

**STATE OF LOUISIANA  
OFFICE OF FINANCIAL INSTITUTIONS  
BATON ROUGE, LOUISIANA**

**NOVEMBER 4, 1992**

**POLICY STATEMENT**

**BUSINESS AND INDUSTRIAL DEVELOPMENT  
CORPORATIONS (BIDCOS)**

**PURPOSE:**

To outline certain procedural guidelines with respect to licensing under the Louisiana BIDCO Act. These guidelines will also be utilized in the examination and supervision of BIDCO licensees in accordance with the BIDCO Act.

**TO WHOM THIS POLICY APPLIES:**

BIDCO examiners, BIDCO licensees, and applicants for licensure

**SPECIFICS:**

**Allowable Organizational Costs, Defined**

Allowable organization costs are those direct costs incurred to incorporate and charter a BIDCO; however, such costs are limited to 25% of capital as defined below. Direct organization costs include, but are not limited to, legal, accounting, consulting fees, and printing costs directly related to the chartering or incorporation process, and filing fees paid to chartering authorities. Allowable organization costs incurred by newly licensed BIDCO's may be capitalized and amortized over a period not to exceed 5 years.

Pre-Opening and Other Development Stage Enterprise Costs, such as salaries and employee benefits, rent, depreciation, supplies, director's fees, training, travel, expenses associated with the establishment of business relationships, postage and telephone fees are examples of costs that must be expensed and not capitalized. Similarly, direct costs associated with the offering and issuance of capital stock are not considered to be organization costs and should not be capitalized; these costs should be deducted from the proceeds in recording the initial capitalization of the BIDCO.

**Capital, Defined**

Common Stock and preferred stock, exchanged for cash or cash equivalents, as defined in the BIDCO Act in R.S. 51:2388(4); does not include commitments or stock exchanged for services, Surplus, Undivided Profits or Loss, which shall be reduced by a fully funded loan loss reserve, Contingency and Other Capital Reserves, and Minority Interests, reduced by Disallowed Organizational Costs.

Note: The only organization costs that may be included are those specifically defined by our internal policy and definition of organization costs.

### **Capital for Specialty BIDCO's, Defined**

Capital, as defined above; however, the MINIMUM acceptable capital is \$250,000 as provided for under R.S. 51:2392(B)(2).

### **Specialty BIDCO Criteria, OFI Position**

The Commissioner of Financial Institutions may grant a "Special Circumstances" designation for initial capitalization purposes. In such instances, the Commissioner may allow an initial capitalization less than \$1,000,000, but in no case less than \$250,000. If an applicant can demonstrate in its business plan that it will (1) have sufficient capital and earnings to perform as an on-going concern, and (2) be able to meet BIDCO requirements, and (3) be able to meet continuing certified capital requirements, if the applicant is a certified capital company, "Special Circumstances" designation may be granted, but not be limited, to the following enterprises:

- a. Applicants 51% owned and controlled in day to day operations by women, minorities or disabled individuals.
- b. Applicants providing > 25% of financial assistance to minority or women businesses or businesses owned by disabled individuals.
- c. Applicants providing > 25% of financial assistance to economically distressed areas.
- d. Applicants providing a combined amount > 25% if financial assistance to those businesses described in (b) and (c) of this subsection.
- e. Applicants demonstrating the need for less operating capital because of low or funded overhead.
- f. Applicants demonstrating other specialized circumstances that would require less operating capital.

Note: The financial assistance criteria will be met if the applicant can demonstrate that, of capital invested in loans and equity investments, over 25% will be invested to the above mentioned categories.

### **Management Fees, OFI Position**

Management fees generally should be allocated on the basis of actual costs incurred. If the management company can not identify specific costs, then those costs attributable to the entire operation may be allocated, based on a reasonable allocation method. The allocation method will be subject to prior approval and examination by the Office. If assets are used as a basis for allocation of costs, only those assets available for funding investments, rather than total committed assets, will be allowed.

Although an allocation of actual costs is the preferred method for the reimbursement of management fees, the Commissioner, on a case-by-case basis, may allow the payment of management fees based on a reasonable, alternative method.

### **D & O Insurance, OFI position**

D & O insurance will not be required as a condition of licensure. It is recommended; however, as a safety and soundness measure.

