



**WHEDA**

**CROP LOAN GUARANTEE  
PROGRAM**

*LENDER MANUAL*

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## **ABOUT THIS MANUAL**

The Wisconsin Housing and Economic Development Authority (WHEDA®) has been providing agricultural financing products since 1985. This Manual contains important details about the products currently offered.

This Manual shall be effective as of January 3rd, 2017 (the “Effective Date”). On or after the Effective Date, each Lender must have a Participating Lender Agreement (CROP Form 1) and an ACH Agreement (CROP Form 2 ) prior to submitting a CROP Guarantee Reservation (CROP Form3).

We look forward to working with you to promote agricultural development in Wisconsin.

## **WHO TO CONTACT**

WHEDA has Business and Community Engagement Officers located throughout the state that are available to assist you. Our Business and Community Engagement Officers work with local lending institutions, local governments and borrowers to provide information on our products.

For the status on an Application in Process, Origination or general information contact:

WHEDA Commercial Lending Group  
P.O. Box 1728  
Madison, WI 53701-1728  
Toll Free: (800) 334-6873  
Fax: (608) 267-2440

For questions pertaining to servicing, workouts or reporting please contact a portfolio risk officer at:

WHEDA Risk & Compliance  
PO Box 1728  
Madison, WI 53701-1728  
Toll Free: (800) 334-6873  
Fax: (608) 267-1099

Website: [www.wheda.com](http://www.wheda.com)  
General E-mail: [info@wheda.com](mailto:info@wheda.com)

## **ELIGIBILITY**

### **A. ELIGIBLE LENDERS**

Any bank, farm credit service (includes production credit association, federal land credit association and agricultural credit association); credit union, savings bank, savings and loan association, farm supply cooperative or other entity that makes Agricultural Production Loans is eligible to become a Participating Lender to receive the Credit Relief Outreach Program (“CROP”) Guarantee.

#### **Becoming a Participating Lender**

The Lender must deliver to WHEDA two (2) PLAs (Participating Lender Agreement), signed by Lender and a completed ACH Agreement. WHEDA’s acceptance of a Lender as a Participating Lender is conditioned on WHEDA’s receipt of such documents in an acceptable form. Upon receipt of the required documents, WHEDA will sign the PLAs and return a fully executed original PLA to the Lender.

*ALL PARTICIPATING LENDERS MUST HAVE A PLA AND ACH AGREEMENT ON FILE WITH WHEDA TO MAINTAIN THEIR STATUS AS PARTICIPATING LENDERS.*

A bank with multiple branches should complete and submit a single PLA together with a Branch Rider. If and when a branch closure or branch addition/expansion occurs, it is the bank’s responsibility to submit an updated Branch Rider to WHEDA with a cover letter explaining the circumstances with respect to which the updated Branch Rider is being submitted.

#### **Additional Requirements for Farm Supply Cooperatives:**

To be approved as a Participating Lender, a farm supply cooperative must meet the following criteria:

Must be duly organized, validly existing, and registered to operate under the requirements established in Chapter 185 of Wisconsin Statutes.

1. Must have a credit policy in force and have the managerial ability, staff, and procedures to implement the credit policy, including (but not limited to) billing, collection, workouts, and foreclosures.
2. Must operate under the guidance of a board of directors through a general manager.
3. Must be duly authorized by its board of directors to originate Agricultural Production Loans and participate in the CROP.
4. Must be financially solvent, not involved in bankruptcy or any other liquidation proceedings for the benefit of creditors, and financially able to clear the risk of a loss of any Agricultural Production Loan included in the CROP.

## **B. ELIGIBLE BORROWERS**

A borrower is *required* to meet the following:

Does not meet the Participating Lender's minimum standard of creditworthiness to receive an Agricultural Production Loan in the normal course of the Participating Lender's business.

1. Actively engaged in a farming operation in Wisconsin.
2. The amount of the Borrower's proposed project debt is at least 40% (but not more than 85%) of the Borrower's project assets. A Borrower may only include debts and assets related to the production of the Agricultural Commodity being produced with the proceeds of the Loan. An entity Borrower may not include the personal assets of its owner(s) to alter its debt to asset ratio nor may an individual Borrower(s) include the assets of an entity in which it holds ownership interest to alter its debt to asset ratio.
3. Borrower's projected cash flow and ending cash balance on the Cash Flow Budget Worksheet (CROP Form 4) must be positive.
4. Has principal residence in Wisconsin (or be a Wisconsin partnership, Limited Liability Company or corporation) and has a farm in Wisconsin.
5. Has sufficient collateral to cover the principal amount of the CROP loan;
6. Is not delinquent in making child support, birthing expense or maintenance payments.
7. Is not in default or forbearance on any WHEDA loans; must have repaid WHEDA in full with respect to previous Guarantee Loan.

