

STATE OF WYOMING
WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM
RULES AND REGULATIONS

Prepared by:

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STATE OF WYOMING

WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM

Rules and Regulations

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STATE OF WYOMING

WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM

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CHAPTER 1 WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM

Section 1. Purpose.

a. These rules are adopted in order to implement W.S. 9-12-301 through 9-12-307, which provide for the making of loans to eligible community development organizations, state development organizations, and businesses. The rules provide for a method of application, review and recommendation, the establishment of terms and conditions of loans, and a hearing process.

Section 2. Authority.

a. Authority for the promulgation of these rules is granted in W.S. 9-12-302.

Section 3. Definitions.

- a. "Board of Directors" means the Board of Directors of the Council;
- b. "Borrower" means the community development organization or a state development organization, which applies for, commits to, and is responsible for repayment of funds provided under this program;
- c. "Business" means any existing enterprise which employs people within the state, provides services within the state, uses resources within the state or otherwise adds economic value to goods, services or resources within the state, and includes farm and ranch operations;
- d. "Cash or cash equivalent" means liquid assets including savings, checking and money market accounts, CDs, stocks, bonds or cash value life insurance or other similar assets. Equity in real estate holdings and other fixed assets is not to be considered liquid assets;
- e. "Community development organization" means a group of private citizens organized as a business entity authorized to do business in this state for the purpose of providing financing for new, existing, or expanding businesses and other economic or community development purposes in Wyoming, and which may take equity positions and shall take security positions in its borrowers' businesses and appropriate personal guarantees from the owners thereof;

- f. “Council” means the Wyoming Business Council;
- g. “Economic development account” means the economic development enterprise account within the revolving investment fund created under article XVI, section 12 of the Wyoming constitution. The account shall consist of funds from payments as provided in W.S. 9-12-306 and other funds as provided by law;
- h. “Guarantee loan participation” means a provision of financing by the council in which the council participates with a bank that has secured a federal guaranteed loan to guarantee repayment of a loan made to a business. The maximum participation by the council shall be fifty percent (50%) of the loan or five hundred thousand dollars (\$500,000.00), whichever is less;
- i. “Finance Committee” means the Finance Committee of the Board of Directors;
- j. “Servicing agent” means the qualified entity contracted by the Council to service the loans in the portfolio and to provide administrative services for the program;
- k. “State development organization” means a corporation organized under W.S. 17-11-101 through 17-11-120 with the authority to provide financing for new, existing or expanding businesses, and to fulfill other economic or community development purposes throughout the state of Wyoming, and which may take equity positions and shall take security positions in its borrowers’ businesses and appropriate personal guarantees from the owners thereof; and
- l. “Third-party loan(s)” means loans made by a community development organization or a state development organization to a business, where such loans are funded partially by the Challenge Loan Program.
- m. “Bridge financing” means the provision of financing for that portion of the total project cost which is calculated by subtracting from the total project cost the sum of ownership debt and equity. The council shall not consider a proposal in which the bridge financing component exceeds thirty-five percent (35%) of the total project cost or Two Hundred and Fifty Thousand Dollars (\$250,000.00) which ever is less and the business does not contribute more than fifteen percent (15%) of the total project cost. The financing is intended to be a participation with a commercial lender with the lender and state sharing a proportionate first lien position on all collateral. In the event of a default the lender will restructure, or proceed with the appropriate legal remedy with proceeds received to be shared proportionately with the state.

Section 4. Eligible Applicants.

- a. Any community development organization, state development organization, business requesting “bridge financing” as defined under section 3 (m), or a business requesting a “guarantee loan participation” as defined under section 3(h) may submit an application to the Council for review and recommendation to the Finance Committee and Board of Directors, as defined by legislation. Only complete applications shall be submitted to the Council.

Section 5. Application Process.

- a. All applications for loans shall be submitted on the required forms. Applications will be accepted at any time and scheduled for final review and recommendation by the Board of Directors on a first-come, first-served basis.