### **Going Concern Policy**

A license may be subject to revocation when a BIDCO loses the ability to provide financing assistance and the servicing of such assistance on a regular and continuous basis.

### **Affirmative Actions Required by Directors Indicating That Each Director Has Read the BIDCO Statutes, Rules and Policies**

Prior to licensure, all members of the Board of Directors shall sign an affidavit indicating that they have read and understand the Louisiana BIDCO rules, statutes, and policies.

### **Reporting Requirements**

- a. Financial Reporting Requirements: in addition to the requirement for an annual audited financial statement, the licensee shall submit quarterly reports to the Commissioner which shall include a statement of financial condition and statement of income and expenses. Quarterly reports are required for the periods ending December 31, March 31, June 30, and September 30, and are due by January 21, April 21, July 21, and October 21, respectively. Such reports shall be prepared on forms prescribed or approved by the Commissioner.
- b. Economic Impact Reporting Requirements: on an annual basis, the licensee is required to submit, no later than January 31, an economic impact report to the Commissioner, on forms prescribed by the Commissioner. Such report shall include the following information:
  1. the number and dollar amount of provisions of financing assistance made by licensees to Louisiana and non-Louisiana business firms
  2. the number and dollar amount of provisions of financing assistance made by licensees to Louisiana and non-Louisiana business firms classified in broad categories of industry
  3. the number and dollar amount of provisions of financing assistance made by licensees to Louisiana and non-Louisiana minority and women-owned business firms and firms owned by disabled individuals
  4. estimates of the number of Louisiana jobs created or retained

## **Unsafe and Unsound Condition**

The BIDCO Act requires licensees to transact business in a safe and sound manner and to maintain a safe and sound condition. The Commissioner has the authority to determine what constitutes an unsafe and unsound act or condition. It generally constitutes an unsafe and unsound practice for a BIDCO to fail to operate and comply with acceptable policies which have been adopted and approved by its Board. As a minimum, licensed BIDCO's must formulate and implement policies, acceptable to the Commissioner, in the following areas: financing assistance, changes in business activity, personnel practices, concentrations, affiliated party disclosures, and contracts for services.

## **Financing Assistance Policy**

This Office will consider it to be an unsafe and unsound practice for a licensee to transact business without an acceptable Financing Assistance Policy which has been adopted by its Board. Furthermore, the licensee will be expected to comply fully with its Financing Assistance Policy. To be acceptable, the Financing Assistance Policy must include as a minimum, the contents, standards and procedures as delineated below:

### Contents

The financing assistance policy of a licensee shall set forth the standards and procedures of such licensee on matters relating to providing financing assistance to business firm and shall contain, in addition to a general statement of policies and objectives on providing financing assistance to business firms, standards and procedures relating to the following:

- a. Types of business firms to which financing assistance may be provided, according to such factors as type of business transacted, size, and geographical location.
- b. Credit qualifications of business firms to which financing assistance may be provided.
- c. Purposes for which financing assistance may be provided, and purposes for which financing assistance may not be provided.
- d. Types of financing assistance which may be provided, including:
  1. With respect to loans, maturities, interest rates and other fees, acceptable and unacceptable collateral, and provisions for repayment.
  2. With respect to leases, terms, rates and other fees, acceptable and unacceptable types of property to be leased, provisions for payment of rent, and disposition of leased property at expiration of term.
  3. With respect to equity investments, acceptable and unacceptable equity securities.
  4. Proportion of financing assistance provided to a business firm which may be in the form of a loan or lease, and proportion of such financing assistance which may be in the form of an equity investment.
- e. Maximum amount of financing assistance which may be provided to any single business firm, to business firms which are affiliated with each other, or to business firms which are

- engaged in the same type, or similar types of business.
- f. Documentation regarding financing assistance to be maintained.
  - g. Delegation of authority to officers to provide, or to commit to provide, financing assistance.
  - h. Reporting financing assistance transactions to, and approval of financing assistance transactions by the board.
  - i. Treatment of substandard and charged-off leases, loans, and other securities.
  - j. Charging-off leases, loan, and other securities, and maintaining reserves for losses.
  - k. Administration of financing assistance accounts, including periodic review and evaluation.

