NACS Program Guidelines

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About the Program

The Native American Collateral Support Program ("NACS" or "Program") is designed to address the lack of access to capital for Native American-owned businesses and eligible non-profits. This program was developed from the feedback of a diverse set of stakeholders that prioritized the development of a financial product and pathway for Native businesses to access financing and capitalize the launch and growth of their businesses and eligible non-profits.

The Program addresses access to capital issues by providing collateral support security for lenders making loans with Native American-owned businesses or eligible non-profits that only lack in sufficient collateral/equity for a business loan according to their loan risk profiles. All other aspects of the credit analysis are satisfactory such as, but not limited to, cash flow, climate, character, and credit-worthiness. The Montana Department of Commerce ("Commerce") administers the Program.

Definitions

Business Impact & Loan Status Report: The reporting format and content that the Lender will submit annually to the Program in the form set forth in the Guidelines.

Certification Form: A form the Native American business owner or authorized signer of a non-profit completes and submits to a Participating Lender.

Collateral Deposit Account: The interest-bearing account opened with the Eligible Lender in the name of State of Montana.

Collateral Deposit Agreement (CDA): An agreement executed between Commerce and the Eligible Lender in a form set forth in the Guidelines.

Collateral Support Application (CSA): The application the Eligible Lender submits to the Program on behalf of an Eligible Borrower for collateral support from the Program as set forth in the Guidelines.

Eligible Borrower: Either (1) a Native American majority owned business with a structure that is a recognized entity under Montana or tribal law and registered with the Montana Secretary of State's Office or (2) a non-profit public benefit corporation under Montana or tribal law that is registered with the Montana Secretary of State's Office or under respective tribal authority that maintains a primary purpose of assisting Native American owned businesses or tribal owned entities with economic development activities.

Eligible Lender: Any bank, community development financial institution, tribal revolving loan institution, certified regional development corporation, microbusiness development corporation, credit union, local development corporation authorized to conduct business in the State of Montana.

Eligible Loan: A Loan that meets the criteria under the NACS Program Guidelines in effect at the time the Loan is applied for.

Lender Participation Agreement (LPA): The Agreement to be executed by Commerce and the Lender, establishing that the Lender is willing to abide by the Program terms to access the NACS funding on behalf of eligible borrowers.

Loan: Any advance of money to an Eligible Borrower by the Participating Lender under NACS that is evidenced by a promissory note or other instrument that obligates the Eligible Borrower to repay the advance.

Participating Lender: Any Eligible Lender that executed a Loan Participation Agreement and jointly funds a Loan with Commerce.

Program Guidelines: The guidelines for the Program as established by Commerce and provided to the Eligible Lender by Commerce.

Resettlement: The process by which a collateral deposit account will be modified to reflect the annual review of the collateral support need.

Collateral Support Information

The Process:

1) An Eligible Lender requests to participate in the Program.
2) Commerce executes a Participation Agreement with the Lender to use NACS funding. Lenders have 10 days from the date of execution to provide the Program documentation of their Worker's Compensation insurance.
3) A Native American business owner or eligible non-profit seeks commercial financing from a Participating Lender and only lacks sufficient collateral to obtain a business loan according to the Participating Lender's underwriting criteria.
4) The Native American business owner or authorized signer of an eligible non-profit completes and submits the appropriate Certification Form to a Participating Lender.
5) The Participating Lender determines initial eligibility of the Native American-owned business or eligible non-profit and submits a CSA to Commerce on behalf of an Eligible Borrower. The Participating Lender must provide an initial representation that the loan will meet the requirements referenced in the Program Guidelines and the LSA. The CSA is accompanied by a collateral analysis and review form, a copy of the loan committee's collateral analysis contained in their credit presentation/ loan memo, and an amortization schedule of loan repayment.
6) Commerce receives the application, makes an initial determination of a properly completed CSA, and formally notifies the Participating Lender by email that the CSA will go to an internal review committee.

