restrictions or requirements. If an individual's application reflects s/he is a U.S. Citizen no further verification of status is required.



3. Businesses owned by Lawful Permanent Residents (LPRs) are eligible. LPRs are persons who may live and work in the U.S. for life unless their status is revoked through an administrative hearing.
  - a) The USCIS Form I-551 (551) is evidence of LPR status. USCIS has two versions of the 551:
    - i. Resident Alien Card; and
    - ii. Permanent Resident Card. (This is the most recent version.)
  - b) USCIS requires replacement of the 551 every 10 years to update the photograph and security measures. Replacements may also be necessary if the 551 is lost, the individual changes name, etc. Replacement of the 551 may take more than a year. LPR status is not in jeopardy merely because the 551 document lapses.

Acceptable forms of evidence when the 551 has been submitted to USCIS for replacement or has an expired date include the following:

- i. A temporary stamp by USCIS on the individual's passport that says "Processed for I-551 – Temporary Evidence of Lawful Permanent Residence;"
      - ii. USCIS Form I-327, "Re-entry Permit," issued to LPRs in lieu of a visa, which is valid for only 2 years;
      - iii. USCIS Form I-797, "Notice of Action," a receipt issued to an alien when the 551 is lost or surrendered for renewal or changes (e.g., a name change because of marriage or divorce).
      - iv. BCIDA requires that the 551 or an acceptable substitute must be current at the time it is submitted with an application or it will be returned and not processed. PLP, BCIDA Express and Pilot Loan Program lenders must have a copy of the current 551 or acceptable substitute prior to requesting a loan number.
3. Businesses owned by the following persons are not eligible:
  - a) Non-immigrant aliens residing in the US. Non-immigrant (documented) aliens are persons who are admitted to the U.S. for a specific purpose(s) and for a temporary period of time with a current/valid USCIS document, such as a visa.
  - b) Asylees and refugees (persons who receive temporary refuge in the United States) with LPR status.
  - c) Businesses owned by Foreign Nationals or Foreign Entities.
4. Documentation to evidence and verify an alien's status.
  - a) At time of application, for any alien required to complete the BCIDA Borrower Application Form, the following applies:

- i. Aliens must provide their alien registration number on the BCIDA Borrower Application Form
- ii. Lenders must obtain a copy of the individual's USCIS documentation and maintain in the case file.
- iii. The lender submits a USCIS Form G-845 (845), "Document Verification Request," with supporting information to BCIDA.
- iv. As required by USCIS, BCIDA will release information about the status of an alien to lenders or other non-governmental entities ONLY when a signed and dated authorization from the alien is attached to and submitted with the 845 on that alien providing name, address and date of birth.
  - (a) As required by USCIS, BCIDA accepts either of the following authorization statements:
    - i. I authorize the U.S. Citizenship and Immigration Services to release information regarding my immigration status to [name of lender], because I am applying for a U.S. Small Business Administration loan.
    - ii. I authorize the U.S. Citizenship and Immigration Services to release alien verification information about me to [name of lender], because I am applying for a U.S. Small Business Administration loan.
  - (b) As required by USCIS, all verification requests must include an authorization with the original signature of the alien for BCIDA to release information to lenders on the status of verification. The original Document Verification Request (Form G-845) and authorization for release must be maintained by the lender in the borrower's file for review by BCIDA and USCIS, if requested.
  - (c) The information provided to BCIDA by the USCIS system is intended solely for the purpose of determining eligibility for BCIDA financial assistance. This information is governed by the Privacy Act, 5 U.S.C. 552(a)(i)(1), and any person who obtains this information under false pretenses or uses it for any purpose other than for determining eligibility may be subject to criminal penalties.
  - (d) The authorization statement must not be on BCIDA or lender stationery.

- b) Lenders must receive verification of the status of each alien required to submit USCIS documents prior to submission of the application to BCIDA or, for delegated processing, prior to submission of the request for loan number. The lender must document the findings in the loan file.
- c) Verification of the status of an LPR is required if 6 months has elapsed since the last verification with one exception: if the individual reported an offense on BCIDA Form 912, then verification would be required even if 6 months had not elapsed, as the offense may put their status at risk. For non-LPRs, verification is required with each loan application, as their status can be revoked at any time.

#### IV. ELIGIBLE USES OF LOAN PROCEEDS

##### A. BCIDA Guaranteed Loan Proceeds May Be Used To:

- 1. Acquire Land and/or purchase, construct or renovate buildings;
- 2. Improve a site (e.g. Grading, streets, parking lots, landscaping);
- 3. Acquire and install fixed assets.
- 4. Inventory;
- 5. Supplies;
- 6. Raw Materials;
- 7. Working Capital;
- 8. Energy Conservation loans; or
- 9. Business acquisition.

##### B. Loan Proceeds May be Used to Finance a Lender's Other Real Estate Owned (OREO):

Where loan proceeds will be used to finance the purchase of real estate owned by the BCIDA lender making the loan, the application must:

- 1. Include an independent real estate appraisal that meets BCIDA appraisal requirements, and that provides the liquidation value of the real estate; and
- 2. Include an explanation of the circumstances surrounding the lender's acquisition of the real estate. If the acquisition of the property was triggered by a business failure at that particular location, the lender must submit a detailed explanation of why the new small business borrower will succeed at that same location;

##### C. Loan Proceeds for Farm Enterprises May be Used for:

- 1. The purchase of land, buildings, and land improvements (fencing, irrigation systems, construction of dikes, silos, barns, hog and dairy facilities, etc.);
- 2. Construction, renovation, or improvement (including water systems) of farm buildings other than residences;
- 3. The purchase of farm machinery and equipment;
- 4. The purchase of seed and the acquisition of animals;

5. Operating expenses directly related to the farming operation, excluding personal or family living expenses; and

**D. Business Loan Proceeds Restrictions**

Loan proceeds may not be used for any of the following purposes (including the replacement of funds used or borrowed for any such purpose):

1. Payments, distributions or loans to an Associate of the applicant except for compensation for services actually rendered at a fair and reasonable rate;
2. To refinance existing debt;
3. Floorplan financing;
4. Payment of Delinquent Taxes. Loan proceeds must not be used to pay delinquent Bucks County taxes, IRS withholding (payroll) taxes, sales taxes or other funds payable for the benefit of others.
5. To finance the relocation of the applicant business out of Bucks County, PA.

**E. Change of Ownership**

1. A Small Business Applicant(s) (and any individual co-applicant as permitted under this paragraph H), may use loan proceeds for a change of ownership, whether the change of ownership is accomplished through a stock purchase (including a stock redemption) or an asset purchase, only under the circumstances described in this paragraph H. (An asset purchase will be deemed a change of ownership and must comply with all of the requirements of this paragraph if the Small Business Applicant(s) is purchasing all or substantially all of the assets of the Seller's business or is otherwise continuing the operations of the Seller's business.):
  - a) The change of ownership will promote the sound development and/or preserve the existence of a small business;
  - b) Change of Ownership Between Existing Owners: A change of ownership between existing owners may be financed under the following circumstances:
    - i. An existing owner(s) of the small business is purchasing the ownership interest of another owner(s), resulting in 100 percent ownership of the business by the purchasing owner(s); or
    - ii. The small business is redeeming the ownership interest of an owner(s), resulting in 100 percent ownership of the small business by the remaining owner(s); and
  - c) Change of Ownership Resulting in a New Owner: A change of ownership resulting in a new owner may be financed under the following circumstances:

- i. A small business is purchasing 100 percent of the ownership interest in another business;
  - ii. An individual(s) who is not an existing owner is purchasing 100 percent of the ownership interest in a small business; or
  - iii. A small business is acquiring another small business through an asset purchase.
2. The seller may not remain as an officer, director, stockholder or key employee of the business. (If a short transitional period is needed, the small business may contract with the seller as a consultant for a period not to exceed 12 months including any extensions.)
3. If the Borrower will be acquiring the small business's real estate in a separate transaction with a non-BCIDA guaranteed loan, the BCIDA Loan must receive a shared lien position (*pari passu*) on the real estate with the non-BCIDA guaranteed loan.
4. The following changes of ownership are not eligible:
  - a) A non-owner who is purchasing less than 100 percent of the ownership interests in the business; or
  - b) An existing owner who is purchasing the ownership of another existing owner that will not result in 100 percent ownership of the business by the purchaser.
5. BCIDA considers a change of ownership to be a "new" business because it will result in new, unproven ownership/management and increased debt unrelated to business operations.
  - a) The lender's loan documentation must include:
    - i. A current business valuation (not to include any real estate) by the lender or an independent third party hired by the lender with proven experience in business valuations. (See Chapter 3 for BCIDA's business valuation requirements.)
    - ii. A site visit of the business being acquired. The lender must document in its loan file the date of the site visit as well as comments.
    - iii. A real estate appraisal for commercial real estate that meets BCIDA's requirements. (See Chapter 3 for BCIDA's appraisal requirements.)
    - iv. An analysis as to how the change of ownership will promote the sound development and/or preserve the existence of the business. If the analysis cannot support that the change of ownership will be in the best interests of the business and its continued, successful operations, then the loan request must not be submitted to BCIDA for its guaranty.
  - b) Intangible Assets: A BCIDA-guaranteed loan may be used to finance a change of ownership that includes intangible assets.

- i. If the purchase price of the business includes intangible assets (including, but not limited to, goodwill, client/customer lists, patents, copyrights, trademarks and agreements not to compete) in excess of \$500,000, the borrower and/or seller must provide an equity injection of at least 25 percent of the purchase price of the business. (Seller equity is defined as seller take-back financing that is on full standby (principal and interest) for a minimum of 2 years.) The borrower and seller will agree how much equity each will provide. For example, the borrower and seller may each provide half of the equity or the borrower may provide 15 percent and the seller may provide 10 percent.
- ii. The “purchase price of the business” includes all assets being acquired such as real estate, machinery and equipment, and intangible assets. Real estate may not be removed from the transaction and financed separately to avoid the 25 percent equity injection requirement for PLP processing.
- iii. The value of the intangible assets is determined by either the book value as reflected on the business’s balance sheet, a separate appraisal for the particular asset, or the value of the business as identified in the business valuation minus the sum of the working capital assets and the fixed assets being purchased.

## CHAPTER 2: LOAN TERMS AND CONDITIONS

### I. MAXIMUM GUARANTY AMOUNTS

The maximum dollar amount outstanding of BCIDA's guaranty to any one business (including affiliates) shall not exceed 75 percent of the Loan Guaranty Fund, except when the loan is approved under an exception to the program guideline which specifically permits higher amounts.

#### A. Maximum Guaranty Per Loan.

Generally, BCIDA will provide a guaranty of each individual loan approved under this program as follows:

1. For loans fully secured by fixed assets at a discounted collateral value computed as set forth in Chapter 3, Paragraph II., A., 1., below, or loans which have a cash flow coverage of greater than 1.25x, BCIDA will provide a loan guaranty of up to the lesser of:
  - a) 50 percent of the loan amount; or
  - b) 50 percent of the lender's actual loss after all collateral has been fully liquidated.
2. For loans that do not meet either of the criteria in paragraph I. A. 1., above, BCIDA will provide a loan guaranty of up to the lesser of:
  - a) 25 percent of the loan amount; or
  - b) 25 percent of the lender's actual loss after all collateral has been fully liquidated.

BCIDA reserves the right to make exceptions to the limits set forth in this Section on a case by case basis, within its sole discretion.

#### B. Guaranty Duration.

1. The initial loan guaranty shall be for a period of 5 years for loans with a maturity of 10 years or longer. Such loan may not balloon before year 10. For loans with a maturity of less than 10 years, BCIDA will provide a loan guaranty for a period up to 3 years, in BCIDA's discretion.
2. At the expiration of the initial guaranty period, upon the request of the Lender, BCIDA may elect to extend the loan guaranty for a period of up to an additional 5 years at the sole discretion of BCIDA. Requests for extension shall generally require an updated application and financial package to be submitted to BCIDA.
3. Upon the expiration of the Loan Note Guaranty, BCIDA shall have no further liability to the Lender.
4. Lender may not include any provision in any of its loan documents or other agreements with the Borrower that create an event of default due to the expiration or termination (for cause) of the BCIDA Loan Note Guaranty. The

inclusion of any such provision in Lender's documents shall render the Loan Note Guaranty null and void and of no effect whatsoever.

C. Zero Percent Guaranty Cannot be Provided For Ineligible Purposes

The percentage of guaranty which BCIDA provides its participants is the same for every part or purpose of that loan. A BCIDA Loan cannot include proceeds for an ineligible purpose or have any portion of the loan made to an ineligible business. An ineligible purpose cannot be included as part of any BCIDA guaranteed loan and no part of a BCIDA Loan may be guaranteed at zero percent.

## II. LOAN MATURITIES

The loan term must be the shortest appropriate term based on the use of proceeds and the borrower's ability to repay. Working capital loans and the financing of intangible assets (including goodwill) must not exceed 10 years. Equipment loans should not exceed 10 years (or the useful life of the equipment) and real estate loans must not exceed 25 years unless a portion of the loan is used for construction or renovation. If the use of proceeds of a real estate loan includes construction or renovation, the construction or renovation period may be added to the 25 year maximum maturity.

Loan maturity may exceed the period of the guaranty. This permits such structures as a working capital loan with a 10-year maturity and a BCIDA guaranty limited to 5 years. However, the guaranty period may not exceed loan maturity. This prohibits such structures as a working capital loan with a 3-year maturity

A. Establishing the Repayment Period

When lenders establish a repayment schedule and loan maturity, they must consider the following: 1) the borrower's ability to repay, 2) use of loan proceeds, and 3) useful life of the assets being financed. (Note: Lender should include in their file support for maturities that exceed the standard for an asset class but in no event may the maturity exceed the stated maximums.)

B. Establishing the Maturity Date

The maturity date for a BCIDA guaranteed loan is set in terms of the number of months from the date of Note to the date when final payment is due.

## III. INTEREST RATES

A. General Policy on Interest Rates

1. A loan may have a fixed or variable interest rate. The lender negotiates the interest rate with the Small Business Applicant, subject to maximum rates allowed under Pennsylvania law.
2. Lenders must demonstrate that the BCIDA Guaranty allows the Lender to offer a lower interest rate or longer term for the proposed financing. This must be documented in the guaranty application to BCIDA.
3. Default interest rates are not permitted except as described below.



