

## **HOW TO OBTAIN A SMALL BUSINESS LOAN FROM THE NAVAJO NATION BUSINESS AND INDUSTRIAL DEVELOPMENT FUND**

### **SMALL BUSINESS LOAN PROGRAM**

This portion of the Navajo Nation Business and Industrial Development Fund (BIDF) was set up within the Division of Economic Development (DED) to specifically assist Navajo-owned small businesses. Collateralized loans can be made in amounts varying from \$10,000 to \$150,000 for new businesses and from \$10,000 to \$200,000 for existing businesses. Applicants must have a good credit history and must not be in violation of the Navajo Business Procurement Act or any other Navajo Nation laws. Applicants must provide ten percent (10%) equity contribution for their loan.

An Applicant must start by going to the DED Regional Business Development Office (RBDO), located nearest to the Applicant's business. The RBDO will provide the Applicant with technical assistance with the business plan, business site lease, etc. When the business plan has been completed in accordance with the loan guidelines, the RBDO will send the loan package to DED Small Business Development Department to review the package for compliance with the guidelines, and if everything is satisfactory, the RBDO staff will process the loan package through the section 164 Review Process using the "Signature Approval Sheet" Process. After complete review and approval by all appropriate persons within the Section 164 Review Process, the RBDO will present the loan proposal to the Loan Committee within the Division of Economic Development for final consideration.

After the loan is approved, loan documents are prepared and signed, and all appropriate documents have been executed and received, the loan funds will be disbursed into a joint bank account where the Applicant and the RBDO representative will have joint signatory authority over the account. This procedure is to ensure the Applicant spends the loan funds in accordance with the approved business plan. It is the policy of the Navajo Nation to hold Applicant responsible for their debts and for honoring their loan agreements and for making repayments accordingly.

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### **DIVISION OF ECONOMIC DEVELOPMENT SBDD / REGIONAL BUSINESS DEVELOPMENT OFFICES**

#### **DED Small Bus. Deve. Dept.**

Post Office Box 663  
Window Rock Arizona 86515  
Phone No. (928)871-6704/6791

#### **Ft. Defiance R.B.D.O.**

Post Office Box 663  
Window Rock Arizona 86515  
Phone No. (928)871-6486/6546

#### **Western R.B.D.O.**

Post Office Box 485  
Tuba City Arizona 86045  
Phone No. (928)283-3010/3011

#### **Eastern R.B.D.O.**

Post Office Box 250  
Church Rock New Mexico 87311  
Phone No. (505)863-6400/6405

#### **Chinle R.B.D.O.**

Post Office Box 565  
Chinle Arizona 86503  
Phone No. (928)674-2240/2243

#### **Shiprock R.B.D.O.**

Post Office Box 1864  
Shiprock New Mexico 87420  
Phone No. (505)368-1315/1319

#### **Aneth R.B.D.O.**

Post Office Box 676  
Montezuma Creek Utah 84534  
Phone No. (435)651-3520/3521

#### **Whippoorwill R.B.D.O.**

Post Office Box 1004  
Pinon Arizona 86510  
Phone No. (928)725-3707/3708

**NAVAJO NATION BUSINESS AND INDUSTRIAL DEVELOPMENT FUND  
SMALL BUSINESS DEVELOPMENT FUND OPERATING GUIDELINES**

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(Revised 10/21/04 and Approved 1/5/05)

**NAVAJO NATION BUSINESS AND INDUSTRIAL DEVELOPMENT FUND  
SMALL BUSINESS DEVELOPMENT FUND OPERATING GUIDELINES**

**SECTION 1 - AUTHORITY**

- A. Pursuant to Resolution CF-3-88, the Fund Management Plan for the Navajo Nation Business and Industrial Development Fund (hereinafter BIDF or Fund) was enacted as Tribal Law contained within 12 NNC Section 1704.

Section 4.2(d) of the Fund Management Plan stipulates financing policies, rules and regulations for implementation of the BIDF financing programs must be developed by the Division of Economic Development (DED) and must be reviewed and approved by the Economic Development Committee of the Navajo Nation Council(hereafter referred to as Committee).

**SECTION 2 - PURPOSE**

- A. The primary purpose of the Small Business Development portion of the Fund is to help establish start-up or expand existing Navajo-owned small businesses within the Navajo Nation's territorial jurisdiction or within close proximity to the Navajo Nation by providing loans or loan guarantees to qualified Navajo-owned businesses.
- B. DED's responsibilities in regard to the fund are:
1. To promote the development of the private sector of the Navajo Nation economy by providing a source of financing for qualified Navajo-owned small businesses;
  2. To protect and maintain the value of the BIDF funds entrusted to DED through the making of quality loans and assisting in the collection of monies due and owing the Navajo Nation; and
  3. To ensure that loans made from the Fund are made in compliance with these guidelines and applicable Navajo Nation laws.

