

RESOLUTION

WHEREAS, the Empowerment Zone Division, Community and Human Development Department has established delinquent loan policies and procedures related to the administration of existing business loans in the Empowerment Zone Revolving Loan Fund, which was transferred to the City in June 2007 as part of City administration of Empowerment Zone Planning and Implementation Grant No. EZ-99-TX-0013 through the United States Department of Housing and Urban Development ("HUD"); and

WHEREAS, the delinquent business loan procedures for the Empowerment Zone Revolving Loan Fund have been designed to promote efficiency, consistency and expediency in the administration and collection of existing Empowerment Zone business loans and to generate repayment of said loan funds, so that these funds are available as a funding source for new loans to qualifying businesses that are located in the Empowerment Zone; and

WHEREAS, in furtherance of the Department's objectives in providing borrowers with adequate notice and opportunities to restructure or modify their loan obligations to forestall loan delinquency and debt acceleration, City Council desires that certain authorizations be in place in order to expedite standard loan restructuring/modification requests.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. That the Community and Human Development Department Director is authorized to approve, cancel, or deny Empowerment Zone business loan restructure/modification requests provided such actions are in accordance with the Empowerment Zone Division's delinquent business loan procedures for the Revolving Loan Fund, which are attached as Exhibit "A"; and
2. That the City Manager is authorized to execute standard restructuring/modification agreements and any related documents, in accordance with the delinquent business loan procedures, with the review and approval of the City Attorney's Office.

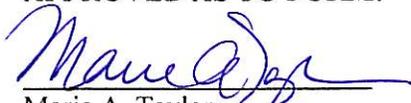
APPROVED this ____ day of _____ 2009

John F. Cook,
Mayor

ATTEST:

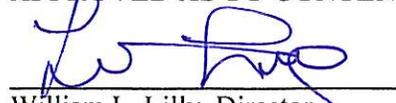
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Marie A. Taylor
Assistant City Attorney

APPROVED AS TO CONTENT:



William L. Lilly, Director
Community and Human Development

EXHIBIT "A"

Community and Human Development Empowerment Zone (EZ) Revolving Loan Fund **DELINQUENT BUSINESS LOAN PROCEDURES**

GENERAL:

The following is an excerpt of the Empowerment Zone Revolving Loan Fund Manual, which delineates procedures regarding the Department of Community and Human Development ("CD") Empowerment Zone Revolving Loan Fund business loans in order to promote efficiency, consistency, and expediency in the administration and collection of the business loans.

DELINQUENT ACCOUNTS PROCEDURES:

First Missed Payment

On or about the last business day of the month when a payment has been missed, the EZ Senior Accountant will make a telephone call to the borrower and remind the borrower that payment has been missed and that a payment needs to be made on the next business day. If the first missed payment is not received on the next business day, the EZ Senior Accountant will make a second and final reminder phone call within the next two business days requesting immediate payment.

30-day Delinquency

For those accounts that are more than thirty days past due, the EZ Senior Accountant will contact the delinquent borrower on the next business day. The borrower will be informed that payments were missed and that two payments must be made on the next due date. Further, the borrower will be informed of and expect to do the following:

1. Borrower must commit to pay past due amount on or before the next due date in order to have payments remain current;
2. For interest-bearing loans, be provided with an explanation of the interest charged and its effect on principal reduction;
3. Be informed of the importance of maintaining a positive credit history with the City. The borrower will be informed of the possible negative effects on future loan options and on the borrower's ability to use this loan or the City as a credit reference; and,
4. The borrower will be reminded that the City of El Paso reports monthly to a national credit reporting bureau and that a late payment may adversely affect its credit rating.

After two documented unsuccessful attempts to reach the borrower by telephone, the EZ Senior Accountant will mail a notice to the borrower. This notice will

include the same points noted above and in the form approved by the City Attorney's Office. In addition, the letter will encourage the borrower to call the EZ Senior Accountant to discuss payment options or account verification. This will establish a contact for obtaining more information to evaluate individual circumstances and possibly, a new telephone number. Under no circumstances, will the EZ Senior Accountant engage in outside collection efforts such as by way of personal visits, contact with friends or family, etc.

60-day Delinquency

For those accounts that are more than sixty days past due, the City of El Paso Financial Services Department will mail a delinquency letter to the borrower and the guarantors of the loan. The letter will request the borrower to call for an appointment to come in and discuss the account and identify possible remedies to eliminate the delinquency and shall be in the form approved by the City Attorney's Office.