### Reports

Whenever the board of directors of a licensee amends the financing assistance policy of such licensee in any material respect or repeals the licensee's financing assistance policy and adopts a new financing assistance policy for the licensee, the licensee shall, not more than 30 days after such action, file with the Commissioner a report containing a copy of the resolution of the board and a copy of the amendment of the financing assistance policy or of the new financing assistance policy, as the case may be, certified by the secretary or by an assistant secretary of the applicant.

### **Report Regarding Differences from Application**

This Office will consider it to be an unsafe and unsound practice for a licensee to engage in an activity which represents a material difference from the business activity described in its application. If the Commissioner finds that an applicant has deviated in any material respect from what was proposed in its application for licensure and that, if such deviation had existed at the time when the application was under review, he would have denied the application, he shall have the authority to revoke the BIDCO license. This provision does not apply in the event that a licensee requests and is granted approval prior to a material change in its business activity.

### **Personnel Policy**

We will consider it to be an unsafe and unsound practice for a licensee to transact business unless such licensee has in effect an acceptable personnel policy which has been adopted by its board and unless the licensee complies with such personnel policy. To be acceptable, the Personnel Policy must include as a minimum, the contents, standards and procedures as delineated below:

### Contents

The personnel policy of a licensee shall set forth the standards and procedures of such licensee on personnel matters and shall contain, in addition to a general statement of personnel policies and objectives, standards and procedures relating to the following:

- a. Hiring, training, promotion, transfer, termination, and retirement

- b. Compliance with any applicable laws relating to equal employment opportunity and affirmative action programs
- c. Hours, vacations, and leaves of absence
- d. Salary, other compensation and benefits
- e. Performance evaluation and review
- f. Discipline
- g. Grievances
- h. Conflicts of interest, including transactions with the licensee, transactions with customers of the licensee, and use of confidential information
- i. Outside employment

#### Reports

Whenever the board of a licensee amends the personnel policy of such licensee in any material respect or repeals the personnel policy of the licensee and adopts a new personnel policy for the licensee, the licensee shall, not more than 30 days after such action, file with the Commissioner a report containing a copy of the resolution of the board and a copy of the amendment of the personnel policy or of the new personnel policy, as the case may be, certified by the secretary or by an assistant secretary of the applicant.

#### Required Absence

It generally constitutes an unsafe and unsound act for a licensee to fail to require that each of its officers and employees be absent from the office of such licensee for a period of not less than 14 consecutive days in each calendar year.

#### Conviction of Crime

It generally constitutes an unsafe and unsound act for a licensee to have as a director or officer any person who has been formally convicted of a crime involving an act of fraud or dishonesty.

#### **Concentration Policy**

This Office will consider it to be an unsafe and unsound practice for a licensee to provide or to commit to provide financing assistance in an unduly large amount to (1) any single business firm; (2) business firms which are affiliated with each other, or (3) business firms which are engaged in the same type, or similar types, of business, unless such business firms are widely diversified by geographical location. In determining whether the amount of financing assistance which a licensee has provided or is about to provide is unduly large, the Commissioner will generally consider such amount in relation to:

- a. total assets;
- b. capital, as defined in this Policy;
- c. funds available for lending: capital as defined plus funds borrowed and lines of credit extended from a lender capable of funding such credit, subject to a maximum of 200% of

- capital;
- d. capital, as defined, plus the discounted present value of future capital commitments payable over a four year period. However, if this method is utilized, the licensee will not be allowed to restructure commitments for a longer pay-out period;
  - e. Other reasonable methods, subject to approval by the Commissioner, on a case by case basis.

### **Affiliated Party Disclosure Policy**

This Office will consider it to be an unsafe and unsound practice for a licensee to enter into a transaction with an affiliate or associate, unless the terms of such transaction are in accordance with the BIDCO Act, approved in advance by the Commissioner and properly disclosed. If a transaction is approved between an affiliate or associate, the Commissioner has the right to examine the books and records of the associate or affiliate.

### **Contracts Between the Licensee and Other Entities**

This Office will consider it to be an unsafe and unsound practice for a licensee to enter into a contract for services with an affiliate or associate without the prior approval by the Commissioner and without proper disclosure of relationships between licensee and affiliates or associates.

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Larry L. Murray, Commissioner