



## Notice of Intent to Adopt Rules

A copy of the proposed rules may be obtained at <https://rules.wyo.gov>

Revised June 2020

<b><u>1. General Information</u></b>			
a. Agency/Board Name*			
b. Agency/Board Address		c. City	d. Zip Code
e. Name of Agency Liaison		f. Agency Liaison Telephone Number	
g. Agency Liaison Email Address			
h. Date of Public Notice		i. Comment Period End Date	
j. Public Comment URL or Email Address:			
k. Program			
Amended Program Name (if applicable):			
* <input type="checkbox"/> By checking this box, the agency is indicating it is exempt from certain sections of the Administrative Procedure Act including public comment period requirements. Please contact the agency for details regarding these rules.			
<b><u>2. Legislative Enactment</u></b> For purposes of this Section 2, "new" only applies to regular non-emergency rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.			
a. Are these non-emergency regular rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?			
<input type="checkbox"/> No. <input type="checkbox"/> Yes. If the rules are new, please provide the Legislative Chapter Numbers and Years Enacted (e.g. 2015 Session Laws Chapter 154):			
<b><u>3. Rule Type and Information</u></b> For purposes of this Section 3, "New" means an emergency or regular rule that has never been previously created.			
a. Provide the Chapter Number, Title and Proposed Action for Each Chapter. Please use the "Additional Rule Information" form to identify additional rule chapters.			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name (if applicable):			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name (if applicable):			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name (if applicable):			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name (if applicable):			
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed	
Amended Chapter Name (if applicable):			

**4. Public Comments and Hearing Information**

a. A public hearing on the proposed rules has been scheduled.  No.  Yes. Please complete the boxes below.

Date:	Time:	City:	Location:
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b. What is the manner in which interested persons may present their views on the rulemaking action?

By submitting written comments to the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: \_\_\_\_\_

A public hearing will be held if requested by 25 persons, a government subdivision, or by an association having not less than 25 members. Requests for a public hearing may be submitted:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: \_\_\_\_\_

c. Any person may urge the Agency not to adopt the rules and request the Agency to state its reasons for overruling the consideration urged against adoption. Requests for an agency response must be made prior to, or within thirty (30) days after adoption, of the rule, addressed to the Agency and Agency Liaison listed in Section 1 above.

**5. Federal Law Requirements**

a. These rules are created/amended/revoked to comply with federal law or regulatory requirements.  No.  Yes. Please complete the boxes below.

Applicable Federal Law or Regulation Citation:
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Indicate one (1):

The proposed rules meet, but do not exceed, minimum federal requirements.

The proposed rules exceed minimum federal requirements.

Any person wishing to object to the accuracy of any information provided by the Agency under this item should submit their objections prior to final adoption to:

To the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: \_\_\_\_\_

**6. State Statutory Requirements**

a. Indicate one (1):

The proposed rule change *MEETS* minimum substantive statutory requirements.

The proposed rule change *EXCEEDS* minimum substantive statutory requirements. Please attach a statement explaining the reason that the rules exceed the requirements.

b.  The Agency has completed a takings assessment as required by W.S. 9-5-304. A copy of the assessment used to evaluate the proposed rules may be obtained:

By contacting the Agency at the physical and/or email address listed in Section 1 above.

At the following URL: \_\_\_\_\_

**7. Additional APA Provisions**

a. Complete all that apply in regards to uniform rules:

These rules are not impacted by the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j).

The following chapters do not differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j):

\_\_\_\_\_ (Provide chapter numbers)

These chapters differ from the uniform rules identified in the Administrative Procedure Act, W.S. 16-3-103(j) (see Statement of Principal Reasons).

\_\_\_\_\_ (Provide chapter numbers)

b. Checklist

The Statement of Principal Reasons is attached to this Notice and, in compliance with *Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council*, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule.

If applicable: In consultation with the Attorney General's Office, the Agency's Attorney General representative concurs that strike and underscore is not required as the proposed amendments are pervasive (Chapter 3, *Types of Rules Filings*, Section 1, Proposed Rules, of the Rules on Rules).

**8. Authorization**

a. I certify that the foregoing information is correct.