**SECTION 3 - POLICY**

- A. All loans made from the Fund and all associated accounts receivable shall be processed and managed according to these guidelines. Any exceptions must be specifically approved by the Loan Committee upon written recommendation of the Division Director and/or Chief Financial Officer of DED. Any such exceptions must be within the authority of the Loan Committee

(i.e. waivers of sovereign immunity can only be authorized by the Navajo Nation Council).

- B. It is the policy of the Navajo Nation to operate all loan programs in a business-like manner, to extend credit only upon a thorough review and sound credit analysis taking into consideration the overall economic situation that exists within the Navajo Nation, to maintain accurate account records, to service and maintain credit accounts so as to protect the assets of the Navajo Nation.
- C. It is the policy of the Navajo Nation to consider the special needs of Navajo business persons in the management of the Funds, to be sensitive to cultural concerns that may arise, and to make a special effort to accommodate qualified Navajo clients on an equal opportunity basis, regardless of age, sex, religion or political affiliation.
- D. It is the policy of the Navajo Nation to hold borrowers responsible for their debts. The Navajo Nation expects loan agreements to be honored and for repayments to be made accordingly. Property pledged as collateral will be seized and sold to satisfy delinquent accounts to the fullest extent permitted by Navajo Nation Law.
- E. Credit Services Department, Division of Finance, shall report all loans to a Credit Bureau on a monthly basis.
- F. In order to avoid the existence and even the appearance of undue influence and conflict of interest, employees of the Navajo Nation and its political subdivisions, elected officials, appointed officials, judicial officials, etc., shall execute a signed and notarized Ethical Certification form attesting that they will refrain from requesting any special consideration from any personnel/program of the Navajo Nation government and will abide by the Navajo Ethics in Government Law prior to the completion of a loan application.

#### **SECTION 4 - SCOPE**

- A. These policies and procedures shall govern all financing obtained through the Small Business Development Fund established and created as a result of the enactment of the Fund Management Plan for the Navajo Nation Business and Industrial Development Fund.

#### **SECTION 5 - LOAN REQUIREMENTS**

- A. Loan requests must be made on loan application forms approved by the Division of Economic Development for that purpose. The application must be completed with all the required information.

DED may require any additional information that it deems necessary in order to help make the credit decision.

- B. Mis-statement of facts or knowingly making any false statements on the application shall be grounds for disqualification. Any evidence of fraud may be referred to the Office of the Prosecutor for appropriate action.
- C. No application shall be presented to the Loan Committee without certification of eligibility under the Navajo Business and Procurement Act, 12 NNC §1501. DED shall not consider any application from any individual who is in violation of this Act. However, Contractors and other businesses that make formal arrangements to allow accounts payable deductions from their contracts with, or other payments from, the Navajo Nation to bring their delinquent accounts current shall be reviewed on a case by case basis and may be given "special" consideration to allow compliance with the Navajo Business and Procurement Act.

No loan shall be approved for a business activity that is in violation of any provision of the laws of the Navajo Nation.

- D. Applicants must be enrolled members of the Navajo Tribe, or associations of Navajo individuals, who are in business or starting a business venture. If the ownership of the business venture is structured as a partnership, corporation, or form other than that of a sole proprietorship, the Applicant must demonstrate that it is one hundred percent (100%) Navajo-owned and controlled, i.e., owner(s) will be directly involved in the daily operation of the business. Certification as a 100% Navajo-owned business under the Navajo Business Opportunity Act shall be sufficient to demonstrate such Navajo ownership. Business ventures that are not certified shall show evidence of Navajo ownership. While the loan is outstanding, any transfer of ownership of the business must be approved in advance by the Loan Committee.
- E. Applicants must demonstrate that loan proceeds will be used for lawful business purposes, including, but not limited to, the purchase of inventory, office furniture, equipment, working capital, the construction of permanent facilities, and the purchase of existing business interests, excluding goodwill<sup>1</sup>. Loan proceeds shall not be used for unrelated purposes.

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<sup>1</sup> For Example: An Applicant wants to borrow \$75,000 to purchase an existing business, but the value of the tangible assets of the business only totals \$70,000. The remaining \$5,000 would be considered goodwill, and loan funds can not be used to finance that portion of the purchase. Goodwill for this purpose is defined as the excess of the purchase price of the business over the net book value of all tangible assets on the balance sheet.