- b. Three (3) copies of the application must be submitted to the Council offices at:

Wyoming Business Council
214 West 15th Street
Cheyenne, WY 82002

- c. Every application for a community development or state development organization must include:

- (i) three (3) years of financial statements (of the community development organization, state development organization and business receiving the third party loan), plus current financial statements;

- (ii) pro-forma financial projections (income statement, balance sheet, and cash-flow statement) of the community development organization state development organization, or the recipient of the third-party loan(s) for two (2) years;

- (iii) certificate of incorporation of the community development organization or state development organization;

- (iv) by-laws of the community development organization or state development organization;

- (v) resolution to borrow by the community development organization or state development organization;

(vi) in the case of a community development organization, demonstrate the use of funds will stimulate economic development in the community or county, or in the case of a state development organization, demonstrate the use of funds will stimulate economic or community development throughout the state of Wyoming, and that such funds for financing the Business(es) are not available from the private-sector or in the case of a business(es) a letter of recommendation from the city, county or economic development organization where they are located;

(vii) business plan of the community development organization, state development organization or the ultimate recipient of the third-party loan(s);

(viii) in the case of a community development organization, a resolution of support from the legislative body of its municipality or county, or in the case of a state development organization, a resolution of support from the Council;

(ix) certification by the community development organization or state development organization that all statutory requirements will be met;

(x) certification that the community development organization or state development organization will contribute an amount of cash or cash equivalent at least equal to the amount of the loan it receives, plus documented evidence of the cash or cash equivalent reserves which will be pledged for such matching; and

(xi) proposed collateral for the loan shall be at a loan to value of no more than 85%.

(xii) proposed collateral and collateral value;

(xiii) detailed use of loan funds (refinance of existing debt is not allowed);

(xiv) personal guarantees;

(xv) certification that the business will allow an examination of its books and records as required in W.S. 9-12-306(a);

d. Applications for “bridge financing” and “guarantee loan participations” must include:

(i) complete copy of the originating lender’s analysis, recommendation and approval;

(ii) three (3) years of financial and tax statements (or in the case of a new business the most recent statements available since start-up), plus detailed and complete current financial statements of the Business and owner(s);

(iii) pro-forma cash flow statement projections of the Business for a minimum of two (2) years;

(iv) proposed collateral and collateral value;

(v) detailed use of loan funds (refinance of existing debt is not allowed);

(vi) personal guarantees;

(xiii) in the case of a “guaranteed loan participation” as defined in section 3(h) certification that the loan will be guaranteed by a federal program;

(xiii) certification by the lender and business that all statutory requirements will be met;

(vii) certification that the business will allow an examination of its books and records as required in W.S. 9-12-306(a).

Section 6. Review and Recommendation.

a. Completed applications shall be reviewed by Council staff to determine eligibility, completeness, and credit-worthiness. Incomplete applications will not be forwarded to the Finance Committee.

b. Applications that are determined by Council staff to be incomplete shall be provided an explanation of the findings in writing within fifteen (15) working days of their receipt where practical.

c. Applications that are complete shall be forwarded to the Finance Committee for their review and evaluation. The Finance Committee will formulate a recommendation to the Board of Directors utilizing the criteria in W.S. 9-12-303 and 9-12-304.

(i) to include:

A. if the total loan amount to a single community development organization does not exceed two hundred fifty thousand dollars (\$250,000.00) or three million five hundred thousand dollars (\$3,500,000.00) to a state development organization;

B. if the total loan amount to a business applying for “bridge financing” does not exceed 35% of the total project costs or two hundred fifty thousand dollars (\$250,000.00) whichever is less or a loan to a business qualifying for a “guarantee loan participation” shall not exceed 50% of the loan or five hundred thousand dollars (\$500,000.00), whichever is less;

C. if there are sufficient funds in the economic development enterprise account to fully fund it and all other outstanding commitments and loans;

D. if funds provided by the state are adequately collateralized. The adequacy of the collateral shall be determined by the Finance Committee at no more than 85% loan to value;

E. if the application for the loan or loan commitment is submitted on or after September 1, 1996;

(ii) and will also take into consideration the following additional criteria:

A. if all appropriate legal documents are executed;

B. if the community development organization or state development organization contributes an amount of cash or cash equivalent at least equal to the loan it receives to a program of investment in its local economic development;

C. if the community development organization or state development organization has consolidated the loan it receives and its required contribution and makes Third-party loans to Businesses and investments in support of Wyoming business;

D. if the Board of Directors has taken into consideration that the Third-party loan does not cause unfair competition with existing businesses in the area;