<i>Printed Name of Authorized Individual</i>	
<i>Title of Authorized Individual</i>	
<i>Date of Authorization</i>	

## **STATEMENT OF PRINCIPAL REASONS**

### **Wyoming Business Council**

### **Wyoming Partnership Challenge Loan Program**

### **Adoption of Updated Rules & Regulations: Chapter 1, General Provisions.**

The Business Council is proposing to update the current Challenge Loan Program Rules that fulfill its statutory obligations under W.S. 9-12-301 through 9-12-308. The proposed rule updates are intended to accomplish the following:

- Replace owner definition with ‘New Owner’ and further define.
- Remove additional definition language added to Succession Loan to directly reflect statute.
- Remove language that references Loan Guarantee Program and Guaranteed Loan Participation Program that are no longer available as of July 1, 2022.
- Renumbering, formatting, and grammar corrections.

The proposed updates correct grammatical errors and layout inconsistencies in the document and better aligns and clarifies definitions consistent with statute. The Wyoming Business Council is statutorily exempt from the Wyoming Administrative Procedure Act under W.S. § 9-12-103(g)(iii).

## CHAPTER 1

### GENERAL PROVISIONS

**Section 1. Purpose.** These rules are adopted in order to implement W.S. 9-12-301 through 9-12-308, 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.** As used in these rules, unless otherwise specified:

(a) “Applicant” means all eligible entities that can apply for loans and then using that term where both CDO/SDO and businesses have the same requirements;

(b) “Board of Directors” means the Board of Directors of the Council;

(c) “Borrower” means the community development organization, state development organization, or business which applies for, commits to, and is responsible for repayment of funds provided under this program;

(d) “Business” means any existing enterprise, incorporated in the state, 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;

(e) “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;

(f) “Community development organization (CDO)” 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;

(g) “Commercial Lender” means commercial institutions that loan money, including banks, credit unions, mutual savings banks, savings and loan associations, stock savings banks, or trust companies;

(h) “Contract Financing” means a provision of financing for a business to gain liquidity and in which the business assigns the proceeds of a valid contract as collateral for the financing;

(i) “Council” means the Wyoming Business Council;

(j) “Council staff” means the staff of the Wyoming Business Council;

(k) “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;

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

(m) “Economic Disaster Loan(s)” means loans made to eligible businesses, up to a maximum of five hundred thousand dollars (\$500,000.00) where such loans are funded by the Challenge Loan Program;

(n) “Fifty-fifty (50-50) financing program” means a provision of financing for that portion of the total project cost that is calculated by subtracting from the total project cost the sum of the business’s debt. The Council shall not consider a proposal in which the fifty-fifty (50-50) financing component exceeds fifty percent (50%) of the total project cost or two million five hundred thousand dollars (\$2,500,000.00), whichever is less; or the business contributes less than fifteen percent (15%) of the total project cost;

(o) “Financial Records” means an applicant’s financial statements, balance sheets, income statements, tax returns, or any other financial records deemed necessary for review;

(p) “Land development loan” means an extension of credit for the purpose of improving unimproved real property prior to the erection of structures. The improvement of unimproved real property may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development;

(q) “Large Project Loan Program” means a provision of financing for a business to promote a stable, balanced, and diversified economy. The project must have a minimum project cost of five million dollars (\$5,000,000.00), a high likelihood of completion, create jobs, increase sales and property taxes, and demonstrate a significant increase in the assessed valuation of the county or counties in which the project is located;

(r) “Loan Review Committee” means a Committee comprised of the Governor or his designee, the Treasurer or his designee, and a member of the Council who has expertise in banking or experience in the banking industry designated by the Chief Executive Officer of the Wyoming Business Council;

(s) “Lost revenues” shall only include actual losses incurred and shall not include any future losses;

(t) “Natural gas fueling infrastructure loan” means a loan issued by the Council for the costs of the engineering, design, real property, equipment, and labor necessary to install a functioning natural gas filling station to fuel motor vehicles, which operate on natural gas as a transportation fuel;

(u) “New Owner” means an individual or entity purchasing or acquiring majority control over a business’s operations and assets and which is responsible for the business’s debt and existing obligations.