In addition, it is the Lender's responsibility to make the following assurances when evaluating a Borrower's application for participation in CROP:

The Lender will consider the Borrower's assets, cash flow and managerial ability to repay the loan, and in the Lender's judgment, it is reasonably likely that the Borrower's primary and secondary sources of payment are sufficient to preclude a voluntary or involuntary liquidation before the end of the loan term;

To the Lender's knowledge, the Borrower is not currently in bankruptcy, has not filed for, and does not anticipate filing bankruptcy (Chapter 7, 11, 12 or 13) at the time of applying for or during the term of the CROP loan; if previously filed, it has been discharged; and to the Lender's knowledge, the Borrower has no outstanding judgments or tax liens.

### **Eligibility Exception for Dairy Borrowers**

A dairy Borrower who has not been paid for milk provided to a dairy plant because of the bankruptcy or insolvency of the dairy plant is eligible to obtain Guaranteed Loans if it meets the eligibility requirements set forth above in Section B, Eligible Borrower, except that a dairy Borrower not need satisfy the 40% Project Debt to Asset Ratio.

### **C. ELIGIBLE LOANS**

WHEDA's guarantee is valid only on eligible uses of proceeds. Documentation verifying disbursements may be requested at WHEDA's discretion. Eligible uses of proceeds are limited to:

1. The Loan is made to an eligible Borrower to finance production of an Agricultural Commodity.
2. The total outstanding guarantee amount of all Loans to the Borrower that are guaranteed under CROP is no more than \$250,000. In determining the aggregate amount of Guarantees outstanding with respect to a particular Borrower, WHEDA will aggregate the guarantee amount of Loans advanced to an individual with Guarantees advanced to entities related to the individual (e.g., a Guarantee to an individual who is also an owner of a limited liability company will be aggregated with any Guarantee to the limited liability company). WHEDA will also aggregate the guarantee amount of Loans which are advanced to multiple individuals or entities involved in the same operation (e.g., WHEDA will aggregate the principal amount of guarantees advanced to three Borrowers involved in one (1) dairy operation to determine the total outstanding principal amount of the Guarantees advanced under CROP).
3. The Loan is not a revolving line of credit (principal repaid may not be re-borrowed).
4. If the Loan is to a dairy Borrower who has not been paid for the milk provided to a dairy plant because of the bankruptcy or insolvency of the dairy plant, the amount of the Loan does not exceed the amount of the payment, excluding interest or penalties, if any, owed to the dairy Borrower by the insolvent or bankrupt dairy plant. In addition, the terms of the Loan require the dairy Borrower to pay to the Lender, in repayment of the Loan, money received from or on behalf of the bankrupt or insolvent dairy plant, immediately upon receipt of the money.
5. The per annum rate of interest on the Loan, including any origination fees or other charges relating to the Loan, does not exceed the WSJ Prime Rate in effect on the date of the Loan closing plus 2.0%, with a ceiling of 7.0% per annum. The interest rate must be a fixed rate determined as of the Loan closing date. The default rate of interest, if any, may not exceed 12.0% per annum.
6. The Participating Lender shall pay directly any supplier of fertilizer, seed, fuel, pesticides, tillage services, crop insurance, animal feed or other service or consumable good necessary to produce an Agricultural Commodity, if the Borrower obtains the Loan to pay that supplier.
7. The Participating Lender obtains a first priority security interest in the Agricultural Commodity resulting from use of the Loan proceeds as collateral for repayment of the Loan. If the Loan will be used to fund dairy operation inputs, and will be secured by feed or other collateral that will be depleted by the maturity date of the Loan (or the collateral value will be less than the principal balance of the Loan at maturity), the Lender obtains a Dairy Assignment.
8. Unless waived by WHEDA, the Borrower procures an insurance policy which protects the Agricultural Commodity and any of the other goods and/or personal property to be financed with the proceeds of the Loan against risk of loss, and the proceeds of which are payable to the Participating Lender. If the farm is located in a special hazard area (as defined by FEMA), the Borrower has procured flood insurance.
9. The term of the Loan does not extend beyond 12 months after the date on which the Participating Lender granted the Loan. In workout situations, the guarantee term will be extended while the collection process is completed.

10. The proceeds of the Loan may not be applied to the outstanding balance of any other loan except that the proceeds may be used to refinance a prior year's Guaranteed Loan subject to Section J, Refinancing a Guaranteed loan (see origination procedures).