4. Interest Rate Ceilings and Floors

BCIDA will permit a lender to limit the upward and downward adjustments by establishing a floor and ceiling provided that (1) both the floor and ceiling are stated in the Note; and (2) the difference between the stated rate in the Note and the floor is equal to or greater than the difference between the stated rate in the Note and the ceiling. For example, if the Note rate is 10 percent and the ceiling is 12 percent, the floor must be 8 percent or lower.

5. Accrual Method. BCIDA does not require a specific accrual method.

6. Amortization

Lender should use an amortization schedule that is appropriate for the type of loan. A fixed interest rate loan must use a payment that will fully amortize the loan by the maturity date. Typically, variable rate loans are re-amortized every time the interest rate is adjusted to ensure full amortization by the maturity date. The amortization schedule may be adjusted to meet the cash flow needs of the business.

B. Interest Rate Swap Contracts

1. An interest rate swap is a contract between two parties where one party pays a fee in exchange for an agreement by the other party to pay any interest in excess of an established amount. The contract may last for all or part of the term of the loan. The swap contract only relates to the payment of interest. Example: A borrower has a prime plus 2 percent interest rate on a BCIDA variable rate guaranteed loan (presently 5.25 percent). The borrower could purchase an interest rate swap contract that would set the interest rate at 7 percent. When the Note rate is lower than the rate paid by the borrower on the swap contract (7 percent), the swap seller keeps the extra amount as compensation for the risk that rates will at some point exceed 7 percent. When the Note rate is higher than the rate paid by the borrower on the swap contract, the borrower would continue to pay the fixed rate of 7 percent and the swap seller would pay the difference above 7 percent to the lender. The ability to stabilize the amount of the loan payment each month is the benefit to the borrower of an interest rate swap contract.
2. In order to use an interest rate swap in the BCIDA program, the interest rate swap contract must meet the following conditions:
  - a) The interest rate swap contract is an agreement between the small business borrower and the lender or, if the swap seller is not the lender, a third party. BCIDA is not a party to the interest rate swap contract.
  - b) BCIDA will not be responsible if the swap seller defaults during the life of the contract. The borrower will be liable to Lender for the interest as required in the Note.

- c) BCIDA will not review swap contracts for borrowers or provide guidance on their use.
- d) The swap contract does not have to last for the entire length of the loan agreement.
- e) BCIDA does not guaranty any amounts due under a SWAP arrangement. BCIDA's only obligation is to provide the guaranty as more particularly set forth in the Loan Guaranty Agreement for principal amounts due under the Note.

## V. BCIDA GUARANTY FEES

### A. Standard Policy

- 1. A participating lender must pay an initial guaranty fee and an ongoing guaranty fee to BCIDA for each loan guaranteed under the BCIDA program. These fees are collectively known as the "BCIDA Guaranty Fee". The total loan amount determines the percentage that is used to calculate this fee. The initial guaranty fee is an amount determined by BCIDA on a loan by loan basis, not to exceed 10 percent of the loan amount. The BCIDA ongoing guaranty fee is an amount equal to:
  - a) up to 2 percent of the guaranteed portion of the loan for guaranty percentages between 26 percent and 50 percent; and
  - b) up to 4 percent of the guaranteed portion of the loan for guaranty percentages up to 25 percent
- 2. The initial guaranty fee is payable as set forth in paragraph B.1.a), below, and the ongoing guaranty fee is payable each year the loan guaranty is in effect.

### B. When the Guaranty Fee Must be Paid

- 1. The lender must pay the guaranty fee to BCIDA as follows:
  - a) The lender must pay the initial guaranty fee to BCIDA within 90 days of the date of issuance of the Conditional Commitment for Loan Note Guaranty by BCIDA. Thereafter, each subsequent ongoing guaranty fee must be paid on or before the anniversary date of the Note for each year that the loan is guaranteed until the Loan Note Guaranty expires.
  - b) THE DUE DATES FOR GUARANTY FEE PAYMENTS SHALL NOT BE WAIVED OR EXTENDED.
- 2. The lender may charge the guaranty fee to the borrower after the loan is closed. However, the first disbursement may not be made primarily for the purpose of paying the guaranty fee. The Borrower may use loan proceeds to pay the guaranty fee.

C. Method of Guaranty Fee Payment

Lenders must submit the guaranty fee to BCIDA at: Bucks County Industrial Development Authority, 11 Welden Drive, Suite 100, Doylestown, PA 18901, or at such other address as may be directed by BCIDA in writing, on or before the due date in each loan guaranty year.

D. If the Fee Is Not Paid

If the guaranty fee is not paid by the applicable deadline, the guaranty will be cancelled:

1. Notification of Fee Due

The approval by BCIDA is the lender's notification that the initial guaranty fee is due and payable within 90 days of issuance of the Conditional Commitment for Loan Note Guaranty. BCIDA may, but is not required to, inform the lender when the guaranty fee has not been received by BCIDA within the required time frame. Neither the issuance of any notice of non-payment by BCIDA nor the receipt of any notice of non-payment by the lender waives the lender's obligation to pay the initial fee within 90 days of approval or any subsequent fee on or before each anniversary date of the note. In addition, the obligation to pay the guaranty fee to BCIDA is not contingent upon the Borrower having paid the fee to the lender.

2. Notice of Cancellation of Guaranty

If BCIDA has not received the full guaranty fee by the applicable due date, BCIDA will cancel the guaranty and issue a "Notice of Cancellation of Guaranty."

E. Additional Guaranty Fee for Loan Increases

1. When a BCIDA Loan is increased, additional appropriations are committed, and an additional Guaranty fee is due. The additional fee is based on the rules in effect at the time the loan was originally approved. Therefore, the amount of the additional guaranty fee due for an increase will equal what the guaranty fee would have been if the increase was part of the original loan amount, less the amount of the original fee (if already remitted). Additional guaranty fees are due and payable at the time a request for increase in loan amount is made.

F. Guaranty Fee Refunds

1. The guaranty fee is based on the amount that BCIDA has approved prior to the loan being closed and initially disbursed. Any request by the lender to decrease the approved amount must be approved by BCIDA with a date that is prior to the date the loan is closed and initially disbursed by the lender in order for the guaranty fee payable to be adjusted downward

2. Full refund: The guaranty fee may be refunded only when the loan has not been closed and initially disbursed and the lender submits a written request to BCIDA to cancel. Once a loan with a maturity exceeding 12 months has been initially disbursed, no refund is permitted.
3. Partial refund: If BCIDA approves the cancellation of a portion of the loan prior to the loan being closed and initially disbursed, BCIDA will adjust the guaranty fee payable to reflect the new loan amount and refund the excess amount if the fee has already been paid. If the loan has been closed and initially disbursed, no refund is permitted.

## VI. OTHER FEES

### A. Generally:

1. The lender may charge the same fees for BCIDA guaranteed loans as it charges for its similarly-sized non-BCIDA guaranteed commercial loans as long as the fees are directly related to the service provided and are reasonable and customary for the services performed. Examples include origination fees, application fees and reasonable transaction fees such as cash advance fees, late fees, returned check charges, currency conversion fees, and organizational change fees.
2. BCIDA reserves the right to disallow fees that are not customary and/or which do not bear a relationship to the actual service provided. Also, if the lender requests that BCIDA honor its guaranty on a BCIDA guaranteed loan, with the exception of the BCIDA guaranty fee, BCIDA will not purchase any portion of the loan balance that consists of fees charged to the borrower.
3. BCIDA shall charge an underwriting review fee and for its actual out of pocket costs advanced. Lender shall be responsible for the payment of these fees. These fees may be charged to the Borrower.

### B. Legal Fees

1. Lender shall be responsible for legal fees incurred by BCIDA in connection with the issuance of the Conditional Commitment for Loan Note Guaranty and the issuance of the Loan Note Guaranty. These fees may be charged to the Borrower.

### C. Out-of-Pocket Expenses

Lenders may be reimbursed by the borrower for all direct costs including UCC filings or recording fees, photocopying, delivery charges, collateral appraisals and environmental impact reports that are obtained in compliance with their internal lending policy, and other direct charges related to loan closing. These costs must be itemized and kept in the loan file for BCIDA's possible review.

D. Late Payment Fee

Lenders may charge the borrower a late payment fee not to exceed 5 percent of the regular loan payment when the borrower is more than 10 days delinquent on its regularly scheduled payment. BCIDA's guaranty does not extend to late fees and, at time of guaranty purchase, BCIDA will not pay any portion of such fees.

**VII. PROHIBITED FEES** The lender or its associate may not:

- A. Require the applicant or borrower to pay the lender, a lender associate, or any party designated by either, any fees or charges for goods or services, including insurance, as a condition for obtaining a BCIDA guaranteed loan;
- B. Charge the borrower any broker, commission, referral or similar fees; or
- C. Charge points or add-on interest.

## CHAPTER 3: CREDIT STANDARDS, COLLATERAL AND ENVIRONMENTAL POLICIES

### I. CREDITWORTHINESS/CREDIT UNDERWRITING

#### A. Credit Standards

On BCIDA-guaranteed loans, the cash flow of the Small Business Applicant is the primary source of repayment, not the liquidation of collateral. Thus, if the lender's financial analysis demonstrates that the Small Business Applicant lacks reasonable assurance of repayment in a timely manner from the cash flow of the business, the loan request must be declined, regardless of the collateral available or outside sources of cash.

1. Lenders credit memorandum and analysis must demonstrate the Small Business Applicant's ability to repay the loan from the cash flow of the business by documenting the following:
  - a) A description of and history of the business;
  - b) Lender's credit analysis must consider the nature of the business, length of time in business under current management and, if applicable, the depth of management experience in the industry or a related industry. Such analysis should include a brief description of the business's management team.
  - c) A financial analysis of repayment ability based on historical financial statements if an existing business (including balance sheet with debt schedule and income statement) and/or tax returns and detailed projections, including the supporting assumptions. Include:
    - i. Analysis of historical cash flow for existing businesses, that demonstrates total debt service coverage after the BCIDA Loan;
    - ii. Calculation of operating cash flow (OCF) defined as earnings before interest, taxes, depreciation and amortization (EBITDA);
    - iii. Analysis must document additions and subtractions to cash flow such as the following:
      - (a) Unfunded capital expenditures;
      - (b) Non-recurring income;
      - (c) Expenses and distributions;
      - (d) Distributions for S-Corp taxes;
      - (e) Rent payments;
      - (f) Owner's Draw; and/or
      - (g) Global cash flow analysis that includes assessment of impact on cash flow to/from any affiliate business.
  - d) Debt service (DS) is defined as the future required principal and interest payments on all business debt inclusive of new BCIDA Loan proceeds. The small business applicant's debt service coverage ratio (OCF/DS) must be equal to or greater than 1.25 on a historical

- and/or projected cash flow basis. If the business shows historical debt service coverage that includes the proposed BCIDA guaranteed debt in the prior 3 full tax periods, then no projection is required. If debt service is evident only in an interim period or not at all, then cash flow projections are required that cover the period of time to which the debt service coverage meets or exceeds the requirement;
- e) For projected cash flows, the Lender should provide the calculation of debt service coverage using the definitions above, and provide analysis of the assumptions supporting the projected cash flow, such as:
    - i. reason for reduced expense structure;
    - ii. reason for revenue growth, i.e.
    - iii. new product lines,
    - iv. sales channels, and
    - v. production facilities, and
    - vi. industry analysis.
  - f) Spread of pro-forma Business Balance Sheet (current business balance sheet adjusted for all changes in assets and liabilities as a result of the loan, other debt, any required equity injection and use of loan proceeds);
  - g) Ratio calculations (based on the pro-forma Balance Sheet and historical and projected Income Statements) for the following financial ratio benchmarks: Current Ratio, Debt/Tangible Net Worth, Debt Service Coverage, and any other ratios the lender considers significant for the business/industry (e.g., inventory turnover, receivables turnover, and payables turnover, etc.);
  - h) Analysis of working capital adequacy to support projected sales growth over the next 12 months;
  - i) Collateral adequacy assessment (using market or net book value as defined in Section II. of this Chapter to offset risk of default);
  - j) Analysis of credit, including lender's rationale for recommending approval. Include discussion and analysis of any:
    - i. Competition
    - ii. Seller financing;
    - iii. Stand-by agreements;
    - iv. 90+day delinquencies;
    - v. Trade disputes and/or;
    - vi. Federal, State or local citations which would preclude the small business applicant from normal business operations.
  - k) For a change of ownership, discussion/analysis of the business valuation (based on generally accepted valuation methods used for the pertinent industry) used to support the purchase price; and

- l) Discussion of any liens, judgments or bankruptcy filings.
2. BCIDA Review of Lender's Credit Analysis
- a) BCIDA's review of the lender's credit analysis must conclude that the lender identified through its credit underwriting that there is a reasonable expectation that the borrower will repay the loan in a timely manner and not default and that collateral meets BCIDA's collateral requirements.
  - b) For all applications, BCIDA reviews the lender's credit analysis at time of loan processing and may ask for and receive additional information beyond the initial submission requirements.
- E. Equity Requirement
1. Amount of Equity
- Adequate equity is important to ensure the long term survival of a business. The lender must determine if the equity and the pro forma debt-to-worth are acceptable based on the factors related to that type of business, experience of the management and the level of competition in the market area. The lender must include in its credit analysis a detailed discussion of the required equity and its adequacy.
2. Source of Equity Injection
- a) The following may be considered as Equity Injection:
    - i. Cash that is NOT borrowed.
    - ii. Cash that IS borrowed only under the limited circumstances outlined below:
      - (a) BCIDA considers funds borrowed through the use of personal credit for injection into the business as additional debt, not equity, with one exception.
      - (b) If the Small Business Applicant can demonstrate repayment of this personal loan from sources other than the cash flow of the business, the cash injection may be considered equity. (Note: The salary of the business owner does not qualify.)
      - (c) A lender must disclose any loan made to an individual for the purpose of providing an equity injection into the business. The lender's credit analysis must address the impact on the personal and business balance sheets and sources of repayment for such side loans.
    - iii. Assets other than Cash



Only tangible fixed assets injected into a project will be considered as equity injection. Lenders must carefully evaluate the value of assets other than cash that are injected by owners or principals. Therefore, an appraisal or other valuation by an independent third party is required if the valuation of the fixed assets is greater than the depreciated value (net book value). A valuation of the fixed assets provided as part of a business valuation will not meet these requirements, except as part of a going concern appraisal as described below.

iv. Standby debt

Debt that is on full standby (no payments of principal or interest for the term of the BCIDA-guaranteed loan) may be considered acceptable equity for BCIDA's purposes. A debt that is on partial standby (interest payments only being made) may be considered equity when there is adequate historical business cash flow available to make the payments. A copy of the note must be attached to the standby agreement. (See below for additional discussion of standby agreements.)

b) The following may not be considered as Equity Injection:

- i. Value or cost of education; and
- ii. Funds that are borrowed and do not meet the exception noted in subparagraph a)(2) above.