(v) “Participant” means any Financial Institution(s) sharing a portion of the loan with the Wyoming Business Council through a participation agreement;

(w) “Partnership Challenge Loan Program” means a provision of financing to be used to assist any community development organization, as defined in Section 3(f), or state development organization, as defined in Section 3(aa), to build, acquire, purchase, or complete projects for the purpose of economic or community development purposes within the State of Wyoming;

(x) “Recipient” means a proposed or existing enterprise who has been awarded funds under any of the following loan programs;

(y) “Renovation” means construction or reconstruction-type work on a building including: façade, roof, exterior wall assembly, foundation, windows, doors, cornice treatment, awnings and canopies;

(z) “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;

(aa) “State development organization (SDO)” 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;

(bb) “Succession financing” means a provision of financing to be used to assist in the transition or succession of a business that has been in existence for not less than seven (7) years immediately before the transfer or succession to a new owner of the business;

(cc) “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;

(dd) “Wyoming main street loan participation” means a provision of financing by the council in which the council participates with a Commercial Lender that has made a loan to a business for building improvements to maintain the structure’s historical character. The

(ee) Maximum participation by the Council shall be seventy-five (75%) of the loan or one hundred thousand dollars (\$100,000), whichever is less.

**Section 4. Eligible Applicants.**

(a) Any of the following applicants are eligible under their respective section(s). All applications shall be reviewed by Council Staff and a recommendation shall be made to the Board of Directors, as defined by legislation. The Council shall not consider incomplete applications;

(i) Any community development organization, as defined in Section 3(f) or state organization, as defined in Section 3(aa) requesting financing utilizing the Partnership Challenge Loan Program as defined in Section 3(w);

(ii) Any business requesting Fifty-Fifty (50-50) financing as defined under Section 3(n);

(iii) Any business(es) requesting Economic Disaster Loan financing as defined in Section 3(m);

(iv) Any business requesting Large Project Loan financing as defined in Section 3(q);

(v) Any business requesting Contract Financing as defined in Section 3(h);

(vi) Any business requesting Succession Financing as defined in Section 3(bb);

(vii) Any business requesting Wyoming Main Street Loan Participation as defined in Section 3(dd);

(viii) Any business requesting a Natural Gas Fueling Infrastructure loan as defined in Section 3(t).

**Section 5. Default 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) One (1) copy of the application shall be submitted to the Council offices at:

Wyoming Business Council  
214 West 15<sup>th</sup> Street  
Cheyenne, Wyoming 82002



(c) Every application for a community development organization, state development organization shall include, unless waived by the Council:

(i) Three (3) years of financial statements (of the community development organization or 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 or state development organization, and the recipient of the third-party loan(s) for two (2) years;

(iii) A certificate of incorporation of the community development organization, state development organization;

(iv) By-laws of the community development organization, state development organization;

(v) A resolution to borrow by the community development organization, state development organization;

(vi) In the case of a community development organization, the use of funds will stimulate economic development in the community or county, or in the case of a state development organization, 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) The 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) A certification by the community development organization or state development organization that all statutory requirements will be met;

(x) A certification that the community development organization or state development organization will contribute an amount of cash or cash equivalent not less than twenty percent (20%) of the amount of the loan it receives, plus documented evidence of the cash or cash equivalent reserves which will be pledged for such matching;

(xi) An itemized list of the proposed collateral and collateral value, not to exceed a loan to value of eighty five percent (85%);

(xii) A detailed proposal explaining how the community development organization or state development organization will use any loan funds. If the development organization intends to use loan funds to refinance existing debt, the proposal shall reflect that less than fifty percent (50%) of the funds received can be devoted to this purpose;

(xiii) Proposed personal guarantees; and

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

(d) With the exception of the Large Loan Program in Chapter 9, all applications shall include, unless waived by the Council:

(i) A 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, if required by the commercial lender, of the Business for a minimum of two (2) years;

(iv) An itemization of any proposed collateral and the collateral value;

(v) A detailed proposal explaining how the business will use any loan funds. If the business intends to use loan funds to refinance existing debt, the proposal shall reflect that less than fifty percent (50%) of the funds received can be devoted to this purpose;

(vi) Proposed personal guarantees;

(vii) Certification by the lender and business that all statutory requirements will be met;

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

(ix) Certification that the business will report jobs, wages, and capital expenses at the request of the Council.

#### **Section 6. Default Review and Recommendation.**

(a) Completed applications shall be reviewed by Council staff to determine eligibility, completeness, and credit-worthiness.

(b) Council staff shall provide to the applicant of any application determined to be incomplete an explanation of their findings in writing prior to denial of the loan.