In addition, the Participating Lender shall reasonably believe that if the Borrower receives a Loan, the Borrower's assets, cash flow, and managerial ability are sufficient to preclude a voluntary or involuntary liquidation before the end of the Loan term.

#### **D. ELIGIBLE USE OF LOAN PROCEEDS**

Loan proceeds may only be used to pay for eligible services or consumable goods necessary to produce an Agricultural Commodity. Examples of eligible services or consumable goods are set forth below:

- Fertilizer
- Seed
- Fuel
- Land rent
- Animal feed
- Put options
- Custom hire
- Livestock/feeder animals
- Utility bills pertaining solely to the production of the agricultural commodity
- Hedging
- UCC filing charges
- Equipment rental/Equipment repair
- Tillage service
- Soil consulting
- Crop insurance
- Pesticides and herbicides
- Labor costs directly related to planting and harvesting the agricultural commodity, excluding costs paid to the Borrower and spouse

#### **E. INELIGIBLE USE OF LOAN PROCEEDS**

Ineligible uses of proceeds include, but are not limited to:

- Property taxes
- Mortgage payments
- Accounting services
- Payments on existing loans
- Guaranty reservation fee
- Utility bills pertaining to the farm home
- Expenses not incurred during current calendar year
- Payroll-related taxes
- Interest or lender fees
- Insurance other than for crops
- Attorney or other legal fees
- Veterinary expenses
- Labor costs paid directly to the Borrower and/or spouse
- Capital improvements or purchases (i.e., building repair, milking equipment)
- Refinancing existing debt (exception: portion of prior-year Guaranteed Loan may be refinanced, see Section J, Origination Procedures)

The Agricultural Commodity must be planted and harvested for consumption within the term of the loan. Livestock (feeder animals) is eligible if purchased, fed and sold within the term of the Loan.

If loan proceeds are disbursed for ineligible expenses, those disbursements are not eligible expenses for guarantee payment. Please contact WHEDA before proceeding if you have a questionable expense.

## **ORIGINATION PROCEDURES**

### **A. AVAILABILITY OF WHEDA GUARANTEES**

The principal amount of CROP Loans that WHEDA may guarantee is subject to the availability of funds from the Wisconsin Development Reserve Fund established under Wis. Stats. Section 234.93.

### **B. LENDER UNDERWRITING**

Lender shall use its own prudent underwriting standards in underwriting each Loan. Lender's decision to underwrite a Loan must be supported by the value of the collateral for the Loan and the credit-worthiness of the Borrower. The Loan should be underwritten based on the Borrower's (and, if applicable, the Borrower's spouse's) income alone. Lender shall be responsible for correctly determining the eligibility of Borrower and the Loan for CROP. WHEDA shall have no obligation to guarantee any Loan not qualified for CROP at the time of the Loan's origination and throughout its term.

### **C. SUBMITTING GUARANTEE RESERVATIONS**

If the Lender, in applying its prudent underwriting standards, determines the Borrower is an eligible Borrower and the Loan is an eligible Loan, Lender shall submit to WHEDA, via facsimile, e-mail (provided a secure e-mail delivery method is used), U.S. mail or overnight courier, a Guarantee Reservation (Form 3). Lenders are required to submit a Guarantee Reservation for each Loan to be included in CROP.

WHEDA recommends that Guarantee Reservations be submitted to WHEDA during the Loan application process. Upon receipt of the Guarantee Reservation, WHEDA will confirm its receipt via fax or e-mail (provided a secure e-mail delivery method is used) to the Lender, assign a Loan number and commit to guarantee the Loan up to a stated principal amount subject to receipt from the Lender within fourteen (14) days of WHEDA's confirmation of the Guarantee Reservation, a complete Loan Package in a form that meets the requirements contained in this Manual and is otherwise acceptable to WHEDA in all respects. If the Loan Package is not received within fourteen (14) days of WHEDA's confirmation of the Guarantee Reservation, or if the Loan Package fails for any reason to meet the requirements set forth in this Manual, the Guarantee Reservation shall be deemed null and void and canceled by WHEDA and the Loan will not be included in CROP.

Should a Lender desire to submit a Loan Package to WHEDA without first submitting a Guarantee Reservation for the Loan, it may do so provided the Loan Package includes a Guarantee Reservation and is received by WHEDA within fourteen (14) days of the Loan closing. Provided the Loan Package meets the requirements contained in this Manual and is otherwise acceptable to WHEDA in all respects, WHEDA will assign a Loan number and include the Loan in CROP.