3. Documentation of Equity Injection.

a) Lenders must verify the injection prior to disbursing loan proceeds and must maintain evidence of such verification in their loan files. Lenders are expected to use reasonable and prudent efforts to verify that equity is injected and used as intended, and failure to do so may warrant a repair or partial/full denial. Lenders must submit with each purchase request on a loan for which the Conditional Commitment required an equity injection, documentation to show that they verified the equity injection. Verifying a cash injection requires the following documentation:

- i. A copy of a check or wire transfer along with evidence that the check or wire was processed showing the funds were moved into the borrower's account or escrow;
- ii. A copy of the statements of account for the account from which the funds are being withdrawn for each of the two most recent months prior to disbursement showing that the funds were available; and
- iii. A subsequent statement of the borrower's account showing that the funds were deposited or a copy of an escrow settlement statement showing the use of the cash.

- b) A promissory note, “gift letter” or financial statement is not sufficient evidence of cash injection without corroborating evidence consistent with paragraph a) above.

## II. COLLATERAL

### A. General Requirements

With respect to collateral taken, lenders must use commercially reasonable and prudent practices to identify collateral items, which conform to procedures at least as thorough as those used for their similarly-sized non-BCIDA guaranteed commercial loans. Decisions regarding what collateral must be taken to secure a loan are based on the circumstances of the individual loan, including size, and in all cases must meet the minimum requirements set forth in this section.

#### 1. Adequacy of Collateral

A loan request is not to be declined solely on the basis of inadequate collateral. In fact, one of the primary reasons lenders use the BCIDA-guaranteed program is for those Small Business Applicants that demonstrate repayment ability but lack adequate collateral to fully repay the loan if the loan defaults. However, BCIDA does not permit its guaranty to be used as a substitute for available collateral. **Lenders must consider both what to take as collateral and how to value that collateral.**

- a) BCIDA considers a loan as “fully-secured” if the lender has taken security interests in all available fixed assets with a combined “net book value” as adjusted below up to the loan amount. For BCIDA Loans, the term “fixed assets” means real estate, including land and structures, machinery and equipment owned by the Applicant. “Net book value” is defined as an asset’s original price minus depreciation and amortization.
  - i. New machinery and equipment may be valued at 75 percent of price minus any prior liens for the calculation of “fully-secured.”
  - ii. Used or existing machinery and equipment may be valued at 50 percent of Net Book Value or 80 percent with an Orderly Liquidation Appraisal minus any prior liens for the calculation of “fully-secured.”
  - iii. Real estate can be valued at 85 percent of the market value for the calculation of “fully-secured” and the value must be determined in accordance with the requirements set forth in Paragraph C below.
  - iv. If there is a collateral shortfall (not fully-secured) on the BCIDA-guaranteed loan, the lender may include trading assets as necessary (using 10 percent of current book value for the

calculation) and will be required to take available equity in the personal real estate of the principals. Liens on a personal residence or investment property may be limited to the amount of the collateral shortfall;

- v. Liens on a personal residence or investment property may be limited to 150 percent of the equity in the collateral, if there are tax implications associated with the lien amount in the particular state where the lien is filed.
  - vi. For loans that are collateralized by commercial real estate, lenders must comply with the appraisal requirements set forth in Paragraph II.C 1 below.
  - vii. BCIDA does not require a lender to collateralize a loan with a personal real estate to meet the “fully secured” definition when the equity in the real estate is less than 25 percent of the property’s fair market value, as documented by an appraisal of the property.
- c) When loan proceeds from any BCIDA Loan will be used to purchase assets, a first security interest in those assets must be obtained.

## 2. Required Collateral

- a) BCIDA requires that the lender collateralize the loan to the maximum extent possible up to the loan amount. If business fixed assets do not “fully secure” the loan in accordance with Paragraph 1. above, the lender may include trading assets (using 10 percent of current book value for the calculation), and **must** take available equity in the personal real estate (residential and investment) of the principals as collateral. Lender is not required to collateralize a loan with a personal real estate to meet the “fully secured” definition when the real estate equity is less than 25 percent of the fair market value.
- b) Assets owned by the Small Business Applicant and Spouse
  - i. When an individual alone or together with his or her spouse owns 20 percent or more of the Small Business Applicant, the lender must consider taking as collateral a lien on personal real estate (investment or residential) that is owned individually by the applicant owner, or jointly owned by the individual and his or her spouse.
  - ii. Real estate transferred by the applicant to the non-owning spouse within 6 months of the date of the application will not be exempt from consideration as available collateral.

## B. Guaranties

1. **Personal Guaranties:** Guarantees of parent and subsidiary entities (corporations, limited liability companies, partnerships, etc.) must be provided on every loan. Generally, for individuals who own 20 percent or more of a Small Business Applicant, the Lender should consider taking an unlimited full personal guaranty of these individuals. If any 20 percent or more owner is not required to provide an unlimited full personal guaranty, the rationale and justification for waiving this general requirement should be included in the lender's credit analysis. Lenders may require other individuals to guarantee the loan as well. The guaranty by owners of less than 20 percent may be limited or full.
  - a) Lender must obtain a personal financial statement from all individuals guaranteeing the loan.
  - b) Guaranty may be secured or unsecured but must meet BCIDA's collateral requirements. If the loan is not fully collateralized by fixed assets, available equity in personal real estate must be pledged to secure the guaranty, up to the collateral shortfall above.
  - c) **Guaranty of Spouse:**
    - i. Each spouse owning 5 percent or more of a Small Business Applicant must personally guarantee the loan in full when the combined ownership interest of both spouses is 20 percent or more
    - ii. For a non-owner spouse, lender must require the signature of the spouse on the appropriate collateral documents. The spouse's guaranty secured by jointly held collateral will be limited to the spouse's interest in the collateral.
2. **Corporate/Other Guaranties:** All entities that own 20 percent or more of a Small Business Applicant must provide an unlimited full guaranty. If the entity that owns 20 percent or more of the Small Business Applicant is a trust (revocable or irrevocable), the trust must guarantee the loan with the trustee executing the guaranty on behalf of the trust and providing the certifications required BCIDA. In addition, if the trust is revocable, the Trustor also must guarantee the loan. Financial statements are necessary to determine the assets available to support the guaranty.
3. Each loan must be guaranteed by at least one individual. If no one individual owns 20 percent or more of the Small Business Applicant, at least one of the owners must provide a full unconditional guaranty. In addition, if the guaranty will be provided by a trust, the requirements of paragraph 2 immediately above must be met.
4. **Reducing Ownership Interest**
  - a) Any person subject to the personal guaranty requirements 6 months prior to the date of the loan application would continue to be subject

to the requirements even if that person has changed his or her ownership interest to less than 20 percent.

- b) The only exception to the 6-month rule is when that person completely divests his or her interest prior to the date of application. Complete divestiture includes divestiture of all ownership interest and severance of any relationship with the Small Business Applicant in any capacity, including being an employee (paid or unpaid).

5. Employee Stock Ownership Plans (ESOPs) and 401(k) Accounts: When an ESOP or 401(k) owns 20 percent or more of a Small Business Applicant, the Plan or Account cannot guarantee the loan. The Plan or Account must meet all applicable IRS eligibility requirements. In addition, the following loan conditions must be met:

- a) The owner(s) of a 401(k) must provide his or her full unconditional personal guaranty regardless of the individual ownership interest in the applicant concern. This guaranty must be a secured guaranty if required by BCIDA's existing collateral policies.
- b) The members of the ESOP are not required to personally guarantee the debt, but all owners of the Small Business Applicant who hold an ownership interest of 20 percent or more outside the ESOP are subject to BCIDA's personal guaranty requirements.

C. Appraisal and Business Valuation Requirements:

1. Commercial Real Estate

BCIDA requires a real estate appraisal if the BCIDA-guaranteed loan is secured by commercial real property.

- a) For all loans secured by commercial real property, federally regulated lenders must obtain an appraisal by a state licensed or certified appraiser and otherwise follow their primary regulator's FIRREA requirements for real estate appraisals. Appraisals must be in compliance with USPAP. Additionally, BCIDA requires that completed appraisals be dated within 12 months of the application for guaranty, and that federally-regulated lenders comply with the provisions set forth in paragraphs 3 and 4 below with regard to other fixed assets and the additional appraisal requirements for changes of ownership.
- b) The appraiser must be:
  - i. independent and have no appearance of a conflict of interest (such as a direct or indirect financial or other interest in the property or transaction); and
  - ii. either State-licensed or State-certified with the following exception: when the commercial property's estimated value is over \$1,000,000, the appraiser must be State-certified.

- c) In order for the appraiser to identify the scope of work appropriately, the appraisal must identify the lender as the client and/or an intended user of the appraisal, as those terms are defined in the Uniform Standards of Professional Appraisal Practice (USPAP). **The lender may not use an appraisal prepared for the applicant.** The cost may be passed on to the Small Business Applicant.
- d) The appraisal must be prepared in compliance with USPAP and use one of the following options:
  - i. a self-contained appraisal report; or
  - ii. a summary appraisal report.
- e) If the loan will be used to finance new construction or the substantial renovation of an existing building, the appraisal must estimate what the market value will be at completion of construction. (“Substantial” means rehabilitation expenses of more than one-third of the purchase price or fair market value at the time of the application.) After construction is completed, lender must obtain a statement from the appraiser that the building was built with only minor deviations (if any) from the plans and specifications upon which the original estimate of value was based. If the appraiser cannot provide such a statement, then the lender may not close the loan without BCIDA’s prior written permission.
- f) If the BCIDA guaranteed loan was used to cover the construction period, the lender must notify BCIDA of any deviation(s) and work with the BCIDA CLSC to determine an appropriate course of action, including the securing of additional collateral. The lender’s notification to BCIDA must provide a sufficient understanding of the reasons for the differences in values between the estimated and actual values as well as a recommendation as to a remedy to offset the difference in values such as additional equity or additional collateral. If additional collateral is being required, the lender must identify both the fair market and liquidation values of the additional collateral. If the appraiser is unable to issue a statement that the building was built with only minor deviations (if any) from the plans and specifications upon which the original estimate of value was based, but is able to provide a new appraisal demonstrating that the market value meets or exceeds the original estimate of value, then no additional action on the part of the lender is necessary.
- g) If the loan will be used to acquire an existing building that does not require construction, the appraiser should estimate market value on an as-is basis. If the appraiser estimates the value other than on an as-is basis, the narrative must include an explanation of why the as-is basis was not used.
- h) If the appraisal engagement letter asks the appraiser for a business enterprise or going concern value, the appraiser must allocate separate values to the individual components of the transaction

including land, building, equipment and business (including intangible assets). When the collateral is a special purpose property, the appraiser must be experienced in the particular industry.

- i) When valuing the collateral, the lender must not include the contributory value of any rental income or the value of any intangible assets contained in the appraisal.
- j) An appraisal may be submitted as part of the loan application to assist with the underwriting or as part of the loan closing. In no case may the lender rely on an appraisal that was prepared more than 12 months prior to the date of the application.
  - i. If the lender is going to require the appraisal at closing, the loan application must include an estimate of the value of the real estate and the estimate must be identified in the Conditional Commitment with the requirement for an appraisal that supports the estimated value at time of closing.
  - ii. If at time of closing the appraisal:
    - (a) Comes in at 90 percent or more of the estimated value, the lender may close the loan but must include a written explanation as to why the appraisal is less than the estimated value in the loan file; or
    - (b) Comes in at less than 90 percent of estimated value, the lender may not close the loan without BCIDA's prior written permission (see exception below for PLP lenders). The lender's justification to BCIDA must provide a sufficient understanding of the reasons for the differences in values between the estimated and actual values as well as a recommendation as to a remedy to offset the difference in values such as additional equity or additional collateral. If additional collateral is being required, the lender must identify both the fair market and liquidation values of the additional collateral.

2. Non-commercial real estate or real estate securing a personal guaranty

BCIDA has no specific appraisal requirements for non-commercial real estate (such as a residence) or real estate (commercial or non-commercial) taken as collateral to secure a personal guaranty.

3. Other Fixed Assets

If the valuation of fixed assets is greater than their depreciated value (net book value), an independent appraisal by a qualified individual must be obtained by the lender to support the higher valuation. A valuation of the fixed assets provided as part of a business valuation will not meet these

requirements, except as part of a going concern appraisal as described in paragraph 5.e) below.

4. Additional Appraisal Requirements for Changes of Ownership

For businesses that have been transferred within 36 months prior to the date of the loan application, BCIDA requires:

- a) An appraisal of the business real estate that meets the appraisal requirements above; and
- b) Either a "review" of the appraisal by another appraiser selected directly by the lender or a site visit by a senior member of the lender's staff. The lender must document the file and include the date of the visit and a description of the items reviewed on site.

5. Business Valuation Requirements – Change of Ownership

Determining the value of a business (not including real estate which is separately valued through an appraisal) is the key component to the analysis of any loan application for a change of ownership. An accurate business valuation is required because the change in ownership will result in new debt unrelated to business operations and create an intangible asset. A business valuation assists the buyer in making a determination that the seller's asking price is supported by historic operations and permits the buyer to make a reasonable return on his or her investment.