E. if the Board of Directors has taken into consideration that the Third-party loan does not cause unfair competition with existing lenders in the area; and

F. if the Board of Directors has taken into consideration the likelihood that the Borrower will be able to make sound underwriting decisions in its provision of the Third-party loans, and the Borrower’s ability to ultimately repay the Challenge Loan.

d. Applicants shall be notified of the time and place of the Board of Directors meeting at which time their application will be evaluated.

e. At the meeting, the Board of Directors shall consider each application, allowing for comments from the applicant and the Finance Committee. The Board of Directors will then approve or deny each application subject to the terms and conditions considered necessary by the Board of Directors. In the event the application is denied the Board of Directors will disclose to the applicant the reason for denial in writing and any remedial steps for the application to be reconsidered.

Section 7. Terms, Conditions, and Repayment.

a. In making loans, the Council shall:

- (i) establish an up-front fee and/or a per annum administrative fee of at least one percent (1%) each of the total loan amount; this fee may be reduced or waived upon approval of the Board of Directors for “guarantee loan participations”;
- (ii) establish a commitment fee of 0.25% per annum of the amount of the unused commitment; to be assessed at the first anniversary of the loan date;
- (iii) establish a commitment period for disbursement of loan proceeds not to exceed two years;
- (iv) set an interest rate (minimum 4% per annum) after considering:
 - A. the dollar-for-dollar match;
 - B. the proposed source(s) and use(s) of the funds, and specifically, the percentage of owner’s equity;
 - C. other interest rates associated with total project financing;
 - D. projected cash flows and business plan of the Borrower as well as the Business;
 - E. credit risk of the community development organization or state development organization and the underlying Third-party loans;
 - F. current and projected market interest rates; and
 - G. collateral and security package.
- (v) establish the terms of repayment not to exceed ten (10) years;

- (vi) establish that whenever a draw-down of funds is requested by the Borrower, provide to the Council for each Third-Party loan under consideration by the Borrower, a written loan application made by the Borrower and approved by its board, which is a detailed due-diligence analysis on the creditworthiness of the proposed Third-party loan. Such loan application shall at a minimum address and analyze the proposed financings: sources and uses of funds, commercial viability of the business/project, risks and mitigants, rational for lending (i.e. why the Business can not obtain funding from the private sector and why the public sector should assume the risk), economic development impact, the collateral package, terms of the security agreement, and terms and conditions of the Third-party loan, etc;
- (vii) establish that whenever a draw-down of funds is requested by the Borrower, provide to the Council for each Third-party loan under consideration by the Borrower, the Business' business plan, three (3) years of historical financial statements and current year-to date financial statements; three (3) years of tax statements; and pro-forma financial projections (income statement, balance sheet, and cash-flow statement), for;
- (viii) establish other terms and conditions determined to be necessary by the Board of Directors, such as, that all Third-party loans shall be reviewed by and are subject to the approval of the Council and the terms of the loan documents, prior to the release of funds to the Borrower, as well as other customary and prudent terms and conditions;
- (ix) require written permission from the Borrower agreeing to allow the Wyoming Department of Audit and an auditor designated by the Board of Directors to examine its books and records, upon request;
- (x) reserve the right to terminate the agreement to ensure funds loaned or committed are invested by the community development organization or state development organization in local economic development within twenty-four (24) months; and
- (xi) require all statutory requirements regarding the loan be met.

Section 8. Servicing Agents.

- a. The Council may undertake to act either directly or indirectly as the loan-servicing agent, or to contract for that service.
- b. The Servicing agent may be responsible for loan packaging, closing, documentation, loan portfolio management, collection and reporting, and other duties as required under the loan servicing agreement.

c. It will remain the responsibility of the Council to monitor the performance of the portfolio through frequent meetings with the Servicing agent.

