

**CHAPTER 25-10  
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### § 25-10-2265 Adoption and Amendment of By-laws

Chapter Authority: 4 CMC §§ 10203(a)(2), 10305(b)(1).

Chapter History: Amdts Adopted 41 Com. Reg. 42808 (Sept. 28, 2019); Amdts Proposed 41 Com. Reg. 42713 (July 28, 2019); Amdts Adopted 36 Com. Reg. 34698 (Feb. 28, 2014); Amdts Proposed 35 Com. Reg. 34329 (Sept. 28, 2013); Amdts Adopted 36 Com. Reg. 34696 (Feb. 24, 2014); Amdts Proposed 35 Com. Reg. 34318 (Sept. 28, 2013); Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002) (superseding all previous rules and regulations); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995);\* Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

\*A notice of adoption for the 1995 proposed amendments was never published.

Commission Comment:

History of the Economic Development Loan Fund:

Section 702(c) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States, art. VII § 702(c) (effective March 24, 1976), reprinted in the comment to 48 U.S.C. § 1801, created an Economic Development Loan Fund (EDLF) to receive certain funds provided by the United States government. This fund was a successor to the Trust Territory Economic Development Loan Fund established by Trust Territory Administrative Directive Order 65-2. According to the 1985 “Policies and Regulations for the Economic Development Loan Fund”:

The Trust Territory Economic Development Loan Fund (EDLF) was originally created by Administrative Directive 65-2 in 1964, by the High Commissioner of the TTPI in compliance with U.S. Public Law 88-487 and U.S. Public Law 92-257.

The Trust Territory EDLF functions and operations were transferred to the Commonwealth through Sections 2, 3 and 13 of the Schedule on Transitional matters of the Commonwealth Constitution, and as further manifested by the TTPI-NMG Memorandum of Understanding No. 2. The organization, functions and procedures of the EDLF, as administered in the Commonwealth, were redefined in the EDLF Policy and Procedure Manual (Rules and Regulations), as approved by the Governor of the Commonwealth, which provides among other things, for the administration of the Fund by an Economic Development Loan Fund Board (hereinafter referred to as the Board of Fund). Grant funds received by the Commonwealth pursuant to Section 702(c) of the Covenant which presently are the principal source of funds, and from the TTPI pursuant to Memorandum of Understanding No. 2, are paid into and administered by the Commonwealth Economic Development Loan Fund.

7 Com. Reg. at 3587 (May 21, 1985).

PL 4-49 (effective May 31, 1985), the “Commonwealth Development Authority Act of 1984,” codified as amended at 4 CMC §§ 10101, et seq., vacated Trust Territory Administrative Directive Order 65-2, establishing the Trust Territory Economic Development Loan Fund. See PL 4-49 § 23; see also the comment to 4 CMC § 10101. The act created the Commonwealth Development Authority, empowered the Authority to manage and administer the Economic Development Loan Fund, and transferred all functions powers, duties, funds, contracts, obligations assets and liabilities of the Economic Development Loan Fund existing on May 31, 1985 to the Authority. PL 4-49 §§ 5 and 6, codified as amended at 4 CMC §§ 10201 and 10203; PL 4-49 § 15, codified as amended at 4 CMC § 10407.

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History of the Commonwealth Development Authority Development Corporation Division Rules and Regulations:

The Economic Development Loan Fund first published rules and regulations in 1979. On May 21, 1985, the EDLF published notice of adoption of “Policies and Regulations for the Economic Development Loan Fund” that completely revised the previous rules and regulations. The 1994 rules and regulations of the Commonwealth Development Authority also republished and readopted the former EDLF regulatory program in its entirety. Where applicable, the section histories in this chapter date back to the 1985 revision.

Prior to the 1985 revision, the history of the EDLF rules and regulations is as follows: Amdts Adopted 2 Com. Reg. 913 (Nov. 17, 1980); Amdts Proposed 2 Com. Reg. 841 (July 9, 1980); Amdts Adopted 2 Com. Reg. 914 (Nov. 17, 1980); Amdts Proposed 2 Com. Reg. 475 (Jan. 16, 1980); Amdts Adopted 1 Com. Reg. 434 (Aug. 16, 1979); Amdts Proposed 1 Com. Reg. 345 (July 16, 1979); Amdts Proposed 1 Com. Reg. 216 (May 16, 1979); Adopted 1 Com. Reg. 134 (Feb. 16, 1979); Proposed 1 Com. Reg. 87 (Jan. 16, 1979).

The 2002 “Commonwealth Development Authority Development Corporation Division Rules and Regulations” superceded and replaced all previously issued or amended rules and regulations of the Development Corporation Division. See DCD Rules and Regs. § 1.1, 24 Com. Reg. at 18827 (Jan. 29, 2002), codified at NMIAC § 25-10-001. The 2002 rules and regulations are codified in this chapter. The previous history of each section back to the 1985 rules and regulations is provided in the section comments where applicable.

The 2005 “Commonwealth Development Authority Development Corporation Division Rules and Regulations” superceded and replaced all previously issued or amended rules and regulations of the Development Corporation Division. See DCD Rules and Regs. § 1.1, 27 Com. Reg. at 24745 (Aug. 22, 2005), codified at NMIAC § 25-10-001. The 2005 rules and regulations are codified in this chapter. The previous history of each section back to the 1985 rules and regulations is provided in the section comments where applicable.

### **Part 001 - General Provisions**

#### **§ 25-10-001 Scope**

The rules and regulations in this chapter govern the administration of the Development Corporation Division (“DCD”) of the Commonwealth Development Authority (“CDA”), subject to any limitations set forth in the CDA Act (i.e. 4 CMC §§ 10101, et seq.). This chapter applies to all the activities in which DCD is engaged and supercedes and replaces any and all previously issued or amended rules and regulations of DCD.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

#### **§ 25-10-005 Powers**

As a mandated division of CDA, DCD is hereby invested with those powers reasonably necessary and incidental to the fulfillment of its purposes, which purposes are as outlined in 4 CMC § 10102(b). The powers of DCD include, but are not limited to, those powers

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set forth in 4 CMC § 10203 and are subject only to any limitations set forth in the CDA Act.

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

### **§ 25-10-010 Authority**

The rules and regulations in this chapter are prescribed by virtue of the authority given CDA under 4 CMC § 10203(a)(2) and (a)(30); and are duly published and adopted in accordance with those procedures set forth in the Administrative Procedure Act (1 CMC §§ 9101, et seq.).

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

### **§ 25-10-015 Amendments**

This chapter may be amended from time to time upon recommendation of the Board of Directors and adoption by the CDA Board.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985) (superseding all previous regulations); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-020 Effective Date**

The effective date of the rules and regulations in this chapter shall be as set forth in 1 CMC § 9105(b).

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

### **§ 25-10-025 General Definitions**

Unless the context otherwise requires, in this chapter:

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- (a) “Agriculture.” “Agriculture” means the science, art, and business of cultivating the soil producing crops and raising livestock.
- (b) “Aquiculture.” “Aquiculture” means freshwater farming or hydroponics, the cultivation of plants and the production of crops in water rather than in soil.
- (c) “Board of Directors.” “Board of Directors” means the Board of Directors of DCD.
- (d) “Chairman.” “Chairman” means the Chairman of the Board of Directors.
- (e) “Commonwealth.” Commonwealth means the Commonwealth of the Northern Mariana Islands.
- (f) “EDLF.” “EDLF” means Economic Development Loan Fund.
- (g) “Executive Director.” “Executive Director” means the Executive Director of CDA.
- (h) “Farmer.” “Farmer” means a farm operator, owner or worker who cultivates or produces a crop in water or soil as an occupation.
- (i) “Fisherman.” Fisherman means one who fishes as an occupation.
- (j) “Governor.” Governor means the Governor of the Commonwealth.
- (k) “Loan.” Loan means a delivery by DCD to, and the receipt by a loan applicant of, a sum of money upon agreement by that loan applicant to repay it to DCD with interest.
- (l) “Loan Applicant.” “Loan applicant” means a person, partnership, association, or corporation seeking a loan or guaranty from CDA.
- (m) “Loan Guaranty.” “Loan guaranty” means a promise by DCD to answer for repayment of a debt or performance of an obligation of an applicant, if that applicant is primarily liable to a financial institution other than CDA and fails to make payment or perform the obligation.
- (n) “Mariculture.” “Mariculture” means seawater farming or the cultivation of marine organisms and crops in their natural habitat.
- (o) “Occupation.” “Occupation” means the principal or regular employment or activity in which one engages.
- (p) “Public Auditor.” “Public Auditor” means the Public Auditor of the Commonwealth.

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(q) “Rancher.” “Rancher” means an owner or manager of a ranch who raises livestock as an occupation.

(r) “Renewable Energy.” “Renewable energy” means any energy resource that is naturally regenerated over a short time scale and derived directly from the sun (such as thermal, photochemical, and photoelectric), indirectly from the sun (such as wind, hydropower, and photosynthetic energy stored in biomass), or from other natural movements and mechanisms of the environment (such as geothermal and tidal energy). Renewable energy does not include energy resources derived from fossil fuels, waste products from fossil sources, or waste products from inorganic sources.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 36 Com. Reg. 34696 (Feb. 24, 2014); Amdts Proposed 35 Com. Reg. 34318 (Sept. 28, 2013); Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985) (superseding all previous regulations); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

Commission Comment: The Commission placed defined terms in quotation marks. The 2005 amendments added new subsections (b) and (n), redesignated the remaining subsections accordingly and amended subsection (h). The 2014 amendments added subsection (r).

The Commission inserted a comma after the word “photochemical” in subsection (r) pursuant to 1 CMC § 3806(g). The Commission corrected the capitalization of the word “energy” in subsection (r) pursuant to 1 CMC § 3806(f).

### **Part 100 - Board of Directors**

Commission Comment: The Board of Directors’ By-laws, adopted at 36 Com. Reg. 34698 (Feb. 28, 2014), contains regulations that conflict with portions of this part. The by-laws did not repeal this part, but to the extent that the regulations conflict, this part is superseded.

#### **§ 25-10-101 Composition of the Board**

The affairs of DCD shall be governed and controlled by the Board of Directors, which shall be composed of the seven members of the CDA Board of Directors; members of the Board of Directors shall serve until their terms of office with the CDA Board expire.

Modified, 1 CMC § 3806(e).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

#### **§ 25-10-105 Quorum, Manner of Acting**



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Five members of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The act of the majority of the members present at a meeting at which a quorum is present shall be the act of the Board of Directors. A member who is unable to attend a particular meeting may authorize in writing another member in attendance to cast the absent member's vote upon any item of business properly noticed. This proxy representation may not be used for more than three consecutive meetings and may not be used to establish a quorum.

Modified, 1 CMC § 3806(e).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-110 Board Leadership**

At the first meeting of each year, the Board of Directors shall elect a Chairman and Vice Chairman from amongst their members as the first item of business at that meeting. A member elected shall serve a one year term or until his or her term as a member of the Board of Directors ends, whichever is less. A member may be elected for successive terms. Any vacancies in leadership created by resignation, removal or death shall be filled by election at the next regular or special meeting called for that purpose.

Modified, 1 CMC § 3806(e).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-115 Chairman**

The Chairman shall preside over the meetings of the Board of Directors. He or she shall also have such powers and shall perform such duties as may from time to time be specified in resolutions or other directives of the Board of Directors. In the absence of such specifications, he or she shall have the necessary powers and authority and shall perform and discharge the duties normally associated with chairmen of similar public corporations.

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

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The Vice Chairman shall assume the duties and responsibilities of the Chairman in his or her absence; and shall also have such powers and shall perform such duties as may from time to time be specified in resolutions or other directives of the Board of Directors.

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

### § 25-10-125 Resignation

A member may resign at any time by delivering written notice of his or her resignation to the Chairman of the Board of Directors. Written notice must also be provided the Governor if he or she is also resigning from the CDA Board. The acceptance of such resignation shall not be necessary to make it effective and shall take effect at the time specified therein. Upon resignation, the member shall cease to sit on the Board of Directors and shall not be included in any quorum count.

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### § 25-10-130 Removal

A member may only be removed before the expiration of his or her term by the Governor and on grounds of gross neglect or dereliction of duty, breach of fiduciary duty, conviction of a felony or mental or physical incapacity. Upon removal, the member shall cease to sit on the Board of Directors and shall not be included in any quorum count.