(c) Council staff shall formulate a recommendation for complete applications to the Board of Directors utilizing the criteria in W.S. 9-12-303 and 9-12-304, including findings as to whether:

(i) The total loan amount request would exceed:

(A) One Million dollars (\$1,000,000.00) to a single community development organization or three million five hundred thousand dollars (\$3,500,000.00) to a state development organization;

(B) Whichever is less of fifty percent (50%) of the total project costs or two million five hundred thousand dollars (\$2,500,000.00) to a business applying for “fifty-fifty (50-50) financing”;

(C) Five hundred thousand dollars (\$500,000.00) to a business applying for “economic disaster loan” financing does not exceed;

(D) Two hundred thousand dollars (\$200,000.00) to a business applying for “contract financing” loan, if the total of all “contract financing” loans issued does not exceed one million dollars (\$1,000,000.00) at any given time;

(E) Five hundred thousand dollars (\$500,000.00) to a business applying for a “succession financing” loan;

(F) One hundred thousand dollars (\$100,000.00) to a business applying for a “Wyoming main street loan participation”;

(G) Seventy-Five percent (75%) of the total costs of real property, construction, and equipment or one million dollars (\$1,000,000.00), whichever is less, to a business applying for a “natural gas fueling infrastructure loans” if the total amount of all “natural gas fueling infrastructure loans” issued do not exceed five million dollars (\$5,000,000) at any given time;

(ii) There are sufficient funds in the economic development enterprise account to fully fund the instant proposal and all other outstanding commitments and loans;

(iii) Funds provided by the state would be adequately collateralized. The adequacy of the collateral shall be determined by Council staff at no more than eighty-five percent (85%) loan to value;

(iv) All appropriate legal documents are executed;

(v) The community development organization or state development organization contributes an amount of cash or cash equivalent not less than twenty percent (20%) of the loan it receives to a program of investment in its local economic development;

(vi) 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;

(vii) 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

(viii) 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 loan.

(d) Council staff shall notify each applicant of the time and place of the Board of Directors' meeting at which its application will be evaluated.

(e) At the meeting, the Board of Directors shall consider each application, allowing for comments from the applicant and Council staff. The Board of Directors shall 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. Default Terms, Conditions, and Repayment.**

(a) In making loans, the Council shall:

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

(ii) Establish a commitment period for disbursement of loan proceeds not to exceed three (3) years;

(iii) Set an interest rate (minimum 3% per annum) for all loans, except Large Project Loan(s) in Chapter 9, after considering:

(A) The proposed source(s) and use(s) of the funds, and specifically, the percentage of owner's equity;

(B) Other interest rates associated with total project financing;

(C) Projected cash flows and business plan of the Borrower as well as the Business;

(D) Credit risk of the community development organization or state development organization and the underlying third-party loans;

(E) Current and projected market interest rates; and Collateral and security package.

(iv) Establish the terms of repayment of the loan, not to exceed ten (10) years, with an additional ten (10) year renewal period upon approval by the Board of Directors of the Council, except for Large Project Loans in Chapter 9;

(v) Establish an amortization not to exceed twenty (25) 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 sources of financing: sources and uses of funds, commercial viability of the business/project, risks and mitigants, rationale for lending, economic development impact, the collateral package, terms of the security agreement, and terms and conditions of the third-party loan;

(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, unless waived by the Council, 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 including the Borrower's income statement, balance sheet, and cashflow statement;

(viii) Establish other terms and conditions determined to be necessary by the Board of Directors 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 thirty-six (36) months; and

(xi) Require all statutory requirements applicable to the loan be met.

## **Section 8. Servicing Agents.**

(a) The Council may undertake to act either directly or to contract for that service through a Servicing Agent;

(b) The Servicing agent may be responsible for loan packaging, closing, documentation, loan portfolio management, collection and reporting, and other duties as required

(c) under the loan servicing agreement. 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 conduct application reviews at a meeting of the Board of Directors;

(b) No requests for changes in loan commitments shall be granted without a vote by the Board of Directors approving the change;

(c) 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.