#### **D. CLOSING: DOCUMENTS TO SUBMIT**

Lender shall close each Loan in accordance with its normal prudent closing procedures, and shall comply with any and all consumer or lender disclosure laws applicable to the Loan transaction. Each Loan should be closed on time for the Loan Package to be delivered to WHEDA on or before fourteen (14) days after WHEDA confirms the Guarantee Reservation for the Loan. It is the Lender's responsibility to insure that all Loan documentation is fully and accurately completed/executed and that appropriate Loan files are maintained throughout the term of the Loan. Failure to properly document the Loan and/or failure to properly perfect the Lender's security interest in the collateral securing the Loan will invalidate WHEDA's guarantee. WHEDA reserves the right to audit the Lender's Loan file as it may from time to time deem necessary.

The following items must be executed and delivered to WHEDA at closing.

1. Original Promissory Note executed by Borrower, adhering to CROP requirements regarding Loan amount, interest rate, maturity date and requiring monthly or quarterly principal payments except in cases where the Borrower will receive a future lump-sum payment in connection with the sale of the Agricultural Commodity financed with the proceeds of the Loan (e.g., a cash crop operation).
2. Lender's Disbursement Record (Form 5)
3. Borrower's Affidavit (Form 6), completed and signed by the Borrower
4. Lender's Warranty (Form 7), completed and signed by the Lender.

In Addition to any other Loan Documentation the Lender may require to close the loan, the following items must be maintained in the Lender's Loan file as applicable:

1. Farm Security Agreement or Production Credit Association Security Agreement executed by the Borrower, covering the collateral that will secure the repayment of the Loan.
2. Farm Products Notice shall be sent by Lender to each buyer of the Borrower's farm products which serve as collateral for the Loan.
3. Dairy Assignment executed by Borrower, Lender and the Borrower's dairy plant operator if the Loan proceeds will be used to fund dairy operation inputs which will be secured by the feed or other collateral that will be depleted by the maturity date of the Loan (or the collateral value at Loan maturity will be less than collateral value at Loan origination).
4. UCC Financing Statements showing Borrower as debtor, Lender as secured party and containing an accurate description of the collateral securing th which has been filed with the Wisconsin Department of Financial Institutions and/or the Office of the Register of Deeds for the County in which the collateral is located.
5. Borrower's Balance Sheet (signed by Borrower and dated within ninety (90) days of the Loan closing).
6. Borrower's Cash Flow Budget Worksheet (Form 4), signed by the preparer of the Cash Flow Budget Worksheet. If off-farm income and expenses are included in the Cash Flow Budget, the income and expense must be verified with documentation acceptable to Lender.
7. Proof of Insurance for a policy which protects the Agricultural Commodity and any of the other goods and/or personal property to be financed with the proceeds of the Loan against risk of loss, and the proceeds of which are payable to the Participating Lender.

8. Borrower's previous two (2) years' income and expense statements or federal income tax returns (with supporting schedules).

9. Environmental questionnaires or other evidence of environmental matters/issues related to the farm should be included in the Loan file. The Lender bears absolute responsibility for assuring itself that no environmental issues exist which would cause impairment to the collateral securing the Loan.

## **E. SUBMITTING A LOAN PACKAGE**

### **Loan Package Due Date**

Within fourteen (14) days of (i) receiving WHEDA's confirmation of a Guarantee Reservation with respect to a Loan or (ii) the Loan closing (in the event the Lender has not submitted a Guarantee Reservation to WHEDA with respect to the Loan), the Lender must submit a Loan Package to WHEDA for review. Loan Packages received later than fourteen (14) days after WHEDA's receipt of the Guarantee Reservation or Loan closing (if no Guarantee Reservation has been submitted) will not be accepted by WHEDA.

### **WHEDA Review Timeframe**

WHEDA will review and process the Loan Package within five (5) business days of receipt and notify the Lender of its decision to approve or reject the Loan for inclusion in the CROP Program. Should any required documentation be missing from the Loan Package, review of the Loan Package will be deferred. A WHEDA representative will contact the Lender and the Lender will then have five (5) business days to submit the missing items. Failure to submit the missing item(s) within said five (5) business days will result in WHEDA's cancellation of the Guarantee Reservation for the Loan.

### **Loan Package Contents:**

A complete Loan Package must include all of the following:

1. Guarantee Reservation (if not previously submitted to WHEDA). (Form 3)
2. Copy of Promissory Note signed by Borrower evidencing the Loan.
3. Lender's Disbursement Record. (Form 5)
4. Borrower's Affidavit (Form 6)
5. Lender's Warranty (Form 7).