F. Applications for loans shall include the following:

1. A signed and completed loan application form.
2. An executive summary of the business concept, loan proposal, description and current estimated market value of collateral supported by appropriate documentation.
3. A detailed business plan which describes the market to be served, expected or existing competition, location of the business to include a map depicting the site, legal form of business organization, management, organizational chart, personnel, operating plans and or service plans, financial plans for the next three years, and expected operating results if the loan is approved.
4. For existing businesses that have a proven, successful track record for three or more years, a brief description of the business may be submitted in lieu of a full-fledged business plan. Additionally, the Applicant must submit its last three (03) years Federal tax returns (personal and business), a current loan application and a statement of what the loan proceeds will be spent for.

For existing businesses, the following additional information may be requested:

- (a) Balance Sheets for all past fiscal (operating) years up to a maximum of three years;
- (b) Income Statements for all past fiscal (operating) years up to a maximum of three years;
- (c) Income Statement for the present fiscal year through the month ending prior to the application;
- (d) Projected Balance Sheet for the immediately succeeding fiscal year;
- (e) Projected Income Statement by quarter for the immediately succeeding fiscal year;
- (f) Projected Cash Flow Statement for the immediately succeeding fiscal year;
- (g) Projected capital expenditures during the term of the loan;
- (h) Projected rates of returns;

- (i) An accounts receivable aging report; and
  - (j) An accounts payable aging report.
5. Applications for start-up businesses shall provide pro-forma financial projections of the balance sheet, income statement, and cash flow for a period of three years. For purposes of these guidelines and policies, applications from businesses that have been in operation for less than one year will be considered as applications from start-up businesses.

All financial statements shall be prepared according to generally accepted accounting principles.

All financial projections shall contain full explanations of all assumptions utilized and a break-even analysis.

6. Applications for the purchase of an existing business shall be accompanied by a certified appraisal report.
7. Personal financial statements.
8. Personal and business federal and state tax returns for the past three tax years.
9. Site Location - Documents authorizing the use of the land or commercial space in which the business is to be located. Applicants shall be required to obtain a determination from the Navajo Nation Small Business Development Department as to whether or not a business site lease is required for a particular business operation. If a business site lease is required, the Applicant shall either have an approved original business site lease, or an approved assignment or sublease of an existing business site lease, or a rental agreement from the holder of an approved business site. For purposes of these operating guidelines, a business site lease shall be considered approved when signed by all appropriate parties of the Navajo Nation and BIA. Applicants who do not require a business site lease and intend to operate a home-based business must provide a detailed map of the location of their home (e.g., construction contractors).
10. A detailed statement regarding the use of the business proceeds, including equity contributions and loans, current purchase quotations and bids as appropriate, for equipment and inventory with a value over \$1,000 or construction costs over \$5,000. If construction costs to be paid from the loan proceeds exceed \$5,000, all work must be done by a licensed contractor, who must post a performance/completion

bond, or other satisfactory evidence of ability to complete the proposed contract, before any loan disbursements are made.

11. Detailed resumes of managers, principal owners, officers, members of the Board of Directors, and others as appropriate, setting forth the qualifications of those individuals as such pertain to the business venture.
12. An acceptable credit history as confirmed through an established credit bureau, or if such is not available due to lack of credit experience by the Applicant, then three verified credit references evidencing a history of repayment. In no instance shall loans be approved and/or disbursed if the Applicant has an unacceptable credit report, or a history of accounts placed with collection agencies, bankruptcy, tax liens, or civil judgments on the report. A good credit history provides reasonable assurance that the loan will be repaid.

If the client feels that the credit report is not accurate, he/she has a right to contact the credit reporting bureau to correct their credit report and/or to explain in writing the reasons for a poor credit history.

13. Supporting documents such as partnership agreements, Corporation Certificate, corporate resolutions authorizing borrowing, business licenses, permits, insurance policies, agricultural tax schedules, etc., as required.

G. Loan proceeds shall not be used for the following purposes:

1. The purchase of, or down payment on, any real estate, unless such is to be used exclusively in the conduct of the business and is essential to the success of the business;
2. To pay all or part of any delinquent tax assessment of any type (income, property, etc.) to the Internal Revenue Service or similar tax agency; and
3. To pay an existing personal debt or unrelated business debt whether owed to the Nation or to any other entity, except that working capital loans may be used to pay trade payables, and other debts may be refinanced on a case by case basis as approved by the Loan Committee.
4. To pay dividends, repurchase or redeem shares or to make loans or distributions of any sort to shareholders, partners or owners of the business.