Section 9. Board of Directors Meeting.

a. The Board of Directors shall meet at the call of the chairman, the secretary or upon request of the majority of its members in accordance with W.S. 16-4-401 through 16-4-407, Public Meetings, and in accordance with W.S. 9-12-103 (d).

b. The Board of Directors shall conduct application reviews at a public meeting with a quorum of the Board of Directors. Board members may be physically present or participate through tele- or video-conference. Loans shall be approved by a majority, affirmative vote of the members of the Board of Directors voting on the matter. The Board of Directors reserves the right to go into Executive Session should it determine matters to be discussed are proprietary or confidential in nature.

c. The Board of Directors shall reserve the right to vote on requests for changes in loan commitments, internal policy matters, or other similar internal business affairs of the Board of Directors, by tele- or video-conference. Minutes will be kept of the tele- or video-conference discussion and the vote duly recorded and made a part of the minutes.

d. The Board of Directors reserves the right to declare a moratorium upon the acceptance of applications.

Section 10. Reporting and Audit.

a. The Council shall submit to the State Banking Commissioner a portfolio report of all loans as of December 31 no later than January 15. The State Banking Commissioner shall schedule an audit of the loan portfolio report on or before April 1 with a completed audit report presented to the Council on or before May 1.

b. On or before July 15 of each year, the Council shall submit a written report to the Joint Minerals, Business and Economic Development Interim Committee reviewing rules adopted by the Council during the reporting period, presenting a portfolio of loans made under the programs and presenting a risk analysis of the portfolio of loans prepared by the State Banking Commissioner.

STATE OF WYOMING

WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM

Rules and Regulations

CHAPTER 2 ECONOMIC DISASTER LOANS

Section 1. Purpose.

a. These rules are adopted in order to implement W.S. 9-12-301 through 9-12-307, in order to permit loans to business affected by economic disaster, specifically, W.S. 9-12-301 (a) (i) (v), 9-12-302 (a), 9-12-304 (a) (intro). (b) (i) and (c). The rules provide for a method of application, review and recommendation, the establishment of terms and conditions of loans, and a hearing process.

Section 2. Authority.

a. Authority for the promulgation of these rules is granted in W.S. 9-12-302.

Section 3. Definitions.

a. "Board of Directors" means the Board of Directors of the Council;

b. "Borrower" means the business which has been negatively directly impacted by an economic disaster in Wyoming, where such Borrower applies for, commits to, and is responsible for repayment of funds provided under this program;

c. "Business" means any existing enterprise which employs people within the state, provides services within the state, uses resources within the state or otherwise adds economic value to goods, services or resources within the state, and includes farm and ranch operations;

d. "Cash or cash equivalent" means liquid assets including savings, checking and money market accounts, CDs, stocks, bonds or cash value life insurance or other similar assets. Equity in real estate holdings and other fixed assets are not to be considered liquid assets;

e. "Council" means the Wyoming Business Council;

f. “Economic Development Account” means the economic development enterprise account within the revolving investment fund created under article XVI, section 12 of the Wyoming constitution. The account shall consist of funds from payments as provided in W.S. 9-12-306 and other funds as provided by law;

g. “Economic Disaster Area” means as defined by W.S. 9-12-301(a)(v);

h. “Economic Disaster Loan(s)” means loans made to eligible businesses, up to a maximum of two hundred fifty thousand dollars (\$250,000.00), where such loans are funded by the Challenge Loan Program;

i. “Finance Committee” means the Finance Committee of the Board of Directors;

j. “Lost Revenues” shall only include actual losses incurred and shall not include any future losses;

k. “Servicing agent” means the qualified entity contracted by the Council to service the loans in the portfolio and to provide administrative services for the program.

Section 4. Eligible Applicants.

a. Any Business or group of Businesses may apply to the Council for designation of an area of the state as an area in which an economic disaster as defined in W.S. 9-12-301 (a) (v) has occurred, through the submission of an application to the Council, as defined by legislation. Only complete applications shall be submitted to the Council.

b. Any Business which has been directly impacted in the form of lost revenues, by an economic disaster, as determined by the Council to have occurred in Wyoming, may apply for an Economic Disaster Loan, through the submission of an application to the Council or its Servicing agent, as defined by legislation. Only complete applications shall be submitted to the Council.

Section 5. Application Process for Designation Of An Economic Disaster Area.

a. All applications for declaration of an Economic Disaster Area shall be submitted on the required forms. Complete applications will be accepted at any time and scheduled for final review and approval or denial by the Board of Directors on a first-come, first-served basis.

