CDFI Bond Guarantee Program Secondary Loan Requirements

In order for an Eligible CDFI to make a Secondary Loan through the CDFI Bond Guarantee Program, it must ensure that the Secondary Loan is made in compliance with the applicable Secondary Loan Requirements. Please refer to the CDFI Bond Guarantee Program's regulations at 12 C.F.R. 1808. Capitalized terms used herein and not defined elsewhere are defined in the regulations at 12 C.F.R. 1808.102.

UNDERWRITING REQUIREMENTS APPLICABLE TO SECONDARY LOANS

If an Eligible CDFI proposes to make a Secondary Loan, the Eligible CDFI must have loan policies and procedures in place which detail the origination, underwriting, credit approval and portfolio management process for Secondary Loans to each asset type. Secondary Loans must be made in compliance with the Secondary Loan Requirements. The Eligible CDFI's underwriting, credit approval and portfolio management processes will be evaluated during the CDFI Fund's Guarantee Application review, and approved asset types will be set forth in the terms of the Bond Loan agreement, entered into by and between the Qualified Issuer (as lender) and the Eligible CDFI (as borrower). The CDFI Fund may consent to allowing additional asset types during the term of the Bond Loan.[1]

REQUIREMENTS FOR ELIGIBLE CDFIS

In order to make Secondary Loans with Bond Loan proceeds, the Eligible CDFI must remain in compliance with the representations and warranties set forth in the corresponding Bond Loan agreement.

REQUIREMENTS FOR SECONDARY LOAN AGREEMENTS / DOCUMENTATION

As a condition to closing and ongoing disbursements, the Eligible CDFI shall provide, to the best of its knowledge, representations and warranties which, at a minimum, must include the following with respect to each Secondary Loan.

- The Eligible CDFI must attest that it is in compliance with all financial and non-financial covenants on existing indebtedness, both before and after the addition of Secondary Loan.
- The information provided with respect to the Secondary Loan set forth in loan documentation is true and accurate.
- There are no unsatisfied mechanics liens or claims for labor, materials, fines, confiscation or repletion relating to the Secondary Loan.

[1] See CDFI Bond Guarantee Program Underwriting Review Checklist.

- The Secondary Loan includes a schedule of monthly payments payable in United States dollars, which, if timely paid, are sufficient to fully amortize the principal balance of the Secondary Loan on its maturity date.
- If the Secondary Loan is secured by a mortgaged property, the mortgaged property is a valid and subsisting lien of record on the mortgaged property.
- If the Secondary Loan is secured by collateral other than mortgaged property, the related financing documents, security agreement and Uniform Commercial Code (UCC) filings create a valid and subsisting lien of record on such pledged collateral.
- If the Secondary Loan is secured by a mortgaged property, the mortgaged property is free of contamination from toxic substances or hazardous waste required action under existing applicable laws.
- There are no delinquent tax or assessment liens on any property which is pledged as collateral for the Secondary Loan.
- The Secondary Loan is not subject to any right of rescission, set-off, counterclaim or defense.
- The Secondary Loan complies, in all material respects, with applicable State and Federal laws and regulations including, without limitation, usury, equal credit opportunity, disclosure and recording laws.
- The Secondary Borrower is not subject to any ongoing, pending, or threatened litigation that impairs its ability to undertake the proposed Secondary Loan project or continue with the proposed Secondary Loan business.
- The Secondary Borrower is current on all withholding tax, corporate income tax and owner's personal income tax liability.
- The Secondary Borrower's management or governing organization has been approved by and in good standing with its licensing authority.
- The Secondary Borrower shall warrant that the proposed Secondary Loan project site and facilities shall maintain comprehensive insurance coverage, security, required ground leases, and easements through and beyond the final maturity of the Secondary Loan
- For Secondary Loans benefitting from a Principal Loss Collateral Provision (structured either as a payment guarantee or deficiency guarantee), the provider of a Principal Loss Collateral Provision must be an institution with an investment grade rating from a public rating agency or, in the case of a private provider such as a foundation, have substantial liquidity and financial assets as determined by Bond Guarantee Program Credit and Risk Management and the Credit Review Board. A financial institution provider that is regulated by an Appropriate Federal Banking Agency or an Appropriate State Agency, must demonstrate performance of financially sound business practices relative to the industry norm for providers of collateral enhancements as evidenced by reports of Appropriate Federal Banking Agencies, Appropriate State Agencies and / or auditors.

COLLATERAL REQUIREMENTS

If an Eligible CDFI proposes to make a Secondary Loan utilizing funds drawn under the Bond Loan (including funds that reside in the Relending Account), the Secondary Loan shall be secured by pledged collateral as set forth below.

General Requirements Applicable to All Secondary Loans

- Secondary Loans may be utilized for expansion or major renovation projects, but may not be used for new construction.
- Secondary Loans must be secured by a perfected senior lien on pledged collateral to the Eligible CDFI, which shall in turn be assigned to the Federal government. In no event shall the Eligible CDFI's claim on pledged collateral be subordinated to the claims of another creditor.
- Pledged collateral must have a useful life no less than the life of the proposed Secondary Loan.

Eligible Forms of Secondary Loan Collateral

- Eligible forms of collateral to secure Secondary Loans include:
  - Real estate, including land and existing structures
  - Leasehold mortgages
  - Machinery, equipment, and movables
  - Cash and cash equivalents
  - Accounts receivable
  - Letters of credit
  - Inventory
  - Fixtures
  - Contracted revenue streams from non-federal creditworthy counterparties provided the Secondary Borrower pledges all assets, rights and interests necessary to generate such revenue stream
  - Principal Loss Collateral Provision.

