

STATE OF CALIFORNIA

DEPARTMENT OF BUSINESS OVERSIGHT

In the Matter of:

STATE ASSISTANCE FUND FOR ENTERPRISE, BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATION

ORDER TAKING POSSESSION OF PROPERTY AND BUSINESS

Pursuant to Financial Code sections 554 and 592, this is an Order of the Commissioner of Business Oversight taking possession of the property and business of the State Assistance Fund for Enterprise, Business and Industrial Development Corporation ("SAFE-BIDCO"). In compliance with section 554, this Order "set[s] forth the condition or conditions of the subject institution . . . that constitute the basis or bases for the commissioner's action."

The Commissioner is issuing this order on three bases. First, SAFE-BIDCO has failed to comply with an earlier order of the Commissioner to develop and submit a detailed liquidation plan. Second, SAFE-BIDCO is in an unsafe and unsound condition, as its years of operating losses have eroded its capital and lending capacity. Third, SAFE-BIDCO does not have a viable plan for dealing with its current condition, either with respect to acquiring more funding or with respect to protecting its creditors.

I. FACTUAL AND LEGAL BACKGROUND

A. SAFE-BIDCO

SAFE-BIDCO is a legislatively-created, non-profit corporation. The Legislature originally created SAFE-BIDCO for the purpose of providing financial assistance to alternative energy development businesses.¹ (Stats. 1980, c. 819, § 1.) In 1989, the Legislature modified SAFE-BIDCO's statutory mission by enacting the State Assistance Fund for Enterprise Act (Fin. Code, § 32001 et seq.). Under that Act, SAFE-BIDCO's mission is to provide financing for small businesses generally. In particular, the Legislature intended for SAFE-BIDCO:

¹ SAFE BIDCO was originally known as the "State Assistance Fund for Energy, California Business and Industrial Corporation." (Stats. 1980, c. 819, § 1.)

- 1 (a) To enhance the availability of financial assistance for small business in
2 California.
- 3 (b) To increase the cost effectiveness and efficiency of financial assistance to
4 small businesses provided by the state. . . .
- 5 (e) To provide the maximum degree of leverage of the limited state resources
6 available to assist small business, consistent with sound business practices
7 and fiduciary responsibility.
- 8 (f) To increase the competitiveness of California’s small businesses in the
9 world economy and the creation of jobs.

(Fin. Code, § 32101.)

B. SAFE-BIDCO’s Revenue and Expenses

SAFE-BIDCO’s initial funding came from: (1) a one-time \$750,000 appropriation from the Energy Resources Conservation and Development Reserve Account within the General Fund (Stats. 1980, c. 819, § 2); (2) a loan of \$1,500,000 from the General Fund (Fin. Code, § 32812(a)), and (3) a loan of \$1,000,000 from the Energy Resources Programs Account within the General Fund (Fin. Code, § 32812(a)). SAFE-BIDCO currently has notes payable due to the California State Enterprise Loan Fund in the amount of \$2,500,000, with principal payments due through November 6, 2028.

C. BIDCO Law and Financial Institutions Law

SAFE-BIDCO is subject to the Business and Industrial Development Corporation Law (Fin. Code, § 31000 et seq.). (Fin. Code, § 32301(b).) As such, SAFE-BIDCO is licensed, supervised, and examined by the Department of Business Oversight. (*Id.* at §§ 31100, 32330(c).)

SAFE-BIDCO is also subject to the Financial Institutions Law. (Fin. Code, §§ 99, 185(k).) Thus, SAFE-BIDCO is subject to an order taking possession by the Commissioner. (Fin. Code, § 592.)

D. SAFE-BIDCO’s Sources of Revenue

SAFE-BIDCO receives revenue primarily from “the interest earned on the funds loaned to small businesses, and administrative fees for loan servicing and underwriting for others and grants.” (SAFE-BIDCO’s Response to Memorandum of Understanding (“RMOU”) at p. 5.) From that revenue, SAFE-BIDCO pays its expenses, including: “1) administrative costs, such as salaries and overhead; 2) interest payments on borrowed funds; [and] 3) provisions for loan losses.” (*Id.*)

1 **E. SAFE-BIDCO's Lending Activity**

2 SAFE-BIDCO engages in several categories of lending activities.

3 First, SAFE-BIDCO acts as a direct lender, making loans to small businesses from its own
4 lending capital. SAFE-BIDCO's Small Business Administration, Microloan, and Energy Efficiency
5 Loan programs fall into this category.

6 Second, SAFE-BIDCO acts an intermediary in the United States Department of Agriculture's
7 ("USDA") Intermediary Relending Program ("IRP"). Through that program, the USDA provides
8 low-interest loans to local intermediaries (like SAFE-BIDCO) to re-lend to businesses, who are the
9 ultimate recipients. (7 C.F.R. §§ 4274.30 et seq.) The intermediary then charges those ultimate
10 recipients interest above what it pays to the USDA.