- b. Three (3) copies of the application must be submitted to the Council offices at:

Wyoming Business Council
214 West 15th Street
Cheyenne, Wyoming 82002

- c. Every application must include:

- (i) a detailed description of the economic disaster event which has occurred, which has resulted in lost revenues to directly affected Businesses, complying with section 3.g.;
- (ii) documentation which substantiates the lost revenues, the geographic area in which the economic disaster has occurred, and that the event was not within the control of the affected businesses; and
- (iii) certification that all statutory requirements will be met.

Section 6. Application Process For An Economic Disaster Loan.

a. All applications for Economic Disaster Loans shall be submitted on the required forms. Complete applications will be accepted at any time and scheduled for final review and approval or denial by the Board of Directors on a first-come, first-served basis.

- b. Three (3) copies of the application must be submitted to the Council offices at:

Wyoming Business Council
214 West 15th Street
Cheyenne, Wyoming 82002

c. Every application must include, unless waived by the Council the following at a minimum:

- (i) three (3) years of financial and tax statements, plus detailed and complete current financial statements of the Business and the owner(s);
- (ii) pro-forma cash-flow statement projections of the Business for a minimum of one (1) year;
- (iii) a statement that such funds for the Economic disaster loan are not available from the private-sector at a like term and interest rate;
- (iv) a detailed repayment plan of the Borrower;

- (v) certification that all statutory requirements will be met; and
- (vi) proposed collateral and personal guarantees for the loan.

Section 7. Review and Recommendation.

a. Completed requests for declaration of an Economic Disaster Area shall be reviewed by Council staff to determine eligibility and completeness. The Council may require whatever documentation is necessary to verify the extent of the economic impact, and may use good faith estimates of lost revenues to Businesses in determining whether an event qualifies as an economic disaster.

b. Completed Economic Disaster Loan application shall be reviewed by Council staff to determine eligibility, completeness, and credit-worthiness. Incomplete applications will not be forwarded to the Board of Directors.

c. Applications that are determined by Council staff to be incomplete shall be returned to the applicant with an explanation of the findings in writing within fifteen (15) working days of their receipt where practical.

d. Applications that are complete shall be forwarded to the Finance Committee and Board of Directors for their review and evaluation. The Board of Directors will take into account the statutory requirements and the criteria in W.S. 9-12-303 and 9-12-304,

(i) to include:

A. if the total loan amount to a single eligible Business does not exceed two hundred fifty thousand dollars (\$250,000.00);

B. if there are sufficient funds in the economic development enterprise account to fully fund it and all other outstanding commitments and loans;

C. if funds provided by the state are adequately collateralized. The adequacy of the collateral shall be determined by the Board of Directors;

D. if the application for the loan or loan commitment is submitted on or after September 1, 1996;

(ii) and will also take into consideration the following additional criteria:

A. if all appropriate legal documents are executed;

B. if the Board of Directors has taken into consideration that the loan does not cause unfair competition with existing Businesses in the area;

C if the Board of Directors has taken into consideration that the loan does not cause unfair competition with existing lenders in the area; and

D. if the Board of Directors has taken into consideration the likelihood that the Borrower has the ability to ultimately repay the loan per the terms and conditions of the loan agreement.

e. Applicants shall be notified of the time and place of the Board of Directors meeting at which time their application will be evaluated.

f. At the meeting, the Board of Directors shall consider each application, allowing for comments from the applicant. The Board of Directors will then approve or deny each application subject to the terms and conditions considered necessary by the Board of Directors. In the event the application is denied, the Board of Directors will disclose to the applicant the reasons and any remedial steps, if any, for the application to be reconsidered.

Section 8. Terms, Conditions, and Repayment.

a. In making loans, the Board of Directors shall:

(i) establish for recovery of filing fees and other administrative fees at cost, which are required for the perfection of security interests;

(ii) set an interest rate (minimum 4% per annum) after considering:

- A. the availability, likelihood of receipt, and the pledging of potential federal grants and/or loans, and insurance and legal proceeding proceeds, if any, for the immediate repayment of the Economic Disaster Loan, to the extent proceeds are available;
- B. the extent of the Borrower's financial assets which could be used to meet its financial needs.
- C. the extent of the verified uninsured economic disaster loss and the financial needs of the potential Borrower;
- D. the proposed use of funds;
- E. other interest rates associated with Borrowers existing indebtedness;
- F. projected cash flows and repayment plan of the Borrower;
- G. credit risk of the Borrower;