A Principal Loss Collateral Provision may be provided in lieu of pledged collateral and in addition to pledged collateral. A Principal Loss Collateral Provision shall be in the form of letter of credit, cash or cash equivalent guarantees in the amounts necessary to secure the Eligible CDFI's obligations under the Bond Loan after exercising other remedies for default. A Principal Loss Collateral Provision may be structured in the form of a deficiency guarantee whereby another entity assumes liability after other default remedies have been exercised and it covers the deficiency incurred by the creditor. The Principal Loss Collateral Provision shall at a minimum provide for an amount that is not less than the difference between the discounted value of the collateral and the unpaid principal balance of the outstanding SecondaryLoan.

Intangible assets, such as customer relationships or intellectual property rights, and to-be-constructed real estate improvements are not acceptable forms of collateral.

Requirements for Secondary Loan Collateral Valuation

- The value of pledged collateral for Secondary Loans must be determined in accordance with the following guidelines:

  - Independent third party appraisals: Appraisals shall conform to the standards set forth in The Uniform Standards of Professional Appraisal Practice (USPAP) established by The Appraisal Foundation. Independent third party appraisals shall be required for the following:

    - Real estate and leasehold mortgages
    - All fixtures, machinery and equipment and movables stock valued in excess of an aggregate value of $250,000
  - Contracted revenue streams from non-federal creditworthy counterparties provided the Secondary Borrower pledges all assets, rights and interests necessary to generate such revenue stream.

  - Book Value: Secondary Loan collateral may s be valued using the cost approach, net of depreciation for the following:

    - Inventory
    - Accounts receivable
    - All fixtures, machinery, equipment, & movables less than or equal to an aggregate value of $250,000

Loan-to-Value Requirements

In each month of the Secondary Loan amortization period, the following requirements shall apply:

- Real estate (except owner-occupied homes): Any Secondary Loan collateralized by real estate (except owner-occupied homes) must have a loan-to-value ratio of 80 percent or less..
- Leasehold mortgage: Any Secondary Loan collateralized by a leasehold mortgage must have a loan-to-value ratio of 80 percent or less.
- Owner-occupied homes: Any Secondary Loan collateralized by an owner-occupied home must have a loan-to-value ratio of 90 percent or less..
- New machinery, fixtures, equipment, and movables: Any Secondary Loan collateralized by new equipment, machinery, or movables, must have a loan-to-value ratio of 70 percent or less.
- Used machinery, fixtures, equipment, and movables: Any Secondary Loan collateralized by used equipment, machinery, or movables, must have a loan-to-value ratio of 40 percent or less.
- Inventory: Any Secondary Loan collateralized by inventory must have a loan-to-value ratio of 75 percent or less.
- Accounts receivables: Any Secondary Loan collateralized by accounts receivable must have a loan-to-value ratio of 80 percent or less.
- Cash, cash equivalents, letters of credit, and Principal Loss Collateral Provision: Any Secondary Loan collateralized by cash, cash equivalent, letters of credit, and Principal Loss Collateral Provision shall have a loan-to-value ratio of 100 percent or less.
- Contracted revenue stream: Any Secondary Loan collateralized by a contracted revenue stream shall have a loan-to-value ratio of 70 percent or less.

- Letters of Credit or Principal Loss Collateral Provision: Any Secondary Loan collateralized by a letter of credit or Principal Loss Collateral Provision shall have a loan-to-value ratio of 100 percent or less.

  Additional collateral: Additional collateral may be utilized to satisfy loan-to-value requirements set forth above, provided a senior lien is provided on such additional collateral and the combined collateral satisfies the loan-to-value requirements in each month of the loan amortization period.

Additional Collateral Requirements for Credit Enhancements

- For Secondary Loans that satisfy applicable collateral requirements but require a Credit Enhancement, secondary liens on real estate owned by guarantors is acceptable to secure the Credit Enhancement.

Additional Requirements for Leasehold Mortgages

For Secondary Loans secured by leasehold mortgages, the following additional requirements shall apply:

- The minimum term of the leasehold mortgage shall be at least ten (10) years greater than the maturity date of the Secondary Loan.
- The leasehold mortgage may not be subordinated to the rights of any other creditor, fee simple owner, leased fee interest, lessee, or lessor of the property.
- There must be a subordination, non-disturbance and attornment (SNDA) or similar subordination agreement among all relevant parties, which may include, but not be limited to: the landlord; the landlord's lender; the Eligible CDFI as the lender to the Secondary Borrower; and the Secondary Borrower as the lessee/tenant).
- The leasehold mortgage may not be modified, merged, terminated, or surrendered without the Eligible CDFI's consent.
- The leasehold mortgage shall provide that the Eligible CDFI receive notice of default with at least a ninety (90) day cure period and, if the lender cannot cure the default, the right to enter into a new lease with the landlord on the same terms as the original lease. A lease cannot be terminated as a result of default so long as the contractually obligated rent is being paid.
- The lease must be assignable to the Eligible CDFI as lender, the Trust Estate, and any of its successors or assignees.
- In the case of leasehold mortgages made on trust land or restricted fee land, as those terms are used in Title 25 of the Code of Federal Regulations, the Eligible CDFI shall secure a limited waiver of sovereign immunity for suits related to the enforceability of the rights and interests under the leasehold mortgage.
- In the case of leasehold mortgages made on trust land or restricted fee land, as those terms are used in Title 25 of the Code of Federal Regulations, the Indian Tribe must demonstrate that it obtained authority to process land leases without approval from the Bureau of Indian Affairs (BIA).