- H. Applicants must show evidence that the business will provide a source of employment and income opportunities to benefit the Navajo Nation economy.
- I. All required information submitted by the Applicant, such as the loan application, or business plan, shall be verified to the greatest extent possible, given available resources and sound business practices.
- J. All projections of income and cash flow must be as accurate and reasonable as possible.
- K. Loan amounts shall not exceed 90% of the purchase price of assets to be acquired, or more than 95% of the value of any permanent improvements constructed on a business site.
- L. The initial loan to an Applicant made from the Fund shall be made in an amount not less than ten thousand dollars (\$10,000) or in an amount not greater than one hundred fifty thousand dollars (\$150,000) for a new business; a loan in an amount not less than ten thousand dollars (\$10,000) or in an amount not greater than two hundred thousand dollars (\$200,000) for existing businesses. An existing business is defined as one having been in successful operation for three (03) or more consecutive years during the past five (05) years.
- M. The term of any loan shall not exceed a weighted average<sup>2</sup>, as follows:
  - 1. Working capital, or the purchase of inventory, supplies, office furniture, fixtures and wages, no more than 48 months (4 years);
  - 2. Machinery and/or Equipment - the anticipated useful life, not to exceed 72 months (6 years); except that if the anticipated useful life is more than 72 months, written evidence must be provided by the supplier, manufacturer or a knowledgeable person, before approval for a term beyond 72 months is made;
  - 3. Permanent improvements, the anticipated useful life, not to exceed 204 months (17 years);

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<sup>2</sup> For example: An Applicant wants to borrow \$10,000 and use \$2,000 for wages, \$3,000 for inventory and \$5,000 for equipment with a useful life of 72 months. The term of the loan would be figured as follows and should be written for a 60-month term:

$$\begin{array}{rcl}
 \$5,000 \div \$10,000 \times 48 \text{ months} & = & 24 \text{ months} \\
 \$5,000 \div \$10,000 \times 72 \text{ months} & = & 36 \text{ months} \\
 \text{Total} & = & 60 \text{ months}
 \end{array}$$

4. The purchase of existing business interests, not to exceed 180 months(15 years);
  5. The term of any loan shall not exceed the remainder of the term of any Business Site Lease including options to renew or non-reservation land lease where the business is to be situated.
- N. The Applicant shall provide at least ten percent (10%) equity contribution, (source of funds to be invested in business in addition to the proposed BIDE loan), which must be verified by DED prior to approval of the loan application. Time and effort of Applicant may be considered as equity at the discretion of Regional Business Development Office Manager. Such time and effort, if allowed, will be valued at \$50.00 per hour. The total debt of the Applicant from all sources, including the amount applied for, shall not exceed Applicant's equity contribution by more than a factor of four.
- O. The Applicant's business venture must be located within the territorial jurisdiction of the Navajo Nation as defined in Title Seven of the Navajo Nation Code, Section 254, as all land within the exterior boundaries of the Navajo Indian Reservation or of the Eastern Navajo Agency, all land within the limits of dependent Navajo Indian communities, all Navajo Indian Allotments, and all other land held in trust for, owned in fee by, or leased by the United States to the Navajo Nation or any Band of Navajo Indians. The Applicant's proposed business may also be located within close proximity to (or within 40 miles of) the exterior boundary of the reservation as defined above.
- Business location shall be determined by considering all available information such as the business site lease agreements, also the address utilized on business correspondence and tax returns.
- P. An Applicant who has had a prior loan approved under these guidelines shall not be required to submit another full-fledged business plan if the second loan request is made for the same business within two years. However, the Applicant shall provide an updated summary of the business (which must be in good standing) and provide required documents deemed necessary to enable DED and the Loan Committee to make a sound credit decision regarding the second application. In no event, shall the cumulative amount of loans for any one Applicant exceed two hundred thousand (\$200,000).
- Q. The Applicant shall be responsible for the payment of all applicable fees necessary for the loan approval, e.g. lien searches, UCC filing fees, appraisals, title and registration fees, etc.

- R. The Applicant must supply at least one loan rejection letter from a financial institution before requesting a BIDF loan.

**SECTION 6 - LOAN COMMITTEE**

The Economic Development Committee authorizes the establishment of an internal Loan Committee to be made up of Division of Economic Development employees having knowledge of general business, banking and/or business lending. The Loan Committee shall be made up of five members and appointed by the Division Director. The Loan Committee shall elect a Chairman and shall maintain records of meetings. Meetings may be called by the Loan Committee Chairman, Division Director or Chief Financial Officer. Quarterly reports will be made to the Economic Development Committee outlining the Loan Committee's actions. The Loan Committee shall have the authority to make final approval of Small Business Loans in accordance with these guidelines unless or until this authority is revoked by the Economic Development Committee. The Loan Committee shall establish rules and procedures for the conduct of its meetings. Undue influence exerted on loan officers by elected officials and political appointees shall be grounds for denial of a loan.