- H. current and projected market interest rates;
 - I. collateral and security package;
 - J. personal guarantee(s) with a blanket lien;
 - K. whether the event was beyond the control of the Business or the result of poor management decisions and planning; and
 - L. the availability of a non-judicial foreclosure agreement with the Borrower's existing lenders.
- (iii) establish the terms of repayment, not to exceed ten (10) years;
- (iv) establish other terms and conditions determined to be necessary by the Board of Directors, as well as other customary and prudent terms and conditions, negative and affirmative covenants, cross-default, conditions precedent, security agreements, etc.;
- (v) require written permission from the Borrower agreeing to allow the Department of Audit and an auditor designated by the Board of Directors to examine its books and records, upon request; and
- (vi) require all statutory requirements regarding the loan be met.

Section 9. Servicing Agents.

- a. The Council may undertake to act either directly or indirectly as the loan-servicing agent, or to contract for that service.
- b. The Servicing agent may be responsible for loan packaging, closing, documentation, collection and reporting.
- c. It will remain the responsibility of the Council to monitor the performance of the portfolio through frequent meetings with the Servicing agent.

Section 10. Board of Directors Meeting.

- a. The Board of Directors shall meet at the call of the chairman, the secretary or upon request of the majority of its members in accordance with W.S. 16-4-401 through 16-4-407, Public Meetings, and in accordance with W.S. 9-12-103 (d).

b. The Board of Directors shall conduct all loan application reviews at a public meeting with a quorum of the Board of Directors. Board members may be physically present or participate through tele- or video-conference. Loans shall be approved by a majority, affirmative vote of the members of the Board of Directors voting on the matter. The Board of Directors reserves the right to go into Executive Session should it determine matters to be discussed are proprietary or confidential in nature.

c. The Board of Directors shall reserve the right to vote on requests for changes in loan commitments, internal policy matters, or other similar internal business affairs of the Board of Directors, by tele- or video-conference. Minutes will be kept of the tele- or video-conference discussion and the vote duly recorded and made a part of the minutes.

d. The Board of Directors reserves the right to declare a moratorium upon the acceptance of applications.

Section 11. Reporting and Audit

a. The Council shall submit to the State Banking Commissioner a portfolio report of all loans as of December 31 no later than January 15. The State Banking Commissioner shall schedule an audit of the loan portfolio report on or before April 1 with a completed audit report presented to the Council on or before May 1.

b. On or before July 15 of each year, the Council shall submit a written report to the Joint Minerals, Business and Economic Development Interim Committee reviewing rules adopted by the Council during the reporting period, presenting a portfolio of loans made under the programs and presenting a risk analysis of the portfolio of loans prepared by the State Banking Commissioner.

STATE OF WYOMING

WYOMING PARTNERSHIP CHALLENGE LOAN PROGRAM

Rules and Regulations

CHAPTER 3 LOAN GUARANTEE PROGRAM

Section 1. Purpose.

a. These rules are adopted in order to implement W.S. 9-12-301 through 9-12-307, which provide for the issuance of loan guarantees, specifically, W.S. 9-12-301 (a) (i) (vii), 9-12-302 (a), 9-12-304 (a) (intro) (b), (b)(i) (f) and (f)(i) . The rules provide for a method of application, review and recommendation, the establishment of terms and conditions of loan guarantees, and a hearing process.

Section 2. Authority.

a. Authority for the promulgation of these rules is granted in W.S. 9-12-302.

Section 3. Definitions.

a. "Board of Directors" means the Board of Directors of the Council;

b. "Business" means any existing enterprise which employs people within the state, provides services within the state, uses resources within the state or otherwise adds economic value to goods, services or resources within the state, and includes farm and ranch operations;

c. "Cash or cash equivalent" means liquid assets including savings, checking and money market accounts, CDs, stocks, bonds or cash value life insurance or other similar assets. Equity in real estate holdings and other fixed assets is not to be considered liquid assets;

d. "Council" means the Wyoming Business Council;

e. "Economic development account" means the economic development enterprise account within the revolving investment fund created under article XVI, section 12 of the Wyoming constitution. The account shall consist of funds from payments as provided in W.S. 9-12-306 and other funds as provided by law;

f. "Finance Committee" means the Finance Committee of the Board of Directors;

g. "Loan guarantee" means a provision of financing by the council in which the council guarantees a portion of a bank loan made to a business;

h. "Servicing agent" means the qualified entity contracted by the Council to service the loans in the portfolio and to provide administrative services for the program;

Section 4. Eligible Applicants.

a. Any business requesting a loan guarantee as defined in section 3(g) may submit an application to the Council for review and recommendation to the Finance Committee and Board of Directors, as defined by legislation. Only complete applications shall be submitted to the Council.

