

7606.0070 FINANCING PROVIDER.

To be eligible to sell financing participation to the commissioner, an officer of a financing provider must sign a participation agreement provided by the commissioner. The commissioner shall not participate in any financing made by a financing provider before the execution of a participation agreement. The agreement shall set terms and conditions under which financing can be made, establish duties of the parties, and specify procedures to be followed in the event of default by the applicant. The agreement must require the financing provider and the commissioner to conform to the following conditions:

A. The financing provider will enter into a financing agreement with the applicant. The financing agreement will include the following:

(1) an agreement that the commissioner may review upon request all relevant financial data of the applicant and may inspect any and all buildings, equipment, and systems associated with financing; and

(2) a resolution of the applicant's governing body guaranteeing that it will use all financing funds solely for the eligible costs of the proposed project, and assuring that it has complied and will comply with parts 7606.0010 to 7606.0080.

B. The financing provider shall make no provision to subordinate any financing collateral to other liens against such property without prior written approval from the commissioner.

C. The financing provider shall not acquire any preferential collateral, surety, or insurance to protect its interest in the financing.

D. All collateral must be prorated between the financing provider and the commissioner.

E. The financing provider shall require the applicant to adequately insure, maintain, and repair all collateral.

F. The financing provider shall review and approve the financing application in accordance with generally accepted commercial lending practices.

G. The financing provider is responsible for servicing the financing either directly or by contracting with a servicing agent.

H. The financing provider shall not sell or transfer the financing or any portion of it without prior written approval of the commissioner.

I. The financing provider, for the term of the entire financing, shall promptly notify the commissioner of any financing payments that are one month overdue. The financing provider shall provide the commissioner with any and all past due notices at the same time they are sent to the applicant. In addition, the financing provider shall submit

an annual financing performance report to the commissioner on a form provided by the commissioner.

J. The portion of the financing participated in by the commissioner must have an amortization term not exceeding five years.

K. The financing provider agrees not to make any amendments to the financing agreement after financing closing without prior written approval of the commissioner.

L. The financing provider agrees to make no waivers of default without prior written approval of the commissioner.

M. The commissioner may review all financial data associated with the execution and servicing of the financing made by the financing provider.

N. Before a declaration of default, any and all payments received by the financing provider must first be credited to interest due and the remainder credited to the principal balance. A pro rata distribution of interest and principal must be forwarded to the commissioner based on the commissioner's percentage of participation.

O. During an event of default for which a declaration of default has been declared, any and all payments received by the financing provider must first be used to pay the reasonable expenses related to the collection of, or attempts to collect, money owed under the financing. After payment of these amounts, any and all payments received by the financing provider must first be credited to the principal balance due on a pro rata basis, and then be credited to interest due on a pro rata basis.

P. If the commissioner determines that an applicant has failed to comply with the start or completion dates given in the financing participation application as approved, and the applicant cannot reasonably justify this failure to comply, the financing provider shall, upon written request of the commissioner, declare the financing to be in default.

Statutory Authority: *MS s 216C.09*

History: *13 SR 2762; 31 SR 1605*

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