**SECTION 7 - APPROVAL/DISAPPROVAL PROCEDURES**

- A. Applications and all required documents must be completed before presentation of the loan request is made to the Loan Committee for consideration. An executive summary of the loan application shall be prepared, along with such other information as the Loan Committee shall require. The executive summary shall be presented to the Loan Committee by the sponsoring RBDO staff or a designee who shall answer, to the best of their ability, any questions arising from the Loan Committee. All decisions pertaining to action on a particular loan (approval, disapproval, modification, etc.) shall be reduced to writing. Loan Committee action must be certified by the signature of the presiding Chairman.
- B. In order to avoid the appearance of undue influence and Conflict of Interest, applications from all Division of Economic Development staff, and all other individuals who have an actual or potential Conflict of Interest as defined in the Navajo Ethics in Government Law, 2 N.N.C. §§ 3741 through 3758, shall obtain a written advisory opinion from the Ethics and Rules Office pursuant to 2 N.N.C. § 3879 (B) (7) as to the significance of this potential or actual Conflict of Interest prior to the approval of any loan under this program. Elected officials, political appointees and their immediate family members shall not be eligible for a loan under these guidelines during their term of office.

Navajo Nation Employees shall provide written approval from immediate supervisor and the Personnel Director to engage in outside or self-employment as required by the Navajo Nation Personnel Policies Manual, Section III (C).

- C. All loan approvals are subject to compliance with all applicable Navajo Nation Laws.

#### **SECTION 8 - LOAN DOCUMENTATION**

- A. Loans shall be documented according to standards and procedures adopted by the Economic Development Committee, which shall require the following:
1. A promissory note and a security agreement signed by the Applicant, the Applicant's spouse, partners, principal stockholders, and co-signer, as is appropriate; where necessary, the promissory note shall contain a cross default clause which stipulates that a default of either the loan or business site lease shall constitute a default of the other.
  2. An accounts payable authorization from the Applicant granting to the Nation the right to withhold all or a portion of any payment from the Nation or other employer or payer to the Applicant;
  3. UCC Filing Documents pledging collateral and granting to the Navajo Nation a first lien on all property (real and personal) acquired with the proceeds of the loan;
  4. UCC Filing Documents pledging collateral and granting to the Navajo Nation a first lien on such other personal property. If the Applicant secures financing from a commercial lending institution other than the Navajo Nation, the Nation may subordinate all or a portion of its debt and security; and
  5. UCC Filing Documents pledging collateral and granting to the Navajo Nation a first lien on real property; however, in no case shall the total value of the liens exceed the appraised value of the property.
- B. The following types of property shall not be eligible for use as collateral:
1. Grazing permits and home-site leases issued by either the Navajo Nation or the Bureau of Indian Affairs;

2. Livestock, except for agricultural business loans;
  3. Jewelry or other works of art or craft items, except for full-time jewelry businesses;
  4. Property restricted by law from being encumbered;
  5. Intangible assets such as future benefits, manuscripts, etc., except that a certain award of future benefits may be considered as Applicant income if the benefits will be received by the Applicant within 30 days of approval, and the certain cash value of whole life insurance and other intangible benefits may be considered for collateral purposes on a case by case basis as determined by the Loan Committee; and
  6. Contracts, except those where payments may be assigned and made directly to the Navajo Nation. The contracting agency must provide written consent authorizing the Applicant to pledge the contract as collateral.
- C. Property used as collateral must be owned by the borrower. Borrowers who pledge property that can be titled and registered (automobiles, mobile homes, trailers, etc.) must consent to a title document showing the Navajo Nation as the first lien holder, and must show a current registration. Borrowers who pledge property (i.e., inventory, office furniture, fixtures, equipment, machinery, etc.) must consent to the lien by signing financing statement (UCC form) showing the Navajo Nation as the secured party and submit required fees. Borrowers who pledge property that does not have title documents, must specifically identify such property (brand name, model, serial number, etc.). Property pledged as collateral must be physically inspected by the sponsoring RBDO staff before the loan application is approved. Property must be in good condition to be used as collateral. Vehicles beyond seven years old can not be used as collateral.
- D. Property pledged as collateral must be covered by a comprehensive insurance policy covering loss due to damage, with a loss payee clause payable to the Navajo Nation if such a payee clause is available. Such insurance shall be written for a term coinciding with the term of the loan, or for such other reasonable term as the Loan Committee shall require. Borrower shall be responsible for adequate insurance coverage at all times. If insurance coverage is threatened with lapse, the Nation may pay any and all sums needed to continue coverage, and add such costs to the outstanding principal balance of the loan. A certificate of insurance coverage shall be provided to DED prior to disbursement of the loan funds.