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### § 25-10-135 Quarterly Meetings

The Board of Directors shall meet at least once each quarter at a time and place designated by the Chairman. An agenda for and notice of the meeting shall be delivered to each member at least fourteen days prior to the meeting.

Modified, 1 CMC § 3806(e).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

**§ 25-10-140 Special Meetings**

The Chairman may convene other or special meetings of the Board of Directors on forty-eight hours written notice to each member, which notice shall include the proposed agenda and the time and place for the meeting.

Modified, 1 CMC § 3806(e).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

**§ 25-10-145 Open and Closed Meetings**

All meetings of the Board of Directors shall be open to the public during discussion of policies, procedures, administrative and other non-confidential matters; and shall be closed to the public during discussion of personnel, financial, credit confidences, or any other privileged information related to or concerning loan applicants, projects and other matters of a confidential nature.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

**§ 25-10-150 Action Without Meeting**

For urgent or in emergency situations, any action required or permitted to be taken at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed and approved by at least five members. Such consent shall have the same force and effect as shall be as binding as if the same had been acted upon or consented to at a meeting of the Board of Directors duly convened and held.

Modified, 1 CMC § 3806(e).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

**§ 25-10-155 Minutes of Meeting**

The Board of Directors shall cause to be kept written minutes of the proceedings of each of its meetings. The Board of Directors shall designate a secretary to keep its minutes and records who may or may not be a member of the Board of Directors.

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History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-160 Compensation**

The members of the Board of Directors shall be compensated pursuant to 1 CMC § 8247 and may be reimbursed in accordance with the Commonwealth law for any reasonable and necessary expenses incurred in the performance of their duties.

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-165 Disclosure of Conflict**

Any member who is directly or indirectly interested in any arrangement, transaction or business matter entered into, proposed or under consideration by the Board of Directors shall, as soon as possible after the relevant facts have come to his or her attention, disclose the nature of the interest to the Board of Directors. Any disclosure shall be recorded in the minutes of the meeting and, except as otherwise provided by a resolution, the conflicted member shall not take part after the disclosure in any deliberation or decision relating thereto, but may be counted as present for the purpose of forming a quorum for any such deliberation or decision. A willful failure to disclose a conflict of interest shall be a breach of duty and cause for immediate removal of the member from the Board of Directors.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-170 Contracting Authority**

The Executive Director and the Chairman, or the Vice Chairman if the Chairman is absent, shall have the contracting authority for all matters pertaining to the operations of DCD, including, but not limited to, execution of loan documents, guarantees and other necessary agreements, contracts and checks. In the absence of the Chairman and Vice Chairman, the Chairman or Vice Chairman of the CDA Board of Directors is authorized to act in his or her stead. At all times, the contracting officers shall comply with applicable procurement regulations.

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History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **Part 200 - Duties of the Board**

#### **§ 25-10-201 Oversight Authority**

The Board of Directors shall oversee the administration of all loans and other fund allocations to ensure that there is compliance with all loan agreement provisions and fulfillment of the statutory purposes of DCD and those duties set forth in this chapter.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

#### **§ 25-10-205 Loan Decisions and Approval**

Pursuant to 4 CMC § 10306(a)(4) and delegation by the CDA Board, the Executive Director may review, reject, approve and make all decisions concerning loan or loan guaranty applications of up to \$25,000 per loan applicant. A report of all loans so handled shall be included by the Executive Director in his or her quarterly reports to the Board of Directors. See § 25-10-1410. All loan or loan guaranty applications of more than \$25,000 per loan applicant shall be reviewed by the Executive Director and then shall be submitted to the Board of Directors for all necessary approvals, disapproval or decisions relating thereto.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

#### **§ 25-10-210 Annual Reports**

The Board of Directors shall prepare a report of its activities at the end of each fiscal year and shall submit the same to the CDA Board of Directors for incorporation into the CDA annual report to be forwarded to the Governor and Legislature.

Modified, 1 CMC § 3806(f).

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History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### § 25-10-215 Operating Budget

The Board of Directors shall prepare an annual operating budget for DCD and shall submit such budget for approval by the CDA Board of Directors.

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### § 25-10-220 Policies

As it deems it necessary, the Board of Directors may by resolution make policies regarding all DCD matters including, but not limited to, matters discussed in this chapter, loan applications, documents, forms, fees and administration, the form and manner of accepting and making payments; and the manner in which specific documents and notices are served and received by DCD.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

## Part 300 - Officers

Commission Comment: The Board of Directors' By-laws, adopted at 36 Com. Reg. 34698 (Feb. 28, 2014), contains regulations that conflict with portions of this part. The By-laws did not repeal this part, but to the extent that the regulations conflict, this part is superseded.

### § 25-10-301 CDA Officers

The Executive Director and Comptroller of CDA shall also serve as the officers of DCD and shall exercise those duties and powers given to them under 4 CMC § 10306 for the benefit of DCD. The Executive Director shall be the officer primarily responsible to oversee, monitor and administer the DCD loans, subject to consultation with the loan manager and the DCD Board as directed by this chapter and in accordance with established policy and procedure.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15,

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1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-305 Delegation of Duties**

The Board of Directors may from time to time delegate to an officer or its officers any of its power or authority given under the rules and regulations in this chapter. Any officer to whom any powers or authority is so delegated may exercise the same in the same manner and with the same effect as if they had been conferred on him or her directly by this chapter.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

## **Part 400 - Loan Eligibility and Availability**

### **§ 25-10-401 Eligibility Policy**

It is the policy of DCD that it shall not compete with any private banks or other financial institutions in the funding of private economic projects. It is, therefore, recommended that borrowers first seek financial assistance from established banks and other financial institutions before submitting a loan application to DCD.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

### **§ 25-10-405 Persons**

Eligible loan applicants who are persons must be United States citizens or nationals and must have been domiciled in the Commonwealth for at least two continuous years immediately preceding the submission of their loan application.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

**§ 25-10-410 Partnerships and Associations**

Eligible loan applicants who are partnerships or associations must be wholly owned by United States citizens or nationals who have been domiciled in the Commonwealth for at least two continuous years immediately preceding the submission of the loan application.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

**§ 25-10-415 Corporations**

Eligible loan applicants who are corporations must be organized under the laws of the Commonwealth and at least fifty-one percent of their capital stock issued, outstanding and entitled to vote must be owned and held by United States citizens or nationals who have been domiciled in the Commonwealth for at least two continuous years immediately preceding the submission of the loan application; and must distribute profits to its stockholders in direct proportion to the number of shares held by each stockholder.

Modified, 1 CMC § 3806(e).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

**§ 25-10-417 Limited Liability Companies**

Eligible loan applicants who are limited liability companies (LLCs) must be wholly owned by United States citizens or nationals who have been domiciled in the Commonwealth for at least two continuous years immediately preceding the submission of the loan application.

History: Adopted 36 Com. Reg. 34696 (Feb. 24, 2014); Proposed 35 Com. Reg. 34318 (Sept. 28, 2013).

Commission Comment: The Commission corrected the capitalization of the words “loan applicants” pursuant to 1 CMC § 3806(f). The Commission struck the figure “2” pursuant to 1 CMC § 3806(e).

**§ 25-10-420 Farmer, Rancher, Fisherman**

Eligible loan applicants who are farmers, ranchers, or fishermen must be, by definition and occupation, farmers, ranchers, or fishermen.

Modified, 1 CMC § 3806(f).



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History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

Commission Comment: The Commission inserted a comma after “ranchers” in the second sentence pursuant to 1 CMC § 3806(g).

### § 25-10-425 Farm and Ranch Loans

A farm or ranch loan is a loan that uses funds reserved for farmers, fishermen, agricultural and marine cooperatives in Covenant § 702(c), and that is made for the purpose of: purchasing farm and ranch equipment such as tractors, plows and other attachments for tractors, tillers, hand tools, related shop tools, repair parts, seeds, plants, fertilizers, farm chemicals, planters, livestock and poultry or specialized equipment and fixtures designed solely for the raising of crops, livestock, poultry or egg production, building shelters for farm machinery, livestock or poultry, or providing reasonable, one-time, start-up operating funds. The foregoing is not to be interpreted as an all comprehensive list and is subject to expansion by the Board of Directors. A farm or ranch loan may or may not be made for the purpose of mariculture or aquiculture activities. Over the road vehicles such as trucks and pick-ups may be included in a farm or ranch loan; however, such vehicles must be used at least sixty percent of the time (in hours) for actual farming and ranching activities. Sedans and other enclosed motor vehicles, such as extra cab pick ups, shall not be included.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

### § 25-10-430 Fishing Loans

A fishing loan is a loan that uses funds reserved for farmers, fishermen, agricultural and marine cooperatives in Covenant § 702(c), and that is made for the purpose of: purchasing boats, boat trailers, ships, fishing gear, safety equipment, ship-to-shore radios, cooler boxes and other directly related fishing equipment, or providing reasonable, one-time, start-up operating funds. Fishing loans are limited to commercial fishing ventures, sport fishing does not qualify. Over the road vehicles such as trucks and pick ups may be included in a fishing loan; however, such vehicles must be used at least sixty percent of the time (in hours) for actual fishing activities, such as the launching or dry storage of fishing boats. Sedans and other enclosed motor vehicles, such as extra cab pick ups, shall not be included.

Modified, 1 CMC § 3806(e), (f).

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History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

### **§ 25-10-435 Commercial Loans**

All loans that are not considered farm, ranch, or fishing loans are considered commercial loans.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

Commission Comment: The Commission inserted a comma after the word “ranch” pursuant to 1 CMC § 3806(g).

### **§ 25-10-440 All Loans Callable**

The repayment terms for all loans shall not be more than thirty years and shall be callable every five years, but the repayment terms must be fully amortized over the total period given. Upon the first five years maturity and for term continuance on the remainder of the given period, the loan manager and the Executive Director must determine that there is sufficient cash flow for debt service requirement and that the loan is not subject to any adverse financial condition before allowing said loan to continue until again callable five years hence.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005).

### **§ 25-10-445 Percentage of Available Cash, Direct Loan**

DCD shall not make any direct loan if, at the time for approval, such loan would exceed twenty-five percent of the total uncommitted cash then available to loan applicants under the particular category of loans for which the loan applicant applied.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

**§ 25-10-450 Percentage of Available Cash, Loan Guaranty**

DCD shall not guarantee any bank loan or participate in any loan guaranty if, at the time for approval, such loan guaranty would exceed twenty-five percent of total uncommitted cash then available to loan applicants under the particular category of loans for which the loan applicant applied.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

**§ 25-10-455 Percentage of Available Cash, Exceptional Cases**

In exceptional cases meriting special consideration, the limits set forth in §§ 25-10-445 and 25-10-450 may be exceeded provided the loan or loan guaranty is of high economic benefit to the Commonwealth (as determined by a statement on economic priorities issued by CDA) and the loan is fully and sufficiently secured. In such exceptional cases, DCD may enter into a syndicated financial arrangement in an effort to limit the exposure of DCD to only twenty-five percent of its then uncommitted cash.