- a) If the amount being financed (including any BCIDA, seller, or other financing) minus the appraised value of real estate and/or equipment being financed is \$250,000 or less, the lender may perform its own valuation of the business being sold, unless the lender's internal policies and procedures require an independent business valuation from a qualified source.
- b) If the amount being financed (including any BCIDA, 504, seller, or other financing) minus the appraised value of real estate and/or equipment is greater than \$250,000 or if there is a close relationship between the buyer and seller (for example, transactions between family members or business partners), the lender must obtain an independent business valuation from a qualified source.
- c) A "qualified source" is an individual who regularly receives compensation for business valuations and is accredited by one of the following recognized organizations:
  - i. Accredited Senior Appraiser (ASA) accredited through the American Society of Appraisers;
  - ii. Certified Business Appraiser (CBA) accredited through the Institute of Business Appraisers;
  - iii. Accredited in Business Valuation (ABV) accredited through the American Institute of Certified Public Accountants;



- iv. Certified Valuation Analyst (CVA) accredited through the National Association of Certified Valuation Analysts; and
  - v. Accredited Valuation Analyst (AVA) accredited through the National Association of Certified Valuation Analysts.
- d) In order for the individual performing the business valuation to identify the scope of work appropriately, the business valuation must be requested by and prepared for the lender. The scope of work should identify whether the transaction is an asset purchase or stock purchase and be specific enough for the individual performing the business valuation to know what is included in the sale (including any assumed debt). The business valuation must include the individual's opinion of value, the qualifications of the individual performing the valuation and their signature certifying to the information contained in the valuation. The lender may not use a business valuation prepared for the applicant or the seller. The cost of the valuation may be passed on to the Small Business Applicant.
- e) The lender may use a going concern appraisal to meet these requirements if:
- i. The loan proceeds will be used to purchase a special use property;
  - ii. The appraisal is performed by an appraiser experienced in the particular industry and who is a "qualified source" as identified in paragraph 5.c) above and
  - iii. The appraisal allocates separate values to the individual components of the transaction including land, building, equipment and intangible assets.
- f) The business valuation must be submitted as part of the loan application, or the credit memorandum must include an estimate of the value of the business. The credit memorandum must be updated after receipt of the business valuation to include a comparison of the loan amount and the business valuation and any discrepancies in excess of 10 percent of the estimated amount must be submitted to BCIDA for approval.
- g) Any amount in excess of the business valuation may not be financed with the BCIDA guaranteed loan.
- i) Lender Verification of Business Valuation Financial Data
- Lender must obtain a copy of the financial information relied upon by the individual who performed the business valuation and verify that information against the seller's IRS transcripts to ensure the accuracy of the information.

### III. ENVIRONMENTAL POLICIES AND PROCEDURES

These environmental policies and procedures apply to all lenders on all BCIDA Loan programs, except where otherwise indicated. Failure to comply with the provisions of this paragraph may result in a denial of BCIDA's guaranty.

- A. Definitions Terms that are capitalized in this paragraph are defined in the "Definitions" section in Appendix 1.
- B. The Risks of Environmental Contamination include:
  - 1. The costs of Remediation could impair the borrower's ability to repay the loan and/or continue to operate the business;
  - 2. The value and marketability of the Property could be diminished. If the borrower defaults, lender or BCIDA might have to abandon the Property to avoid liability or accept a reduced price for the Property;
  - 3. Lender or BCIDA could be liable for environmental clean-up costs and third-party damage claims arising from Contamination if title to contaminated Property is taken as a result of foreclosure proceedings and/or lender or BCIDA exercises operational control at the Property; and
  - 4. If a Governmental Entity cleans a site, it may be able to file a lien for recovery of its costs which may be superior to lender's lien.

- C. Environmental Investigations

BCIDA requires an Environmental Investigation of all commercial Property upon which a security interest such as a mortgage or leasehold mortgage is offered as security for a loan or debenture. The type and depth of an Environmental Investigation to be performed varies with the risks of Contamination. This paragraph provides minimum standards. Prudent lending practices may dictate additional Environmental Investigations or safeguards.

- D. Submission of Environmental Investigation Reports

Lender must submit the Environmental Investigation Report to BCIDA with the application or prior to issuance of the Loan Note Guaranty. All Transaction Screens, Phase I and Phase II ESAs **must** be performed by an Environmental Professional.

- E. The Steps of an Environmental Investigation

- 1. NAICS Codes. For all Property except a unit in a Multi-Unit Building, Lender must begin by making a Good Faith effort to determine the NAICS code(s) for the Property's **current and known prior uses** and compare the NAICS code(s) to the list of environmentally sensitive industries in Appendix 2. For a unit in a Multi-Unit Building, Lender may proceed directly to subparagraphs b)i. and ii. below.
  - a) If there is a NAICS code match to an environmentally sensitive industry identified in Appendix 2, the Environmental Investigation must begin with a Phase I, regardless of the amount of the loan. If the NAICS code begins with 447 (gas stations with or without convenience stores),

the Environmental Investigation must begin with a Phase I and the lender must also refer to and, if applicable, comply with “Environmental Investigation Requirements for Gas Station Loans” in Appendix 3.

- b) If there is not a NAICS code match to an environmentally sensitive industry, or if the Property is a unit in a Multi-Unit Building, the lender must proceed as follows:
  - i. If the loan amount is **up to and including** \$150,000, the Environmental Investigation may begin with an Environmental Questionnaire.
  - ii. If the loan amount is **more than** \$150,000, the Environmental Investigation must, at a minimum, begin with an Environmental Questionnaire and Records Search with Risk Assessment.
2. Environmental Questionnaire Results. If the Environmental Questionnaire reveals it is unlikely that there is environmental contamination at the Property and that no further investigation is warranted, lender must submit the results of the Environmental Investigation to BCIDA with recommendations and seek BCIDA’s concurrence. If at any time an Environmental Questionnaire reveals that further investigation is warranted, lender must obtain, at a minimum, a Records Search with Risk Assessment.
3. Environmental Questionnaire & Records Search with Risk Assessment Results
  - a) If the Environmental Questionnaire reveals that it is unlikely that there is environmental contamination at the Property and that no further investigation is warranted, and the Records Search with Risk Assessment concludes that the Property is a “low risk” for Contamination, lender must submit the results of the Environmental Investigation to BCIDA with recommendations and seek BCIDA’s concurrence.
  - b) If the Records Search with Risk Assessment concludes that the Property is an “elevated risk” or “high risk” for Contamination, lender must obtain a Phase I ESA.
4. Transaction Screen Results
  - a) If the Environmental Professional conducting the Transaction Screen concludes that no further investigation is warranted, the lender must submit the results of the Environmental Investigation to BCIDA with recommendations and seek BCIDA’s concurrence.
  - b) If the Environmental Professional conducting the Transaction Screen concludes that further investigation is warranted, the lender must obtain a Phase I ESA.

5. Phase I ESA Results

- a) If the Environmental Professional conducting the Phase I ESA concludes that no further investigation is warranted, the lender must submit the results of the Environmental Investigation to BCIDA with recommendations and seek BCIDA's concurrence.
- b) If the Environmental Professional conducting the Phase I ESA concludes that further investigation is warranted (typically a Phase II), and the lender still wants to make the loan, the lender must proceed as recommended by the Environmental Professional, or in the alternative submit the results of the Environmental Investigation to the BCIDA with recommendations and seek BCIDA's concurrence. In general, BCIDA will require compliance with all of an Environmental Professional's recommendations (including "housekeeping measures," such as secondary containment, decommissioning monitoring wells, sealing floor drains, etc.). In the rare instance where an exception may be warranted, lenders must provide a rationale for not wanting to follow the Environmental Professional's recommendation.

6. Phase II ESA Results

- a) If the Environmental Professional conducting the Phase II ESA concludes that no further investigation is warranted, the lender must submit the results of the Environmental Investigation to BCIDA with recommendations and seek BCIDA's concurrence.
- b) If the Phase II ESA reveals Contamination and the lender still wishes to make the loan, lender must ensure that the Environmental Professional has documented:
  - i. Whether the Contamination quantities exceed the reportable or actionable levels;
  - ii. Whether Remediation is necessary;
  - iii. An estimate of any Remediation costs (Environmental Professionals may use ASTM E2137-01 Standard Guide for Estimating Monetary Costs and Liabilities for Environmental Matters); and
  - iv. The projected completion date of any Remediation.
- c) If the Environmental Investigation reveals Contamination, the lender should determine whether disbursement is appropriate under one or more of the factors identified in subparagraph F below, "Approval and Disbursement of loans when there is Contamination or Remediation at the Property". If at any stage of the Environmental Investigation BCIDA concurs with a lender's recommendation that environmental risk has been sufficiently minimized and that no further investigation is required, the loan may be disbursed.

F. Approval and Disbursement of Loans When There Is Contamination or Remediation at the Property

Loans may not be approved or disbursed if there is known Contamination or on-going Remediation at the Property unless the risks have been minimized to the satisfaction of BCIDA. Lenders seeking loan approval or disbursement authority despite Contamination or on-going Remediation at the Property must submit a recommendation to BCIDA that includes, at a minimum, a discussion of the following:

1. Nature and Extent of the Contamination including copies of the following documents pertaining to the Property:
  - a) All relevant Environmental Investigation Reports;
  - b) All publicly available Governmental Entity correspondence;
2. Remediation
  - a) Recommended method of Remediation;
  - b) Status of on-going Remediation, if any;
  - c) Environmental Professional's estimated cost of Remediation;
  - d) Environmental Professional's estimated completion date;
  - e) Governmental Entity's designation of responsible Person(s);
  - f) Person(s) paying for on-going Remediation;
3. Collateral Value
  - a) Proposed loan amount and proposed use of proceeds;
  - b) Appraised or the estimated value of the Property;
  - c) Institutional Controls and Engineering Controls, if any, and their impact on repayment ability, collateral value and marketability of the Property; and
4. Mitigating Factors

BCIDA will rely upon one or more of the following factors when deciding to disburse before completion of Remediation or monitoring.

- a) Indemnification. If any Person who possesses sufficient financial resources to cover the costs of completing Remediation executes the BCIDA Environmental Indemnification Agreement in Appendix 4, approval or disbursement may be considered. Lender must conduct an analysis of the proposed indemnitor to ensure that it has sufficient assets to honor an indemnification agreement. The Third Party Indemnitor cannot be the borrower or the operating company.

The BCIDA Environmental Indemnification Agreement:

- i. cannot be modified;
- ii. must be executed by the Borrower and (if applicable) Operating Company;
- iii. must have a copy of the Environmental Investigation Report attached to it; and

- iv. must be properly recorded in the memorandum format in Exhibit C to Appendix 4.

All lenders must submit the finalized BCIDA Environmental Indemnification Agreement to BCIDA for review and approval prior to a request that BCIDA fund the loan.

- b) **Completed Remediation.** If the Governmental Entity has affirmed in writing that active Remediation is complete but additional monitoring is required, approval or disbursement may be considered after the following occurs: (a) monitoring results for the first year are obtained; (b) an Environmental Professional concludes that the results show no unacceptable increase in Contamination since Remediation; and (c) Environmental Professional concludes that the owner/operator of the Property is in compliance with any continuing obligations, including activity and use limitations, Engineering and Institutional Controls, and post-Remedial monitoring required by the Governmental Entity.
- c) **“No Further Action”.** If a lender obtains a “no further action letter” or “closure letter” from a Governmental Entity stating that no further Remediation or monitoring of Contamination previously found is required, approval or disbursement may be considered.
- d) **“Minimal Contamination”.** If the extent of Contamination and cost of Remediation are de-minimis in relation to the value of the Property and/or the resources of the Person responsible for Remediation, and the Remediation is projected to be completed within one year, approval or disbursement may be considered. The lender should identify the Environmental Professional that will supervise the Remediation and discuss: (a) the nature of the Contamination; (b) the reliability of the Remediation estimates; (c) the projected completion date; and (d) the duration of ongoing monitoring.
- e) **Clean-up Funds.** If lender provides evidence from a Governmental Entity that the borrower or Property has been approved by a fund to pay for or reimburse Remediation costs, and the amount allocated is sufficient to cover the costs of Remediation, approval or disbursement may be considered. Lender must also address any conditions of Remediation that might preclude payment or reimbursement and the financial capability of the fund.
- f) **Escrow Account.** If an escrow account is available which (a) equals a minimum of 150 percent of the total estimated cost of required Remediation and (b) is controlled by the BCIDA lender, approval or disbursement may be considered. The Governmental Entity must concur with the Remediation’s scope. The Conditional Commitment and escrow agreement for the escrow account must ensure that escrow funds will only be used for Remediation costs. The source of the escrow funds may not be BCIDA Loan proceeds. Depending upon the circumstances, an escrow account with more than 150 percent of the estimated costs of Remediation may be appropriate. The escrowed funds may be

used for Remediation. Any remaining funds in the account may not be released until the appropriate “closure letter” or “no further action letter” is received or, in the case of monitoring, when all monitoring wells related to the Property have been decommissioned.

Note: Lender’s role as trustee of the escrow account is solely to release funds upon the satisfactory completion of Remediation work – the lender must not control or manage the Property being remediated.

- g) Groundwater Contamination Originating from Another Site. If groundwater Contamination on the Property is shown to have come from another property, approval or disbursement may be considered if:
- i. Another Person with sufficient resources is performing Remediation pursuant to a Remediation action plan that has been approved by the appropriate Governmental Entity; or
  - ii. The state has laws or regulations that provide that an owner or operator of property will not be responsible for Contamination from another site; or
  - iii. The Governmental Entity provides satisfactory written assurance that it will not hold the Property owner liable for the Contamination. Lender should attempt to have lender and BCIDA included by name in the letter along with the Property owner and future purchasers.
- h) Additional or Substitute Collateral. If additional or substitute collateral is being pledged, or an additional equity contribution is being made, sufficient to overcome the potential loss due to Contamination, then approval or disbursement may be considered.
- i) “Other Factor(s)”. Lender and BCIDA may rely on factors other than or in addition to the eight referenced above when considering approval or disbursement. For example, the existence of adequate environmental insurance, bonds, agreements not to sue present and future property owners from the Governmental Entity, Engineering and Institutional Controls, etc.
- H. Special Use Facilities Prudent lending practices dictate that specific additional environmental assessments be performed for certain special use facilities. For example, Property constructed prior to 1980 that will be used for daycare or child care centers or nursery schools or residential care facilities occupied by children must undergo a lead risk assessment (for lead based paint) and testing for lead in drinking water, and the results of these assessments must be submitted to the BCIDA. Disbursement will not be authorized unless the risk of lead exposure to infants and small children has been sufficiently minimized. On-site dry cleaning facilities, which may have utilized tetrachloroethene (PCE) and trichloroethene (TCE) in the course of their business operations, may present significant clean-up costs if these contaminants have entered the soil or

groundwater. Prudent lending practices dictate and BCIDA requires that on-site dry cleaners in operation for more than 5 years undergo a Phase II Environmental Site Assessment in addition to a Phase I which would be required due to the NAICS code match. Any Phase II performed in connection with an on-site dry cleaning facility must be conducted by an independent Environmental Professional *who holds a current Professional Engineer's or Professional Geologist's license and has the equivalent of 3 years of full time relevant experience.* Gasoline stations also present significant clean-up costs if contaminated (for specific requirements pertaining to gasoline stations, please refer to Appendix 3).