- E. Accounts payable authorizations shall start at the earliest opportunity after disbursement of loan proceeds.
- F. An undeveloped business site lease shall be valued at no more than the current appraised value.
- G. Accounts receivable that are over 90 days past due shall be considered at zero value for collateral purposes.
- H. Awarded contracts assigned as collateral shall be valued at no more than fifty percent (50%) of their face value for collateral purposes.
- I. All borrowers must maintain adequate property and liability insurance, covering their business operations and facilities. Proof that such insurance is in place shall be documented prior to loan closing. DED may require such other business insurance as it deems advisable. If insurance coverage is threatened with lapse, the Nation may pay any and all sums needed to continue coverage, and add such costs to the outstanding principal balance of the loan.
- J. All borrowers for loans must obtain, if reasonably obtainable, and/or assign Credit Life/Disability Insurance and/or other Life insurance with a loss payee clause in favor of the Navajo Nation in an amount equal to or exceeding the loan, prior to loan closing. Borrowers shall be responsible for adequate insurance coverage at all times. If insurance coverage is threatened with lapse, the Nation may pay all sums needed to continue coverage, and add such costs to the outstanding principal balance of the loan.
- K. All borrowers from the Fund shall file copies of annual financial reports with Regional Business Development Office, including a balance sheet and income statement, as requested.

## **SECTION 9 - LOAN CLOSING**

- A. Disbursements of loan proceeds shall be made in the name of the Applicant and the business venture, unless the RBDO directs that disbursements be made directly to third party vendors and upon approval of the Loan Committee. The loan proceeds shall be deposited into a special bank account (at the discretion of the Regional Business Development Office Manager), which shall require the joint signatures of the Applicant and a representative of Navajo Nation for all withdrawals. The responsible RBDO staff shall ensure that the loan proceeds are disbursed in accordance with the Applicant's approved loan proposal. The bank account shall be maintained until all loan

proceeds are spent.

- B. Closings may take place at any location convenient to all the parties (the borrower and the RBDO staff). All disbursements from the special account shall be made by checks or cashiers checks.
- C. If the loan is approved subject to certain conditions, the RBDO staff responsible for disbursement shall ensure that those conditions are met.
- D. No closing or disbursement shall take place unless the DED staff certifies in writing that all required documents have been executed and received.
- E. No closing or disbursement shall take place unless the DED staff responsible for the closing assures that the borrower has complied with all applicable Navajo Nation laws.
- F. All loans shall be closed within sixty days of Loan Committee approval. If the loan is not closed within sixty days for any reason, the loan commitment may be canceled and the client must reapply. If an Applicant presents legitimate extenuating circumstances, a written request for an extension can be made prior to the expiration of the sixty days. The request for extension shall be reviewed and approved or disapproved by the Executive Director or by the Chief Financial Officer of DED. Any extension granted shall be for a maximum of thirty days. No request for a second extension shall be granted.
- G. The RBDO staff responsible for processing the loan application for an Applicant shall provide technical assistance to ensure the business develops a plan according to sound business practices and management principles and closely monitor the business, filing quarterly status reports on the business with the Small Business Development Department. The Applicant may be required to undertake business management/accounting training courses, depending on his/her business experience.

#### **SECTION 10 - ACCOUNTING**

- A. The records and books for the Fund shall be kept by the Division of Finance in accordance with generally accepted accounting principles, with Navajo Nation accounting policies and as required by the BDF Fund Management Plan. The records and books shall be available for review upon reasonable request and copies shall be provided to DED.
- B. All loan payments shall be credited in the following order of priority to the respective loan account identified by a loan

number:

1. First, to accrued interest due and owing calculated from the date of the last payment;
2. Second, to late fees;
3. Third, to direct expenses incurred by the Nation in servicing the loan account, including filing fees associated in the perfecting of security interests, non-sufficient funds fees for returned checks, insurance purchased to protect collateral, or costs associated with collection efforts; and
4. Finally, the remainder, if any, to the principal balance.

C. Monthly Reconciliation:

1. Cash posting shall be by the Cashier's Section of Financial Services Department through the General Ledger of the Financial Management Information System (FMIS) to Credit Services Department Loan Ledger.
2. Credit Services Department (Department) monthly shall reconcile its Loan Ledger amounts to the Accounts Receivable shown on the General Ledger maintained by Financial Services Department.

D. Idle BIDE funds shall be invested by the Division of Finance. Interest earned on idle funds shall be credited to the program account and shall be available for use in the operation of the Fund.