## **F. APPLICATION FEE**

Upon acceptance of a Loan for the CROP Program, WHEDA shall collect an application fee in an amount equal to two percent (2.0%) of the guarantee amount of the Loan, provided, however, the minimum application fee for any Loan is Five Hundred Dollars (\$500) and the maximum of \$2,500. WHEDA will initiate an electronic payment of the application fee from Lender's account in accordance with the Lender's ACH Form. The Application fee is non-refundable.

## **G. WHEDA GUARANTEE AMOUNT**

**Ninety Percent (90%) Guarantee.** If the aggregate principal amount of Loan(s) to a Borrower is less than One Hundred Thousand Dollars (\$100,000), WHEDA will guarantee ninety percent (90%) of the Guaranteed Loan(s).

**Eighty Percent (80%) Guarantee.** If the aggregate principal amount of Loan(s) to a Borrower is One Hundred Thousand Dollars (\$100,000) or more, WHEDA will guarantee eighty percent (80%) of the Guaranteed Loan(s).

The guarantee percentage is determined by using the Loan amount that is indicated in the Guarantee Reservation and corresponding promissory note, rather than the actual amount disbursed by the Lender at the Loan closing. If multiple Guaranteed Loans are advanced to a Borrower in a given year, all such Loans will be covered under the same percentage of guarantee. *Example: Initial Guaranteed Loan under \$100,000 has a 90% guarantee. Subsequent Guaranteed Loans in the same year, to the same Borrower, result in an aggregate Loan amount which is greater than \$100,000. Once the \$100,000 threshold has been reached or surpassed, the guarantee percentage for all Guaranteed Loans (to the same Borrower) become 80%.*

## **H. LENDER'S DISBURSEMENT OF LOAN PROCEEDS**

Lender shall not disburse the proceeds of the Loan to the Borrower. Instead, the Borrower shall submit a Loan disbursement request to Lender prior to the Loan closing. The Borrower's Loan disbursement request should include copies of all invoices, bills and other requests which are to be paid with the Loan proceeds. Outstanding bills and invoices which are to be paid with the Loan proceeds may not be past due or otherwise delinquent. The Lender must make payments directly to the payee/supplier on behalf of the Borrower. All amounts paid by the Lender (including expenses incurred by the Borrower prior to Loan origination) must be included in the Lender's Disbursement Record (Form 5).

Total disbursements by the Lender may not exceed the total Loan amount. Loan proceeds may not be used to pay previously outstanding credit (except as provided under Section J) or to pre-pay the following year's expenses.

WHEDA will require evidence of proper disbursement of Loan proceeds (for eligible CROP uses) if a request for guarantee payment is made by the Lender after Loan default.

## **I. MULTIPLE LOANS**

### **Underwriting and Eligibility**

A Borrower may obtain multiple Guaranteed Loans in any given calendar year, provided that the aggregate amount of guarantees to a Borrower does not exceed \$250,000 and, further, provided, the Borrower is current on its existing Guaranteed Loan(s) and otherwise not in default under the documents evidencing his/her/its existing Guaranteed Loan(s). All Loan underwriting and eligibility requirements set forth in this Manual shall apply to the Lender's advance of any additional Loan.

### **Guaranty Amount Increase Request**

Prior to advancing any additional Loan, Lender must submit a Guarantee Amount Increase Request (Form 8) to WHEDA. Upon WHEDA's receipt of the Guarantee Amount Increase Request, WHEDA will confirm its receipt to the Lender and commit to guarantee the additional Loan up to the stated principal amount of the additional Loan subject to receipt from the Lender within fourteen (14) days, of a complete Loan Package for the additional Loan (which must include a separate Promissory Note evidencing the additional Loan).

## **Additional Application Fee**

If WHEDA agrees to guarantee an additional Loan to a Borrower, an additional application fee may be due and payable to WHEDA under the following circumstances:

- If the additional Loan causes the aggregate guarantee amount to exceed \$25,000, an additional application fee in an amount equal to two percent (2%) of the guarantee amount in excess of \$25,000 will be due and payable via electronic transfer to WHEDA.
- If the guarantee amount of the loan prior to the additional Loan was in excess of \$25,000, an additional application fee in an amount equal to two percent (2%) of the entire additional principal amount will be due and payable via electronic transfer to WHEDA.
- No additional application fee will be due to WHEDA if the aggregate guarantee amount of the Loans is less than \$25,000.
- In all cases, the maximum application fee will not exceed \$2,500.

## **J. REFINANCING A GUARANTEED LOAN**

The proceeds of a Loan may be used to refinance a prior year's Guaranteed Loan if at least sixty percent (60%) of the principal amount of the Guaranteed Loan to be refinanced has been repaid. A Borrower may not refinance any other debt with the proceeds of a Guaranteed Loan.

