

1580.0700 GENERAL TERMS AND CONDITIONS OF LOAN GUARANTEES.

The loan guarantee agreement between the state and the lender, and the loan agreement between the lender and the borrower must contain the following provisions, unless the board determines that the applicant has shown in writing that a required term or condition is not necessary to ensure the lender and the state of repayment according to the terms of the loan agreement in light of generally accepted commercial lending practices:

A. Payments of principal and interest made by the borrower under the loan must be applied by the lender to reduce the guaranteed and nonguaranteed portion of the loan on a proportionate basis, and the nonguaranteed portion may not in any event receive preferential treatment over the guaranteed portion.

B. A period of grace must be allowed of at least 60 days from the date a principal or interest payment is due, prior to the making of demand for payment pursuant to the loan guarantee, to permit adequate time for a decision by the board regarding principal and interest assistance under part 1580.0800. Payment as required by the loan guarantee must be made within 60 days of receipt by the board of a written demand complying with the terms and conditions of the guarantee.

C. The lender shall not accelerate a payment of the loan or exercise other remedies available to the lender if the borrower defaults, unless:

- (1) the borrower fails to pay a required payment of principal or interest;
- (2) the board consents in writing; or
- (3) as otherwise permitted in the loan guarantee.

In the event of a default, the lender may not make demand for payment pursuant to the guarantee unless the board agrees in writing that the default has materially affected the rights or security of the board and lender, and the board finds that the lender should be entitled to receive payment pursuant to the loan guarantee.

D. If a payment of principal or interest is made by the board upon default of the borrower, the board is subrogated to the rights of the lender with respect to payment.

E. The borrower shall have promptly prepared and delivered to the board annual audited or reviewed financial statements of the project prepared by a certified public accountant according to generally accepted accounting principles.

F. Duly authorized representatives of the board must have access to the project site at reasonable times during construction and operation of the project.

G. The borrower shall maintain adequate records and documents concerning the construction and operation of the project in order that representatives of the board may determine its technical and financial conditions and its compliance with environmental

requirements. The records shall include the amounts of all sales and use taxes paid on personal property and services purchased for the construction and operation of the project, with tax receipts furnished by the sellers or other supporting documentation determined by the board to be satisfactory. The amounts of those taxes must be reported to the board in the manner and at the times required by the board.

H. The borrower shall protect and preserve at all times the project assets and other collateral securing the loan and shall assist in liquidation of collateral to minimize loss in the event of default.

I. Orderly liquidation of assets of the project must be provided for in the event of default, with an option on the part of the board to acquire from the lender the lender's interest in the assets pursuant to the nonguaranteed portion of the loan.

J. The board must be paid at or before the closing of the guaranteed loan a fee or fees for the loan guarantee or the commitment to guarantee the loan. The aggregate fee must be one percent of the total principal amount of the guaranteed portion of the loan.

K. The lender shall perfect and maintain the mortgage lien on the real estate and the security interest in all personal property and collateral granted as security for the loan, and shall cause all other loan servicing functions to be performed that are normally required or performed by a reasonable and prudent lender with respect to a loan without a guarantee.

L. The lender must notify the board in writing without delay of:

- (1) the date, amount of, and use for each disbursement of loan proceeds;
- (2) any loan payments that are two weeks overdue;
- (3) any failure to honor a commitment by any person of an intended source of capital for the project; and
- (4) any significant adverse changes from original cash flow projections as evidenced by reports from the borrower, or any other known evidence that the borrower might be unable to meet a future scheduled payment of principal or interest.

M. The board or the lender may determine that the loan is in default when:

- (1) scheduled payments are 60 days past due;
- (2) the borrower is or may become unable to meet in full the principal or interest payments, or both, that are due or to become due within a specified period; or
- (3) the board and the lender mutually determine and agree that the project is no longer viable and financially feasible.

N. The borrower must be required to establish a reserve, from the proceeds of the loan or otherwise, to be maintained with the lender or with a trustee for the holders of the borrower's obligations, with a letter of credit, or in cash or securities of a specified market

value at least one-half of the annual amount that would be required to amortize the entire amount of the loan over the term (or at the rate of yield resulting from the interest rates) provided in the loan agreement.

O. The lender must service the loan and receive the payments of principal and interest. In the event of default, the lender must continue to service the loan if requested by the board to do so. Upon written approval of the administrator, the lender may sell or transfer the loan or loan servicing functions.

P. The agreement shall contain other terms and conditions that the board determines necessary and appropriate to carry out the purposes of Minnesota Statutes, chapter 41A.

Statutory Authority: *MS s 41A.04*

History: *11 SR 713*

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