



North Dakota Opportunity Fund Consortium

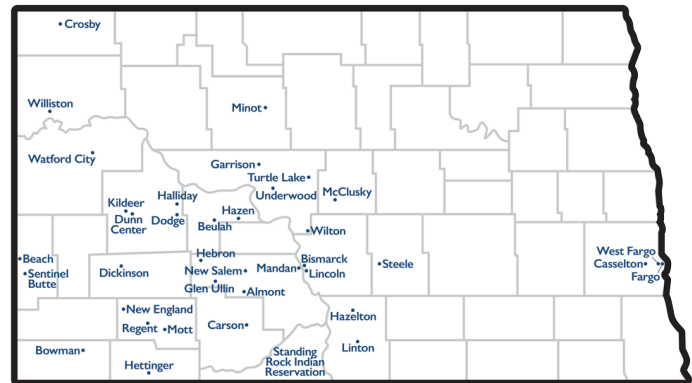
Disaster Assistance Loan Program

Policies and Procedures

Adopted on March 26, 2020

Background

The North Dakota Opportunity Fund originated as part of the Small Business Jobs Act of 2010, which created the State Small Business Credit Initiative. The SSBCI program was intended to leverage private financing to help small businesses and manufacturers attain loans and investments needed to expand and create jobs. A consortium of 38 municipalities led by the City of Mandan was allocated \$9,734,641.00 of funding for operation of a loan participation program. The program began in September 2012. The consortium has operated the loan participation program under the name of the North Dakota Opportunity Fund.



The SSBCI is a one-time program of limited duration. The authorities and duties of the Secretary of Treasury to implement and administer the program terminate on September 27, 2017. The obligations of participating states and territories to perform and report on progress will expire as outlined in the terms of the Allocation Agreement. Allocation Agreements between the Treasury and the participating states, territories and municipalities expires March 31, 2017.

Effective April 1, 2017, The “North Dakota Opportunity Fund” (hereafter referred to as “Opportunity Fund”) will operate under the framework of policies and procedures outlined in this document. The policies herein have been established by the North Dakota Opportunity Fund Consortium Steering Committee (Steering Committee) with a goal of furthering economic development for the municipalities participating in the Consortium.

Periodic reviews of the program will be conducted by the Steering Committee, and the program administrator, Lewis and Clark Regional Development Council (LCRDC). The policies should remain flexible, enabling the program to meet the needs of participating municipalities.

Credit Criteria

The **North Dakota Opportunity Fund** will base its credit decisions on the following criteria:

1. The business must meet the eligibility requirements of the Opportunity Fund.
2. The business must show it was impacted by emergency disaster declaration.
3. The management of the business must have the ability to conduct the business and show commitment to the project.
4. The payment history of the business with other lenders and creditors must be satisfactory.
5. The review of proposed collateral must be acceptable.
6. The credit history of borrowers and guarantors of the loan must be satisfactory.
7. The Opportunity Fund Disaster Assistance Loan Program loan to a single Borrower Entity will not exceed \$50,000.
8. All Applications will be considered on a case-by-case basis by the NDOF Loan Committee at a properly called meeting.

Loan Purpose

The Opportunity Fund will assist borrowers in financing lost income due to disaster of emergency declaration by executive order.

On a case-by-cases basis, existing NDOF Borrowers meeting all disaster criteria that are current on loan payments may be considered for re-advance on the existing loan at disaster assistance interest rate with a separate promissory note referencing the existing security instruments.

Interim Financing may be considered for an existing business that meets all disaster criteria and has applied for and been accepted by the SBA disaster loan program. The SBA disaster funds will then repay the NDOF loan.

An existing business that does not qualify for SBA disaster financing but meets eligibility criteria of the NDOF may be considered eligible for the NDOF disaster Assistance program.

The Opportunity Fund Disaster Assistance Loan Program is not intended to replace conventional commercial financing.

Eligibility Requirements

Loans can only be made to businesses located and operating within the legal boundaries of the participating municipalities, unless:

The mayor or chief executive of a Participating Municipality warrants, in writing, that the loan or investment will result in significant economic benefit to the Participating Municipality. When evaluating criteria to determine if a loan or investment made outside of its geographic borders yields significant economic benefit, Participating Municipalities should consider the impacts that the transaction will have on:

1. Jobs created or maintained within the Participating municipality;
2. increasing the amount of sales, income, or other tax revenue to the Participating Municipality; or
3. The benefit of the goods or services provided by the small business to the Participating Municipality or businesses within the Participating Municipality.
 - a. A written warranty of the anticipated economic benefit, signed by the mayor or chief executive of the Participating Municipality, must be retained with the transactions records for each loan or investment made outside of the borders of a Participating Municipality.