If the borrower initiates contact, then the EZ Coordinator may proceed with the following:

1. Adoption of a Payment Plan that identifies the time and frequency of the payments to be made to resolve the past due balance as well as the current payment amounts to be made on a monthly basis. The reasons for the delinquency will be documented and the payment plan shall last no longer than three months. At the end of the payment plan period (up to three months) all arrearages must have been paid in full and the loan account brought current.
2. Submittal of a Loan Restructure or Modification request upon the borrower's request for the application for loan modification. The application will be processed and reviewed in accordance to the respective section outlined below.

90-day Delinquency

Pursuant to the EZ Senior Accountant's monthly delinquent accounts reporting requirements, the EZ Senior Accountant will provide the following information to the EZ Coordinator for all loans that have been identified as 90 days delinquent:

- Borrower name, business name and current mailing address;
- EZ loan account number;
- Current payment history/analysis that shows the total delinquency including interest due and missed payments;
- Copy of prior past due notice/letter from Financial Services (if applicable); and,
- Copy of documentation of prior contact/communication utilizing notes tab from DownHome Loan Software.

The EZ Coordinator will submit a request for a default letter from the City Attorney's Office and provide the following information:

- The aforementioned information submitted by the EZ Senior Accountant;
- Copy of loan documents including promissory note; forgivable loan note (if any); loan agreement; security agreement; guaranty agreement (if any); UCC financing statement and deed of trust (if applicable);
- Copy of any prior communications from City Attorney's Office (if applicable); and,
- A memo requesting default letter preparation with an explanation of the request to the City Attorney's Office including a listing of the months that are past due; a total sum of the delinquency, including interest due and the date the next payment is due.
- The City Attorney's Office will prepare the default letter to be mailed out by the EZ Coordinator via certified mail return receipt and regular mail.

Referral to the City Attorney's Office after 120 days delinquency

When all attempts to elicit a response from the borrower have failed and the loan is in default*, the EZ Coordinator will forward the loan account file to the City Attorney's Office, along with updated account information and CD Director's recommended action, for the handling of additional collection efforts.

*A loan is in default when not paid as stated in the contract, is 120-days delinquent, does not have a loan modification pending, and has not been deemed "uncollectible".

Bankruptcies

Upon the filing of a petition for bankruptcy and notification to the City, the loan may be subject to an automatic stay. The "stay" prohibits all creditors from making contact with the borrower or pursuing collection activities. EZ staff shall provide notice of any bankruptcy filings to the City Attorney's Office.

During the duration of the bankruptcy proceeding, the borrower's loan will be closely monitored for compliance with any required payments under any bankruptcy plan. The EZ Senior Accountant will notify the City Attorney's Office of any noncompliance. The City Attorney's Office will handle as appropriate.

The EZ Senior Accountant will track that the borrower is complying with the repayment plan. Neither the EZ Senior Accountant nor EZ staff shall contact any borrower while the bankruptcy is pending. Any action taken shall be done in consultation with the City Attorney's Office.

Loan Restructure or Modification

Application Request - During the loan's term, the borrower may request an application for loan restructure from the EZ Coordinator. The EZ Coordinator will mail the borrower a packet that includes a loan restructure application (with instructions) and a personal financial statement form that must be completed and returned to the City of El Paso. If the application is requested as a result of a delinquency or default, then the application (with the requisite documentation) must be returned within ten business days from the date of the packet letter.

Application Submission - Upon receipt of the completed forms and required attachments, the EZ staff will review the packet for completeness and package the request for loan review within seven working days of submission. Receipt of a properly completed application will abate the collection efforts by the EZ staff and City Attorney's Office while the application processing is pending, but will not affect the City's policy regarding reporting of delinquent loan activity to a national credit reporting bureau. The applicant shall continue to make timely monthly payments during the evaluation. A letter will be mailed to the borrower confirming receipt. The letter will inform the borrower that he/she must continue making timely monthly payments during the consideration process.

