CDFI Bond Guarantee Program Secondary Loan Requirements

General 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 which include the General Requirements and the Underwriting Review Checklist (together the "Secondary Loan Requirements"). Please also 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 in each asset class. 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 classes 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 classes during the term of the Bond Loan.

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 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 the Secondary Loan.
- That the information provided with respect to the Secondary Loan set forth in the 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.
- 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 Secondary Loan 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 and hazardous waste and is in compliance with all required action under existing applicable local, state, or federal environmental laws, rules, or regulations.
- There are no delinquent tax or assessment liens on any property that 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, and 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 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 Collateral Requirements Applicable to All Secondary Loans

- 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 interests
  - Machinery, equipment, and movables
  - Cash and cash equivalents
  - Accounts receivable
  - Tertiary Loans 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

Ineligible Forms of Secondary Loan Collateral

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

- Book Value: The cost approach (net of depreciation) shall be accepted only for the following:

  - Inventory.
  - Accounts receivable.
  - All fixtures, machinery, equipment, and movable stock with an aggregate value less than or equal to $250,000.

- For all real estate related Secondary Loan Collateral: Appraisals shall have been performed no more than three (3) years prior to the date on which the Secondary Loan is pledged to the CDFI Bond Guarantee Program except in the following circumstances:
    - Secondary Loans that are secured by residential real estate as the underlying collateral and the appraisal of the residential real estate conforms to the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) appraisal standards applicable to that category of real estate.
    - Secondary Loans that do not represent an extension of new funding to the Secondary Borrower by the Eligible CDFI and the Eligible CDFI reevaluated the original real estate appraisal utilizing evaluation criteria in accordance with the Eligible CDFI's policies and procedures for the appraisal of real estate collateral and such policies and procedures were reviewed and approved in advance by the CDFI Fund.
    - For Secondary Loans with commercial real estate as the underlying collateral, a re-evaluation must include a site visit of the underlying property securing the Secondary Loan.
- A re-evaluation of pools of owner-occupied home mortgages may be conducted through the use of an Automated Valuation Model (AVM) to the extent that the Eligible CDFI has a sound documented methodology and trained personnel for the use of AVMs.
- The CDFI Bond Guarantee Program may require a re-appraisal of the underlying real estate collateral of a Secondary Loan if a subsequent evaluation results in a substantial reduction in the value of the collateral. The Eligible CDFI is responsible for the cost of any appraisal or re-appraisal.

Appraisals must be conducted on an "as is" or "as stabilized" basis. Appraisals conducted on an "as complete" basis will only be accepted in the following circumstances:

1. The Eligible CDFI has provided both the construction and the permanent financing for the Secondary Borrower; or
2. The Eligible CDFI provided the permanent financing only through a forward dated commitment to the Secondary Borrower and
    i. The construction lender is not affiliated with the Eligible CDFI,
    ii. The Eligible CDFI provides appropriate representations as to the current quality of the appraisal value, and
    iii. The Eligible CDFI provides evidence of the execution of an extensive re-evaluation that will include documented policies and procedures on conversion underwriting, comprehensive market and valuation analysis, borrower analysis, environmental assessment, income and expenses proforma, long-term cash flow analysis and verification of completion of the project contemplated in the "as complete" appraisal.