The refinanced portion of a previous year's Guaranteed Loan must be indicated as such in the Lender's Guarantee Reservation for the current year. Refinancing of a Guaranteed Loan will be permitted for a maximum of two (2) consecutive years.

Example: Year 1: Borrower obtains a \$30,000 Guaranteed Loan.

Year 2: Borrower refinances \$12,000 of Year 1's Guaranteed Loan and borrows an additional \$48,000 (Total Guaranteed Loan = \$60,000).

Year 3: Borrower refinances \$24,000 of Year 2's Guaranteed Loan and borrows an additional \$36,000.

Year 4: Borrower may not refinance any portion of Year 3's Guaranteed Loan and may not request an additional Guaranteed Loan until the Year 3 Guaranteed Loan is paid in full.

## **SERVICING**

### **A. SERVICING DEFINITION**

Lender shall hold and service each Loan throughout its term. Servicing of each Guaranteed Loan shall be conducted in accordance with Lender's normal, prudent Agricultural Production Loan servicing standards.

### **B. COLLECTIONS**

Lender shall collect from the Borrower all payments of principal and interest on each Guaranteed Loan as they become due. Proceeds from the sale of an Agricultural Commodity which are intended to repay a Guaranteed Loan may not be redirected or refunded to the Borrower nor may proceeds of a Dairy Assignment be redirected or refunded to the Borrower. Loans may be prepaid in full or in part at any time without penalty. Upon receipt from the Borrower of payment in full of a Guaranteed Loan, Lender shall notify WHEDA in writing.

### **C. LOAN MODIFICATIONS**

The Lender shall obtain approval from WHEDA prior to modifying the terms of any Guaranteed Loan by submitting to WHEDA a Loan Modification Request (Form 9). WHEDA will respond within five (5) business days of receiving the Loan Modification Request. If the request to modify the Guaranteed Loan is approved by WHEDA, the Lender may modify only the Loan terms approved by WHEDA. Any Loan modification not approved by WHEDA will invalidate WHEDA's guarantee of the Loan.

### **D. DUTY TO KEEP WHEDA INFORMED**

Lender shall promptly notify WHEDA of the following events/occurrences by delivering to WHEDA a Loan Status Notification (Form 10) within fourteen (14) days of obtaining knowledge of such events/occurrences:

- Payment delinquencies;
- Borrower or guarantor bankruptcy filings;
- Death of a Borrower or guarantor;
- Other Loan defaults or events which are likely to become Loan defaults with the giving of notice or passage of time.

In addition, prior to exercising any rights or remedies under the Loan documents evidencing a Guaranteed Loan, Lender shall notify WHEDA of its intended course of action and obtain WHEDA's consent to taking remedial action against the Borrower. Lender's failure to timely notify WHEDA of the matters outlined in this Section and/or Lender's failure to obtain WHEDA's consent to remedial action with respect to a Guaranteed Loan will invalidate WHEDA's guarantee of the Loan.

### **E. WHEDA Access to Loan Files and Status UPDATE REQUESTS**

From time to time, during the term of a Guaranteed Loan, WHEDA may request access to the Lender's Loan file for said Loan and/or an updated Loan Status Notification. Lender shall accommodate such requests on a timely basis.

## **DELINQUENT LOANS AND DEFAULTS**

### **A. NOTICES TO THE BORROWER**

In the event a Loan becomes delinquent or otherwise in default, Lender shall send to the Borrower Lender's standard delinquency or default notice according to Lender's usual timetable for sending such notices, but in no event shall the notice be sent later than the 15th day following the date the Loan became delinquent or in default. Lender shall follow such notice with other standard collection procedures until the Loan payments are current. Copies of all delinquency and default notices sent to the Borrower should also be sent to each person who signed the Loan documents, and when the Borrower is a married individual, to the Borrower's spouse. Lender shall immediately notify WHEDA in writing of each Guaranteed Loan which is delinquent or in default using a Loan Status Notification (Form 10). Thereafter, Lender shall send WHEDA a Loan Status Notification on such Loan each quarter, or more frequently as requested by WHEDA, until such Loan is paid in full or becomes current.

### **B. COLLECTION EFFORTS**

Lender shall pursue to the fullest extent possible any and all reasonable alternatives for collecting each Loan which becomes delinquent or is in default including, but not limited to, filing suit against the Borrower for collection and foreclosure of the Lender's security and levying against all of the Borrower's assets for collection of any deficiency judgment.