Section 5. Application Process.

a. All applications for a Loan Guarantee shall be submitted on the required forms. Complete applications will be accepted at any time and scheduled for final review and approval or denial by the Board of Directors on a first-come, first-served basis.

b. Three (3) copies of the application must be submitted to the Council offices at:

Wyoming Business Council
214 West 15th Street
Cheyenne, Wyoming 82002

c. Every application must include, unless waived by the Council, the following at a minimum:

(i) complete copy of the originating bank's analysis, recommendation and approval;

(ii) three (3) years of financial and tax statements (or in the case of a new business the most recent statements available since start-up), plus detailed and complete current financial statements of the Business and owner(s);

(iii) pro-forma cash flow statement projections of the Business for a minimum of three (3) years;

(iv) proposed collateral and collateral value;

(v) detailed use of loan funds (refinance of existing debt is not allowed);

(vi) personal guarantees;

(vii) certification by the originating lender that this “Loan Guarantee” is a greater benefit to the business than a traditional “Federal Guaranteed Loan” or the “Loan Guarantee Participation” as outlined in Chapter 1 of these rules;

(viii) certification by the lender and business that all statutory requirements will be met;

(ix) certification that the business will allow an examination of its books and records as required in W.S. 9-12-306(a).

Section 6. Review and Recommendation.

a. Completed applications shall be reviewed by Council staff to determine eligibility, completeness, and credit-worthiness. Incomplete applications will not be forwarded to the Finance Committee.

b. Applications that are determined by Council staff to be incomplete shall be provided an explanation of the findings in writing within fifteen (15) working days of their receipt where practical.

c. Applications that are complete shall be forwarded to the Finance Committee for their review and evaluation. The Finance Committee will formulate a recommendation to the Board of Directors utilizing the criteria in W.S. 9-12-303 and 9-12-304.

(i) to include:

A. if the total guarantee shall not exceed one hundred thousand dollars (\$100,000.00) per loan guaranteed or eighty percent (80%) of any net loan loss by the bank, whichever is less;

B. if there are sufficient funds in the economic development enterprise account to fully fund it and all other outstanding commitments and loans;

C. if the loan guarantee provided by the state is adequately collateralized by the originating bank and further secured by the personal guarantee of the owners of the business. The adequacy of the collateral and personal guarantees shall be determined by the Finance Committee;

D. if there is no more than one (1) guarantee issued and outstanding per business at any time;

(ii) and will also take into consideration the following additional criteria:

A. if all appropriate legal documents are executed;

B. if the Board of Directors has taken into consideration that the loan guarantee does not cause unfair competition with existing businesses in the area;

C. if the Board of Directors has taken into consideration that the loan guarantee does not cause unfair competition with existing lenders in the area; and

d. Applicants shall be notified of the time and place of the Board of Directors meeting at which time their application will be evaluated.

e. At the meeting, the Board of Directors shall consider each application, allowing for comments from the applicant and the Finance Committee. The Board of Directors will then approve or deny each application subject to the terms and conditions considered necessary by the Board of Directors. In the event the application is denied the Board of Directors will disclose to the applicant the reason for denial in writing and any remedial steps for the application to be reconsidered.