## CHAPTER 1

### GENERAL PROVISIONS

#### Section 1. Purpose. \_\_\_\_\_

(a) These rules are adopted in order to implement W.S. 9-12-301 through 9-12-308, 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;

(b) ~~Language in this chapter applies to all chapter 1-9 unless otherwise specified.~~

#### Section 2. Authority.

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

#### Section 3. Definitions. As used in these rules, unless otherwise specified:

(a) “Applicant” means all eligible entities that can apply for loans and then using that term where both CDO/SDO and businesses have the same requirements;

(b) “Board of Directors” means the Board of Directors of the Council;

(c) “Borrower” means the community development organization, state development organization, or business which applies for, commits to, and is responsible for repayment of funds provided under this program;

(d) “Business” means any existing enterprise, incorporated in the state, 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;

(e) “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;

(f) “Community development organization (CDO)” 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;

(g) “Commercial Lender” means commercial institutions that loan money, including banks, credit unions, mutual savings banks, savings and loan associations, stock savings banks, or trust companies;

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(i) “Council” means the Wyoming Business Council;

(j) “Council staff” means the staff of the Wyoming Business Council;

(k) “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;

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

(m) “Economic Disaster Loan(s)” means loans made to eligible businesses, up to a maximum of five hundred thousand dollars (\$500,000.00) where such loans are funded by the Challenge Loan Program;

(n) “Fifty-fifty (50-50) financing program” means a provision of financing for that portion of the total project cost that is calculated by subtracting from the total project cost the sum of the business’s debt. The Council shall not consider a proposal in which the fifty-fifty (50-50) financing component exceeds fifty percent (50%) of the total project cost or two million five hundred thousand dollars (\$2,500,000.00), whichever is less; or the business contributes less than fifteen percent (15%) of the total project cost;

(o) “Financial Records” means an applicant’s financial statements, balance sheets, income statements, tax returns, or any other financial records deemed necessary for review;

(p) “Land development loan” means an extension of credit for the purpose of improving unimproved real property prior to the erection of structures. The improvement of unimproved real property may include the laying or placement of sewers, water pipes, utility cables, streets, and other infrastructure necessary for future development;

(q) “Large Project Loan Program” means a provision of financing for a business to promote a stable, balanced, and diversified economy. The project must have a minimum project cost of five million dollars (\$5,000,000.00), a high likelihood of completion, create jobs, increase sales and property taxes, and demonstrate a significant increase in the assessed valuation of the county or counties in which the project is located;



(r) “Loan Review Committee” means a Committee comprised of the Governor or his designee, the Treasurer or his designee, and a member of the Council who has expertise in banking or experience in the banking industry designated by the Chief Executive Officer of the Wyoming Business Council;

(s) “Lost revenues” shall only include actual losses incurred and shall not include any future losses;

(t) “Natural gas fueling infrastructure loan” means a loan issued by the Council for the costs of the engineering, design, real property, equipment, and labor necessary to install a functioning natural gas filling station to fuel motor vehicles, which operate on natural gas as a transportation fuel;

(u) “New Owner” means an individual or entity purchasing or acquiring majority control over a business’s operations and assets and which is responsible for the business’s debt and existing obligations. ~~“Owners” means an individual/entity possessing an interest in the applicant’s business, at or more than twenty percent (20%) and/or a guaranteeing entity;~~

(v) “Participant” means any Financial Institution(s) sharing a portion of the loan with the Wyoming Business Council through a participation agreement;

(w) “Partnership Challenge Loan Program” means a provision of financing to be used to assist any community development organization, as defined in Section 3(f), or state development organization, as defined in Section 3(aa), to build, acquire, purchase, or complete projects for the purpose of economic or community development purposes within the State of Wyoming;

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(y) “Renovation” means construction or reconstruction-type work on a building including: façade, roof, exterior wall assembly, foundation, windows, doors, cornice treatment, awnings and canopies;

(z) “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;

(aa) “State development organization (SDO)” 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;

(bb) “Succession financing” means a provision of financing to be used to assist in the transition or succession of a business that has been in existence for not less than seven (7) years

(cc) immediately before the transfer or succession ~~business from the business's current owner or owners~~ to a new owner of the business; "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;

(dd) "Wyoming main street loan participation" means a provision of financing by the council in which the council participates with a Commercial Lender that has made a loan to a business for building improvements to maintain the structure's historical character. The maximum participation by the Council shall be seventy-five (75%) of the loan or one hundred thousand dollars (\$100,000), whichever is less.