Eligible Loan Uses

Working Capital: The average working capital loan is expected to be 1 to 5 years.

Ineligible Loan Uses

1. Passive Real Estate:
 - a. SSBCI has developed a definition of "passive real estate investment" in consultation with the Small Business Administration (SBA). Opportunity Fund considers loan or investment proceeds to be used for "passive real estate investment" purposes when the proceeds from the loan or investment are used by an eligible small business to invest in real or personal property acquired and held primarily for sale, lease, or investment.
 - i. If proceeds from an Opportunity Fund -supported loan or investment are used in the construction of a new building, the eligible small business must occupy and use no less than 60% of the total rentable property following construction.
 - ii. If proceeds are used in the acquisition, renovation or reconstruction of an existing building, the borrower may permanently lease up to 49% of the rentable property to one or more tenants, if the eligible small business also occupies and uses no less than 51% of the total rentable property within 12 months following the real property acquisition.

- iii. For example, Smith Bakery may use the proceeds of an Opportunity Fund – supported loan to purchase an existing building with 4,000 square feet of rentable property that is currently leased to three businesses if at least 2,040 (51%) square feet will be occupied by the bakery itself within 12 months of acquiring the building.

Under either scenario, if an eligible small business chooses to lease an allowable portion of the rentable square footage to a tenant, the Opportunity Fund has the responsibility to ensure that the occupancy requirements of the eligible small business are met and supported by substantiating documentation, which may include lease agreements, blueprints, or similar documentation. Additionally, Opportunity Fund-supported loan or investment proceeds may not be used to improve or renovate any of the rentable property that is leased to a third party. Opportunity Fund considers "rentable property" to be the total square footage of all buildings or facilities used for business operations excluding vertical penetrations (stairways, elevators, and mechanical areas that are designed to transfer people or services vertically between floors), and including common areas (lobbies, passageways, vestibules, and bathrooms). Rentable property excludes all outside areas.

2. The loan cannot pay a delinquent federal or state income taxes unless the borrower has a payment plan in place with the relevant taxing authority
3. The loan cannot pay taxes held in trust or escrow, e.g. payroll or sales taxes.
4. The loan cannot reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance.

Rates & Terms

The Disaster Assistance Loan Program will offer a 0% interest rate with payments deferred for the first 6 months of the loan. Starting on month 7, the interest rate will be 4% with a repayment term of 54 months with monthly principal and interest payments.

Collateral

All loans will be secured. Security arrangements will be determined on a project-by-project basis considering the potential benefits and merits of each funded activity. The Opportunity Fund will secure either a first, shared first, or junior security position on the assets or other forms of collateral of the project. Loan security may include such instruments as:

1. **Lien positions** on real estate, machinery, equipment, inventory, receivables, or marketable securities. Such liens may be subordinated only to existing liens of record and other loans made in connection with the project. This includes deeds of trust and mortgage title insurance;
2. **Assignments** of patents and/or licenses right;
3. **Life Insurance policies** on key individuals needed for the business to realize continued success. The acquisition of hazard and other insurance when deemed necessary;
4. **Personal guarantees** may be required from the project's principals if other collateral offered is inadequate to properly secure the loan.

Application Process

Applicant will complete the loan application and send fully completed form to The Opportunity Fund administrator, Lewis and Clark Regional Development Council (LCRDC). The application consists of borrower information, project scope to include sources and uses of total project, employment projections, market summary, financial analysis based on three years historical and three years projected and management information. The applications will be reviewed as needed at loan committee meetings.

Loan Application Process

Each potential project will be exposed to three forms of selection analysis prior to submission to the Loan Committee for approval. These include a project qualification review, application completeness review and preliminary analysis, and finally an in depth financial analysis and project feasibility review.

1. **Project qualification analysis:** This preliminary review using an application form (see Appendix) will be used to determine, through communications with the applicant, whether the project is in accordance with the Opportunity Fund plan and program guidelines. This review will screen the projects prior to submission to loan committee. Non-qualifying projects will be "weeded out." Financial packaging advice will also be offered at this stage if it appears the project may be restructured to better benefit all parties involved. This first analysis step will be conducted by the LCRDC staff.