7) Commerce reserves the requested funding for the CSA until it goes through a formal internal review process and a final determination is made.
8) Commerce will notify the Participating Lender if the CSA has been approved for funding via a formal reservation of funds letter. The letter will contain the approved amount of collateral deposit, the term, the form of collateral deposit, whether the deposit Resettlement will be tiered or proportionate, and the amount of Resettlement per year.
9) Once approval has been communicated to the Participating Lender, the Participating Lender will have 90 calendar days to get the CD account established and documented. The reservation of funds letter will serve as documentation for collateral support in the loan closing process as the actual CD will not be in place until after the Loan has closed.
10) Commerce executes a CDA with the Participating Lender for the benefit of the specific Loan and Eligible Borrower. The CDA identifies the terms of the deposit, accessibility of deposited sums and the process for retrieving deposited sums based on terms, Resettlement, or default. Participating Lenders are advised to review the CDA template with their legal and operational team prior to execution as this document will actuate the Assignment of Deposit Account and establish a Certificate of Deposit Account with the Participating Lender.
11) Upon Loan closing, Commerce will establish a deposit account with the Participating Lender with the reserved funding for the benefit of the Eligible Borrower, which will be used to support the collateral gap. The Participating Lender will send Commerce a copy of the Loan closing documents. The Eligible Borrower must not have access to Collateral Deposit Account.
12) Resettlement of the collateral deposit will occur annually in conjunction with the closing date of the Loan. No later than 10 business days after the anniversary of the Loan closing date, the Participating Lender must notify Commerce of the amount to be released back to Commerce.

13) The Participating Lender will submit an annual business impact & loan status report for each NACS Program supported loan, due no later than 10 business days after each certificate of deposit is settled.
14) Commerce will review the submitted business impact & loan status report.
15) Participating Lenders will only draw upon collateral support deposits if, upon Loan default, the business assets collateralized by the Participating Lender do not cover the remaining loan value and in accordance with the terms outlined in the Lender Participation Agreement and Collateral Deposit Agreement.

Collateral Support Amounts:

Collateral support amounts vary. Collateral support deposits are intended to address collateral shortfalls and will be evaluated by Commerce on a case-by-case basis. There is no minimum or maximum allowable collateral support amount, and Participating Lenders should determine the minimum NACS assistance necessary to stimulate the proposed project or investment.

Interest Rate

The interest rate is set by the Participating Lender and reviewed by the Program.

Loan Term

There is no minimum loan term, and the maximum loan term is five (5) years.

Application Process

Application Submission: Participating Lenders may submit a CSA on an open-cycle basis as funds are available. Applications must be submitted online through the State of Montana Grant and Loan Portal – ServiceNow, located at: https://montana.servicenowservices.com/mtgl.

Users will be required to create an Okta profile, which requires a valid email account. Okta is located at: https://okta.loginmt.com.

Commerce will make an initial determination of a properly completed CSA and notify the Participating Lender of this determination. If additional information is needed to complete the CSA, Commerce will notify the Participating Lender of the missing items. It is the responsibility of the Participating Lender to obtain and submit the requested information to Commerce.

Internal Review Process: Commerce will conduct an initial review of each CSA for completeness and sufficiency. During this process, Commerce may request additional information, clarification, or documentation from the Participating Lender. Once the CSA is deemed complete, Commerce will notify the Participating Lender by email that the application will be presented to the internal review committee.

The internal review committee will assess the application and make a funding recommendation to the Director of the Montana Department of Commerce. The Director will make the final determination to approve or deny collateral support.

Commerce will communicate the final decision to the Participating Lender through a formal award or denial letter.

Approved Collateral Support: For applications that receive final approval, Commerce will issue a reservation of funds letter outlining the approved collateral deposit amount, term, deposit structure (tiered or proportionate), and annual Resettlement terms. The Participating Lender will have 90 calendar days from the date of the letter to establish the certificate of deposit account.

The CDA must be executed between Commerce and the Participating Lender. This agreement defines the terms of the deposit, the process for accessing funds under certain conditions, and the parameters of Resettlement or default. Commerce will fund the CD account after the CDA is fully executed. Once the Loan has officially closed, the Lender will

submit the Loan closing documents. The collateral support is strictly for the benefit of the Loan and the Eligible Borrower must not access these funds.