#### **Section 4. Eligible Applicants.**

(a) Any of the following applicants are eligible under their respective section(s). All applications shall be reviewed by Council Staff and a recommendation shall be made to the Board of Directors, as defined by legislation. The Council shall not consider incomplete applications;

(i) Any community development organization, as defined in Section 3(f) or state organization, as defined in Section 3(aa) requesting financing utilizing the Partnership Challenge Loan Program as defined in Section 3(w);

(ii) Any business requesting Fifty-Fifty (50-50) financing as defined under Section 3(n);

(iii) Any business(es) requesting Economic Disaster Loan financing as defined in Section 3(m);

(iv) Any business requesting Large Project Loan financing as defined in Section 3(q);

(v) Any business requesting Contract Financing as defined in Section 3(h);

(vi) Any business requesting Succession Financing as defined in Section 3(bb);

(vii) Any business requesting Wyoming Main Street Loan Participation as defined in Section 3(dd);

(viii) Any business requesting a Natural Gas Fueling Infrastructure loan as defined in Section 3(t).

#### **Section 5. Default 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) One (1) copy of the application shall be submitted to the Council offices at:

Wyoming Business Council  
214 West 15<sup>th</sup> Street  
Cheyenne, Wyoming 82002

(c) Every application for a community development organization, state development organization shall include, unless waived by the Council:

(i) Three (3) years of financial statements (of the community development organization or 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 or state development organization, and the recipient of the third-party loan(s) for two (2) years;

(iii) A certificate of incorporation of the community development organization, state development organization;

(iv) By-laws of the community development organization, state development organization;

(v) A resolution to borrow by the community development organization, state development organization;

(vi) In the case of a community development organization, the use of funds will stimulate economic development in the community or county, or in the case of a state development organization, 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) The 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) A certification by the community development organization or state development organization that all statutory requirements will be met;

(x) A certification that the community development organization or state development organization will contribute an amount of cash or cash equivalent not less than twenty percent (20%) of the amount of the loan it receives, plus documented evidence of the cash or cash equivalent reserves which will be pledged for such matching;

(xi) An itemized list of the proposed collateral and collateral value, not to exceed a loan to value of eighty-five percent (85%);

(xii) A detailed proposal explaining how the community development organization or state development organization will use any loan funds. If the development organization intends to use loan funds to refinance existing debt, the proposal shall reflect that less than fifty percent (50%) of the funds received can be devoted to this purpose;

(xiii) Proposed personal guarantees; and

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

(d) With the exception of the Large Loan Program in Chapter 9, all applications shall include, unless waived by the Council:

(i) A 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, if required by the commercial lender, of the Business for a minimum of two (2) years;

(iv) An itemization of any proposed collateral and the collateral value;

(v) A detailed proposal explaining how the business will use any loan funds. If the business intends to use loan funds to refinance existing debt, the proposal shall reflect that less than fifty percent (50%) of the funds received can be devoted to this purpose;

(vi) Proposed personal guarantees;

(vii) Certification by the lender and business that all statutory requirements will be met;

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

(ix) Certification that the business will report jobs, wages, and capital expenses at the request of the Council.

## Section 6. Default Review and Recommendation.

(a) Completed applications shall be reviewed by Council staff to determine eligibility, completeness, and credit-worthiness;

(b) Council staff shall provide to the applicant of any application determined to be incomplete an explanation of their findings in writing prior to denial of the loan;

(c) Council staff shall formulate a recommendation for complete applications to the Board of Directors utilizing the criteria in W.S. 9-12-303 and 9-12-304, including findings as to whether;

(i) The total loan amount requested would exceed:

(ii) (A) ~~The total loan amount to a single community development organization does not exceed~~ One million dollars (\$1,000,000.00) to a single community development organization or three million five hundred thousand dollars (\$3,500,000.00) to a state development organization;

(iii) (B) Whichever is less of fifty percent (50%) of the total project costs or two million five hundred thousand dollars (\$2,500,000.00) ~~The total loan amount to a business applying for “fifty-fifty (50-50) financing” does not exceed fifty percent (50%) of the total project costs or two million five hundred thousand (\$2,500,000.00) whichever is less or a loan to a business qualifying for a “guarantee loan participation” shall not exceed 50% of the loan or two million dollars (\$2,000,000), whichever is less;~~