Modified, 1 CMC § 3806(c), (e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

**§ 25-10-460 Ancillary Services**

DCD may provide ancillary services to a borrower, in connection with a loan or other financing activities by DCD, when it would not be practical for such services to be provided by another financing institution.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

**Part 500 - Creditworthiness and Restrictions**

**§ 25-10-501 Determination of Creditworthiness**

In all cases, the Board of Directors shall be responsible for determining the creditworthiness of each loan applicant.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

**§ 25-10-505 Requirements and Criteria**

In making its determination, the Board of Directors must evaluate the loan application based on the following general credit requirements and credit underwriting criteria:

- (a) The loan applicant must be of good financial and moral character;
- (b) Evidence pertaining to the credit worthiness of the loan applicant obtained under the Fair Credit Reporting Act (15 U.S.C. § 1681) or other applicable laws;
- (c) The loan applicant must demonstrate an ability to operate a successful business;
- (d) The loan applicant must be willing to provide DCD with evidence of a reasonable investment of equity in cash or in-kind of not less than twenty percent of the total project cost to ensure that the loan applicant has an appropriate stake in the venture;
- (e) The loan applicant must show that the proposed loan is of sound business and economic potential to the respective community in which it will operate; and
- (f) The loan applicant must show that the past earning, if any, and future prospects and potential earnings of the business or project indicates the ability to repay the loan and other fixed debt, if any, out of earnings.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

**§ 25-10-510 Restrictions**

No loan applicant shall be qualified or granted a loan if:

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- (a) The loan applicant was a controlling shareholder or a manager of an association or a corporation that, at any time during the three years immediately preceding the filing of the loan application and during the period of control or management by the loan applicant, had been adjudicated bankrupt, filed for bankruptcy, or been placed under receivership;
- (b) The loan applicant is in default of any debt, loan or any financial obligation at the time of filing the loan application or if the loan applicant has a record of defaulting on previous loans or other credit extensions without justification;
- (c) Within three years of the date of the loan application, any property of the loan applicant was actually foreclosed upon, or taken and sold at foreclosure sale to satisfy any debt owed to a creditor by the loan applicant;
- (d) The loan proceeds are to be used for a hobby, personal entertainment, or personal pleasure; or
- (e) The loan is not fully secured by sufficient securities or collateral.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

Commission Comment: The 1998 amendments amended subsection (a). The Commission inserted commas after the phrases “filed for bankruptcy” in subsection (a) and “personal entertainment” in subsection (d) pursuant to 1 CMC § 3806(g).

### **§ 25-10-515 Additional Restrictions**

In addition to the above restrictions, the Board of Directors shall not make or approve a loan or loan guaranty:

- (a) If funds are otherwise available on reasonable terms from other sources, including but not limited to personal resources, commercial banks, savings and loan associations and credit unions. Evidence that such funds are not available shall be in the form of at least three declination letters from three other sources, each stating that the applicant was denied a loan for reasons other than:
  - (1) An incomplete application,
  - (2) Insufficient security,
  - (3) Insufficient documentation, or
  - (4) Bad credit.
- (b) If loan proceeds are to be used for illegal and/or immoral activities;

- (c) For the purpose of refinancing a debt not connected with the loan;
- (d) For the purpose of providing short term financing, except as necessary in connection with medium or long-term assistance by DCD.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

Commission Comment: The 2005 amendments amended subsection (a) and added new subsections (a)(1) through (a)(4).

## **Part 600 - Loan Application Requirements and Review**

### **§ 25-10-601 Application Review**

Loan applications shall be considered and reviewed only after they are complete. A loan application shall not be considered complete until all necessary documents, including, but not limited to, security and collateral documents and government permits, have been obtained and received and all applicable fees have been paid.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

Commission Comment: The Commission inserted the final period.

### **§ 25-10-605 Application Documents**

For all loans and the continuance of all loans, the loan manager and the Executive Director shall ensure that the following loan documents, as applicable, are obtained:

- (a) A certification letter from the loan manager to the Executive Director that he/she has inspected the individual business establishment and has determined that the business is still engaged in the same operation mode and that there is no adverse financial conditions preventing recommendation of the new loan, renewal or continuance.
- (b) Interim and last three years financial statements (income statement and balance sheet) and last three years audited financial statement with supporting schedules for loans over \$250,000.00.

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- (c) Personal financial statements for current year of owner or major stockholders and individual tax returns (filed) with all schedules for the last three years.
- (d) Current year and last two years business gross receipts tax (BGRT) and last three years corporate income tax returns (form 1120CM) with all schedules.
- (e) Inventory aging list, accounts receivables, payables aging list, rent rolls and tenant lists, and rental/lease agreement.
- (f) Hazard (fire/typhoon and earthquake) and liability insurance and life insurance policy.
- (g) Most recent filed business documents (e.g., business license(s), articles of incorporation or organization, by-laws, certificate of incorporation and annual report).
- (h) Business plan/profile.
- (i) Corporate resolution to borrow.
- (j) Sketch map of business property.
- (k) Recorded warranty deed, deed of gift or certificate of title and land management approved survey property map.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005).

Commission Comment: In subsection (g), the Commission inserted the closing parenthesis.

### **§ 25-10-610 Application Fee**

DCD may, when the loan application is made, charge each loan applicant an application fee not to exceed \$100.00. The application fee shall be credited to the closing costs if the loan is made. If the loan application is not approved, or the borrower cancels the loan application prior to approval, the deposit fee will not be returned to the loan applicant.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

### **§ 25-10-615 Incomplete Application**

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A pending loan application shall be deemed to have been removed from consideration if incomplete and if the loan applicant has been notified in writing of such defect and has not corrected the defect within thirty days of such notification.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

### **§ 25-10-620 Loan Approval**

No loan applicant shall be deemed to have been granted a loan unless and until the Executive Director, or his or her designee, so notifies the loan applicant in writing and the loan applicant indicates his acceptance in writing. Notice by any other DCD employee or member of the Board of Directors, verbally or otherwise, shall be invalid and have no effect and may subject said person to disciplinary action.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-625 Rejection of Application**

The Executive Director and the Chairman are authorized to cancel a conditionally approved loan if the conditions set out in the approval letter are not fulfilled within ninety days after the receipt of such letter by the loan applicant.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

### **§ 25-10-630 Loan Interest Rates**

DCD shall review and from time to time recommend to the CDA Board of Directors the rates of interest to be assessed its borrowers or any particular borrower. A recommended rate may not exceed the rate authorized by law; and in recommending interest rates DCD shall consider the costs of capitalization, its own administrative expenses in relation to its loans, overall prevailing market rates, and other economic indicators. DCD may also recommend special interest rates for projects and other undertakings which serve particular socio-economic needs, but with due regard for the overall need of DCD to recover its costs.



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Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-635 Loan Fees**

Loan applicants shall pay all fees necessary or incidental to their loans. Such fees may include, but are not limited to, recording fees, notary fees, returned check fees, appraisal fees, certified public accounting fees in the event such is required by the Board of Directors and any legal fees incurred by DCD for the drafting of documents necessary for the loan. In the case of direct loans and at the request of the loan applicant, loan fees may be included in the total loan amount; in the case of a loan guaranty, the loan applicant shall be required to remit all loan fees to DCD prior to the execution of the guaranty agreement.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-640 Loan Closing Service Charge**

In addition to any loan fees, DCD shall assess each loan applicant a processing service charge equal to one half of one percent of the total amount of the loan plus all applicable legal fees but not less than \$125.00. In the case of direct loans and at the request of the loan applicant, the service charge may be included in the total loan amount; in the case of a loan guaranty, the loan applicant shall be required to remit the service charge to DCD prior to the execution of the guaranty agreement.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

Commission Comment: The 2005 amendments deleted former § 25-10-640, entitled “Loan Revision and Fee.” For the history of this section see: Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

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### § 25-10-645 Posting and Revision of Fees

All fees and charges may be reviewed and revised by the Board of Directors. The fees set forth in this chapter shall continue in force and effect until reviewed and revised by the Board of Directors. Publication of any revised fees or new fees shall be by posting a schedule of revised fees in the offices of CDA. No amendment of this chapter or further publication in the CNMI Register of any revised or new fees shall be required.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### § 25-10-650 Borrower Records

The Board of Directors may, as deemed necessary, require its borrowers to keep records and accounts in accordance with sound and generally accepted business practices, and may require them to furnish necessary information regarding their business operations and accounts. DCD retains the right to inspect its borrowers' finances, as well their operations, records, and books of accounts. The Board of Directors is further authorized to retain an independent accounting firm to perform the compilation and preparation of financial reports of a borrower, with the costs incurred being borne by the borrower.

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### § 25-10-655 Renewable Energy Preference

Business plans and loan applications that incorporate renewable energy into their structures, utility and business models, and that make green energy part of their business approach, may be given loan approval preferences over those business plans and loan applications that fail to incorporate renewable energy into their businesses.

History: Adopted 36 Com. Reg. 34696 (Feb. 24, 2014); Proposed 35 Com. Reg. 34318 (Sept. 28, 2013).

Commission Comment: The Commission corrected the capitalization of the words "renewable energy" pursuant to 1 CMC § 3806(f).

## Part 700 - Construction Loan Requirements

### § 25-10-701 Construction Requirements

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In addition to all other submission requirements, a loan applicant seeking to construct a building with loan proceeds is required to submit the following documents:

- (a) Complete plans and specifications of the building or improvements to be constructed approved by a certified professional engineer;
- (b) A schematic drawing of the building and its proposed location;
- (c) A certification from the Commonwealth Utility Corporation that adequate water service and electricity are available on the premise where the project will be situated;
- (d) A certification from other appropriate government agencies that the proposed project will not have a negative impact to the existing community and environment including the effect of any applicable zoning laws;
- (e) A signed copy of the construction contract between the builder and the owner showing, among other things, that DCD is not subject to any liability before, during or after construction is completed;
- (f) An original copy of the performance and payment bond covering the total amount contracted;
- (g) An original copy of the workmen's compensation insurance policy;
- (h) A signed copy of the construction management contract between the construction manager and the owner. The manager must be licensed to do business in the Commonwealth and must possess a thorough knowledge in construction management. A provision in the construction management contract should provide that the manager must ensure that the project is thoroughly inspected by qualified inspectors and conforms to approved plans and specifications. In addition, the contract shall contain a provision imposing personal liability on the manager for non- performance under the management contract;
- (i) Cost breakdown for description of materials; and
- (j) Builder's risk insurance should be obtained with CDA as loss payee.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

Commission Comment: The 2005 amendments added new subsections (i) and (j) and amended subsection (g).

### **§ 25-10-705 Construction Loan Disbursement**

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Disbursements will be done based on stages of construction completion pursuant to a request for payment, certified by the contractor, borrower and the bonding company, with a certification letter from the construction manager as to the status of the project. Of the amount requested, ten percent will be retained until completion of the project and expiration of any mechanic's lien period. Upon completion of the project, borrower shall submit: a completion certification, a release of mechanic's lien, an affidavit that all liens have been paid, a contractor's warranty, a certificate of occupancy, an insurance policy on building with CDA as loss payee, and proper government agency approval of any septic tank, if applicable.

Modified, 1 CM C § 3806(e), (g).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005).

Commission Comment: The Commission changed "of project" to "of the project" to correct a manifest error.

### **Part 800 - Loan Guaranty and Participation**

#### **§ 25-10-801 Loan Guaranty**

DCD may guarantee up to ninety percent of the principal amount of a loan extended to a qualified loan applicant by a lender other than DCD. DCD must approve of the lender's administration and default policies before agreeing to guarantee any loan. DCD shall set aside as a reserve not less than twenty-five percent of the amount of a guaranteed loan. A loan guaranty must meet and satisfy the same criteria as a direct loan including, but not limited to, the disbursement requirements of § 25-10-1105 and the requirements and restrictions of part 500, exclusive of § 25-10-515(a).

Modified, 1 CMC § 3806(c), (e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

#### **§ 25-10-805 One Percent Interest Rate**

The lender shall impose a one percent per annum interest rate, which shall be collected by the lender for DCD. This interest rate shall be in addition to the interest rate to be charged by the lender under the terms and provisions of its loan, and shall be assessed and collected first, before the interest rate to be charged by the lender. The lender shall collect and remit the one percent per annum interest rate to DCD on a quarterly basis.

Modified, 1 CMC § 3806(e).

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History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995).

### **§ 25-10-810 Loan Guaranty Documents**

The Board of Directors shall approve and adopt a standard guaranty agreement for use with all participating lenders. The guaranty agreement shall include terms and conditions deemed reasonable and necessary for the protection and purposes of DCD including, but not limited to:

- (a) A maximum term of five years;
- (b) Language prohibiting amendments or addendums to a CDA guaranty;
- (c) Language prohibiting the subordination of any of CDA's rights under its guaranty; and
- (d) With any 90% guaranty, language requiring the lender to complete the foreclosure process before calling the guaranty.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

Commission Comment: The 2005 amendments added new subsections (a) through (d).