Loan-to-Value Requirements

Prior to an Eligible CDFI pledging any Secondary Loans to the CDFI Bond Guarantee Program, 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 interests: Any Secondary Loan collateralized by a leasehold interest 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 movable stock: Any Secondary Loan collateralized by new equipment, machinery, or movable stock, must have a loan-to-value ratio of 70 percent or less.
- Used machinery, fixtures, equipment, and movable stock: Any Secondary Loan collateralized by used equipment, machinery, or movable stock, 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.
- Tertiary Loans receivable: For both the CDFI to Financing Entity and the CDFI-to-CDFI asset classes, any Secondary Loan collateralized by a pool of Tertiary Loans receivable must have an aggregate loan-to-value ratio of 80 percent or less of the Secondary Loan relative to the collective outstanding principal value of the Tertiary Loans receivable pool. For example, if an Eligible CDFI makes a $1 million Secondary Loan to a Certified CDFI or an Approved Financing Entity under the CDFI-to-CDFI or CDFI-to-Financing Entity Secondary Loan asset classes, the Secondary Loan must be secured by at least $1,250,000 of Tertiary Loans receivable.
- Cash, cash equivalents, letters of credit, and Principal Loss Collateral Provision: Any Secondary Loan collateralized by cash, cash equivalent, letters of credit, or 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.
- Additional collateral: Additional collateral may be utilized to satisfy loan-to-value requirements set forth above, provided that 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 are acceptable to secure the Credit Enhancement.

Additional Requirements for Principal Loss Collateral Provisions

A Principal Loss Collateral Provision may be provided in lieu of pledged collateral or in addition to pledged collateral. A Principal Loss Collateral Provision shall, at a minimum, be in the form of a 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 Secondary Loan.

Additional Collateral Requirements for New Construction Loans

Secondary Loans for expansion or major renovation projects may utilize any eligible form of collateral. However, loans funding new construction will only by accepted as Secondary Loans when fully collateralized by a Principal Loss Collateral Provision under terms and conditions approved by the CDFI Fund.

Additional Requirements for Tertiary Loans

- Tertiary Loans may only be used as Secondary Loan Collateral within the CDFI-to-CDFI or CDFI to Financing Entity asset classes (Tertiary Loans receivable).
- The CDFI Fund will accept either single Tertiary Loans or pools of Tertiary Loans as collateral. In general, Tertiary Loan pools are aggregate numbers of relatively small loans for Owner-Occupied Home mortgages or Small Business loans.
- Collateral securing Tertiary Loans receivable shall be secured on a first lien or pari passu position at all times. The collateral for a Tertiary Loan cannot be another loan receivable. In no instances may the collateral securing the Tertiary Loan receivable be subordinate to the interest of another creditor.
- The Tertiary Loans receivable, as well as any collateral securing the tertiary loans, must be assignable to the Trust Estate.
- Any collateral securing the Tertiary Loans receivable must have a useful life longer than the term of the Tertiary Loan receivable.
- The maturity and amortization requirements of Tertiary Loans receivable are at the discretion of the Eligible CDFI. For Tertiary Loans pledged and collateralizing the Secondary Loan on a pooled basis, the loan-to-value requirements for collateral securing each Tertiary Loan may also be at the discretion of the Eligible CDFI.
- Tertiary Loans receivable means loans (i) originated or acquired by the Parent or Affiliate of an Eligible CDFI, or Approved Financing Entity or a Certified CDFI, (ii) pledged by the Approved Financing Entity or Certified CDFI to an Eligible CDFI, as Secondary Loan Collateral and (iii) the terms of which comply with the requirements for Secondary Loans such that they would be classified as Secondary Loans if they were made by the Eligible CDFI directly from Bond Loan Proceeds. Please see the Loan-to-Value Requirements and the Additional Requirements for Tertiary Loans Receivable sections for more guidance on the loan-to-value and amortization requirements for Tertiary Loans receivable.

Additional Requirements for Leasehold Interests

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

- The minimum lease term shall be at least ten (10) years greater than the maturity date of the Secondary Loan.

- The leasehold interest 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 agreement (SNDA) or similar subordination agreement among all relevant parties, which may include, but is not 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 or tenant.
- The leasehold interest may not be modified, merged, terminated, or surrendered without the Eligible CDFI's consent.
- The leasehold interest 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. The leasehold interest must provide that the 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 interests made on trust land or restricted land, as those terms are defined in 25 C.F.R. 162.003, 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 interest.
- In the case of leasehold interests made on trust land or restricted land, as those terms are defined in 25 C.F.R. 162.003, the Indian Tribe must demonstrate that it obtained authority to process land leases without approval from the Bureau of Indian Affairs (BIA).