Application Review - Review of forms will entail determination of borrower's capacity to make the modified monthly payment amount. Criteria that will be considered include:

1. Firm's history
2. Management practices, principles, strategies, and structure
3. Product(s) or Service(s)
4. Production capabilities
5. Existing and projected market conditions
6. Financing structure and continuity
7. Collateral specifications
8. Assessment of repayment ability
 - i. Review will document other business liabilities and status of repayment obligations
 - ii. Review will document other borrower personal liabilities
9. Other unpaid obligations to the City of El Paso (e.g. property taxes)
10. Borrower's compliance with other loan requirements (if applicable) – annual reporting and/or hiring Empowerment Zone residents.

Application Recommendation - Upon completion of review, the reviewing EZ staff will submit a recommendation to the CD Director concerning approval or denial of the request for loan restructuring.

The modified agreement may entail changes to one or all of the following:

1. Loan term: to be refinanced for a period not longer than the original term period.
2. Payment amount:
 - i. a monthly payment no less than the monthly interest accrued,
 - ii. an initial minimum payment of 20% of the past due loan amount.
3. Collateral: Initial collateral may be augmented; but, not reduced.

Within seven working days of staff review, the borrower will be notified by telephone and by mail detailing the recommended loan terms. With the borrower/guarantors' preliminary acceptance of recommended loan terms, a modified agreement will be prepared.

For all loan restructure approvals, the following documentation is required before the preparation of the modification/restructuring agreement. If any of the below mentioned documentation items are not provided within 30 days of the date the omitted documentation was requested, the modification/restructuring will be cancelled. Only after the borrower has a complete loan closing package as specified, will the loan modification/restructure proceed:

1. Proof of ownership;
2. Current appraisal or other acceptable documentation of value of any real property (CAD value is sufficient) or personal property used as collateral; and,
3. Current Uniform Commercial Code (UCC) filing on any personal property used as collateral.

The borrower shall bear the costs associated with creating and entering into a restructuring agreement, including UCC filing costs and recordation.

Modification/Restructuring Agreement Execution - By City Council resolution dated _____, the CD Director is authorized to approve, cancel, or deny the loan restructure/modification in accordance with the terms and conditions of this document; and the City Manager is authorized to execute the agreement upon approval by the CD Director as to content and City Attorney's Office as to form. Any restructuring agreements secured by real property will be recorded in the Real Property Records of El Paso County, Texas.

Uncollectible Loan Authorization

Declaring a loan uncollectible will be authorized under the following circumstances. Upon following a due diligence review conducted by EZ staff concerning the loan and the City's lien securing the same, it is determined by the City Attorney, in conjunction with the CD Director's review, that:

1. The City's lien has been extinguished by a foreclosure of a lien in a superior lien position and there is a new owner of record on the property; or,
2. An Order of Discharge has been entered by a United States Bankruptcy Court discharging the borrower(s) from the obligation of the loan or the Bankruptcy Court has ordered a Trustee's Sale of the Property and there are no excess proceeds or there are insufficient proceeds from the sale to satisfy the loan; or,
3. Given the individual factual circumstances concerning the loan and the City's lien securing the loan, the estimated costs of collection on the loan exceed the anticipated amount to be recovered on the loan or the costs of collection are otherwise prohibitive in relation to the outstanding indebtedness.

Any lien created by a loan declared uncollectible shall not be released unless payment of all amounts due has been made. If a loan account is declared uncollectible, the Financial Services Department will service the loan as an uncollectible account under its standard accounting purposes.

National Credit Bureau Reporting

As part of its loan servicing procedures, the Financial Services Department will report delinquent loan activity to a national credit reporting bureau on a monthly basis. As required, the Financial Services Department will provide borrowers any notices required by state or federal law.

UCC Filing for EZ Business Loans

Depending on the form of the loan security, the City will file the appropriate financing statements with the Office of the Secretary of State or El Paso County. When required, the EZ Senior Accountant will process and file a financing statement for each active loan.

Pay-Offs

Accounts with less than three monthly payments worth of principal balance will be identified analyzed and tracked for imminent pay-off. The EZ Senior Accountant will send the borrower a letter that states the amount of the final pay-off.

If necessary, borrowers will be encouraged to meet with the EZ Senior Accountant who will explain the computation used in determining the pay-off amount. In the situation when an overpayment is received for a loan, the EZ Senior Accountant will request a refund check for the borrower.

The EZ Coordinator will process any request for release of a lien or termination of the UCC financing statement following loan pay-off. When requests for loan pay-

off amounts originate from a title company handling the sale of the property, the EZ Senior Accountant will initiate a loan analysis and complete a balance computation.