### **§ 25-10-815 Examination of Account**

Upon its request and at all reasonable times, DCD shall be entitled to examine and audit the borrower's account with lender and copies of any security instruments or loan documents held by lender which relate to disbursements or advances made, or to be made, under the loan guaranty.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

### **§ 25-10-820 Loan Participation Program**

The Board of Directors may jointly participate with banks or other financial institutions in financing a loan to an eligible loan applicant. The terms and conditions of the financial participation must be approved by the Board of Directors. DCD and the bank or lending

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institution shall share the collateral interest on any security for the loan in direct proportion to their loan exposure. The period of repayment shall not be more than the period authorized by this chapter.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

### **§ 25-10-825 Private Projects**

The Board of Directors may elect to participate in an ongoing or new private sector project or undertaking to further the purpose of DCD. In determining whether or not to participate, the following shall be considered:

- (a) Whether there are any other private sector lending institutions in the Commonwealth which may participate;
- (b) To what extent DCD is committing its financial and technical resources for the particular project;
- (c) If the project is new to the Commonwealth, or an island in the Commonwealth, would such participation protect the future participation of Commonwealth citizens; and
- (d) Is it in the best interest of the Commonwealth for DCD to participate. If a determination has been made to participate, the Board of Directors shall ensure that DCD's interests are fully secured and that the total amount of funding made available for any given private project is determined solely by the Board of Directors.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

### **Part 900 - Security**

#### **§ 25-10-901 Security Policy**

DCD shall secure its loans and loan guaranties in accordance with sound lending practices, provided that in doing so, DCD shall have due regard to its purposes to promote economic development in the Commonwealth.

Modified, 1 CMC § 3806(f).

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History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-905 First Mortgage on Real Estate**

Wherever possible, all loans shall be secured by a fee simple, first mortgage or deed of trust interest in real estate and improvements. First position of any mortgage shall be proven by the submission of a preliminary title report (PTR) from a CNMI licensed title insurance company. The allowable loan to be secured by any fee simple real estate first mortgage on unimproved bare land shall not exceed fifty percent of the appraised value of the land. The allowable loan to be secured by any fee simple real estate first mortgage on improved land shall not exceed sixty percent of the appraised value of the land, including improvements and proposed improvements.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-910 Second Mortgage on Real Estate**

Secondary mortgages are discouraged, but may be allowed if a loan application has a strong economic feasibility and potential for success, the loan applicant has a good credit rating and excellent repayment ability, and the total outstanding principal debt of the holder of the first security interest and the proposed second mortgage shall not exceed more than thirty percent of the appraised value of the land for unimproved bare land or forty percent of the appraised value of the land for improved land and proposed improvements. Third mortgages shall not be accepted.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

Commission Comment: The 2005 amendments deleted former § 25- 10-915, entitled “Third Mortgage on Real Estate.” For the history of this section, see 24 Com. Reg. 19377 (June 17, 2002); 24 Com. Reg. 18813 (Jan. 29, 2002); 16 Com. Reg. 12319 (Aug. 15, 1994); 16 Com. Reg. 11843 (May 15, 1994).

### **§ 25-10-915 Leasehold Mortgage**

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The total loan allowable on the first leasehold mortgage interest given as security shall not exceed fifty percent of the appraised leasehold value (existing as well as proposed leasehold improvement), but excluding the underlying value of the fee simple land. No loan secured by only a leasehold mortgage shall have a repayment term that is greater than the remaining term of the mortgaged lease. Prior to accepting a mortgage on a lease, the borrower shall obtain for DCD an estoppel certificate from the fee simple landowner certifying that the lease is in full force and effect and consenting to the mortgage of the leasehold interest.

Modified, 1 CMC § 3806(e), (g).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

Commission Comment: The Commission inserted the period after “fee simple land” to correct a manifest error.

### **§ 25-10-920 Chattel Mortgage and Inventories**

Loans may further be secured by a chattel mortgage or a security interest on personal and/or business properties provided that such loan amounts shall not exceed forty percent of the value of such personal and/or business properties, or of the purchase price thereof, whichever is lower, and provided that the DCD receives a first lien on the chattel mortgage or security interest. Crops or agricultural products such as livestock, poultry and fish may not be used as security for any loan due to their perishable nature.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-925 Additional Security**

In addition to any one or combination of the above securities, the Board of Directors shall require individual guaranties from the shareholders of a corporation, the partners in an association or partnership, and the owners and members of an LLC. The Board of Directors may also require individual guaranties from directors for a corporation and other managers of the loan applicant and may require an assignment of receivables and/or assignment of life or mortgage insurance from each loan applicant. All guarantors, endorsers, or other cosigners are subject to the same credit underwriting standards as the principal loan applicant.

History: Amdts Adopted 36 Com. Reg. 34696 (Feb. 24, 2014); Amdts Proposed 35 Com. Reg. 34318 (Sept. 28, 2013); Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and



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regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

Commission Comment: The Commission corrected the capitalization of the words “loan applicant” pursuant to 1 CMC § 3806(f). The Commission inserted commas after the words “partnership” and “endorsers” pursuant to 1 CMC § 3806(g).

### **§ 25-10-930 Appraisals**

The Board of Directors in determining the sufficiency of any real or personal property offered as security shall use the current market value of the property, and shall require a complete appraisal report for all loans greater than \$25,000 or a letter of appraisal (i.e., curbstone appraisal) for all loans less than \$25,000, subject to the discretion of the Executive Director. All appraisals shall be by an appraiser approved and engaged by DCD. DCD shall contact the appraiser and order the appraisal; however, the cost of, and any expenses associated with, the appraisal shall be paid by and be the obligation of the loan applicant. The Board of Directors shall only approve and engage qualified appraisers who are U.S. educated, and who are licensed and authorized under applicable CNMI law to conduct business and to appraise commercial and residential property in the CNMI.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

Commission Comment: The Commission inserted the period after “loan applicant” to correct a manifest error.

### **§ 25-10-935 Title Insurance**

All loans having real estate as security should have title insurance policies naming CDA as the loss payee. All title insurance and title reports submitted to CDA must be from a CNMI licensed title insurance company. The expense of title insurance, casualty insurance and title opinions shall be paid solely by the loan applicant.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005).

## **Part 1000 - Insurance**

### **§ 25-10-1001 Property and Casualty Insurance (P&C)**

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All loans having real estate improvements as security shall have the necessary insurance policies insuring the improvements against any damage due to earthquake, fire, typhoon, and any other casualty and liability up to the full insurable value of the improvements. Such insurance shall be obtained from a company on the list of insurance companies approved by DCD and licensed to do business in the CNMI.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-1005 Surety**

With respect to construction loans, a loan applicant shall be required to produce a performance and a payment bond each covering the full value of the project, the improvements, and the construction cost.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005).

Commission Comment: The 2005 amendments deleted former § 25-10-1005, entitled “Title Insurance” and former § 25-10-1010, entitled “Bonding.” For the history of these sections, see 24 Com. Reg. 19377 (June 17, 2002); 24 Com. Reg. 18813 (Jan. 29, 2002); 16 Com. Reg. 12319 (Aug. 15, 1994); 16 Com. Reg. 11843 (May 15, 1994); 7 Com. Reg. 3585 (May 21, 1985); 7 Com. Reg. 3468 (Mar. 15, 1985); 3 Com. Reg. 1400 (Nov. 30, 1981). The Commission inserted a comma after the phrase “the improvements” pursuant to 1 CMC § 3806(g).

### **§ 25-10-1010 Life Insurance**

All fishing, farming, and agricultural borrowers are required to maintain adequate life insurance in an amount equal to or greater than the outstanding balance of their loan principal, interest and fees. This requirement of life insurance may only be waived upon a showing of three declination letters from three DCD approved life insurance companies. Depending on the planned use of the loan proceeds and/or the risks involved with the business ventures, DCD may also require general commercial loan borrowers to maintain life insurance in amounts DCD deems sufficient to adequately cover the loan proceeds and/or risks involved. On all life insurance policies covering loans, DCD shall be named as the first or primary beneficiary. Upon approval of a loan application, DCD shall inform the loan applicant of any life insurance requirement. In the event the loan applicant has an existing life insurance policy, with coverage in excess of the loan amount, the borrower may assign the benefits of the existing policy to DCD to satisfy the life insurance requirement. Unless the borrower has first obtained an acceptable waiver,

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no loan proceeds shall be disbursed to any borrower, until the requisite life insurance has been obtained and until the first year premium has been paid in full.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981). The Commission inserted a comma after the word “farming” pursuant to 1 CMC § 3806(g).

### **§ 25-10-1015 P&C, Surety and Life Insurance Companies**

Loan applicants shall purchase all required insurance and bonds from any one of the several companies approved by DCD. DCD shall keep a list of such approved P&C, surety and life insurance companies for easy reference and the following shall apply:

- (a) Upon approval of the loan applicant’s life insurance application by the insurance firm, initial premiums may be paid, at the time of closing of the loan, out of the first disbursement of loan proceeds;
- (b) Subsequent premiums shall be paid by the borrower in accordance with the insurance policies terms and conditions;
- (c) Should a borrower fail to pay any of the subsequent premiums, DCD may pay such premium on behalf of the borrower;
- (d) Should DCD pay such premium on behalf of the borrower, then the borrower’s loan shall be restructured to include the premium payment by DCD, and any related fees, in the principal amount owed. In the event a loan is restructured, the borrower shall be advised by DCD of the new monthly payment amounts;
- (e) Borrowers may, at any time during the term of their loans, select a different life insurance firm, as long as the newly selected insurance firm can satisfactorily meet the life insurance requirements of DCD and is on the DCD approved list of companies;
- (f) The insurance firm and the borrower are required to notify DCD, in a timely manner, when an insurance policy is in danger of expiring due to unpaid premiums; and when an insurance policy lapses due to nonpayment; and
- (g) Should it choose, DCD may establish an escrow account for the purpose of collecting funds for necessary insurance. Such escrow accounts are to be administered as directed by the DCD Board.

Modified, 1 CMC § 3806(f), (g).

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History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

Commission Comment: The 2005 amendments added new subsection (g) and amended the opening paragraph and subsections (a), (b), (c) and (e). The Commission removed “and” from the end of subsection (e) and inserted “and” at the end of subsection (f). The Commission changed the final period to a semi-colon in subsection (f).

### **§ 25-10-1020 Lapsed Coverage**

In the event any borrower fails to obtain P&C, life insurance, property insurance or any other insurance required under the loan documents or policies, or to maintain such insurance coverage, then the borrower shall be called in to meet with the DCD loan manager, and the following shall apply:

(a) The loan manager shall inform the borrower that, unless the necessary insurance is obtained or the policy is reinstated, the loan will be declared to be in default;

(b) Upon approval of the borrower’s insurance application by the insurance firm, DCD may pay the first year premium, on behalf of the borrower, and the loan may be restructured to reflect the new principal amount including the premium paid by DCD.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995).

Commission Comment: The 2005 amendments deleted former subsection (b), redesignated and amended subsection (c) and amended the opening paragraph.

### **Part 1100 - Disbursements**

#### **§ 25-10-1101 Check Signing Authority**

All checks issued by DCD shall contain two signatures, one of which shall be the Executive Director (or other official of DCD with check signing authority as approved by the Board of Directors of CDA) and the other by the Chairman (or Vice-Chairman or the Chairman or Vice Chairman of the CDA Board of Directors in the absence of the Chairman or Vice Chairman). In the absence of both Chairmen and Vice Chairmen, the Board of Directors shall appoint one among its members to sign jointly with the Executive Director or other official of DCD.

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History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-1105 Disbursement Requirements**

No funds shall be disbursed unless the loan application is complete and all documents have been fully reviewed and executed by all necessary parties and all fees and charges have been paid or added to the total loan amount. All disbursements are subject to the accounting procedures and policies set forth under the CDA Act [4 CMC §§ 10101, et seq.] and this chapter. These disbursement requirements shall also apply to any funds guaranteed by DCD and disbursed by a private bank or lender.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-1110 Retained Proceeds**

In the event an approved loan is for a construction project and the contractor is not bonded, the standard withholding of ten percent of the project cost may be increased at the discretion of the Board of Directors. With each incremental payment, an amount equal to a minimum of ten percent of the incremental payment shall be withheld to assure that all subcontractors, materialmen and suppliers have been paid. Such withheld portion shall be released only after the project has been completed, upon finding by the Chairman, or his or her designee, that all the materialmen, subcontractors, and other suppliers have been paid.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-1115 Incremental Disbursements**

Each construction increment shall be done according to plans and specifications and must be approved by the loan applicant or owner. Upon receipt of such approval, then such increment shall be inspected by the Executive Director, or his or her designee, to

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determine that the work has been performed according to the plans and specifications. Upon approval of each increment by the Executive Director, or his or her designee, funds may accordingly be disbursed, subject to the ten percent withholding set forth above.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-1120 Purchase of Equipment and Materials**

In the event that disbursements involve the purchase of equipment, materials or properties then disbursements shall be made only upon the loan applicant producing satisfactory receipts, purchase orders, or other types of evidences of purchase. No further disbursements shall be made without first satisfying the previous disbursements with supporting documents.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-1125 Disbursement Discretion**

The Executive Director shall exercise his or her sound discretion in authorizing release or disbursement of any loan proceeds. All disbursements are to be used for approved purposes and as set forth in the loan commitment/approval letter from DCD.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

## **Part 1200 - Professionals**

### **§ 25-10-1201 Approved Professionals**

All professionals who seek to be paid out of proceeds from a loan, or who provide their services in connection with the loan approval process, including without limitation,

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accountants, architects, attorneys, appraisers, contractors, engineers, insurers, lenders, and surveyors, must meet certain minimum requirements of qualification before payment for their services, or reliance on their opinions will be permitted.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

Commission Comment: The Commission inserted a comma after the word “lenders” pursuant to 1 CMC § 3806(g).