I. Brownfields Sites

BCIDA encourages the redevelopment of brownfields, and BCIDA Loan guarantees are available to small businesses interested in locating on revitalized brownfields. Typically this occurs through utilization of one or more of the 9 factors in subparagraph F.4 above.



## CHAPTER 4: LOAN GUARANTY

The lender sets the terms and conditions for extending credit to the borrower. BCIDA establishes the terms and conditions for its loan guaranty. Upon approval of Lender's Application, BCIDA will issue a Conditional Commitment for Loan Note Guaranty ("Conditional Commitment") which will set forth the material terms and conditions to be met for issuance of the Loan Note Guaranty. The Conditional Commitment is BCIDA's written agreement between BCIDA and the lender providing the terms and conditions under which BCIDA will guarantee a business loan.

### I. INSURANCE REQUIREMENTS

#### A. Hazard Insurance

1. BCIDA requires hazard insurance on all assets pledged as collateral. If the business is located in a state that requires additional coverage such as wind, hail, earthquake or other, on the hazard insurance, the borrower must provide a separate policy.
2. Real Estate:
  - a) Coverage must be in the amount of the full replacement cost.
  - b) If full replacement cost insurance is not available, coverage must be for the maximum insurable value.
  - c) Insurance coverage must contain a MORTGAGEE CLAUSE (or substantial equivalent) in favor of the 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. The policy or endorsements must provide for at least 10 days prior written notice to lender of policy cancellation.
3. Personal Property:
  - a) Coverage must be in the amount of full replacement cost.
  - b) If full replacement cost insurance is not available, coverage must be for maximum insurable value.
  - c) 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. The policy or endorsements must provide for at least 10 days prior written notice to lender of policy cancellation.

#### B. Flood Insurance

1. BCIDA flood insurance requirements are based on the Standard Flood Hazard Determination (FEMA Form 086-0-32 or FEMA Form 81-93). Lenders have the option of using either form until May 30, 2015, at which time only FEMA Form 086-0-32 may be used. The mandatory purchase of flood insurance requirements set forth by the National Flood Insurance Program (NFIP) apply with equal force to condominium and cooperative units. Policies for such units will consist of separate policies obtained by the individual unit owner for the

particular unit and the condominium or cooperative association for the exterior of the entire building.

2. If any portion of a building that is collateral for the loan is located in a special flood hazard area, lender must require Borrower to obtain flood insurance for the building under the NFIP.
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 collateral for the loan, lender must require Borrower to also obtain flood insurance for the Personal Property Collateral under the NFIP.
4. If any 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. The lender may waive this requirement when the building is not collateral for the loan if it:
  - a) Uses prudent lending standards to determine that flood insurance is not economically feasible or not available; and
  - c) Includes a written justification in the loan file 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.
5. Insurance coverage must be in amounts equal to the lesser of the insurable value of the property or the maximum limit of coverage available.
6. Insurance coverage must contain a MORTGAGEE CLAUSE/LENDER'S LOSS PAYABLE CLAUSE (or substantial equivalent) 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.

D. Life Insurance

Lenders may follow their internal policy for similarly sized non-BCIDA guaranteed commercial loans, except: If the loan is not fully secured, life insurance is required for the principals of sole proprietorships, single member LLCs, or for businesses otherwise dependent on one owner’s active participation, consistent with the size and term of the loan. The amount and type of collateral available to repay the loan may be factored into the determination of the appropriate amount of life insurance. If lender determines that the principal is uninsurable, lender must obtain written documentation from a licensed insurer of the same.

E. Other Insurance

Lender must include any other insurance appropriate to the loan, including but not limited to:

1. Liability Insurance;

2. Product Liability Insurance;
3. Dram Shop/Host Liquor Liability Insurance;
4. Malpractice Insurance;
5. Disability Insurance;
6. Workers' Compensation Insurance; and
7. Any State specific insurance requirements.

## II. IRS TAX TRANSCRIPT/VERIFICATION OF FINANCIAL INFORMATION

- A. BCIDA's Tax Verification process is to determine if:
  1. The Small Business Applicant filed business tax returns; and
  2. The Small Business Applicant's financial statements provided as part of the application agree with the business tax returns submitted to the IRS.
- B. For a sole proprietorship, the lender must verify the Schedule C.
- C. For a change of ownership, the lender must verify the seller's business tax returns or a sole proprietor's Schedule C. Where there is an acquisition of a division or a segment of an existing business, other forms of verification may be used in lieu of the 4506-T (e.g. Sales tax payment records).
- D. Prior to submission of the application to BCIDA, lender must obtain:
  1. Verification of Financial Information
    - a) Lender must submit IRS Form 4506-T to the Internal Revenue Service to obtain federal income tax information on the Small Business Applicant for the last 3 years (unless the Small Business Applicant is a start-up business). The lender is required to reconcile the financial information provided by the borrower with the transcript received from the IRS and address the results of that reconciliation in their credit memo. If the business has been operating for less than 3 years, lender must obtain the information for all years in operation.
    - b) This requirement does not include tax information for the most recent fiscal year if the fiscal year-end is within 6 months of the date BCIDA received the application. If the applicant has filed an extension for the most recent fiscal year, lender must obtain a copy of the extension along with evidence of payment of estimated taxes.
    - c) Lender must compare the tax data received from the IRS with the financial data or tax returns submitted with the loan application.
    - d) Borrower must resolve any significant differences to the satisfaction of lender and BCIDA. Failure to resolve differences may result in cancellation of the loan.
    - e) For a change of ownership, lender must verify financial information provided by the seller of the business in the same manner as above.

2. The Internal Revenue Service (IRS) has implemented a new expedited service through which the financial community can expeditiously confirm the income of a borrower during the processing of a loan application: Income Verification Express Service (IVES) program. Under IVES, the IRS can electronically provide tax return transcript, W-2 transcript and 1099 transcript information generally **within 2 business days** to a third party with the consent of the taxpayer. The transcript information is delivered to a secure mailbox based on information received from a Form 4506-T. A \$2.00 fee is imposed on each transcript requested. It is expected that this process will replace the current process, which requires the manual pick-up and delivery of transcripts from the seven IRS Return and Income Verification Services (RAIVS) units located across the country. Under the new system, transcripts will be delivered electronically using the e-Services platform via a secure mailbox. To participate in the IVES program, lenders will need to register and identify employees to act as agents to receive electronic transcripts on the lender's behalf. To establish access to a secure mailbox, lenders will need to register, which can be done through the following IRS website:

<http://www.irs.gov/Individuals/Income-Verification-Express-Service>

Additional information on IVES is also available from this website.

3. If the IRS advises that it has no record on the applicant, or the lender is unable to reconcile the IRS information to the Small Business Applicant's financial information, the lender must report the issue BCIDA.
4. If a Small Business Applicant has not filed required federal tax returns, the applicant is not eligible for BCIDA financial assistance.

#### IV. STANDBY AGREEMENTS

- A. Lender may use its own Standby Agreement Form that is used for similar non BCIDA guaranteed loans. A copy of the note must be attached to the standby agreement.
- B. Standby Creditor must subordinate any lien rights in collateral securing the Loan to lender's rights in the collateral, and take no action against Borrower or any collateral securing the Standby Debt without lender's consent.

#### V. ASSIGNMENT OF LEASE AND LANDLORD'S WAIVER

- A. When a substantial portion of the loan proceeds are to be used for leasehold improvements or a substantial portion of the collateral consists of leasehold improvements, fixtures, machinery, or equipment that is attached to leased real estate, the lender should obtain:
  1. An Assignment of Lease with
    - a) A term including renewal options that equals or exceeds the term of the loan; and

- b) A requirement that the lessor provide a 60-day written notice of default to the lender with option to cure the default; and
  - 2. A Landlord's Waiver.
- B. The Landlord's Waiver gives the lender access to the leased premises and facilitates the liquidation of the collateral on the borrower's premises and should be obtained for all BCIDA Loans with tangible personal property as collateral.
- C. If the loan proceeds will finance existing or new improvements on a leasehold interest in land, the underlying ground lease must include, at a minimum, detailed clauses addressing the following:
  - 1. Tenant's right to encumber leasehold estate;
  - 2. No modification or cancellation of lease without lender's or assignee's approval;
  - 3. Lender's or assignee's right to:
    - a) Acquire the leasehold at foreclosure sale or by assignment and right to reassign the leasehold estate (along with right to exercise any options) by lender or successors; lessor may not unreasonably withhold, condition or delay the reassignment;
    - b) Sublease;
    - c) Hazard insurance proceeds resulting from damage to improvements;
    - d) Share in condemnation proceeds; and
  - 4. Lender's or assignee's rights upon default of the tenant or termination.

## VI. CONSTRUCTION LOAN PROVISIONS

- A. In the construction of a new building or an addition to an existing building, lender must obtain:
  - 1. Evidence of compliance with the "National Earthquake Hazards Reduction Program Recommended Provisions for the Development of Seismic Regulations for New Buildings" (NEHRP), or a building code that has substantially equivalent provisions.
    - a) The NEHRP provisions may be found in the American Society of Civil Engineers (ASCE) Standard 7 and the International Building Code.
    - b) Examples of evidence include a certificate issued by a licensed building architect, construction engineer or similar professional, or a letter from a state or local government agency stating that an occupancy permit is required and that the local building codes upon which the permit is based include the Seismic standards.

- c) The Authorization boilerplate automatically inserts the NEHRP provision when any of the use of proceeds options selected includes construction financing, including leasehold improvements. If the leasehold improvements made with loan proceeds will become permanently affixed to any structure on the leased premises, then they must comply with the NEHRP. If the improvements are only temporary, they do not need to comply with the NEHRP. Accordingly, if the borrower can demonstrate that the leasehold improvements will be temporary, lender may request modification of the Authorization to remove the NEHRP provision in accordance with Paragraph X of this Chapter.
- 2. Lender may charge Borrower a one-time fee not to exceed 2 percent of the portion of the Loan designated for construction. The actual fee must not exceed the cost of the extra service.
- B. If there is a construction component of a BCIDA-guaranteed loan, construction must be completed and Lender must provide BCIDA with confirmation that the project has been substantially completed in material compliance with the plans and spec's as proposed and provide evidence that all mechanics liens have been waived or otherwise satisfactorily addressed to BCIDA's satisfaction.

## **VII. CERTIFICATION REGARDING CHILD SUPPORT**

The lender must obtain certification from the Small Business Applicant that no holder of 50 percent or more of the Small Business Applicant is more than 60 days delinquent on any obligation to pay child support.

## CHAPTER 5: SUBMISSION OF APPLICATION FOR GUARANTY

The application forms for all programs include information on the number of employees at the time of application and the number of jobs to be created and/or retained as a result of the loan. Jobs “created” means the number of full-time (or equivalent) employees that the small business expects to hire as a result of the loan. Jobs “retained” means the number of full-time (or equivalent) employees on the payroll of the business at the time of application that will be lost if the loan is not approved.

### I. GENERALLY:

The issuance of a BCIDA Loan Note Guaranty is a two-step process: 1) the issuance of a Conditional Commitment for Loan Note Guaranty, prior to the closing of the loan, which sets forth the material terms and conditions to be met by the Lender; and 2) the issuance of the Loan Note Guaranty, post-closing, which is the document that serves as the agreement between the Lender and BCIDA governing the terms and conditions of BCIDA’s guaranty of the Loan. The requirements for the applications for the Conditional Commitment for Loan Note Guaranty and for the Loan Note Guaranty are set forth in Section II., below.

### II. CONTENTS OF LENDER’S APPLICATION FOR GUARANTY:

- A. BCIDA Application packages for issuance of a **Conditional Commitment for Loan Note Guaranty** must include the forms and information the lender requires in order to make an informed eligibility and credit decision. Any application obtained by the lender from the applicant must be certified by the applicant as true and complete. The following BCIDA documentation is required:
  1. Applicants must complete and sign the BCIDA “Borrower Application Form.” The Borrower Application Form must be signed by the following:
    - a) For a sole proprietorship, the sole proprietor;
    - b) For a partnership, all general partners and all limited partners owning 20 percent or more of the equity of the firm;
    - c) For a corporation, all owners of 20 percent or more of the corporation and each officer and director;
    - d) For limited liability companies (LLCs), all members owning 20 percent or more of the company and each officer, director, and managing member;
    - e) Any person hired by the business to manage day-to-day operations; and
    - f) Any person guaranteeing the loan, if that guaranty is required by BCIDA, as set forth in Chapter 3, Paragraph II., B.
  2. Lender must complete and sign the BCIDA Lender Application Form.
  3. Lender’s Credit Memorandum, with all amendments.
  4. Personal Financial Statement, dated within 90 days of submission to BCIDA, on all owners of 20 percent or more (including the assets of the owner’s spouse and any minor children), and proposed guarantors.

5. Business financial statements and/or tax returns dated within 180 days prior to submission to BCIDA, consisting of:
  - a) Year End Balance Sheet for the last three years, including detailed debt schedule,
  - b) Year End Profit & Loss Statements for the last three years,
  - c) Reconciliation of Net Worth,
  - d) Interim Balance Sheet,
  - e) Interim Profit & Loss Statements,
6. Affiliate/Subsidiary financial statement requirements same as above, and
7. Copy of Lease, if applicable
8. Detailed listing of machinery and equipment to be purchased with loan proceeds and cost quotes
9. Detailed listing of collateral
10. Provide the following if real estate is to be purchased with loan proceeds:
  - a) Appraisal;
  - b) Lender's environmental assessment;
  - c) Cost breakdown; and
  - d) Copy of purchase agreement.
11. Provide the following if purchasing an existing business with loan proceeds:
  - a) Copy of buy-sell agreement
  - b) Copy of business valuation that meets the requirements of Chapter 4;
  - c) Pro forma balance sheet for the business being purchased as of the date of transfer;
  - d) Copy of seller's financial statements for the last 3 complete fiscal years or for the number of years in business if less than 3 years; and
  - e) Interim statements no older than 180 days from date of submission to BCIDA.
  - f) If seller's financial statements are not available the seller must provide an alternate source of verifying revenues. Lender must discuss in its credit analysis:
    - i. Why financial statements are not available;
    - ii. How the lender determined the business purchase price was reasonable; and
    - iii. How the lender verified business revenue.
12. Equity Injection – explanation of type and source of applicant's equity injection.
13. IRS Form 4506-T, Request for Transcript of Tax Return. Identify the date IRS Form 4506-T was sent to IRS. Verification of IRS Form 4506-T is required prior to submission of application.