Notwithstanding the terms of any promissory note evidencing a Loan or any other loan agreement between Borrower and Lender, any and all funds collected by Lender from the Borrower (and/or any guarantor) shall be applied by Lender first to payment of the outstanding principal balance of the Guaranteed Loan and then, to the extent any funds remain, to the payment of any other amounts the Borrower may owe Lender. In furtherance of the foregoing, Lender shall apply the proceeds of the collateral for the Guaranteed Loan against the outstanding principal balance of the Guaranteed Loan prior to applying such proceeds against the outstanding balance of any other amounts the Borrower may owe the Lender.

NOTE: When pursuing legal action against a Borrower, any costs and expenses (including Lender's legal fees) incurred by the Lender shall remain the sole responsibility of the Lender. WHEDA is not responsible for such costs and expenses.

### **C. UNPAID INTEREST**

Notwithstanding the terms of any promissory note evidencing a Loan or any other loan agreement between Borrower and Lender, if scheduled payments of principal on a Guaranteed Loan become ninety (90) days or more past due, Lender shall place the Loan on non-accrual status and all future payments received from the Borrower shall be applied only to the outstanding principal balance of the Guaranteed Loan. If the Borrower's collateral is sold, notwithstanding the provisions of this Section, proceeds shall be applied by Lender first to the payment of the outstanding principal amount of the Loan, second to the payment of accrued and unpaid interest on the Loan, and then to the extent any funds remain, to the payment of other loans or amounts owing by the Borrower to Lender.

## **D. BANKRUPTCY**

Within thirty (30) days after the Lender receives notice that a Borrower has filed bankruptcy, the Lender shall send WHEDA a Loan Status Notification (Form 10) and a copy of the Lender's proof of claim timely filed with the bankruptcy court or an explanation as to why no proof of claim was filed. Thereafter, the Lender shall contact WHEDA to discuss WHEDA's requirements with respect to the bankruptcy action and determine when it is appropriate for the Lender to apply to WHEDA for a guarantee payment.

## **E. FORBEARENCE**

If, prior to the initial maturity date of the Loan, the Lender reasonably determines the Borrower is willing and able to continue making Loan payments on a modified basis with respect to a non-performing Loan, it may enter into a Forbearance Agreement with the Borrower as an alternative to commencing legal action against the Borrower and the collateral securing the Loan.

### **Submitting a Forbearance Request**

The Lender shall obtain approval from WHEDA prior to entering into any Forbearance Agreement with respect to a non-performing Guaranteed Loan by submitting to WHEDA a copy of the proposed, unsigned Forbearance Agreement (Form 11) with the Forbearance Package in draft form. WHEDA will review and process the proposed Forbearance Agreement within ten (10) business days of receipt and notify the Lender via fax or e-mail (provided a secure e-mail delivery method is used) of its decision to approve or deny approval of the Forbearance Agreement. If the Forbearance Agreement is approved by WHEDA, the Lender may execute the Forbearance Agreement with the Borrower and amend and restate the original promissory note evidencing the Guaranteed Loan in accordance with the forbearance terms approved by WHEDA. If approval of a Forbearance Agreement is denied by WHEDA, Lender must pursue all reasonable alternatives for collection of the Loan in accordance with the provisions of this Section prior to submitting Guarantee Payment Request (Form 12) to WHEDA. Entering into a Forbearance Agreement not approved by WHEDA will invalidate WHEDA's guarantee of the Loan.

### **Loans Eligible for Forbearance**

A Loan will be eligible for forbearance if, prior to the initial maturity date of the Loan, WHEDA has approved the Lender's proposed, unsigned Forbearance Agreement and all of the following apply:

1. The Forbearance Agreement applies only to the outstanding principal balance of the non-performing Loan. Unpaid accrued interest and/or Lender fees must be excluded from the terms of the Forbearance Agreement.
2. An amended and restated promissory note evidencing the outstanding principal balance of the Loan subject to the Forbearance Agreement has been executed by the Borrower.
3. The amended and restated promissory note includes the following language: *This amended and restated promissory note amends and restates a certain **\*[insert \$ amount of original note]\*** promissory note dated **\*[insert date]\*** executed by Borrower to Lender (the "Original Note"), is a continuation of existing indebtedness and is not a novation or satisfaction of the indebtedness evidenced by the Original Note.* (If multiple Guaranteed Loans were advanced to the Borrower in a given year, then the outstanding principal balance of all Loans should be consolidated so that all Loans are evidenced by a single

amended and restated promissory note.)

4. Neither the term of the Forbearance Agreement nor the term of the amended and restated promissory note exceeds twelve (12) months.
5. Amended amortization period does not exceed five (5) years.
6. Monthly payments of principal and interest are due and payable under the Forbearance Agreement and the amended and restated promissory note. Interest-only payments are not permitted.
7. The per annum rate of interest on the Loan during the forbearance period (inclusive of any fees payable to Lender) does not exceed twelve percent (12%) per annum.
8. Full or partial prepayment of the Loan is permitted; no prepayment fees are due or payable in connection with any prepayment of the Loan.