### **§ 25-10-1205 Pre-qualified List**

The Board of Directors may cause to be published a request for proposals from professionals, setting forth the minimum qualifications and from the responses, create a pre-qualified list. At any time, professionals may submit their qualifications and request inclusion on the list.

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

### **§ 25-10-1210 Requirements**

When establishing minimum qualifications, the Board of Directors may require, among other things: the possession of a Commonwealth business license for at least two years in advance of the request for inclusion on the pre-qualified list; professional licensing from the relevant professional society; a client list of customers from the Commonwealth who can attest to the quality of the professional’s work; and other proof of the ability of the professional to perform.

Modified, 1 CMC § 3806(e).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

## **Part 1300 - Feasibility Studies and Technical Assistance**

### **§ 25-10-1301 Feasibility Studies**

The Board of Directors, with the approval of the CDA Board of Directors, may authorize the total or partial funding of economic feasibility studies on specific projects in the areas of agriculture, aquiculture, mariculture, light industries, fishing, and of other economic projects. With the approval of the CDA Board of Directors, DCD may hire a consultant or retain the services of a professional firm to perform the feasibility study or authorize a prospective loan applicant to perform such a study.

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History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

Commission Comment: The Commission inserted a comma after the word “fishing” pursuant to 1 CMC § 3806(g).

### **§ 25-10-1305 Results and Reports**

The results of any feasibility studies undertaken solely by DCD shall be provided without charge to interested residents of the Commonwealth, except that a reasonable fee for printing and reproduction costs may be charged.

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

### **§ 25-10-1310 Technical Assistance**

At its option and without obligation, the Board of Directors may provide, through its staff or by retaining the services of outside experts, consultants, architects, engineers, technical or management assistance to borrowers, businesses, or to assure quality construction of any project undertaken or financed by DCD.

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

## **Part 1400 - Loan Servicing**

### **§ 25-10-1401 Tracking System**

The Executive Director shall institute a follow-up or tickler system and accounting system to assure that all the payments concerning all loans are received in a timely fashion. Any accounting system required by law shall be followed. The system used shall include the ability to follow-up on insurance payments, principal and interest payments that are delinquent more than fifteen days and production of any financial statements required pursuant to the loan agreement.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).



**§ 25-10-1405 Monthly Reports**

For the first year, borrowers shall be required to submit monthly reports to show exactly how the loan proceeds are being spent. After this initial period, all loans shall require a least an annual or semi-annual financial report from the borrowers together with a status report on the business. For loans in excess of \$500,000.00, the Executive Director shall require a borrower to submit annual financial statements audited by a certified public accountant or other documentation displaying the financial condition of the borrower.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

**§ 25-10-1410 Loan Quality Assurance and Control**

The Executive Director and the loan manager shall conduct a review every quarter on all loans. As part of that review, the file documentation must be reviewed to insure that the borrowers are providing all updated loan documents required by DCD. Each loan requirement must also be scrutinized to insure that the borrower has satisfied all terms and conditions of the loan agreement.

- (a) The Executive Director shall supervise all lending activities and quality of loans and shall assist the Loan Division with loan functions.
- (b) The Executive Director shall ensure that all loan applications and approved loans are domiciled and serviced by the central office (Saipan) and that all such loans approved are within the CNMI jurisdiction and that there is no deviation.
- (c) The Executive Director and Loan Manager shall report to the Board of Directors any exceptions and or deviations revealed during the review.
- (d) Any loan application in excess of the Executive Director \$25,000.00 credit limit must be presented and reported to the Board or Directors for further review and final approval or disapproval.
- (e) The Loan Manager shall develop a tickler for all required insurance policies showing the expiring policies for each loan account. The Loan Manager shall insure that renewals are received thirty days prior to policy expiration. These insurance policies must be updated. Should the borrowers be unable to update the policy, DCD has the option of purchasing the policy to protect its interest, but approval should be obtained from the Executive Director to add on any insurance costs.

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- (f) The Loan Manager must maintain an updated list of all loans and guarantees.
- (g) The Loan Manager must contact the borrowers ninety days prior to the expiration of loans to discuss renewal requirements.
- (h) The Loan Manager shall insure that the handling of credit reports, insurance, documentation, filing and other administrative duties and functions of the credit division are in accordance to standard documentary procedure and lending policy.
- (i) The Loan Manager shall prepare and submit to the Executive Director the month-end delinquent reports as well as track the recoveries of past due loans, either performing, nonperforming or loans handled by attorneys.
- (j) The Executive Director shall submit his/her loan quality assurance and control report to the Board of Directors for further review and disposition. This quarterly report is due on or before the tenth day following the quarter end.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005).

### **§ 25-10-1415 Failure to Submit Reports**

If a borrower fails to submit a required financial or status report, the Executive Director may order an investigation or audit of the financial condition of the borrower upon five days written notice to the borrower. Any failure to submit the required reports or refusal to cooperate with an investigation or audit shall be deemed and considered an event of default under the loan.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

### **§ 25-10-1420 Executive Director Meetings and Reports**

Borrowers shall be required to meet with the Executive Director, or his or her designee, as often as the Executive Director deems is necessary to discuss loan problems or review business records.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994);

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Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **Part 1500 - Loan Repayment**

#### **§ 25-10-1501 Term of Loan**

The repayment period or term of a loan may not exceed thirty years, exclusive of any grace period, revisions or extensions. A loan may not be revised or extended more than five times, not including any revisions or extensions made prior to the 2005 amendment of the regulations in this chapter. A loan applicant may be granted a term of more than twelve years only if the loan is secured by a first mortgage of sufficient real property. If the loan is secured only by a second mortgage of real property, its term may not exceed twelve years inclusive of any grace period, revisions or extensions. If the loan is secured only by a chattel mortgage, its term may not exceed three years, inclusive of any grace period, revisions or extensions, except upon submission of audited financial statements and approval of an increased term by the Board of Directors. When determining the term of loan, the Board of Directors shall consider, among other things, the repayment capability of the loan applicant and the useful life of the assets to be acquired with the loan.

Modified, 1 CMC § 3806(d), (e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

#### **§ 25-10-1505 Advance Payments and Early Payoff**

There shall be no minimum repayment period requirement, prohibition, fee charge, or penalty for an advance payment on or the early pay-off of a loan.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

Commission Comment: The Commission inserted a comma after the phrase “fee charge” pursuant to 1 CMC § 3806(g).

#### **§ 25-10-1510 No Assumption of Loan**

No assumption shall be allowed of any loan without the prior pre-approval of the Board of Directors. Any pre-approved assumption shall be conditioned on the qualification of the party seeking to assume the loan as an eligible loan applicant.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

**§ 25-10-1515 Death of Borrower**

Upon the death of a borrower, the entire unpaid balance of the loan shall be immediately due and payable. First, the Loan Manager shall claim and collect any life insurance proceeds available to be applied toward the loan. If life insurance proceeds are insufficient, then the Board of Directors may allow assumption of the loan by the heirs of the borrower if a final decree in the probate of the borrower identifies the heirs and approves distribution to them of the mortgaged property and loan, and if the respective heirs themselves qualify as eligible loan applicant and execute all necessary documents. In the event the insurance proceeds are insufficient and the loan is unable to be assumed by heirs, then DCD shall pursue foreclosure and seek to collect its loan in court.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

**§ 25-10-1520 Monthly Payments**

All loan payments shall be due and payable monthly. Monthly payments on the loan shall be made in accordance with the executed loan documents. Unless the Board of Directors agrees, or the loan documents state, otherwise, timely monthly payments will first be applied against any accrued interest and then against the outstanding principal amount.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

**§ 25-10-1525 Past Due Payments**

Any payments toward a delinquent loan or that are past due or not made on or before the date they are due under the executed loan documents shall first be applied against any outstanding out-of-pocket expenses and charges associated with the loan including, but not limited to, legal fees, publication, insurance, court and appraisal costs, then against any accrued interest and finally against the outstanding principal amount.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005).

**§ 25-10-1530 Late Payment Fees**

In accordance with the terms and conditions of the loan documents, late payment fees may be charged each time a monthly payment is missed or delayed more than fifteen calendar days. The amount of late payment fees shall be posted and as determined by the Board of Directors as circumstances require.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

**§ 25-10-1535 Additional Required Payments**

It is the policy of DCD to continually foster economic development and, accordingly, borrowers shall be encouraged to pay-off their loans as swiftly as they are able in order to better circulate DCD's available loan funds. It shall be an understood and agreed upon condition of each loan, that any proceeds generated by a loan that exceed those required to operate and preserve the business should be used to pay down or pay-off the loan.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

**Part 1600 - Loan Revisions and Refinancing**

**§ 25-10-1601 Loan Revision**

Subject to the approval of the Board of Directors, a borrower may request and receive a loan revision. A loan may not be revised or extended more than five times, not including any revisions or extensions made prior to the 2005 amendment of the regulations in this chapter.

Modified, 1 CMC § 3806(d), (e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005).

Commission Comment: The 2005 amendments added this new part 1600 and moved former part 1600 to part 1900 of this chapter.

**§ 25-10-1605 Loan Revision Fee**

As a condition of every loan revision, the borrower shall be assessed and shall pay a loan revision fee equal to one quarter of one percent of the outstanding balance of the loan

plus any applicable legal fees but not less than \$125.00. Any assessed loan revision fee must be paid before a loan can be revised and may not be included in or added to principal amount of the loan.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005).

**§ 25-10-1610 Waiver of Interest and Late Fees**

In general, it is a recognized policy that accrued interest and late fees shall not be waived. Further, in recognition of 4 CMC § 10402(f) and the fact that CDA pays its administrative expenses, in large part, out of earned interest on its loans, only the CDA Board can authorize the waiver of interest or fees and, even then, only as part of negotiated settlements or declared emergencies as set forth in § 25-10-1615.

Modified, 1 CMC § 3806(c).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005).

**§ 25-10-1615 State of Emergency Relief**

In the event the U.S. President declares a state of emergency for all or part of the CNMI, and in the event the declared emergency reasonably impacts some or all of the DCD borrowers, the CDA Board may waive interest and penalties for a period up to six months for those borrowers who are both:

- (a) Fully performing, current borrowers; and
- (b) Who are affected by the declared emergency.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005).

**§ 25-10-1620 Working With Borrowers**

Subject to very real time and resource limitations, the Loan Division shall use its best efforts to work with its delinquent borrowers to facilitate revisions in those situations where such an option is feasible and the borrower is willing.

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005).

**§ 25-10-1625 Loan Refinancing**

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Subject to the approval of the Board of Directors, a borrower whose loan is current may refinance his or her loan to take advantage of an available and reduced interest rate or to consolidate a supplemental DCD loan with his or her DCD loan. In every refinance situation, the borrower must first be qualified as if she was a new DCD borrower, including the presentation of sufficient security and mortgages.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005).

### **§ 25-10-1630 Loan Refinancing Fee**

As a condition of every loan refinance, the borrower shall be assessed and shall pay a reasonable loan refinance fee to be set by the Board of Directors and posted in accordance with § 25-10-645. Any assessed loan refinance fee must be paid before a loan can be refinanced and may not be included in or added to principal amount of the loan.

Modified, 1 CMC § 3806(c).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005).