2. **Application completeness review and preliminary analysis:** LCRDC staff will review those projects which qualify for Opportunity Fund assistance. The staff will then conduct a preliminary analysis to determine the potential success of the project and its ability to repay the Opportunity Fund loan.
3. **Financial analysis and feasibility review:** This financial analysis (which includes all financial aspects of the business) will be conducted through the review of required application materials. These materials may include past business financial statements, personal financial statements for the project principals, tax returns, pro forma financial statements, appraisal reports on business assets, and proof of all committed funds. Through an analysis of this information combined with the other required application information, the review committee will base a determination as to the feasibility of the project to be successful in realizing its marketing goals and ultimately servicing its debt.
 - a. An in-depth credit analysis will be conducted by the LCRDC staff utilizing submitted financial information, published sources of industry ratios, information from past and present creditors and customers, and information obtained through credit agencies. The Opportunity Fund may at times rely on a determination of a borrower's credit worthiness obtained by the due diligence usually to be conducted by participating lenders.
 - b. Throughout the review process, the LCRDC staff may request more information, revise the proposed financial structure, and negotiate with the applicant regarding terms and conditions of the loan. The purpose of this whole process is to provide a recommendation to the Loan Committee as to whether a project should be rejected or approved. The Loan Committee will make a final determination based upon this recommendation. The final and ultimate funding authorization lies entirely with the Loan Committee. This Loan Committee also maintains the authority to revise the terms and conditions of the loan as long as they adhere to the Opportunity Fund.
4. Staff then prepares and submits the credit review and a recommendation to the Loan Committee for review. All loans will be considered via any real-time meeting, either in person, or electronic, where a quorum is obtained and in which a discussion of the members can take place.
5. Upon approval of the loan, LCRDC executes various loan documents which generally include:
 - a. Commitment Letter spelling out the terms and conditions of the approval.
6. Once all loan conditions and documentation requirements are received by LCRDC, the loan document drafts will be compiled and the loan will be closed and funded.
 - a. All of the above documents contain the rights and responsibilities of the parties and the terms and conditions of the loans.
7. LCRDC will perfect all security interests through filing of security documents with the appropriate entities.

Fees

1. Borrower will be charged up to a 2% origination fee.
 - a. Generally, the origination fee will be 1% of the Opportunity Fund amount.
 - b. The origination fee will be collected at loan closing.
 - c. The Origination fee may be deducted from loan proceeds.
2. A fee of 15% of the payment amount due will be assessed to payments that are more than 10 days delinquent. Collection of late fees will be at the discretion of LCRDC.

Payments

1. All payments will be made to Lewis and Clark Regional Development Council, 200 1st Avenue NW, Mandan, ND 58554.
2. All payments will be applied first to fees, then interest, then principal.
3. A loan payment will be considered late when the scheduled loan payment has not been made on or prior to its scheduled date and late payments will incur the appropriate fees. A fee of 15% of the payment amount due will be assessed 10 days after payment due date.
4. There will be no prepayment penalties fee assessed for early partial or full payment of the loan, unless otherwise negotiated with the borrower.

Administration

LCRDC will perform all administrative functions of the program as outlined in the administration contract. These duties include but are not limited to:

1. Keep a database of all loans approved, closed and funded.
2. Accept and collect payments.
3. Provide semi-annual financial statements to Municipalities.
 - a. The reports will be for periods ending March 31 and September 30.
 - b. The reports will be provided within 30 days of the period just ended.
 - c. The reports will include the total amount of funds used for administrative costs, total amount of funds re-lent, the amount of program income generated, loan activity and status of existing loan portfolio and amount of charge-offs.
4. Market the program through different avenues including brochures, newsletters, direct correspondence, website, and in-person meetings.
5. Review the loan closing information prior to disbursing funds to make sure security instruments are in place.

Certifications

Borrower will provide assurance affirming...

1. Loan proceeds are needed as a direct result of losses incurred due to a declared disaster or as a result of emergency declaration by executive order.
2. The loan proceeds must be used for working capital. The loan proceeds will not be used to:
 - a. repay a delinquent federal or state income taxes unless the borrower has a payment plan in place with the relevant taxing authority; or
 - b. repay taxes held in trust or escrow, e.g. payroll or sales taxes; or
 - c. reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance; or
 - d. purchase any portion of the ownership interest of any owner of the business.
3. The borrower is not:
 - a. an executive officer, director, or principal shareholder of the financial institution lender; or
 - b. a member of the immediate family of an executive officer, director, or principal shareholder of the financial institution lenders; or
 - c. a related interest of an executive officer, director, principal shareholder, or member of the immediate family.
4. The business is not:
 - a. a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business; or
 - b. a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company Community Development Financial Institution; or
 - c. a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants; or
 - d. a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); or
 - e. a business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from lottery sales.