(iv) (C) Five hundred thousand dollars (\$500,000.00) ~~The total loan amount to a business applying for “economic disaster loan” financing does not exceed five hundred thousand dollars (\$500,000.00);~~

(v) ~~—The total loan amount to a business applying for “loan guarantee” financing does not exceed one hundred thousand dollars (\$100,000.00);~~

(vi) (D) Two hundred thousand dollars (\$200,000.00) ~~The total loan amount to a business applying for a “contract financing” loan does not exceed two hundred thousand dollars (\$200,000.00), if the total amount of all “contract financing” loans issued does not exceed one million dollars (\$1,000,000.00) at any given time;~~

(vii) (E) Five hundred thousand dollars (\$500,000.00) ~~The total loan amount to a business applying for a “succession financing” loan does not exceed five hundred thousand dollars (\$500,000.00);~~

(viii) (F) One hundred thousand dollars (\$100,000.00) ~~The total loan amount to a business applying for a “Wyoming main street loan participation” loan does not exceed one hundred thousand dollars (\$100,000.00);~~

(ix) ~~(G) Seventy-five percent (75%) of the total cost of real property, construction, and equipment or one million dollars (\$1,000,000.00), whichever is less, The total loan amount to a business applying for a “natural gas fueling infrastructure loan” does not exceed 75% of the total costs of land building and equipment or one million dollars (\$1,000,000), whichever is less, if the total amount of all “natural gas fueling infrastructure loans” issued do not exceed five million dollars (\$5,000,000) at any given time;~~

(x) (ii) There are sufficient funds in the economic development enterprise account to fully fund he instant proposal and all other outstanding commitments and loans;

(xi) (iii) Funds provided by the state would be adequately collateralized. The adequacy of the collateral shall be determined by Council staff at no more than eighty-five percent (85%) loan to value;

~~(xii) The application for the loan or loan commitment is submitted on or after July 1, 2022;~~

(xiii) (iv) All appropriate legal documents are executed;

(xiv) (v) The community development organization or state development organization contributes an amount of cash or cash equivalent not less than twenty percent (20%) of the loan it receives to a program of investment in its local economic development;

(xv) (vi) 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; ~~The Board of Directors has taken into consideration that the Third party loan does not cause unfair competition with existing businesses in the area;~~

(xvi) (vii) 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

(xvii) (viii) 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 loan.

(d) Council staff shall notify each applicants of the time and place of the Board of Directors meeting at which its ~~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 Council staff. The Board of Directors shall 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. Default Terms, Conditions, and Repayment.**

- (a) In making loans, the Council shall:
- (i) Establish an up-front fee of at least one percent (1%) each of the total loan amount;
  - (ii) Establish a commitment period for disbursement of loan proceeds not to exceed three (3) years;
  - (iii) Set an interest rate (minimum 3% per annum) for all loans, except Large Project Loan(s) in Chapter 9, after considering:
    - (A) The proposed source(s) and use(s) of the funds, and specifically, the percentage of owner's equity;
    - (B) Other interest rates associated with total project financing;
    - (C) Projected cash flows and business plan of the Borrower as well as the Business;
    - (D) Credit risk of the community development organization or state development organization and the underlying third-party loans;
    - (E) Current and projected market interest rates; and Collateral and security package.
  - (iv) Establish the terms of repayment of the loan, not to exceed ten (10) years, with an additional ten (10) year renewal period upon approval by the Board of Directors of the Council, except for Large Project Loans in Chapter 9;
  - (v) Establish an amortization not to exceed twenty (25) 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 sources of financing: sources and uses of funds, commercial viability of the business/project, risks and mitigants, rationale for lending, economic development impact, the collateral package, terms of the security agreement, and terms and conditions of the third-party loan;
  - (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, unless waived by the Council, 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 including the Borrower's income statement, balance sheet, and cashflow statement;

(viii) Establish other terms and conditions determined to be necessary by the Board of Directors 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 thirty-six (36) months; and

(xi) Require all statutory requirements applicable to the loan be met.

#### **Section 8. Servicing Agents.**

(a) The Council may undertake to act either directly or to contract for that service through a Servicing Agent;

(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. 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 conduct application reviews at a meeting of the Board of Directors;

(b) No requests for changes in loan commitments shall be granted without a vote by the Board of Directors approving the change;

(c) 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.