



ADMINISTRATIVE RULES OF MONTANA

8.99.504 DEVELOPMENT LOAN - TERMS

- (1) Development loans shall be renewable at intervals of no more than four years.
- (2) Development loans shall require, at a minimum, the payment of interest on a quarterly basis.
- (3) The loan agreement shall require that the MBDC provide management training and preloan and postloan technical assistance as described in the MBDCs application for certification.
- (4) The loan agreement will specify reporting obligations of the MBDC to the department, including scheduling and format of reporting.
- (5) The loan agreement will require the MBDC to purchase and maintain insurance protection from the loss of development loan funds due to the dishonest or fraudulent activities of the employees of the MBDC. The insurance must provide coverage of all MBDC employees having access to development loan funds in an amount equal to or greater than the total outstanding indebtedness of the MBDC that has been issued by the department to the MBDC under the authority of the Microbusiness Development Act.
- (6) The initial department development loan to a certified MBDC shall not exceed the maximum amount the certified MBDC can reasonably be expected to lend to eligible microbusinesses, in an effective and sound manner, within two years after loan closing. After two years from the closing of the initial development loan, at least 60 percent of the total principal balance of the certified MBDC's development loan shall be loaned out to eligible microbusinesses. The loan out rate shall be calculated as follows: total revolving loan fund microbusiness loan receivables multiplied by .86, divided by the total development loan principal balance outstanding.
- (7) On a quarterly basis, all MBDCs shall report, in writing, the total revolving loan fund microbusiness loan receivables and the resulting loan out rate to the department. If the reported loan out rate falls below the 60 percent loan out rate standard for a 12 month period, the MBDC shall return the excess funds to the department, except for any MBDC that has an outstanding development loan principal balance that is less than \$250,000. The dollar amount of development loan funds equivalent to the difference between the actual percentage of development loan funds loaned out and the 60 percent loan out rate standard is referred to as "excess funds". If excess funds are returned by the MBDC to the department, a certified MBDC may apply for additional development loan funds in the future, provided that the certified MBDC meets the requirements established in ARM 8.99.502.
- (8) All development loan funds received by a MBDC and all MBDC matching loan funds are assets of the revolving loan fund. For as long as any part of a development loan to a MBDC remains unpaid, the MBDC shall maintain the revolving loan fund. The MBDC may transfer additional assets into the revolving loan fund. The receivables created by making loans to eligible microbusinesses, the

MBDC's security interest in collateral pledged by microbusinesses, collections on the receivables, interest, fees, and any other income or assets derived from the operation of the revolving loan fund are assets of the revolving loan fund.

- (9) The portion of the revolving loan fund that consists of development loan funds shall only be used for making direct loans by the certified MBDC to microbusinesses or guaranteeing loans made directly by banks to microbusinesses in accordance with the provisions of 17-6-401, MCA, et seq. The portion of the revolving loan fund that consists of MBDC matching loan funds shall only be used for securing the development loan and/or making direct loans by the certified MBDC to microbusinesses or guaranteeing loans made directly by banks to microbusinesses in accordance with the provisions of 17-6-401, MCA, et seq. The portion of the revolving loan fund that includes revolving loan fund income may be used for development loan debt service, reasonable revolving loan fund administrative costs, funded loan loss reserves, or making direct loans by the certified MBDC to microbusinesses or guaranteeing loans made directly by banks to microbusinesses in accordance with the provisions of 17-6-401, MCA, et seq.
- (10) The MBDCs shall follow generally accepted accounting principles (GAAP) to identify and record revolving loan fund assets and to prepare, present, and report revolving loan fund financial statements (balance sheet and income statement) as follows:
 - (a) the MBDC shall maintain a separate accounting ledger for the revolving loan fund; and
 - (b) each MBDC shall provide the department with a copy of an annual organization wide audit that is prepared by an independent certified public accountant that is licensed by the state of Montana.
- (11) All department development loan funds, MBDC matching loan funds, and all proceeds from interest, fees, and any other income earned or derived from the operation of the revolving loan fund shall be deposited in the revolving loan fund bank account. For as long as any part of a development loan to a MBDC remains unpaid, the MBDC shall maintain the revolving loan fund bank account as follows:
 - (a) the revolving loan fund bank account is a separate demand deposit account in a federally insured bank. All moneys deposited in such bank account shall be money of the revolving loan fund. No other moneys of the MBDC shall be commingled with such money;
 - (b) all development loan funds, MBDC matching loan funds, and all revolving loan fund income shall be deposited into the revolving loan fund bank account;
 - (c) the MBDC may transfer additional cash into the revolving loan fund bank account;
 - (d) loans to eligible microbusinesses are advanced from the revolving loan fund bank account; and
 - (e) all revolving loan fund expenses are paid from the revolving loan fund bank account.
- (12) Department development loan funds, MBDC matching loan funds, and funded loan loss reserve funds may be transferred to the investment bank account from the revolving loan fund bank account. The investment bank account is a separate time deposit account, which pays interest for a fixed term not to exceed one year, in a federally insured bank. All moneys deposited in such bank account shall be money of the revolving loan fund. No other moneys of the MBDC shall be commingled with such money. The investment bank account does not include accounts that are evidenced by a certificated instrument. All interest earnings generated from the investment account shall be deposited in the investment account. All withdrawals or transfers from the

investment bank account shall be deposited in or transferred to the revolving loan fund bank account.

- (13) Security for all development loans to MBDCs shall be sufficient to ensure repayment of the development loan. The MBDC's operating income, financial condition, and management ability will also be considered. The certified MBDC shall execute a promissory note, development loan agreement, and security agreement with the department. Security for all development loans to MBDCs shall include, but shall not be limited to, a pledge by the MBDC of all assets now in or hereafter placed in the revolving loan fund. The MBDC shall covenant that, in the event the MBDC's financial condition deteriorates or the MBDC takes action detrimental to prudent revolving loan fund operation or fails to take action required of a prudent lender, as determined by the department, the MBDC shall provide additional security, execute any additional documents, and undertake any reasonable acts the department may request to protect the department's interest. In addition to normal security documents, a first lien interest in the MBDC's revolving loan fund bank account and investment bank account shall be accomplished by control agreements satisfactory to the department. The control agreement does not have to require department signature for withdrawals. The depository bank shall waive its offset and recoupment rights against the bank account to the department and subordinate any liens it may have against the MBDC bank account.

Authorizing statute(s): 17-6-406, MCA

Implementing statute(s): 17-6-407, MCA

History: NEW, 1992 MAR p. 42, Eff. 1/17/92; AMD, 1996 MAR p. 2166, Eff. 8/9/96; AMD, 2000 MAR p. 1045, Eff. 4/28/00; AMD, 2008 MAR p. 486, Eff. 3/14/08; AMD, 2011 MAR p. 1131, Eff. 6/24/11.