## **Part 1700 - Loan Collection and Foreclosure**

### **§ 25-10-1701 Monitoring**

The Executive Director and Loan Manager shall closely monitor the repayment of all loans and shall prepare and issue reports for the Board of Directors as required by § 25-10-1410.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-1705 Fifteen Day Phone Call**

If any payment is not received by the fifteenth day after its due date, then the Loan Manager, or his or her designee, shall attempt to contact the borrower by telephone informing them of the payment default.

Modified, 1 CMC § 3806(e).

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History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005).

### **§ 25-10-1710 DCD Thirty Day Notice**

If any payment is not received by the thirtieth day after its due date, then the Loan Manager, or his or her designee, shall attempt to contact the borrower by telephone or by written letter informing them of the payment default.

Modified, 1 CMC § 3806(e).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-1715 DCD Sixty Day Notice**

If any payment is not received by the sixtieth day after its due date, then the Loan Manager, or his or her designee, shall again attempt to contact the borrower by telephone or by written letter informing them of the payment default.

Modified, 1 CMC § 3806(e).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

### **§ 25-10-1720 Demand Letter**

If any payment is ninety days or more delinquent, the matter shall be forwarded to CDA legal counsel together with a delinquency update showing the amount of principal, interest and fees needed to bring the loan current. CDA legal counsel shall send the borrower a letter demanding payment within thirty days.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-1725 Notice of Default**



If the borrower fails to bring the loan current within the thirty days stated in the demand letter, the Loan Manager, or his or her designee, may direct CDA legal counsel to send the borrower a notice of default in accordance with the Commonwealth's Mortgage Foreclosure Act (2 CMC §§ 4537, et seq.). The Loan Manager, or his or her designee, shall provide CDA legal counsel with an account update of all principal, interest and fees outstanding and the working file in order to facilitate the drafting of a notice of default. A notice of default must be served personally or by certified mail, return receipt requested, upon the borrower.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

### **§ 25-10-1730 Other Defaults**

If a borrower has defaulted for any reason other than the failure to make a monthly loan payment, and notice of such default has been given to the borrower and the borrower has failed to cure said default within thirty days or within the period provided for in the loan documents, the Loan Manager, or his or her designee, may direct CDA legal counsel to send the borrower a notice of default and to commence foreclosure notwithstanding the fact that said default has not yet continued for the periods applied to defaults due to a failure to make a monthly payment.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

### **§ 25-10-1735 Deed in Lieu of Foreclosure**

(a) In the event of default, the Loan Manager, together with the Executive Director, may propose a deed in lieu of foreclosure to the defaulted borrower. For purposes of the regulations in this chapter, a deed in lieu of foreclosure shall be defined as when the defaulted borrower voluntarily agrees to exchange by way of a deed all of his or her mortgaged property for the elimination of all or a part of his debt.

(b) Before any deed can be accepted, a clean Preliminary Title Report (PTR) and a current and approved appraisal must be obtained for the mortgaged property and the cost of such PTR and appraisal must be paid by the borrower. For purposes of this section, an appraisal shall be considered "current" if its "date of value" is within one (1) year of the date of the deed in lieu of foreclosure. The appraised value will be used for the value of the mortgaged property. In the event an appraisal value exceeds the outstanding balance of the defaulted loan, no credit or payment shall be made by CDA to the defaulted

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borrower for the difference. The value assigned the mortgaged property shall be the value of the loan only.

(c) Unless some other justifiable resolution is approved by the Board of Directors, any debt that remains (anything above the appraised value of the mortgaged property) shall be reduced to a new note with new terms. If the defaulted borrower provides new and acceptable Security for this new note, interest rates may be reduced; otherwise the interest rate on the new loan should remain the same as the rate for the old loan unless the Board of Directors otherwise approves.

(d) Only CDA mortgaged properties can be used for deeds in lieu of foreclosure. The Board of Directors may, however, upon recommendation of and justification by the Loan Manager and Executive Director approve deed(s) in lieu of foreclosure that convey the mortgaged properties plus or together with other unmortgaged property. Before such additional property can be accepted, a clean PTR and current approved appraisal must also be obtained for such unmortgaged property. Otherwise, no other, new or substitute property can qualify for a deed in lieu of foreclosure.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 34 Com. Reg. 32419 (May 29, 2012); Amdts Proposed 34 Com. Reg. 32363 (Mar. 29, 2012); Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (d).

### **§ 25-10-1740 Complaint to Foreclose**

After the notice of default is served on the borrower, and if the borrower fails to cure the default in the time frame allowed, and in the manner directed by the Loan Manager or his or her designee, then CDA legal counsel may be directed to file a lawsuit to collect the loan and foreclose upon the mortgages.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

### **§ 25-10-1745 Acceleration of Loan**

Upon filing of the lawsuit, the loan shall be accelerated and the entire principal balance plus any accrued interest shall become immediately due and payable. Prejudgment interest shall accrue on the principal at the rate established in the loan agreement. Prior to the entry of judgment, the borrower may have the right, as set forth by the law, to cure

the default and bring the loan current. After judgment, interest shall accrue at the rate established by law for judgments.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

### **§ 25-10-1750 Judgment and Auction**

Upon entry of a judgment in the lawsuit, a copy of the judgment shall be served upon the borrower. If the borrower fails to pay the entire judgment amount within three months from the time borrower is served the copy of the judgment, all properties mortgaged as security for the loan shall be noticed for sale. The Board of Directors shall set the minimum bid for any auction after considering the appraisal obtained, the outstanding loan balance and all other relevant documents. All auction notices shall include the minimum bid set by the Board of Directors, and shall provide notice that the Board of directors reserves the right: to withdraw the mortgaged property from auction before the sale or before a bid for the property is accepted; to adjourn the auction without notice at any time before the mortgaged property is struck off, without incurring any liability whatsoever there by; and to reject any and all bids. At auction, CDA may purchase the mortgaged property.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

### **§ 25-10-1755 Multiple Properties**

In the event of multiple real properties being noticed for sale, either the Executive Director or Loan Manager shall apportion the minimum bid for any sale of property in a manner so as to maximize the likelihood of sale and to maximize the possibility of recovery of all amounts owed DCD.

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Amdts Adopted 20 Com. Reg. 16272 (Oct. 15, 1998); Amdts Proposed 19 Com. Reg. 15718 (Oct. 15, 1997); Amdts Proposed 17 Com. Reg. 13807 (Nov. 15, 1995); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

Commission Comment: The 2005 amendments deleted former § 25-10-1750, entitled “Section Auction” and § 25-10-1755, entitled “Third Auction.” For the history of these sections, see 24 Com. Reg. 19377 (June 17, 2002); 24 Com. Reg. 18813 (Jan. 29, 2002); 16 Com. Reg. 12319 (Aug. 15, 1994); 16 Com. Reg. 11843 (May 15, 1994).

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### § 25-10-1760 Certificate of Sale

If the property is sold at an auction, CDA legal counsel shall prepare a certificate of sale and shall deliver a copy to the buyer after recording the original.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

### § 25-10-1765 Deed

After the one year redemption period, if the borrower has not redeemed the property, CDA legal counsel shall prepare a deed to be executed in accordance with the Commonwealth's Mortgage Foreclosure Act and to be delivered to the buyer after filing.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

### § 25-10-1770 Controlling Authority

If any of the above procedures conflict with any applicable provision of law or any term in any of the loan documents, then said law or contractual term shall control.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

Commission Comment: The 2005 amendments deleted former § 25-10-1775, entitled "Loan Workouts." For the history of this section, see 24 Com. Reg. 19377 (June 17, 2002); 24 Com. Reg. 18813 (Jan. 29, 2002); 16 Com. Reg. 12319 (Aug. 15, 1994); 16 Com. Reg. 11843 (May 15, 1994).

### § 25-10-1775 Loan Revisions

A loan being foreclosed or in financial difficulty may only be revised in accordance with part 1600.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005).

### § 25-10-1780 Settlement

All CDA obtained judgments are subject to settlement at the discretion of the Board of Directors, subject to the mutual agreement of the parties and a determination by the Board of Directors that such a settlement is reasonable and in the best interest of DCD and CDA.

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005).

**§ 25-10-1785 Attorneys' Fees**

In accordance with all executed loan documents, a borrower shall be responsible for, and his or her account shall be charged with, all reasonable expenses and legal fees incurred by DCD in the collection, foreclosure and monitoring of his or her loan. Any payments toward a loan to which fees and expenses have been charged shall first be applied against those outstanding fees, expenses and other charges, then against any accrued interest and finally against the outstanding principal amount.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005).

Commission Comment: The Commission inserted the apostrophe in the section title pursuant to 1 CMC § 3806(g).

**§ 25-10-1790 Seizure of Chattel & Accounts**

At CDA's option, if any payment is not received by the thirtieth day after its due date, then the loan manager, or his or her designee, may at any time after the thirtieth day, seize, secure, and/or sell, in accordance with the chattel mortgage, security agreements, or applicable law, any and all mortgaged chattels or other movable security or other accounts including, but not limited to, automobiles, boats, furniture, fixtures, merchandise, machinery, inventory, equipment, appliances, bank accounts, accounts receivable, and supplies.

History: Adopted 36 Com. Reg. 34696 (Feb. 24, 2014); Proposed 35 Com. Reg. 34318 (Sept. 28, 2013).

Commission Comment: The Commission struck the figure "30<sup>th</sup>" pursuant to 1 CMC § 3806(e). The Commission corrected the capitalization of the words "loan manager" pursuant to 1 CMC § 3806(f). The Commission inserted commas after the words "secure," "agreements," and "receivable" pursuant to 1 CMC § 3806(g).

**§ 25-10-1795 Non-Collectible Debt**

(a) The CDA Management shall take all reasonable steps to attempt to see that debts owed to it are satisfied prior to determining whether or not a particular debt should be classified as non-collectible. At a minimum, these steps should include (in no particular order):

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- (1) The CDA Management should conduct foreclosure sales on any and all property mortgaged to satisfy the debt.
  - (2) The CDA Management, in consultation with its attorneys, should seek an Order in Aid of Judgment to determine the most reasonable means by which to seek full satisfaction of the debt.
  - (3) The CDA Management should conduct a thorough and complete asset search to determine whether or not the debtor owns any property (not mortgaged to secure the debt) that can legally be utilized to satisfy the debt. Such asset searches should include, but not be limited to:
    - (i) A thorough grantor/grantee search of recorded documents with the CNMI Recorder's Office to determine what, if any, interests in non-mortgaged real property are owned by the debtor;
    - (ii) Employment of an asset search specialist, or the utilization of CDA personnel, to determine what, if any, interests in non-mortgaged personal property are owned by the debtor;
    - (iii) Any and all other reasonable steps the CDA Management may take to determine what property the debtor owns that is subject to collection within the CNMI and/or Guam, and as applicable in other jurisdictions; and
    - (iv) Any and all other reasonable steps the CDA Management deems fit, in its discretion, under each individual circumstance.
  - (4) The CDA Management should, once a determination is made that the debtor owns an interest in real or personal property sufficient value to justify collection efforts, work in consultation with its attorneys to take any and all legal steps to utilize said property to satisfy the debt.
  - (5) The CDA Management should attempt, when reasonable, to implement a payment plan with debtors when any deficiency on an account remains after efforts to satisfy the debt through the collection and sale of a debtor's property. CDA shall develop a standard operating procedure by which it will assess a debtor's financial ability to participate meaningfully in a payment plan.
- (b) If, after all reasonable efforts to satisfy the debt (including those specific steps mentioned above) have been exhausted, and the debt in question remains unpaid, the CDA Management is hereby directed to determine (by applying GAAP and its best judgment) whether the remaining debt should be declared non-collectible. When such a determination has been made, the CDA Management will present its recommendation for classification as non-collectible to this Board at the earliest practicable meeting, at which this Board shall consider the CDA Management's recommendation to declare the debt non-collectible. Should such a declaration be made, CDA may refer the remainder of the non-collectible debt to an appropriate collections attorney or collection agency and reflect that such debt is non-collectible in all future financial records and statements.

Modified, 1 CMC § 3806(a), (f).

History: Adopted 41 Com. Reg. 42808 (Sept. 28, 2019); Proposed 41 Com. Reg. 42713 (July 28, 2019).