### **Forbearance Fee**

A forbearance fee in the amount of Six Hundred Dollars (\$600) is due and payable to WHEDA at the time the Forbearance Request is submitted to WHEDA. WHEDA will initiate an electronic payment of the forbearance fee from Lender's account in accordance with the Lender's ACH Form. The forbearance fee is non-refundable.

### **Delivery of Forbearance Package**

If a Forbearance Agreement is approved by WHEDA, Lender shall deliver a complete Forbearance Package to WHEDA within fourteen (14) days of WHEDA's approval. A complete Forbearance Package must include:

- Copy of fully executed Forbearance Agreement between the Borrower and the Lender.
- Copy of fully executed Amended and Restated Promissory Note.
- Copy of the original security agreement, UCC filing statement and renewals, Lender's Disbursement Record (Form 5), proof of insurance, dairy assignment if applicable and other items as requested by WHEDA.
- Borrower's Balance Sheet signed by Borrower and dated within ninety (90) days of the Forbearance Request.
- Borrower's financial statements (income and expense statements) signed by Borrower and dated within ninety (90) days of the Forbearance Request.

### **Forbearance Expiration**

If a Borrower is unable to pay a Guaranteed Loan in full upon expiration of the Forbearance Agreement, the Lender may, within thirty (30) days following the expiration of the Forbearance Agreement, (i) request WHEDA's approval of a second forbearance provided the request is made in accordance with all forbearance requirements contained in this Manual, or (ii) commence legal action against the Borrower and the collateral securing the Loan. Failure to timely submit a request for a second forbearance period or commence legal action against the Borrower and the collateral securing the Loan will invalidate WHEDA's guarantee of the Loan.



## **F. REQUEST FOR GUARANTEE PAYMENT**

Lender may submit to WHEDA a Guarantee Payment Request (Form 12) with respect to any delinquent or defaulted Guaranteed Loan for which a principal balance remains outstanding after all collection procedures have been exhausted. Lender shall make every reasonable effort to collect the Guaranteed Loan prior to submitting the Guarantee Payment Request. Lender's claim for guarantee payment will not be paid until WHEDA has received and approved a complete Guarantee Payment Request Package.

### **Guarantee Payment Request Package**

A complete Guarantee Payment Request Package shall include:

- Guarantee Payment Request (Form 12).
- Copy of Judgment against Borrower or proof of claim if Borrower has filed bankruptcy (unless Lender has been instructed by the court not to file a proof of claim – then submit copy of bankruptcy notice).
- Lender's Disbursement Record (Form 5) for the Loan.
- Lender's internal system generated Loan payment history.
- Written explanation of (A) why the Borrower was unable to pay the Loan and (B) the final disposition of the collateral and collateral sale proceeds.
- Income and expense statement and balance sheet current within 90 days.
- List of lien holders and amount owed to creditors holding a lien on assets also pledged to the Guaranteed Loan.
- Copies of UCC filing statements, security agreements and other collateral documents securing the Guaranteed Loan.

### **Guarantee Payment**

WHEDA will pay to the Lender the appropriate guarantee percentage of the outstanding principal balance of the Guaranteed Loan. Prior to making the guarantee payment, WHEDA will review the Lender's Loan file and all Loan documentation to verify compliance with the CROP requirements. To the extent the Guaranteed Loan fails to meet any requirements of CROP set forth in this Manual or otherwise established by WHEDA and incorporated in the forms referred to and referenced herein, WHEDA's guarantee shall be null and void and no guarantee payment shall be made by WHEDA. After a guarantee payment has been made by WHEDA with respect to a Guaranteed Loan, the Borrower (and any persons with an ownership interest in the Borrower) will not be eligible for participation in any WHEDA programs (unless and until the Borrower repays WHEDA in full).

## **Forms**

- CROP 1 Participating Lender's Agreement and Branch Rider (PLA)
- CROP 2 ACH Agreement
- CROP 3 Guarantee Reservation
- CROP 4 Cash Flow Budget Worksheet
- CROP 5 Lender's Disbursement Record
- CROP 6 Borrower's Affidavit
- CROP 7 Lender's Warranty
- CROP 8 Guarantee Amount Increase Request
- CROP 9 Loan Modification Request
- CROP 10 Loan Status Notification
- CROP 11 Forbearance Agreement
- CROP 12 Guarantee Payment Request