Section 7. Terms and Conditions.

a. In issuing guarantees, the Council shall:

(i) establish an up-front fee of at least one percent (1%) of the total loan amount;

(ii) establish that the maximum amount of each guarantee shall not exceed one hundred thousand dollars (\$100,000.00) per loan guaranteed or eighty percent (80%) of any net loan loss by the bank, whichever is less;

(iii) establish the terms of the guarantee shall not to exceed ten (10) years;

(iv) establish that whenever a guarantee is requested by the Business, provide to the Council for each loan guarantee under consideration, a written loan application made by the Business and approved by the originating bank, which is a detailed due-diligence analysis on the creditworthiness of the proposed loan. Such loan application shall at a minimum address and analyze the proposed financings: sources and uses of funds, commercial viability of the business/project, risks and mitigants, rationale for lending (i.e. why the Business can not obtain a traditional Federal Guarantee and/or why the State of Wyoming Guarantee provides a greater benefit to the Business), economic development impact, the collateral package, terms of the security agreement, and terms and conditions of the guarantee, etc;

- (v) establish that whenever a guarantee is requested by the Business, provide to the Council for each Guarantee under consideration by the Business, the Business' business plan, three (3) years of historical financial statements and current year-to-date financial statements; three (3) years of tax statements (or in the case of a new business the most recent statements since start-up); and pro-forma financial projections (income statement, balance sheet, and cash-flow statement), for;
- (vi) establish other terms and conditions determined to be necessary by the Board of Directors, such as, that all loan guarantees shall be reviewed by and are subject to the approval of the Board of Directors and the terms of the loan documents, prior to the release of funds to the Borrower, as well as other customary and prudent terms and conditions;
- (vii) require written permission from the Business agreeing to allow the Department of Audit and an auditor designated by the Board of Directors to examine its books and records, upon request;
- (viii) require all statutory requirements regarding the guarantee be met;
- (ix) establish that in the event of default by a Business, on a loan made by a bank, guaranteed by the provisions of these rules the following must be met before payment may be requested under provisions of the guarantee;
 - A. written notification must be given to the Council, by the originating bank, that a guaranteed loan is in default and that the bank intends to begin liquidation;
 - B. complete liquidation of all collateral securing the loan;
 - C. complete recovery against any personal guarantees;
 - D. a summary of liquidation and general ledger of the note documenting net loan loss may be submitted to the Council requesting payment under the guarantee;
 - E. calculation of net loan loss is principal less recovery from liquidation of collateral, personal guarantees and accrued interest not to exceed sixty days (60 days), recovery of attorney fees and other legal costs are not allowed to be included in the net loan loss;
 - F. notwithstanding the maximum guaranteed payment of one hundred thousand dollars (\$100,000.00) or eighty percent (80%) of any net loan loss, whichever is less, must be approved by the Board of Directors.

Section 8. Servicing Agents.

- a. The Council may undertake to act either directly or indirectly as the loan-servicing agent, or to contract for that service.
- b. The Servicing agent may be responsible for loan packaging, closing, documentation, collection and reporting.
- c. It will remain the responsibility of the Council to monitor the performance of the portfolio through frequent meetings with the Servicing agent.

Section 9. Board of Directors Meeting.

- a. The Board of Directors shall meet at the call of the chairman, the secretary or upon request of the majority of its members in accordance with W.S. 16-4-401 through 16-4-407, Public Meetings, and in accordance with W.S. 9-12-103 (d).
- b. The Board of Directors shall conduct all loan application reviews at a public meeting with a quorum of the Board of Directors. Board members may be physically present or participate through tele- or video-conference. Loans shall be approved by a majority, affirmative vote of the members of the Board of Directors voting on the matter. The Board of Directors reserves the right to go into Executive Session should it determine matters to be discussed are proprietary or confidential in nature.
- c. The Board of Directors shall reserve the right to vote on requests for changes in loan commitments, internal policy matters, or other similar internal business affairs of the Board of Directors, by tele- or video-conference. Minutes will be kept of the tele- or video-conference discussion and the vote duly recorded and made a part of the minutes.
- d. The Board of Directors reserves the right to declare a moratorium upon the acceptance of applications.

Section 10. Reporting and Audit

- a. The Council shall submit to the State Banking Commissioner a portfolio report of all loans as of December 31 no later than January 15. The State Banking Commissioner shall schedule an audit of the loan portfolio report on or before April 1 with a completed audit report presented to the Council on or before May 1.

b. On or before July 15 of each year, the Council shall submit a written report to the Joint Minerals, Business and Economic Development Interim Committee reviewing rules adopted by the Council during the reporting period, presenting a portfolio of loans made under the programs and presenting a risk analysis of the portfolio of loans prepared by the State Banking Commissioner.