E. Month end closeout and reconciliation reports shall be prepared by Credit Services Department and submitted to the General Accounting Section to be applied to appropriate accounts with the following reports to be furnished to DED from Credit Services Department on a monthly basis:

- a. Journal Voucher
- b. Close out Worksheet
- c. General Ledger by Business Unit
- d. Management Alert
- e. Cash Report of Loan Ledger
- f. Trial Balance
- g. Customer Aging Report
- h. Bankrupt Customer Listing
- i. Paid in Full Customer Listing
- j. New Loans Booked for the Month
- k. Portfolio At Risk
- l. Customer Loan Ledger with Notes
- m. Customer Billing Statements



- F. Quarterly summary accounting reports shall be prepared and presented to the Economic Development Committee by the Chief Financial Officer and a representative from the Credit Services Department for review. Such reports shall include at a minimum, the total amount of funds collected, the amount of such funds collected that represents program revenue (interest and direct expense reimbursements), amounts representing principal repayment, the balance of the program loan account, information pertaining to delinquencies and such other information as the Committee may require.
- G. To obtain a current and accurate payoff figure for an outstanding loan, you must call, write or e-mail the Credit Services Department with the request. The request should include the name of the borrower, loan number, date of loan and the date of the payoff.
- H. Requests for loan disbursements after loans have been approved must be taken from the Division of Economic Development directly to the Credit Services Department, along with copies of the Promissory Note, Security Agreement, UCC filings, Loan Application and a detailed map showing the borrower's business location.
- I. Interest and late fees shall stop accruing for purposes of recognizing loan income on all loans that are more than 90 days delinquent.

## **SECTION 11 - COLLECTIONS**

- A. Loan accounts that are in arrears or otherwise not in compliance with the loan agreements are forwarded to the Collections Section within the Credit Services Department for collection efforts. The Department's collection officers are the liaisons between the Department and borrower(s). The goal of the collection officers is to have the borrowers repay their debt on a timely basis through the process of negotiation and cooperation without having to resort to legal proceedings.
- B. Collection efforts by the Department shall be in compliance with all applicable Navajo Nation, Federal and state laws and shall be subject to any new or revised law dealing with credit and collections within the Navajo Nation.
- C. Loan payments are due on the date specified in the promissory note. It is the borrower's responsibility to ensure that the payment is received at the proper office on or before the date specified.

- a. Payments mailed or delivered to the Department's personnel will be forwarded to the Cashier's Office within the Financial Services Department.
  - b. Payments received by the Department or by the Cashier's Office after 2:00 p.m. will be receipted and posted on the following business day.
- D. The Credit Services Department will be responsible for collections and shall keep detailed records of efforts and contacts with borrowers. Periodic contacts shall be made with the borrowers and co-signers either in person, by mail to the last known address or telephone to demand payments due and owing on the loan account. The loan file is a legal document and any entries made must be considered as potential evidence in a court of law.
- E. It is the responsibility of the borrowers and co-signers to keep the Department informed of their current address and telephone numbers. The Department is not responsible for sending correspondence to other than the last address and telephone number provided by the borrowers.
- F. Throughout the formal collection process, efforts shall be conducted to contact the borrowers and co-signers to collect monies owed to the Nation.
- G. If payments are not received within ten (10) days following the due date, the loan account may be subject to any late charge pursuant to the terms of the promissory note.
- H. If payments are not received prior to sixty (60) days following the due date, and after the Department has sent out five (5) written notices to the borrowers and co-signers, the Nation shall accelerate the debt pursuant to the promissory note.
- I. If the debt is accelerated, the Nation shall declare the loan in default, declare the entire amount due and owing, and demand immediate payment of the same. The borrowers and co-signers shall be notified in writing, by certified mail, of this action.
- J. The borrowers and co-signers will be given opportunities to forestall further legal proceedings. Such opportunities may include, but shall not be limited to, the opportunity to bring the loan account current in a specified time by entering into a new payment agreement with the Department and the opportunity for voluntary relinquishment of the pledged property. It is the responsibility of the borrowers and co-signers to contact the Department to arrange such opportunities.
- K. Voluntary settlements, whereby the borrower relinquishes the collateral pledged as security for a loan, or such other

property as may be required, or takes such other action as is appropriate, are encouraged if it appears borrower cannot repay debt by normal means.

- a. If a deficiency remains on the loan accounts after the liquidation of the property, the borrowers or co-signers shall be liable for the deficiency amount under applicable laws.
- L. The Department shall pursue Small Claims Court proceedings if a loan account has a balance of two thousand dollars (\$2,000.00) or less and the account has been accelerated.
- M. If an account is collected, through judicial action or judgment, including but not limited to Bankruptcy, Voluntary Liquidation, and/or Repossession, the borrowers and/or co-signers shall not be considered for another loan until a minimum of ten (10) years has lapsed.
- N. The Credit Services Department shall have the authority to contract with a collection agency or outside firm to collect on all delinquent loans. In contracting with a collection agency or outside firm, the Department shall comply with the requirements for contracting as provided in N.N.C. Sections 223 and 1013.
- O. Bankruptcy (Chapter 7 or 13) cases shall be subject to the Federal Bankruptcy Laws and all other applicable laws to discharge an individual debt to the Navajo Nation. However, the continued right to foreclose on the property is subject to all applicable Navajo Nation, Federal and state laws in which the property is located.
  - a. In order to qualify for future loans, the borrowers and co-signers may reaffirm in writing to continue payments on the loan account that was discharged by a Federal Bankruptcy Court.
- P. In the event of death of a borrower, the Department shall contact the surviving spouse or the administrator of the deceased's estate to proceed with the probate in compliance with the Navajo Nation Rules of Probate Procedures.
- R. Any uncured payment arrearages of employees of the Navajo Nation or entity of the Nation shall be pursued, at the option of the Department through judicial means or through the Navajo Business and Procurement Act, 12 N.N.C. §1507 and pursuant to the Navajo Nation Executive Branch Personnel Policies Manual Article XVI(B) (2), Conduct of Employees.