14. Documentation of USCIS status verification -- lenders must receive verification of the status of each alien required to submit USCIS documents prior to submission of the application to BCIDA. Lenders may submit a copy of the verification received from USCIS or BCIDA-SLPC or lender may document in its credit memorandum that verification has been obtained.
- B. After the loan has closed and funded in accordance with the requirements of the Conditional Commitment, Lenders may submit a request to BCIDA for issuance of the **Loan Note Guaranty**. Requests to BCIDA for issuance of the Loan Note Guaranty must include the following documents:
1. Documentation of any modifications to the Loan from the approved application documentation provided pursuant to Paragraphs A. 1.-15., above.
  2. Copies of all of Lender's closing documents signed in connection with the BCIDA guaranteed loan.
  3. Copies of all settlement sheets and disbursement documentation associated with the BCIDA guaranteed loan.
  4. Updated financial statements for the Borrower, current within 90 days of the request for issuance of the Loan Note Guaranty.
  5. All documentation required in the Conditional Commitment for Loan Note Guaranty.

## CHAPTER 6: POST-APPROVAL MODIFICATIONS, LOAN CLOSING & DISBURSEMENT

A thorough review of the Conditional Commitment for Loan Note Guaranty is the first step in closing and disbursing a BCIDA-guaranteed loan. If any changes are necessary, the lender must follow the steps in Section I., below. After the lender has determined that the loan conditions in the Conditional Commitment are appropriate for the terms of the credit, the lender must close the loan in accordance with the provisions of the Conditional Commitment, including any BCIDA-approved post-approval modifications.

### I. POST APPROVAL/PRE-DISBURSEMENT REQUESTS FOR CHANGES

- A. For BCIDA Loans that have not been closed or fully disbursed, lenders must submit requests for BCIDA approval of the following actions:
  - 1. An increase or decrease in the loan amount; or
  - 2. An increase or decrease in the guaranty percentage.
- B. Lenders must inform BCIDA of the following actions (BCIDA approval of these items is not necessary, and BCIDA will not respond in writing):
  - 1. Cancellation of the entire loan;
  - 2. Change in the maturity date;
  - 3. Change in the legal name of the business;
  - 4. Change in the borrower's business address.
- C. For BCIDA Loans that have not been closed or fully disbursed:
  - 1. To request a post-approval modification, Lenders must submit a written request to BCIDA with the Loan Number and the following information:
    - a) The current requirement;
    - b) The requested change; and
    - c) The justification for the change and any supporting documentation.
  - 2. Post-approval modifications should be sent directly to the BCIDA.
- D. For BCIDA Loans that have been fully disbursed, see the procedures for servicing in Chapter 7, below.

### II. TRANSFER OF GUARANTY BETWEEN PARTICIPATING LENDERS

- A. To transfer the guaranty between participating lenders prior to final disbursement, lender must submit a written explanation to BCIDA along with any supporting documentation.

### III. PAYMENT OF GUARANTY FEE

The guaranty fee must be paid within the time frame stated within the Conditional Commitment.

#### IV. LOAN CLOSING AND DISBURSEMENT

##### A. Disbursement Period

1. The loan must be initially disbursed within 3 months of the issuance of the Conditional Commitment and fully disbursed within 12 months of the issuance of the Conditional Commitment or any remaining undisbursed balance will be cancelled by BCIDA.
2. Lenders may use an escrow account for not more than 5 business days to facilitate a loan closing. A lender must not report the loan to BCIDA as “disbursed” or charge the borrower the guaranty fee until all funds are disbursed from the escrow account. The lender may only charge the borrower interest on funds that have been disbursed out of escrow to the borrower.
3. A loan is considered to be fully disbursed when the borrower has access to the loan proceeds and is able to use them in accordance with the terms of the Conditional Commitment.

##### B. Required BCIDA Forms

1. Tax Return Verification, IRS Form 4506-T.
2. Evidence of proper disbursement
  - a) Lender must disburse the loan proceeds in accordance with the credit approval submitted to BCIDA as part of the application package for the Conditional Commitment. Failure to do so may be a cause for BCIDA to deny liability under its guaranty.
  - b) All lenders must document each disbursement on a BCIDA-guaranteed loan. The documentation must contain sufficient detail for BCIDA to determine:
    - i. The recipient of each disbursement;
    - ii. The date and amount of each disbursement; and
    - iii. The purpose of each disbursement.
  - c) The lender must obtain evidence to support disbursements, such as cancelled checks or paid receipts, to ensure that the borrower used loan proceeds for purposes stated in the application package for the Conditional Commitment.
  - c) The following documentation is acceptable to verify disbursement in accordance with the application package for the Conditional Commitment:
    - i. A settlement statement from a third party settlement agent, such as a title company or attorney;
    - ii. Copies of receipts, invoices or other supporting documentation marked paid by the seller or vendor; and/or

- iii. Evidence of an electronic funds transfer to a vendor along with a copy of the invoice.

C. Borrower's Certifications

1. As part of the terms and conditions of the Conditional Commitment, the lender must obtain certain certifications and agreements from the Small Business Applicant prior to disbursement of loan proceeds. All Small Business Applicants must certify that:
  - a) They received a copy of the Conditional Commitment;
  - b) That there has been no adverse change in the Small Business Applicant's financial condition, organization, operations or fixed assets since the date the Loan Application was signed.
  - c) No 50 percent or more owner of the Small Business Applicant is more than 60 days delinquent on any obligation to pay child support;
  - d) Small Business Applicant(s) is/are current on all federal, state and local taxes, including but not limited to income taxes, payroll taxes, real estate taxes and sales taxes;
  - e) For any real estate pledged as collateral for the loan or where the Small Business Applicant(s) is/are conducting business operations, they are in compliance with all local, state and federal environmental laws and regulations and will continue to comply with these laws and regulations. Furthermore, they are unaware of any other actual or potential environmental hazards related to the collateral or business premises. They agree to fully indemnify lender and BCIDA against all liabilities or losses arising from the contamination of the property before or during the term of the loan;
  - f) They will reimburse lender for expenses incurred in the making and administration of the loan;
  - g) They will maintain proper books and records, allow lender and BCIDA access to these records, and furnish financial statements or reports annually or whenever requested by lender.
  - h) They will pay all federal, state and local taxes, including income, payroll, real estate and sales taxes of the business when they come due; and
2. The Small Business Applicant(s) must certify that they will not, without the lender's prior written consent:
  - a) Make any distribution of company assets that will adversely affect the financial condition of the Small Business Applicant;

- b) Change the ownership structure or interests of the Small Business Applicant or the business during the term of the loan; or
- c) Sell, lease, pledge, encumber (except by purchase money liens on property acquired after the date of the Note), or otherwise dispose of any of the Small Business Applicant's property or assets, except in the ordinary course of business.

3. Additional certifications from the Small Business Applicant(s)

Any additional certifications required in the Conditional Commitment for Loan Note Guaranty must be obtained by the lender from the Small Business Applicant.

## CHAPTER 7: BCIDA LOAN SERVICING AND LIQUIDATION.

### I. Lender Responsibility and Authority

The following requirements for servicing and liquidation of BCIDA Loans must be complied with while the BCIDA Guaranty is in effect. In all aspects of servicing and liquidation, Lender acts as a fiduciary, protecting the interests of BCIDA. Failure to materially comply with these guidelines may result in a denial of the BCIDA guaranty. Upon the expiration of the BCIDA guaranty, Lender may service and liquidate the Loans in accordance with their conventional policies and procedures.

#### A. Servicing and Liquidation

BCIDA Lenders must service and liquidate:

1. All of the BCIDA Loans in their portfolio and must complete liquidation of all collateral before BCIDA purchases the guaranteed portion.
2. The entire debt owed on each BCIDA Loan—not just the unguaranteed portion—regardless of the guaranteed percentage.

#### B. Litigation

Lenders, are responsible for conducting all litigation needed to ensure maximum recovery on all of the BCIDA Loans in their portfolios.

#### C. Decision-Making

##### 1. Unilateral Authority

Lenders have unilateral authority to take all necessary action to service and liquidate the BCIDA Loans in their portfolio, provided that their actions are consistent with their requirements for similarly sized unguaranteed loans in their portfolio.

##### 2. Unilateral Actions that Require Notice to BCIDA

Lenders must notify the appropriate BCIDA Loan Center in writing when they take substantive unilateral Loan Actions, such as those listed below.

- a. Decrease the BCIDA guaranty percentage;
- b. Cancel BCIDA's guaranty before guaranty purchase;
- c. Extend the maturity date;
- d. Change the Borrower's name, address, legal structure, employer identification number, or Social Security number;
- e. Approve an assumption of the loan without release of an Obligor; or
- f. Downgrade the risk rating of the loan.

##### 3. Actions Requiring Prior BCIDA Approval

Lenders must obtain BCIDA's prior written approval before taking any Loan Action that involves:

- a. Exception to BCIDA policy;
- b. Preference;
- c. Conflict of interest: real, apparent or potential;
- d. Sale or lease of collateral or acquired collateral to the Lender, an Associate of the Lender, an employee of the Lender, or a Close Relative of an employee of the Lender;
- e. Sale or lease of collateral or acquired collateral to an Obligor or a Close Relative or Associate of an Obligor;
- f. Release of a co-Borrower or Guarantor;
- g. Compromise of the principal loan balance;
- h. Assumption of the loan with release of an Obligor;
- i. Extraordinary servicing fee;
- j. Acquisition of title to any property in BCIDA's name;
- k. Material modifications to the terms of the loan (including any changes to the amount, rate or monthly payment due under the Note)
- l. Any release of collateral securing the Loan
- m. Acquisition of title to Contaminated property in BCIDA's name or the Lender's name;
- n. Operation or control of a business that handles Hazardous Substances;
- o. Operation or control of a business located on Contaminated Property;
- p. Increase in the loan amount;
- q. Increase in BCIDA's guaranty percentage;
- r. Reinstatement of BCIDA's guaranty; or
- s. Taking any action that does not adequately protect the interests of BCIDA.

#### D. Recordkeeping

##### 1. General Requirements

All servicing and liquidation Loan Action decisions, including the justification for the decision, must be documented in the Loan File or Computer Tracking System.

##### 2. Loan Action Records and Supporting Documents

Loan Action Records should be dated and kept in the Loan File along with the Supporting Documents, such as Appraisals, credit reports and Environmental Investigation Reports, and any other document relied upon before taking the action memorialized in the Loan Action Record.

##### 3. Correspondence

Copies of all paper and electronic correspondence concerning the loan must be dated and kept in the Loan File.

##### 4. Telephone Conferences and Meetings

Detailed information concerning telephone calls and face-to-face meetings, i.e., date, time, place, Persons in attendance, substance of conversation, etc., must be kept in the Loan File or entered in a Computer Tracking System.

## 5. Loan File Retention

### General Rule

- a. Nationally-chartered and state-chartered BCIDA Lenders must adhere to the applicable record retention requirements established by their regulators, but in no event shall records be retained for less than six years following the final disposition of each loan, (i.e., after the loan has been paid in full or charged-off.).
- b. If litigation involving a BCIDA Loan is reasonably anticipated, all potentially relevant information regarding the loan, including electronically stored information must be preserved. This preservation requirement supersedes the general rule set out in Paragraph 5.a and means that routine retention and destruction policies must be suspended and a "litigation hold" must be put on the Loan File, electronically stored information, and other relevant documents and data to ensure the preservation of such documents and data. Note: "Reasonable anticipation of litigation" arises when an organization is on notice of a credible threat it will become involved in litigation or anticipates taking action to initiate litigation." Guideline 1. The Sedona Conference Commentary on Legal Holds: The Trigger & The Process (Sedona Conference Working Group on Electronic Document Retention & Production, August, 2007.)

## E. Loan Monitoring

After a loan has closed, changes often occur that can impact the ability to administer or collect the loan. They include, for example, a Borrower's name change, relocation, or consolidation with another entity; a deterioration in the Borrower's financial condition; and changes that affect the value of collateral, such as failure to pay real estate taxes that can become a senior lien on the collateral. Lenders are responsible for monitoring each BCIDA Loan in their portfolio and for mitigating the risk of loss associated with any change in accordance with prudent lending practices. For example:

### 1. Name, Address or Legal Structure Changes

In addition to notifying BCIDA and updating the Loan File or Computer Tracking System, if a change in the name, address, legal structure, etc., of an Obligor or any other relevant Person (e.g., a standby creditor) could impact the ability to collect the BCIDA Loan, appropriate corrective action must be taken immediately. For example, a UCC 3 should be filed to reflect a name change and preserve the priority of personal property liens; if a Borrower changes its legal structure, generally the new entity should be required to formally assume the BCIDA Loan; and if an Obligor dies, in addition to collecting the proceeds from any life insurance policy pledged as collateral for the loan, legal action may be necessary to protect the ability to collect the balance owed on the loan.



## 2. Borrower's Creditworthiness

- a. The Borrower's creditworthiness, i.e., financial and operational condition, should be monitored through the use of tools such as periodic submission of financial statements, contact with the Borrower via phone or site visits, or review of relevant financial data from sources such as credit reports, credit scores and tax returns.
- b. If the Loan Documents require the Borrower to submit financial statements, the statements should be reviewed and analyzed in a timely manner.
- c. If the financial information provided by the Borrower raises concerns, an executed copy of IRS Form 4506-T should be requested, and a transcript of the Borrower's most recent Federal Income Tax return should be obtained and compared to the questionable information.
- d. BCIDA does not permit Lenders to charge a default interest rate or a separate servicing fee for past due financial statements. (Submission of the past due financial statements should be required as a condition for considering any future servicing request made by the Borrower.)