### **Part 1800 - Funds and Accounting**

**§ 25-10-1801 Accounting Records and Reports**

The Executive Director shall ensure at all times that accounting records and supporting documents are maintained to insure sound internal control. DCD shall use the accrual method of accounting. Monthly financial statements with detailed loan fund status reports must be prepared in accordance with Generally Accepted Accounting Principles and Practices (GAAPP) and copies thereof shall be provided to the Board of Directors.

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

**§ 25-10-1805 Accounting System**

A separate accounting system shall be used and maintained for the functions of DCD including economic development loan fund activities. The accounts and statements of account of DCD shall be audited by the Public Auditor or an independent auditor approved by the Public Auditor. The fiscal year of DCD shall be identical with that of the Commonwealth government.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

**§ 25-10-1810 Liquid Funds**

DCD shall maintain sufficient liquid assets to be able to meet normal operating expenses and discharge its short-term liabilities and current maturities of any long-term indebtedness. DCD funds not currently needed in liquidity shall be reinvested by the Board of Directors, to the extent permitted by law, in qualified investments which mature not later than the date on which such funds will be needed.

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

**§ 25-10-1815 Accounts**

DCD may, as it deems necessary, open and maintain savings and checking accounts and other investment forms with banks or savings and loan associations which are reputable financial firms and members of the Federal Reserve System or the Federal Deposit

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Insurance Corporation (FDIC). Money received by DCD shall be deposited into such accounts.

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### § 25-10-1820 Collections

- (a) DCD shall cause to be collected and obtained:
- (1) From the Development Banking Division of CDA, all 702(c) Covenant funds, any appropriated or budgetary funds, and all assets of the EDLF existing prior to September 19, 1985;
  - (2) All money to be received by or on behalf of DCD, with respect to repayment of any loan made, including interest and other charges payable;
  - (3) All money arising from property or investments acquired by or invested in by DCD; and
  - (4) All other money and property due and payable to DCD.
- (b) DCD shall not accept and hold deposits, but may hold evidence of deposits, or otherwise accept control of deposits, in other financial institutions.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

### § 25-10-1825 Loan and Investment Amounts

The Board of Directors shall pay out of DCD funds:

- (a) Approved loan or loan guaranty amounts; and
- (b) Amounts approved for investment or equity participation, and participation in any projects and/or feasibility studies or technical assistance.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994);



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Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

Commission Comment: The Commission corrected the spelling of “feasibility” pursuant to 1 CMC § 3806(g).

### **§ 25-10-1830 Operation Expenses**

The Board of Directors shall pay out of funds available to the DCD pursuant to 4 CMC § 10401(b)(1) and (b)(3) all expenses, costs and obligations incurred for the administration and operation of the DCD. Payment under this section shall be in conformity with the operating budget, prepared and submitted to the CDA Board of Directors. See § 25-10-215.

Modified, 1 CMC § 3806(c).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

### **§ 25-10-1835 Technical Assistance and Studies**

The Board of Directors shall also pay out of funds available to DCD pursuant to 4 CMC § 10401(b)(1) and (b)(3) all amounts expended or obligated for technical assistance, economic studies, project evaluations and feasibility studies. Payment under this section shall also be in conformity with the operating budget, prepared and submitted to the CDA Board of Directors. See § 25-10-215.

Modified, 1 CMC § 3806(c).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

Commission Comment: The Commission corrected the spelling of “feasibility” pursuant to 1 CMC § 3806(g).

### **§ 25-10-1840 Interest Tracking and Booking**

DCD shall track accrued and unpaid interest for one hundred twenty days, after which such interest shall continue to accrue but shall be booked (together with the underlying loan) as non-performing and shall be isolated from amounts/funds able to be used for payment of DCA administrative and operating expenses.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005).

**Part 1900 - Investigations and Audits**

**§ 25-10-1901 Investigations and Audits**

The Board of Directors or the Executive Director may instruct a representative of DCD, or may contract with a qualified firm or person, to investigate or audit the accounts of any borrower in order to ascertain:

- (a) Whether the loan has been used for the purpose for which it was granted;
- (b) Whether there is evidence or indication of future difficulties arising that might prevent the borrower from repaying the loan in accordance with the loan agreement; or
- (c) Whether management or other assistance is needed to improve the business operation.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

Commission Comment: The 2005 amendments moved this part from former part 1600.

**§ 25-10-1905 Associated Fees for Costs**

The Board of Directors may impose reasonable fees upon the borrower for performing the above services in order to recover its costs incurred.

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

**Part 2000 - Conflicts and Confidentiality**

**§ 25-10-2001 Conflicts of Interest**

As a mandated division of CDA, DCD follows and abides by the same conflicts of interest law and standards as CDA. The applicable conflicts of interest law and standards are set forth in 4 CMC § 10408.

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002).

**§ 25-10-2005 Confidentiality**

No member of the Board of Directors or DCD employee or officer who becomes privy to any confidential information, data figures, projections, estimates, customer lists, tax records, personnel history, accounting procedures, promotions, and information otherwise privileged as a result of his or her membership shall reveal such information to any person, firm, corporation, or other entity outside the course of his or her official duties; nor shall he or she use such information for his or her own personal gain. Nothing in this section shall prevent DCD from using and disclosing such information as is necessary to administer its loans or collect amounts outstanding from the loan applicant or borrower.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

Commission Comment: The Commission inserted a comma after the word “promotions” pursuant to 1 CMC § 3806(g).

**§ 25-10-2010 Preparation of Loan Applications**

No DCD employee, officer, or member shall engage in the preparation of any loan application; provided, however, that the loan department staff may assist a loan applicant in the preparation of a loan application within the DCD office without compensation. If the staff assists the loan applicant, the loan applicant shall first waive any legal claims against the staff, DCD, and CDA for any wrongful performance or alleged misrepresentation on the loan application.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994); Adopted 7 Com. Reg. 3585 (May 21, 1985); Proposed 7 Com. Reg. 3468 (Mar. 15, 1985); Proposed 3 Com. Reg. 1400 (Nov. 30, 1981).

Commission Comment: The Commission inserted commas after the words “officer” and “DCD” pursuant to 1 CMC § 3806(g).

**Part 2100 - Violations of Rules and Regulations**

**§ 25-10-2101 Known Violations**

Known violations or possible violations of any provision contained in this chapter shall immediately be reported to the Executive Director or other person designated for that purpose. The violation or possible violation shall then be promptly reported to the Board of Directors by the Executive Director.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

**§ 25-10-2105 Discovered Violations**

If any DCD employee or member discovers irregularities in the use and enforcement of this chapter, or has reasonable grounds to believe this chapter may have been violated, the employee or director shall report the matter to the Executive Director who shall furnish the Board of Directors with the information he or she has obtained.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

**§ 25-10-2110 Additional Information**

It is the responsibility of the Executive Director, together with the Chairman, to review the information submitted, and request additional information necessary to make a determination as to whether there is substantial evidence of violation of this chapter or whether further investigation should be undertaken.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

**§ 25-10-2115 Penalties**

If it is determined by the majority of the Board of Directors that an individual has violated any of the provisions of this chapter, he or she shall be subject to the penalties provided by law, and to such additional disciplinary and other remedial action including, among others, dismissal, suspension, or reduction in job position, as is appropriate.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 27 Com. Reg. 24733 (Aug. 22, 2005) (superseding all previous rules and regulations); Amdts Proposed 27 Com. Reg. 24548 (June 20, 2005); Adopted 24 Com. Reg. 19377 (June 17, 2002); Proposed 24 Com. Reg. 18813 (Jan. 29, 2002); Adopted 16 Com. Reg. 12319 (Aug. 15, 1994); Proposed 16 Com. Reg. 11843 (May 15, 1994).

**Part 2200 - Board of Directors' By-laws**

Commission Comment: This part contains regulations that conflict with regulations codified at Part 100 and Part 300. The Notice of Proposed Amendments and Notice of Adoption for this part did not repeal Parts 100 or 300. To the extent that these regulations conflict with Parts 100 or 300, the regulations in Parts 100 and 300 are superseded.

See the Commission Comment to § 25-10-2265 for information regarding the accuracy of this part.

**§ 25-10-2201 Introduction**

We, the undersigned Members of the Board of Directors of the Commonwealth Development Authority, for the purpose of ensuring and facilitating the orderly conduct of the meetings of the Board, do hereby adopt these by-laws as the By-Laws of the Board of Directors of the Commonwealth Development Authority.

History: Adopted 36 Com. Reg. 34698 (Feb. 28, 2014); Proposed 35 Com. Reg. 34329 (Sept. 28, 2013).

Commission Comment: This section was an introductory paragraph to the by-laws in the original regulation. The Commission codified it at this section pursuant to 1 CMC § 3806(a).

**§ 25-10-2205 Name of Organization**

The name of this organization is the Board of Directors of the Commonwealth Development Authority (hereinafter the “Board”).

History: Adopted 36 Com. Reg. 34698 (Feb. 28, 2014); Proposed 35 Com. Reg. 34329 (Sept. 28, 2013).

**§ 25-10-2210 Principal Office**

The Board shall have as its principal office, and meeting place, the principal office of the Commonwealth Development Authority (the “Authority”) located in Saipan, and may establish such other offices or branches elsewhere in the Commonwealth of the Northern Mariana Islands as the Board deems necessary. The principal office is Beach Road, San Jose Village, Saipan, MP 96950.

History: Adopted 36 Com. Reg. 34698 (Feb. 28, 2014); Proposed 35 Com. Reg. 34329 (Sept. 28, 2013).

**§ 25-10-2215 Enabling Legislation**

The Commonwealth Development Authority is established and created pursuant to 4 CMC § 10101, *et seq.*, as amended.

History: Adopted 36 Com. Reg. 34698 (Feb. 28, 2014); Proposed 35 Com. Reg. 34329 (Sept. 28, 2013).

**§ 25-10-2220 Composition of the Board**

(a) The affairs of the Authority shall be governed and controlled by the Board, which shall consist of seven members. Members of the Board are appointed by the Governor

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with the advice and consent of the Senate. Members of the Board shall serve staggered terms of four years. Appointment to fill vacancies shall be for the remainder of the unexpired term.

(b) The Board membership shall consist of U.S. citizens or U.S. nationals as defined in Section 8 of the Schedule on Transitional Matters of the Constitution who have at least one year continuous residency in the Commonwealth and who are domiciles of the Commonwealth as defined in Section 1005(e) of the Covenant, with at least two members representing Rota and at least two members representing Tinian. Board members shall be individuals with knowledge and experience in business, finance, banking, or other economic affairs and may include the Public Auditor.

History: Adopted 36 Com. Reg. 34698 (Feb. 28, 2014); Proposed 35 Com. Reg. 34329 (Sept. 28, 2013).

Commission Comment: The Commission struck the figure “7” from subsection (a) pursuant to 1 CMC § 3806(e). The Commission inserted a comma after the word “banking” in subsection (b) pursuant to 1 CMC § 3806(g).

### § 25-10-2225 Meetings of the Board

(a) All meetings of the Board shall be held in the Commonwealth and pursuant to Public\* 8-41; “the Open Government Act of 1992”.

(b) Quarterly Meetings Required. The Board shall meet not less than once each quarter at a time and place designated at least 14 calendar days in advance by the Chairperson.

(c) Other Meetings. The majority of the Board or the Chairperson may convene other meetings on 72 hours’ notice.

(d) Special Meetings. The majority of the Board or the Chairperson may call at any time a special meeting at least twenty-four hours before the time of such meeting as specified in the notice.

(e) Open and Closed Meetings. Meetings shall be open to the public during discussion of policies, procedures and administrative and other non-confidential matters, and closed to the public during discussion of personnel and other matters of a confidential nature as may be defined in these by-laws or other applicable local or federal laws. Matters of a confidential nature shall include, but not limited\* to, the following:

- (1) All matters requiring consultation with the governing body’s legal counsel.
- (2) All matters which may infringe on a person’s right to privacy as guaranteed by the Commonwealth Constitution and as further defined in 1 CMC § 9903, including but not limited to confidential medical or financial information.
- (3) All matters pertaining to any actual or suspected wrongdoing, fraud, misfeasance or other violations of agency law, regulations, policies, and procedures whether or not the violation can be criminally prosecuted.

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(4) All matters involving the receipt and evaluation of complaints or charges brought against the agency, its officers, board members, and employees.