**SECTION 12 - MODIFICATION OF A LOAN**

- A. A modification of any term and condition of a loan (except an increase in the loan amount), including a change in the use of proceeds, a reduction in the scheduled repayment amount, restructuring of the loan or an extension of the term of the loan shall be administratively handled by the Executive Director and Chief Financial Officer of DED. Any increase in the loan amount must be approved by the Loan Committee.
- B. Requests for an additional advance to increase the loan amount shall be considered as a new loan application.
- C. Release of all or a portion of collateral upon partial repayment of a loan will be considered on a case by case basis by the Executive Director and Chief Financial Officer of DED.
- D. Any modification of a loan must be communicated to the Credit Services Department in writing as soon as possible after the modification has been officially approved.

**SECTION 13 - REPAYMENT**

- A. Repayment shall generally be on a monthly basis and shall commence after the loan closing. Repayment schedules on a quarterly or other basis shall require specific certification and approval of the Loan Committee.
- B. All loan payments in the form of a check or money order shall reference the assigned loan number and be made to the following address:  
  
THE NAVAJO NATION  
Credit Services Department  
Division of Finance  
P.O. Box 2405  
Window Rock, Arizona 86515
- C. There shall be no pre-payment penalty. Borrowers are encouraged to prepay their loans.
- D. Within 30 days after a loan is paid in full, the liens on collateral pledged as security shall be released to the borrower.
- E. Unless otherwise specified in writing and signed by the Executive Director or Chief Financial Officer of DED, interest shall start accruing as of the date of the promissory note.

**SECTION 14 - INTEREST RATES**

- A. The interest rate charged shall be a minimum of one percent (1%) to a maximum of four percent (4%) above the prime rate as published in the Wall Street Journal as the interest rate on the first business day of each month; the loan rate shall be fixed at that rate in effect as defined above on the day the Loan Committee approves the loan. Loans shall be made for a fixed interest rate, but that rate may vary from loan to loan, depending on the credit risk of each Applicant. Interest shall be calculated on the basis of 365 days.

**SECTION 15 - ACCOUNT MAINTENANCE**

- A. Each active loan account receivable within the Program shall be closely monitored by the RBDO representative assisting the Applicant with the loan application at least once a month to ensure timely receipt of repayments, insurance coverage of collateral, etc.
- B. Written notices of any delinquency or default, lapse of required insurance, etc. shall be provided by Credit Services Department, Division of Finance to the borrower.
- C. Each active loan account within the loan program shall be closely monitored by the Credit Services Department, Division of Finance, to ensure timely repayment. Computer generated monthly statements will be provided to the borrower and Division of Economic Development.

**SECTION 16 - WRITE-OFF OF LOANS**

- A. The write-off of a loan account shall be initiated by the Credit Services Department when a loan is determined to be uncollectible and all collection efforts have been exhausted or when a settlement agreement between the borrower and the Credit Services Department has been entered into in order to collect at least some portion of the remaining outstanding debt.
- B. The Credit Services Department shall consider factors such as death, bankruptcy and other circumstances on a case-by-case basis before recommending a write-off. Any recommendation to write-off a loan or any portion thereof shall require final review by the Chief Financial Officer of Division of Economic Development and the Department of Justice before submittal to the Economic Development Committee for final approval.
- C. All write-offs of loans or any portion thereof requires the final approval of the Economic Development Committee and, upon approval, the principal, interest and fees may be taken off the

books of the Navajo Nation. However, even though a loan or some portion thereof may be taken off the books, this does not relieve the borrowers or co-signers from the legal responsibility to repay the loan with interest. A separate record shall be maintained by Credit Services Department showing the loans that have been written off and should the future circumstances change for the borrower, so that he has the means to repay the loan, every effort should be made to collect. The write off of a loan or any portion thereof may be considered as a default and a disqualification for any future loans or other entitlements under 12 N.N.C.§1505(B).

**SECTION 17 - MODIFICATION OF GUIDELINES**

- A. These guidelines may be modified from time to time, as the need arises, by action of the Economic Development Committee, conditioned upon a written recommendation from the Executive Director and Chief Financial Officer of the Division of Economic Development.