Note: If an Obligor files bankruptcy, appropriate action must be taken to protect the ability to collect the BCIDA Loan.

## 3. UCC Filings

All UCC filings must be monitored and any document needed to maintain the perfection and priority of the lien securing the BCIDA Loan must be properly prepared and filed, including, for example, a UCC-3 to continue an existing financing statement.

## 4. Taxes and Assessments

Secured BCIDA Loans should be monitored to ensure that all taxes and assessments, which if unpaid could become senior liens against the collateral for the BCIDA Loan, are paid in a timely manner.

## 5. Insurance

BCIDA Loans should be monitored to ensure that all required insurance coverage is in place throughout the term of the loan.

## F. Reporting Requirements

1. Annual Certificate of Good Standing/No Material Adverse Change. Lenders must provide to BCIDA an annual statement with the payment of the ongoing guaranty fee certifying to BCIDA that:

- a. there exists no event of default under the Loan Documents and the Borrower is current and otherwise in good standing under the loan; and
- b. There has been no material adverse change in the business of the Borrower or the financial condition of the Borrower or the financial condition of the Borrower or any Guarantor from the most recent financial statements submitted by Borrower and the Guarantors to Lender.

2. Monthly Status Report—Loans in workout and liquidation.

- a. Lenders must provide BCIDA with a written monthly status report within 15 business days after a loan enters workout or liquidation. The quarterly report on each loan must include, at a minimum, a description of the status of the following:
  - (1) Obligors;
  - (2) Collateral;
  - (3) REO and acquired personal property collateral;
  - (4) Workout negotiations;
  - (5) Recoveries and expenses incurred; and
  - (6) Liquidation and litigation proceedings.

Lender's failure to provide the monthly status report by the first business day of each month, or Lender's failure to comply with BCIDA's requirements regarding liquidation shall constitute grounds for cancellation of the BCIDA Loan Note Guaranty.

4. Site Visit Report

A site visit should be conducted within 60 days of the occurrence of an event of default under the Loan. A Site Visit Report, which should be kept in the Loan File, should be prepared after every visit to the Borrower's business premises regardless of whether the loan is in regular servicing or liquidation status. All Lenders must prepare a post-default Site Visit Report. Lenders must provide the BCIDA Loan Center with a Site Visit Report along with their Wrap-up Report unless it was previously submitted with the Lender's guaranty purchase request.

5. Wrap-up Report

Lenders must provide the BCIDA Loan Center with a Wrap-up Report upon completion of the liquidation activities associated with each BCIDA Loan in their portfolio.

## II. Real Property Collateral Liquidation

### A. General Requirements

All collateral that has Recoverable Value should be liquidated. With regard to real property collateral, if the Recoverable Value of an individual parcel is \$10,000 or more, it must be liquidated unless there is a documented compelling reason for not doing so. The most common methods of liquidating real property collateral are discussed below.

B. Procedure for Selecting Best Method of Liquidation

Real property collateral must be liquidated in a manner that will maximize recovery on the loan in the shortest amount of time. Lender's costs associated with liquidation may not be deducted from the net liquidation proceeds from sale of the collateral. All collateral sales must be supported by a commercially reasonable independent appraisal of the fair market value of the collateral, including orderly and forced liquidation values.

C. Abandonment

The pursuit of recovery on real property collateral may be abandoned if the collateral has no significant Recoverable Value, i.e., a Recoverable Value of less than \$10,000 per parcel. The decision and justification for abandoning collateral, including the basis for the Recoverable Value estimate, must be documented in the Loan File.

### III. Personal Property Collateral Liquidation

A. General Requirements

All collateral that has Recoverable Value should be liquidated. With regard to personal property collateral, if the individual or aggregate Recoverable Value is \$5,000 or more, it must be liquidated unless there is a documented compelling reason for not doing so.

B. Procedure for Selecting Best Method of Liquidation

Personal property collateral must be liquidated in a manner that will maximize recovery on the loan in the shortest amount of time. Lender's costs associated with liquidation may not be deducted from the net liquidation proceeds from sale of the collateral. All collateral sales must be supported by a commercially reasonable independent appraisal of the fair market value of the collateral, including orderly and forced liquidation values.

C. Abandonment

The pursuit of recovery on personal property collateral may be abandoned if the collateral has no significant Recoverable Value, i.e., the individual or aggregate Recoverable Value is less than \$5,000. The decision and justification for abandoning collateral, including the basis for the Recoverable Value estimate, must be documented in the Loan File.

### III. Acquired Collateral

A. General Requirements

Certain methods of liquidation may result in the acquisition of real property collateral ("Real Estate Owned" or "REO") or personal property collateral. When collateral is acquired, it should be liquidated in a manner that will maximize recovery in the shortest amount of time.

B. Acquiring Title to Collateral

1. General BCIDA Policy and Requirements

- a. Title to collateral should not be acquired unless it is necessary to maximize recovery on the loan.
- b. To avoid acquisition, foreclosure sales should be aggressively advertised in order to attract a large number of potential buyers.

2. Real Property

- a. Lenders should take title to REO property in their own name.
- b. Lenders must not take title to Contaminated property without BCIDA prior written approval.

C. Ownership Responsibilities

Upon acquiring title to real or personal property collateral, the following actions should be taken:

1. Possession and Control

- a. Take possession of the acquired collateral;
- b. Change the locks immediately on vacant, improved REO. Depending on the circumstances, arrange for additional security if necessary to prevent damage or to avoid liability associated with ownership; and
- c. Begin eviction proceedings if anyone is unlawfully occupying REO and will not leave voluntarily.

2. Inventory

Inventory and photograph all acquired personal property, including property located in and around REO.

3. Taxes

Monitor and pay taxes and assessments to avoid liens, interest accrual and penalties.

4. Care and Preservation

Take reasonable steps to prevent deterioration, such as arranging for utility services and essential repairs and maintenance.

5. Insurance

Obtain hazard insurance coverage for the collateral in accordance with Lender's policy for non-guaranteed loans.

D. Timeframe for Disposal

Acquired collateral should be disposed of within 12 months of acquisition.

E. Sale

Acquired collateral should be disposed of by sale.

1. Method of Sale

Acquired collateral should be sold by whatever method, (e.g., broker's sale, public auction, sealed bid sale, etc.), will maximize recovery on the loan in the shortest amount of time.

2. Bidding or Acquisition by Borrower or Lender

The Small Business Loan Applicant or the Lender as well as their employees, Close Relatives or Associates must not, directly or indirectly, bid on, purchase or otherwise take title to acquired collateral except pursuant to a written exception to policy approved BCIDA.

3. Sales Price

The sales price for acquired collateral should be based on an Appraisal.

4. Use of Real Estate Brokers

REO may be sold by listing it with a real estate broker provided that the terms of the listing are commercially reasonable and in accordance with market conditions. Neither the listing nor selling broker may have an actual, apparent, or potential conflict of interest with regard to the REO, Obligors, BCIDA or the Lender.

F. Abandonment

Acquired collateral must not be abandoned unless abandonment of the specific REO or acquired personal property collateral has been pre-approved by BCIDA as an exception to policy.

#### IV. Loan Note Guaranty Purchase Requests

A. Overview

This section covers the process Lenders should use to request that BCIDA purchase the guaranteed portion of a loan. BCIDA will not purchase the guaranteed portion of a loan from a Lender unless the Lender has submitted a Purchase Package to BCIDA, which BCIDA deems to contain sufficient credible evidence that the Lender made, closed, serviced and liquidated the loan in accordance with BCIDA Loan Program Requirements and prudent lending practices.

B. Interest Paid on Guaranteed Portion of Loan

Lenders are paid up to a maximum of 120 calendar days interest.

C. Requirements

Before BCIDA can honor a Lender's request for guaranty purchase, all of the following requirements must be met:

1. Uncured Loan Default

The Borrower must be in default on a payment due on the Note for more than 60 calendar days unless BCIDA agreed otherwise in writing.

## 2. Completed Liquidation

All liquidation of collateral must be complete; in addition, all cost-effective means of recovery must be exhausted.

## 3. Complete Purchase Package Submitted to BCIDA

To request guaranty purchase, Lenders must submit a complete Purchase Package to the appropriate BCIDA Loan Center in accordance with the following requirements:

### a. Contents of Purchase Package

The Lender should prepare and send a Purchase Package to BCIDA for review and processing. The purchase package must contain the following documentation:

- (1) BCIDA Loan number, Borrower's name, and principal loan balance; and
- (2) Lender's name, contact person's name, phone number and email address.

### b. Status of Obligors

A discussion of the status of each Obligor identified in the Loan documents, which includes, when applicable, the following information and Supporting Documents:

- (1) Each Obligor's name, address and Taxpayer Identification Number (Employer Identification Number or Social Security number), whether they are still liable for the loan balance, and if not, the reason why, e.g., compromise, discharge in bankruptcy, etc.;
- (2) A copy of the demand letter sent to each Obligor—or an explanation for its absence (e.g., bankruptcy filing);
- (3) A description of the efforts made to locate any missing Obligor(s);
- (4) A description of any efforts made to obtain a settlement from each Obligor who remains liable for the loan balance; and
- (5) An estimate of the potential recovery from each remaining Obligor based on a current asset search, credit report or other credible Supporting Document(s).

### c. Status of Collateral

A discussion of the status of the collateral required by the Loan documents, which includes, when applicable, the following information and Supporting Documentation:

- (1) List of how and when each significant item or category of collateral (i.e., real property with a Recoverable Value of \$10,000 or more per parcel, and personal property with an aggregate or individual Recoverable Value of \$5,000 or more) was liquidated and the amount recovered;
- (2) Justification for abandoning any remaining collateral, and a description of the efforts made to compromise with the owner-Obligor if it includes a lien on a personal residence;
- (3) Summary section of any post-default Appraisal;
- (4) With regard to commercial real property collateral, the summary section of any post-default Environmental Investigation Report or an explanation for why an Environmental Investigation was neither necessary nor prudent; and a
- (5) Description of the efforts to liquidate any life insurance policy with a cash-surrender value.

d. Status of Collection Activities

A statement verifying that there are no collection activities, which are on-going or planned for the immediate future, (e.g., collection of payments under a workout agreement or plans to execute on a judgment).

e. Site Visit Report

A copy of the post-default Site Visit Report, previously approved site visit waiver, or an explanation for why a site visit was not conducted, i.e., why a site visit was neither necessary nor prudent.

f. Recoveries

If not previously reported to BCIDA, a list of all recoveries that includes: the source, amount and date of the recovery; an accounting of how the recovery was applied to the loan balance; a copy of any relevant Supporting Document(s).

## V. Liability on BCIDA Guaranty

A. When BCIDA May Deny Liability

BCIDA is released from liability on its guaranty of a BCIDA Loan and may, in its sole discretion, refuse to honor a guaranty purchase request in full or in part, if the Lender:

1. Failed to comply materially with a Loan Program Requirement;
2. Failed to make, close, service or liquidate the loan in a prudent manner;
3. Placed BCIDA at risk through improper action or inaction;
4. Failed to disclose a material fact to BCIDA in a timely manner;

5. Misrepresented a material fact to BCIDA regarding the loan;
  6. Failed to obtain BCIDA consent for an action for which consent is required under these guidelines;
  7. Failed to submit its request for BCIDA to purchase the guaranty within 180 days of the completion of liquidation of all collateral for the Loan; or
  8. Failed to provide the monthly status report by the first business day of each month, or failed to adequately protect BCIDA's interests in the liquidation.
- B. Loss Attributable to Lender
1. Material Loss or Harm to Program Integrity

Generally, BCIDA does not deny liability on a BCIDA Loan guaranty unless the Lender's actions or omissions caused, or could cause, a Material Loss on the loan. BCIDA may, however, deny liability on a guaranty in the absence of an actual or potential Material Loss if the Lender's misconduct is deemed material to the soundness and integrity of the BCIDA Loan program, such as, for example, if the loan was ineligible for BCIDA financing, the Lender failed to disclose or misrepresented a material fact to BCIDA, or lender included a provision in its loan documents or other agreements with the Borrower, whereby the expiration or cancellation of the Loan Note Guaranty by BCIDA constitutes an event of default under the loan.
  2. Amount of Loss on Collateral

The amount of a loss related to collateral should be based on the collateral's Recoverable Value.
- C. Repairs
1. Definition

As set forth in Chapter 2 (Definitions), the term Repair means an agreement between BCIDA and a BCIDA Lender as to a specific dollar amount to be deducted from the funds BCIDA pays on the Lender's guaranty in order to fully compensate BCIDA for an actual or anticipated loss caused by the Lender's actions or omissions. A Repair does not reduce the percent of the loan guaranteed by BCIDA or BCIDA's pro-rata share of expenses or recoveries.
  2. Repair Amount

The net amount of a Repair must be a specific dollar amount that fully compensates BCIDA for the actual or anticipated loss caused by the Lender's actions or omissions. Generally, it is determined by multiplying the dollar amount of the loss by the percent of the loan guaranteed by BCIDA. (E.g., \$50,000 loss x 50 percent guaranty = \$25,000 Repair)
  3. When a Repair is Appropriate



Except in cases involving gross Lender misconduct (See Subparagraph 4 below.), a Repair is appropriate when the Lender's actions or omissions caused an actual or anticipated loss that justifies a partial Denial of Liability by BCIDA, but rather than have BCIDA formally deny liability, the Lender agrees to allow BCIDA to deduct a specific, agreed-upon dollar amount from the amount that BCIDA owes to the Lender on its guaranty in order to fully compensate BCIDA for the loss.

4. When a Repair is Not Appropriate

a. Total Loss on Loan

A Repair is not appropriate if the Lender's actions or omissions caused a total or near total loss on the loan.

b. Gross Lender Misconduct

A Repair is not appropriate if the Lender's misconduct is deemed material to the integrity and soundness of the BCIDA Loan program.

c. Justified Abandonment of Collateral

A Repair based on a Lender's failure to liquidate personal property collateral is not appropriate if the Lender abandoned the property in accordance with prudent lending practices and BCIDA Loan Program Requirements. (See Chapter 18 for information regarding abandonment of personal property collateral.)

For example, a Repair for failure to liquidate equipment located on leased premises would not be appropriate if the appraised value of the equipment is \$12,000 and the estimated cost of removing, transporting, storing, and selling it is approximately \$10,000. Under the circumstances, abandonment would be justified not only based on the estimated Recoverable Value of \$2,000, but the fact that the actual Recoverable Value could be significantly less due to the Lender's risk of liability for damage done to the leased premises while removing the trade fixtures.