Collateral Resettlement will occur annually based on the anniversary of the Loan closing date. Within 10 business days of each anniversary, the Participating Lender must notify Commerce of the eligible amount to be returned.

Underwriting

Underwriting will be based on the Participating Lender's risk profile and collateral underwriting criteria. The Participating Lender must determine that each application meets its typical underwriting criteria "but for" a collateral gap. The Participating Lender assumes full responsibility for the credit and ongoing servicing of the Loan.

Eligible Borrowers

An eligible business owner(s) must be an enrolled tribal citizen from one of the federally recognized tribes residing in Montana or the eligible business must be a majority tribal owned entity (51% tribal ownership). The eligible business owner(s) must complete a Native American business owner Certification Form.

An eligible non-profit must be a public benefit corporation organized under either Montana or tribal law and registered with the Montana Secretary of State's Office or under respective tribal authority. The non-profit must maintain a primary purpose of assisting Native American owned businesses or tribal owned entities with economic development activities on federally recognized Indian Reservations. The non-profit must complete a non-profit Certification Form.

Ineligible Borrowers

The NACS Program does not provide collateral support to any board member, loan committee member, officer, or employee of a Participating Lender. Ineligibility extends to any

business that is more than 20 percent owned or otherwise controlled by such individuals, as well as to their immediate family members, including parents, siblings, children, spouses, or their equivalent. Additionally, borrowers who have previously had a loan written off by Commerce or collateral paid out from a Collateral Deposit Account to a Participating Lender are not eligible for financing.

Eligible Lenders

Eligible Lenders may become a Participating Lender at any time and should reach out to Commerce to execute the required LPA.

NACS Funding

An original pool of $500,000 was available starting July 1, 2015, for collateral support. Funding is contingent upon the availability of NACS funds. Please inquire with staff about the current availability of funds prior to submitting a Collateral Support Application (CSA).

Prohibited Uses of Funds

An Eligible Borrower must be engaged in an activity Commerce determines as acceptable for financial assistance from public state funds. The following list of restricted activities is **not** eligible for NACS assistance:

- Refinancing Existing Debt
- Change of Ownership
- Owner Reimbursement of Equity
- Paying Delinquent Taxes
- Speculative Activities
- Businesses located in a foreign country
- Consumer and Marketing Cooperatives (producer cooperatives are eligible)
- Lending
- Life Insurance Companies
- State or Federally Illegal Uses
- Gambling

- Businesses principally engaged in teaching, and instruction, whether in a religious or secular setting
- Purchase of the Ownership of any Owner in a Business
- Private clubs or businesses that limit the number of memberships for reasons other than capacity
- Businesses in which the Lender or any of its associates owns an equity investment
- Businesses primarily engaged in political or lobbying activities
- Businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds (except when the property is leased to the business at zero profit for the property's owner).

Reporting Requirements

During the LPA term, the Participating Lender must provide Commerce with an annual business impact & loan status report for the lifetime of any loans the Participating Lender maintains with the NACS Program. Reports are due no later than 10 business days after each certificate of deposit is settled. Please see the NACS business impact & loan status report form for specific reporting requirements. Commerce reserves the right to request additional information if it deems necessary.

Access to Records

The Participating Lender shall maintain detailed records of all Loan related documents and will allow access to these records by Commerce, the Legislative Auditor, or their authorized agents.

Resettlement | Repayment Method

Each NACS associated Loan will be reviewed annually, based on the Loan closing date. No later than 10 business days after the anniversary of the Loan closing date, the Participating Lender must notify Commerce of the amount to be released back to Commerce. The amount must include the principal, as well as the interest earned on that principal. The Participating Lender will submit the released amount to Commerce via an Automated Clearing House (ACH) transaction, wire or paper check.

Program Contact

If you have any questions regarding the Native American Collateral Support Program or other aspects of the Program, contact:

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