(f) Lack of Quorum/Postponement of Meeting. At a meeting published to begin at a certain time, if a quorum cannot be established for a period longer than thirty minutes after the scheduled time, then the meeting shall be postponed by the Chairperson of the Board until a definite date and time when a quorum can be established.

(g) Compensation. The members of the Board shall be compensated pursuant to 1 CMC Section 8247, including but not limited to the following, and may be reimbursed in accordance with the Commonwealth law for any reasonable and necessary expenses incurred in the performance of their duties under this division:

(1) A Board of Director\* shall be entitled to compensation rates of \$60.00 for a meeting for four or more hours and \$30.00 for a two to four hours meeting. The compensation shall not exceed a maximum of \$6,000 per year; provided further that compensation for meetings shall be limited to those meetings open and public as required by 1 CMC § 9904 and for which notice has been published in accordance with 1 CMC § 9910. A member who is employed by the Commonwealth shall receive his or her regular salary under administrative leave status in lieu of compensation for meetings held during working hours.

(2) For purposes of this section, a full-day is defined as not less than four hours. A half-day is defined as not less than two nor more than four hours.

(3) A member shall not be compensated for attendance at a meeting unless the minutes of that meeting have been transcribed and adopted.

(4) Standing committees, subcommittee meetings, ad hoc, and informal meetings shall not be compensable.

(5) Rules and rates for travel and per diem rates shall be the same as those established for the Executive Branch.

\* So in original.

History: Adopted 36 Com. Reg. 34698 (Feb. 28, 2014); Proposed 35 Com. Reg. 34329 (Sept. 28, 2013).

Commission Comment: Subsection (f) did not appear in the original proposed regulation. It was added by the Notice of Adoption. The Commission inserted commas after the words “policies” in subsection (e)(3), “members” in subsection (e)(4), and “ad hoc” in subsection (g)(4) pursuant to 1 CMC § 3806(g). The Commission struck the figures “30” from subsection (f) and “2” and “4” from subsections (g)(1) and (g)(2) pursuant to 1 CMC § 3806(e).

### **§ 25-10-2230 Members of the Board**

(a) Members of the Board. Members of the Board, constituting a quorum, shall elect a Chairperson and Vice-Chairperson, immediately upon their first meeting following Senate confirmation of all seven members. The Chairperson and Vice-Chairperson shall serve for a term of two years. At the end of every two year period, the Board shall elect its Chairperson and Vice-Chairperson. The Chairperson shall preside over the meetings of the Board. The election of said Chairperson and Vice-Chairperson will be conducted as the first order of business of the first scheduled meeting of the calendar year.

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(b) Secretary. The Board shall designate a Secretary to keep the minutes and records of the Board, who may or may not be a member of the Board.

(c) Resignation. An appointed member may at any time resign his or her office by notice in writing to the Governor. Upon resignation, removal, or expiration of the term of appointment, the member shall cease to sit on the Board, and shall not be included in a quorum count.

(d) Removal and Vacancies of Board.

(1) Removal of a Board member before the expiration of his or her term shall occur only by the Governor and on grounds of gross neglect or dereliction of duty, breach of fiduciary duty, conviction of a felony, or mental or physical incapacity. In the event that a Board member is removed from the Board or ceases to sit on the Board for any other reason, the Governor shall appoint a replacement, with the advice and consent of the Senate. Such a replacement member of the Board shall serve the remainder of the term of the member he or she replaces and must be confirmed by the Senate.

(2) In the event the Chairperson or Vice-Chairperson is replaced, the Board will select a Chairperson or Vice-Chairperson from among its members pursuant to subsection (a).

(f) The Chairperson shall preside at all meetings of the Board. He or she shall also have such powers and shall perform such duties as may from time to time be specified in resolutions or other directives of the Board. In the absence of such specifications, he or she shall have the powers and authority and shall perform and discharge the duties of a chairperson serving in public corporations having the same or similar general purposes and objectives as this public corporation.

History: Adopted 36 Com. Reg. 34698 (Feb. 28, 2014); Proposed 35 Com. Reg. 34329 (Sept. 28, 2013).

Commission Comment: The Commission inserted commas after the words “removal” in subsection (c) and “felony” in subsection (d)(1) pursuant to 1 CMC § 3806(g). The Commission substituted section numbers pursuant to 1 CMC § 3806(d).

### **§ 25-10-2235 Officers of the Authority**

(a) The Board shall appoint an Executive Director who shall be its Chief Executive Officer, and shall exercise the power and duties under the provision of 4 CMC § 10306(a). The Board shall also appoint a Comptroller and such other officers as the by-laws may require for the operation of the Authority.

(b) The person appointed as Executive Director shall be knowledgeable, and have a minimum of five years professional experience, in banking procedures and activities, or in economic development and financial management, and shall possess a graduate degree in business administration, economics, engineering, accounting, or law from an accredited university or college.



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- (c)(1) The Comptroller shall exercise the following functions:
- (i) keep the official books and accounts of the Authority;
  - (ii) prepare an annual report of the financial condition of the Authority for the Executive Director and the Board; and
  - (iii) perform such other functions as the Executive Director or the Board may require.
- (2) The Comptroller shall hold at least a bachelor's degree in accounting and five years experience in governmental or financial accounting.
- (d) The Board may appoint an attorney who will serve at its pleasure and whose duties and compensation may be fixed by the Board. The Attorney shall advise the Board, the Executive Director, and staff in all legal matters to which the Authority is a party or in which the Authority is legally interested, and may represent the Authority before the Legislature, Boards, and other agencies of the Commonwealth or of the United States.
- (e) The Executive Director and Comptroller shall be paid at salaries established pursuant to 1 CMC Section 8246.
- (f) The Executive Director, Comptroller, and other officers of the Authority may be dismissed for cause by the affirmative vote of five Board members.

History: Adopted 36 Com. Reg. 34698 (Feb. 28, 2014); Proposed 35 Com. Reg. 34329 (Sept. 28, 2013).

Commission Comment: The Commission inserted commas after the words "accounting" in subsection (b), "Director" in subsection (d), and "Comptroller" in subsection (f) pursuant to 1 CMC § 3806(g). The Commission struck the figure "5" from subsection (c)(2) pursuant to 1 CMC § 3806(e).

### **§ 25-10-2240 Procedures in Meetings**

- (a) A quorum for meetings and transacting business shall be five voting members present and able to conduct a meeting. A vote of five members shall be required for all action taken by the Board. An abstention is not considered a vote. After a quorum is established and a meeting has convened, no member shall leave the meeting room without the permission of the Chairperson and permission may not be granted, except for good cause, if such departure will destroy the quorum.
- (b) Unless otherwise provided for in this division, all decisions of the Board shall be made by a majority of those members present and voting when a quorum is present. A member of the Board, who is unable to attend a particular meeting, may authorize in writing another Board member to cast the absent member's vote upon any item of business previously noticed on the agenda for that meeting. Notice of such proxy designation must be given to the Chairperson no less than 24 hours before the meeting. A proxy authorization cannot be used to establish a quorum.
- (c) A motion to be put before the Board must be raised in definitive form either verbally or in writing by one of the members of the Board. The motion must thereupon be seconded by another member of the Board within a one-minute interval, or the proposed motion will fail at that juncture. Once a motion has been properly introduced and

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seconded, that motion shall then be stated by the Chairperson before debate. Debate shall continue until the Chairperson closes the debate and calls for a vote on the motion. Any motion may be withdrawn by the initiator at any time before it has been adopted.

(d) A vote on a motion before the Board shall be either by voice, show of hands, roll call, or secret ballot. A secret ballot may be requested by any member of the Board on any vote on any motion provided, however, such request is supported by a majority of the members present. A vote by show of hands or roll call may be requested by any member of the Board which shall be entertained by the Chairperson upon such request. Any member may require for the record an indication of the outcome of the vote as to each individual member of the Board except in those instances where a secret ballot is requested whereupon only the ascertainment of the result of the vote will be recorded.

(e) Any motion that does not receive a majority affirmative vote is thereby rejected and cannot be re-introduced in its same form at the same meeting of the Board.

(f) When a question is under debate, no motions shall be received except the following: To adjourn; for the previous question; to table the motion; to postpone indefinitely; to postpone to a certain time; to defer; to amend; or to recess. These motions shall have precedence in the order listed.

(g) When an appeal is taken from a decision of the Chair, the member taking the appeal shall be allowed to state his reason for so doing. The question shall then be immediately put in the following form: "Shall the ruling of the Chair be sustained?"

(h) A motion to adjourn shall always be in order, except when a vote is being taken on any question before the Board, or when a member has the floor, provided that there be some intervening business proposed and determined between two motions to adjourn.

(i) Meetings of the Board shall be conducted according to this part. Should any procedural problem develop that is not specifically answered by this part, the Chairperson shall refer to the most current edition of "Robert's Rules of Order" to assist in a determination of the appropriate procedure to follow.

History: Adopted 36 Com. Reg. 34698 (Feb. 28, 2014); Proposed 35 Com. Reg. 34329 (Sept. 28, 2013).

Commission Comment: The Commission inserted a comma after the word "call" in subsection (d) pursuant to 1 CMC § 3806(g). The Commission struck the figure "2" from subsection (h) pursuant to 1 CMC § 3806(e). The Commission substituted section numbers pursuant to 1 CMC § 3806(d).

### **§ 25-10-2245 Code of Ethics**

The members of the Board shall comply with the requirements of the Commonwealth Ethics Code pursuant to Public Law 8-11 [1 CMC §§ 8511 *et seq.*]. The members of the Board and the Executive Director shall file an annual statement of financial interest on or before May 1 of each year with the Office of the Public Auditor.

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History: Adopted 36 Com. Reg. 34698 (Feb. 28, 2014); Proposed 35 Com. Reg. 34329 (Sept. 28, 2013).

Commission Comment: The Commission corrected the capitalization of the words “statement of financial interest” pursuant to 1 CMC § 3806(f).

### **§ 25-10-2250 Conflicts of Interest**

The members of the Board shall comply with the requirements of the Commonwealth Ethics Code pursuant to Public Law 8-11 [1 CMC §§ 8501 *et seq.*] and Section 16 of the Commonwealth Development Authority Act of 1984, NMI Public Law 4-49, as amended and as codified in 4 CMC § 10408.

History: Adopted 36 Com. Reg. 34698 (Feb. 28, 2014); Proposed 35 Com. Reg. 34329 (Sept. 28, 2013).

### **§ 25-10-2255 Confidentiality Agreement**

The Board shall adopt a confidentiality agreement to be executed by each member of the Board immediately after being officially sworn. The agreement shall comply with the privacy information requirements of Section 19 of the Commonwealth Development Authority Act of 1984, NMI Public Law 4-49, as amended and codified in 4 CMC § 10410.

History: Adopted 36 Com. Reg. 34698 (Feb. 28, 2014); Proposed 35 Com. Reg. 34329 (Sept. 28, 2013).

Commission Comment: The Commission corrected the capitalization of the words “confidentiality agreement” pursuant to 1 CMC § 3806(f).

### **§ 25-10-2260 Seal**

There shall be a seal for the Commonwealth Development Authority which seal shall be kept by the designated Secretary of the Board.

History: Adopted 36 Com. Reg. 34698 (Feb. 28, 2014); Proposed 35 Com. Reg. 34329 (Sept. 28, 2013).

### **§ 25-10-2265 Adoption and Amendment of By-laws**

(a) These by-laws shall become effective when adopted by a majority of the members of the Board.

(b) These by-laws, except those provisions existing pursuant to law or its amendment therefore, may be amended, altered, changed, added to or repealed by the affirmative vote of the majority of the membership of the Board, after due notice of said proposal in accordance with section 25-10-2225, above.

History: Adopted 36 Com. Reg. 34698 (Feb. 28, 2014); Proposed 35 Com. Reg. 34329 (Sept. 28, 2013).

Commission Comment: The Commission corrected the capitalization of the word “by-laws” in both subsections pursuant to 1 CMC § 3806(f). The Commission substituted section numbers pursuant to 1 CMC § 3806(d).

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Because subsection (b) purports to allow the Board to amend the by-laws without publishing a Notice of Proposed Regulation or Notice of Adoption in the Commonwealth Register, the Commission is unable to guarantee that the regulations contained in this part are currently in effect as the by-laws of the Board.