D. Full Denial of Liability

A full Denial of Liability is justified if the Lender's actions or omissions caused an actual or anticipated total or near total loss on the loan, resulted in BCIDA guaranteeing an ineligible loan, or are deemed material to the soundness or integrity of the BCIDA Loan program, and the Lender does not voluntarily request that BCIDA cancel the loan guaranty.

E. Voluntary Termination of Guaranty

Lenders may, at any time prior to guaranty purchase, voluntarily request termination of the BCIDA Loan guaranty.

F. Examples of When a Full or Partial Denial of Liability May Be Justified

Listed below are examples of common Lender deficiencies that justify BCIDA Denial of Liability in full or in part. The list is not exhaustive and is provided for illustrative purposes only.

Examples of When a Full or Partial Denial of Liability is Justified:

1. Collateral Not Available for Liquidation

A full or partial Denial of Liability may be justified if there was a Material Loss on the loan because collateral required to be purchased with the loan proceeds, which would have had Recoverable Value, was not purchased and therefore, was not available for liquidation. For example, a partial Denial of Liability would be justified if a Lender made a \$350,000 loan to purchase the equipment needed to start a new dental practice but failed to ensure that the Borrower purchased the equipment, and after several years of operating, the Borrower defaulted and BCIDA suffered a Material Loss equivalent to the Recoverable Value that the equipment would have had if it had been purchased with the loan proceeds and available for liquidation.

2. Failure to Obtain Required Lien or Lien Position

A full or partial Denial of Liability is justified if the Lender failed to obtain either the lien or the lien position required by the Conditional Commitment on the property required to be taken as collateral for the loan, and that failure caused, or could cause, a Material Loss on the loan. The amount of the loss should be based on the aggregate Recoverable Value that the property would have had if the Lender had obtained the lien or the required lien position.

3. Failure to Conduct a Post-default Site Visit

A full or partial Denial of Liability is justified if the collateral required by the Loan documents disappeared or declined in value due to the Lender's failure to conduct a post-default site visit within 60 days of default, and that failure caused, or could cause, a Material Loss on the loan. The amount of the loss should be based on the aggregate Recoverable Value of the collateral that was not available for liquidation or the aggregate amount by which the collateral declined in value due to the Lender's failure to properly conduct a timely site visit.

4. Failure to Liquidate in a Commercially Reasonable Manner

a. Examples of When a Full or Partial Denial of Liability is Justified

A full or partial Denial of Liability is justified if the Lender failed to liquidate the loan in a prudent and commercially reasonable manner and the failure caused, or could cause, a Material Loss on the loan. For example, a full or partial Denial of Liability is justified if the Lender:

- i. Failed to safeguard the collateral until it could be liquidated;

Note: A list, which reasonably describes the collateral, should be attached to the security agreement and UCC financing statement to ensure that (1) a security interest "attaches" to the collateral, i.e., that

the creditor obtains a lien on the items; and (2) the lien is "perfected," i.e., that the creditor establishes the priority of its lien over those of competing creditors.

- ii. Permitted a substantial decline in the value of collateral to occur because of unnecessary delays or mismanagement of the liquidation process;
- iii. Failed to account for items listed on the pre-closing collateral list that were not listed on the post-default inventory and appraisal; or
- iv. Failed to account for items listed on the post-default inventory and Appraisal that were not included in the liquidation sale.

b. Example of When Full or Partial Denial of Liability is Not Justified

A partial Denial of Liability is not justified based on the Lender's failure to liquidate personal property collateral if the Lender abandoned it pursuant to prudent lending practices and BCIDA Loan Program Requirements. For example, a partial Denial of Liability would not be justified if the Lender abandoned the inventory of a souvenir shop with a Liquidation Value of \$10,000, even though the routine foreclosure costs were estimated at \$5,000, if the collateral could not be repossessed without a breach of the peace and the Lender provided evidence that a replevin action would, at a minimum, cost an additional \$3,000.

5. Loan Actions Resulting in Lender Preference

A full or partial Denial of Liability is justified if the Lender took any Loan Action that conferred a Preference on the Lender, which caused, or could cause, BCIDA to suffer a Material Loss on the loan or is deemed by BCIDA to be material to the soundness or integrity of the BCIDA Loan program, including, for example, if the Lender:

- a. Applied recoveries from a BCIDA Loan to the Lender's non-BCIDA Loans(s) or to another BCIDA Loan with a lower guaranty percentage in a junior lien position;
- b. Released the collateral for a BCIDA Loan in order to use it as security for a non-BCIDA Loan; or
- c. Subordinated the lien securing an existing BCIDA Loan to a lien securing a non-BCIDA Loan or BCIDA Loan with a lower guaranty percentage;

## CHAPTER 8: DEFINITIONS

The terms defined below have the same meaning wherever they are used in this Program Guide. Unless otherwise indicated, defined terms are capitalized wherever they appear.

### A. General Terms

1. **BCIDA** means the Bucks County Industrial Development Authority, an agency of the government of Bucks County, Pennsylvania.
2. **BCIDA Loan** means a loan that was made pursuant to this Program Guide for which a Loan Note Guaranty was issued by BCIDA..
3. **Borrower Application Form** means BCIDA Form 1, which sets forth the required information to be submitted to BCIDA with Lender's application for a Conditional Commitment.
4. **Appraisal** means an expert's written opinion as to the value of specific property prepared specifically for the Lender's use with regard to a particular BCIDA Loan, which is obtained in accordance with the requirements set forth in this Program Guide.
5. **Associate** of the Borrower means an officer, director, Key Employee of the Borrower, or a Person who has an ownership interest of 20 percent or more in the Borrower's business; any entity in which one or more of the foregoing Persons has an ownership interest of 20 percent or more in the entity's business; or any Person in control of, or controlled by, the Borrower.
6. **Associate** of a Lender means an officer, director, Key Employee of a Lender or other senior lender, or owner of 20 percent or more of the value of the Lender's stock or debt instruments; or any entity in which one or more of the foregoing Persons, or a Close Relative of any such Person, has an ownership interest of 20 percent or more.
7. **Borrower** means the Person or Persons who executed the Note evidencing the BCIDA Loan.
8. **Close Relative** means a spouse, parent, child or sibling, or the spouse of a parent, child or sibling.
9. **Computer Tracking System** means the electronic method used by BCIDA or a Lender to create and maintain a chronological record of the significant activities on a BCIDA Loan, such as Loan Actions and the substance of telephone calls, meetings or letters regarding the loan.
10. **Conditional Commitment for Loan Note Guaranty**, or **Conditional Commitment**, means BCIDA Form 2, which is BCIDA's written agreement including subsequent modifications thereto, which sets out the terms and conditions under which BCIDA will issue a Loan Note Guaranty.

11. **Denial of Liability** means a determination made by BCIDA that it is not obligated to purchase the guaranteed portion of the BCIDA Loan. A Denial of Liability may be for the full amount of the guaranteed portion of the loan or any part thereof.
12. **Good Faith**, whether capitalized or not, means the absence of any intention to seek an unfair advantage or to defraud another party; i.e., an honest and sincere intention to fulfill one's obligations in the conduct or transaction concerned.
13. **Guarantor** means a Person who executed a Guaranty as security for a Note executed by a Borrower.
14. **Guaranty** means a document executed by a Guarantor that contains an unconditional promise to pay the debt owed on a Note if the Borrower fails to pay it.
15. **Including**, whether capitalized or not, means "including but not limited to," i.e., the list is exemplary and not exhaustive.
16. **Key Employee** means any Person hired by a business to manage its day-to-day operations, including, for example, the hiring and firing of employees, and the expenditure of money.
17. **Lender** or **BCIDA Lender** means an institution that has executed a Loan Note Guaranty with BCIDA.
18. **Liquidation Value** is the likely price collateral will sell for if sold quickly and with limited exposure to potential buyers. An Appraisal is necessary to determine the Liquidation Value of real or personal property collateral unless it consists of:
  - a. Cash or Equivalent—the Liquidation Value of cash or cash equivalent items such as retirement accounts, trust funds, life insurance policies with a cash surrender value, certificates of deposit, letters of credit, or other commercial instruments should be the net amount arrived at after deducting verifiable, documented costs such as penalties for early withdrawal; or
  - b. Motor Vehicles and Stock—the Liquidation Value of items that are customarily sold in a recognized market should be based on industry standards. For example, the Liquidation Value of motor vehicles should be based on NADA or Kelley Blue Book value, and the Liquidation Value of publically traded stock should be based on official stock exchange prices.
19. **Loan Action** means an activity or decision regarding a specific BCIDA Loan including a decision to engage or not to engage in a particular activity, such as a decision not to enter a Protective Bid at a senior lienholder's foreclosure sale.

20. **Loan Action Record** means the paper or electronic document used to memorialize the decision and justification for a specific Loan Action. It may consist of a memo, email, letter or other document provided that it contains: the Borrower's name and the BCIDA Loan number; the Lender's name and contact information; a reasonable description of the Loan Action; the justification for the Loan Action including an analysis of any Supporting Documentation; and a citation to the applicable PROGRAM GUIDE provision that provides authority for the proposed Loan Action.
21. **Loan Documents** means the Conditional Commitment, Note, Guaranty, lien instruments, and all other agreements and documents related to a BCIDA Loan.
22. **Loan File**, whether capitalized or not, means the electronic or paper folder dedicated exclusively to storing a hard copy or an electronic copy of all of the Loan Documents pertaining to a specific BCIDA Loan.
23. **Loan Guaranty Fund** means the fund established by Bucks County, Pennsylvania, backed by funds held by the various county economic development agencies or lenders and provided to BCIDA to provide loan guarantees to Lenders that originate commercial loans to Borrowers for projects and businesses located in Bucks County, Pennsylvania. The amount of the Loan Guaranty Fund available for loan guarantees shall be the amount of funds not currently allocated for other loan guarantees at the time an application for a Conditional Commitment is made.
24. **Loan Note Guaranty** means BCIDA Form 3, which sets forth all of the terms and conditions of the agreement between BCIDA and Lender, whereby BCIDA agrees to Guaranty a portion of the BCIDA Loan extended by Lender to Borrower.
25. **Loan Program Requirements** mean the requirements pertaining to BCIDA's Loan Program as set forth in this Program Guide, as revised from time to time.
26. **Material Loss** means: (a) with regard to personal property collateral—a single loss or the aggregate amount of multiple losses totaling \$5,000 or more; and (b) with regard to real property collateral—a loss in the amount of \$10,000 or more.
27. **Must**, whether capitalized or not, means that the action is mandatory.
28. **Note** means the promissory note, and all amendments thereto, executed by the Borrower on a BCIDA Loan.
29. **Obligor** means any Person with direct liability for repaying a BCIDA Loan, such as the Borrower, an assumptor, and every Person with contingent liability, such as a Guarantor.
30. **Person** means any individual, corporation, partnership, limited liability company, association, unit of government, or other legal entity, however organized.

31. **Preference** means an arrangement not pre-approved by BCIDA that gives a BCIDA Lender a preferred position compared to BCIDA relating to the making, servicing, or liquidation of a BCIDA Loan. E.g., a Lender would receive a Preference if it released the collateral for a BCIDA Loan in order to use it as security for a non-BCIDA Loan to the same Borrower.
32. **Program Guide** means this program guide which sets forth the requirements for participation in the BCIDA Guaranteed Loan Program, as amended from time to time.
33. **Purchase**, whether capitalized or not, when used in conjunction with BCIDA's BCIDA Loan guaranty ("guaranty purchase") refers to BCIDA's purchase of the guaranteed portion of a BCIDA Loan.
34. **Purchase Package** means the packet of documentation prepared and submitted by a BCIDA Lender to support its request to have BCIDA honor its guaranty by purchasing the guaranteed portion of a loan.
35. **Real Estate Owned** ("REO") means real property collateral acquired by a Lender.
36. **Recoverable Value** means the net dollar amount that a prudent lender could reasonably expect to recover by liquidating a particular piece of collateral. Recoverable Value is determined by deducting the following amounts from the Liquidation Value of the collateral: (a) the balance owed on senior liens (less amounts waived or subordinated by a Loan Document); (b) Recoverable Expenses associated with any necessary lien foreclosure action; and (c) if the collateral is likely to be acquired by BCIDA or the Lender at the foreclosure sale (e.g., real property), the expenses associated with the care, preservation and resale of the acquired collateral.
37. **Repair** means an agreement between BCIDA and a BCIDA Lender as to a specific dollar amount that will be deducted from the amount BCIDA pays on the Lender's BCIDA Loan guaranty in order to fully compensate BCIDA for an actual or anticipated loss on the loan caused by the Lender's actions or omissions. A Repair does not reduce the percent of the loan guaranteed by BCIDA.
38. **Servicing Request** means a Loan Action requested by a Borrower regardless of whether it is simple (e.g., address change) or more complex (e.g., subordination of lien position).
39. **Should**, whether capitalized or not, means that the action is recommended but not required.
40. **Site Visit Report** means the paper or electronic record documenting the Lender's findings and conclusions after visiting the Borrower's business premises. A post-default Site Visit Report should cover, for example, the Lenders efforts to: determine whether a workout is feasible; identify the collateral available for liquidation; establish the collateral's Recoverable Value; determine whether the Borrower is behind on the rent and whether a

liquidation sale of the personal property collateral can be held on-site; determine whether any real property collateral is occupied by a Person other than the Borrower; develop a liquidation strategy; assess any environmental risk associated with the anticipated method of liquidation; and arrange for the care and preservation of the collateral pending liquidation.

41. **Supporting Document** or **Supporting Documentation** means the original, or a complete and accurate executed copy, (i.e., it must contain all of the required signatures and include all of the addendums thereto), of any document relied upon to reach a decision regarding a Loan Action, e.g., a purchase and sale agreement, Appraisal or Environmental Investigation Report.
42. **Wrap-up Report** refers to the documentation, whether or not it is entitled "Wrap-up Report," that a Lender must provide to BCIDA with its Purchase Package requesting BCIDA pay the guaranty.

**B. Environmental Terms**

Definitions of the environmental terms used in this PROGRAM GUIDE, which are capitalized when they appear, are located in Appendix 1 of this Program Guide.