

MINUTES
OF THE LOAN COMMITTEE OF THE
BUFFALO AND ERIE COUNTY REGIONAL DEVELOPMENT CORPORATION
(RDC)

DATE AND PLACE: October 9, 2019, at the Erie County Industrial Development Agency, 95 Perry Street, Suite 403, Buffalo, New York 14203

MEMBERS PRESENT: Joseph H. Emminger, Rebecca Gandour, Nancy LaTulip, David McKinley, and Michael A. Taylor

MEMBERS ABSENT: John J. Mudie and Royce L. Woods

OTHERS PRESENT: Steven Weathers, Chief Executive Officer; John Cappellino, Executive Vice President; Mollie Profic, Chief Financial Officer; Gerald Manhard, Chief Lending Officer; Daryl Spulecki, Credit Analyst; and Karen M. Fiala, Assistant Treasurer/Secretary

GUESTS: Pietra G. Zaffram, Esq., representing General Counsel/Harris Beach PLLC; and Kevin Zanner, Hurwitz & Fine

There being a quorum at 9:05 a.m., the meeting of the RDC Loan Committee was called to order by its Chair, Mr. Emminger.

MINUTES

Upon motion made by Ms. Gandour, and seconded by Ms. LaTulip, and unanimously carried, it was

RESOLVED, that the minutes of the RDC Loan Committee meeting of August 14, 2019 are hereby approved.

RDC LOAN PORTFOLIO UPDATE

Mr. Manhard updated the Committee on the RDC Loan Portfolio. He noted that there has recently been more attention paid to the loan portfolio and questions regarding loan write-offs in particular.

Mr. Weathers reported that the Investigative Post had requested information regarding the TMP transaction and associated loan. Specifically, a reporter had searched online for information regarding the transaction and discovered the personal tax returns of the applicant's owners. The tax returns were available online due to the fact the Loan Committee meeting materials where

the application was considered had included the tax returns, and such information was available online for the Investigative Post reporter to search. Going forward, tax returns will not be provided in the electronic Loan Committee packages. However, they will be kept in hard copy in the loan due diligence file. Mr. Weathers noted that staff is revamping the requirements of what will be provided to the Committee members in advance of meetings.

Mr. Weathers asked if the Committee requires personal income tax returns to make decisions on loan applications. Mr. Taylor stated they did not. He noted that credit reports and tax returns are provided in evaluations of the application and are available if necessary. Mr. Cappellino then inquired if business financials are required. Mr. Taylor responded that if necessary, the Committee could go into executive to discuss the financial position of the loan applicant and review such financial information.

Mr. Taylor then inquired whether there will still be loan summary and spread information provided. Mr. Manhard responded that they would. Ms. Profic noted that staff has the capability to provide encrypted information to the Loan Committee members if necessary. Ms. Gandour noted that it is important for the Committee to have flexibility to ask for additional information if they deem it necessary.

Mr. Manhard then provided an update of the RDC loan portfolio, noting that there are four loans past due with a 14.1% delinquency rate, measured by loan dollar amount outstanding. The delinquency rate is measured by the total principal balance remaining on delinquent loans divided by the total loan portfolio balance.

DISCUSSION ON REPORTING LOAN PORTFOLIO DELINQUENCIES

A discussion then ensued regarding loan portfolio delinquencies will be reported to the Loan Committee. Mr. Weathers noted that at the last RDC meeting, the County Executive had asked Staff to disclose the identity of those borrowers who are delinquent in the RDC loan portfolio. Ms. Gallagher had expressed concern regarding identifying the delinquent borrowers, as did Staff. Ms. Gallagher and Staff expressed concerns that disclosing the identity of a delinquent borrower could negatively affect the borrower's business position. Mr. Weathers reported that the County Executive had also inquired as to how the delinquency rate for loans delinquencies is calculated.

In response to the queries presented at the RDC board meeting, Mr. Manhard then provided the Loan Committee two different presentations of the Loan Status Reports for the Committee to take into consideration. He noted that example #2 breaks out past due loans by aging, or days past due. Mr. Manhard recommended that the only time a borrower delinquency should be listed is when the RDC "calls the loan" and a workout situation ensues.

Ms. Gandour moved and Ms. LaTulip seconded a motion to enter into Executive Session for the purpose of discussing confidential financial information of the borrowers in the RDC loan portfolio. The motion was then unanimously approved.

At 9:22 a.m., the Agency entered into Executive Session.

Upon motion made by Ms. Gandour and seconded by Mr. McKinley, and unanimously approved, the Agency terminated Executive Session at 10:02 a.m.

Mr. Emminger reported that the Committee is fully aware of their obligation to be transparent with the taxpayers of Erie County by informing them of those borrowers who are delinquent on obligations. However, the Committee is very concerned that publishing the names of delinquent borrowers to the Board could cause irreparable harm to a company, thereby increasing default risk and limiting the ability of the RDC to recover and workout loans. Further, reporting such delinquencies could adversely affect the mission of the RDC to promote business and job creation and limit the ability to attract new loan recipients. Also, Ms. Gandour summarized that such disclosure could discourage entrepreneurs from taking risks associated with starting a business and negatively impacts the entrepreneurial ecosystems that have been created by such organizations as 43North, Beverly Grey Center and UB.

In trying to balance transparency with the public and protecting the privacy of RDC loan borrowers, the following actions were recommended by the Committee:

- Loans that are 1-89 days past due will not be disclosed to the Board as they are typically in a workout stage. At this stage, Staff will attempt to contact the borrower via phone calls, emails, letters and site visits in order to ascertain the root cause of past due payments and assist the borrower in curing the delinquency.
- Loans that are 90 days+ past due will be reported to the Board, with no borrower names given, nor will the report include the amount of the initial loan approval. However, the outstanding loan balance, days past due, amount past due and brief comments will be reported. Generally, a demand letter will be issued to the borrower at this time.
- Loans that are in default will be reported separately from past due loans. Loans requiring legal collection will be reported to the Board upon the action being filed with courts. At such time, information released to the Board will include borrower's name, amounts approved, outstanding loan balance, days past due, amount past due and any other details as requested.

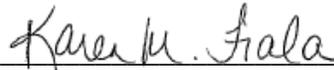
Ms. Profic then stated that in the course of reporting to the EDA, the RDC needs to certify the RLF is being administered in accordance with the Loan Administration Plan. In the past, they have engaged outside consultants to perform this task. Freed Maxick annually reviews certain aspects of the loan portfolio in their audit and they will be willing to include additional audit components contained in the loan administration plan that were previously performed by outside consultants. Consolidation of the separate audits will reduce RDC costs.

Ms. Profic recommended that 20% of active loans be reviewed as a test sample by the auditors.

OTHER BUSINESS

Mr. Emminger noted that Mr. Mudie has resigned from Board and RDC Loan Committee so there is a vacancy at this time. It was noted that Ms. McDuffie, Chair of the ECIDA, could appoint new person to replace Mr. Mudie on the Committee.

There being no further business to discuss, Ms. LaTuilip moved, and Mr. McKinley seconded, to adjourn the meeting. Mr. Emminger adjourned the meeting at 10:13 a.m.



Karen M. Fiala, Secretary