11 Third, SAFE-BIDCO acts as a Financial Development Corporation ("FDC"). An FDC is
12 agent of the Small Business Loan Guarantee Program, which is administered by the California
13 Infrastructure and Economic Development Bank. Under that Program, the State may guarantee up to
14 80% of a small business loan issued by a private lender. The FDC's role is to review the loan
15 package to assess its fitness for a State guarantee. For this service, SAFE-BIDCO receives a one-
16 time fee equivalent to 2.5 percent of the guaranteed loan amount.

16 **F. SAFE-BIDCO's Financial Condition**

17 **1. Operating Losses**

18 For eleven of the past thirteen fiscal years, SAFE-BIDCO's expenses have exceeded
19 revenues, resulting in net operating losses. The aggregate loss for the last five years is
20 approximately \$1,616,000; for the last six years, approximately \$1,786,000; and for the last seven
21 years, approximately \$2,066,000.

22 In the two fiscal years in which SAFE-BIDCO did not experience a loss (2007-08 and 2016-
23 17), that outcome was the result of one-time, non-recurring events. In 2008, the U.S. Department of
24 Energy released SAFE-BIDCO from a \$2.75 million liability. If not for that forgiveness, SAFE-
25 BIDCO would have posted an operating loss of approximately \$381,000 for the year. In 2017,
26 SAFE-BIDCO assumed a \$1.2 million loan portfolio and \$1 million in loan funds under the USDA's
27 IRP program, resulting in the recognition of approximately \$314,000 in revenue. If not for that
28 acquisition, SAFE-BIDCO would have posted an operating loss of approximately \$120,000 for the
 year.

2. Declining Capital

SAFE-BIDCO's years of operating losses have led to a declining total net asset (or capital) position. SAFE-BIDCO's total net assets have declined over the past nine years as follows:

Fiscal Year Ending	Approx. Total Net Position (Capital)
6/30/2008	\$5,016,000
6/30/2009	\$4,547,000
6/30/2010	\$3,983,000
6/30/2011	\$3,703,000
6/30/2012	\$3,494,000
6/30/2013	\$2,452,000
6/30/2014	\$1,877,000
6/30/2015	\$1,557,000
6/30/2016	\$1,289,000
6/30/2017	\$1,794,000 ²

(RMOU at p. 40; SAFE-BIDCO's Letter of July 28, 2017 [Balance Sheet].)

Another way to evaluate SAFE-BIDCO's capital condition is to look at SAFE-BIDCO's General Operating Fund, without consideration of the IRP-related assets.³ SAFE-BIDCO's General Operating Fund "accounts for the contributions from the State of California, the general and administrative expenses of the Corporation, fee income and interest earned on loans and investments, certain other expenses, and contract revenues for the Corporation." (SAFE-BIDCO Audited Financial Statements, dated June 30, 2016 at p. 21.) According to audited financial

² This figure (an unaudited figure provided by SAFE-BIDCO) takes into account SAFE-BIDCO's one-time assumption of loan funds and a loan portfolio under the USDA's IRP program. However, as SAFE-BIDCO admits, that non-recurring event does not by itself make SAFE-BIDCO sustainable. (See RMOU at p. 7 ["Although incrementally positive this would not alone provide sustainability for SAFE-BIDCO."].)

³ Under the law, it is unclear how much, if any, of the IRP-related assets can be liquidated by SAFE-BIDCO for the purpose of satisfying its non-IRP liabilities. (See 7 C.F.R. § 4274.314 ["Agency [USDA] IRP loan funds must be placed in the intermediary's IRP revolving fund and used by the intermediary to provide direct loans to eligible ultimate recipients."]; *id.* at § 4274.319 ["Agency [USDA] IRP loan funds may not be used for payment of the intermediary's administrative costs or expenses."].); *id.* at § 4274.325 ["The rate [charged by the intermediary to ultimate recipients] should normally be the lowest rate sufficient to cover the loan's proportional share of the IRP revolving fund's debt service costs, reserve for bad debts, and administrative costs."].)

1 statements SAFE-BIDCO provided to the Department, SAFE-BIDCO's net asset position (i.e., net
2 assets minus net liabilities) in its General Operating Fund has declined as follows:

Fiscal Year Ending	Approx. Net Position (Capital) in General Operating Fund
6/30/2012	\$3,067,000
6/30/2013	\$2,135,000
6/30/2014	\$1,529,000
6/30/2015	\$1,218,000
6/30/2016	\$833,000

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9 (SAFE-BIDCO Audited Financial Statements from FY 2011-12, FY 2012-13, FY 2013-14, FY
10 2014-15, FY 2015-16.) The Commissioner has not received audited financial statements for the
11 2016-17 fiscal year. But, given the historical trend, there is reason to believe that the General
12 Operating Fund net position is now lower than \$833,000.

13 3. Declining Loan Production

14 As SAFE-BIDCO's capital declined, SAFE-BIDCO's capacity to make direct loans also
15 declined. In the past six fiscal years, the number of loans SAFE-BIDCO has made through the
16 Small Business Administration Loan, Energy Efficiency Loan, and Microloan programs has been as
17 follows:

SMALL BUSINESS ADMINISTRATION LOANS		
Fiscal Year	Number of Loans	Approx. Value of Loans
2011-12	9	\$1,557,300
2012-13	7	\$1,041,000
2013-14	3	\$300,000
2014-15	5	\$550,000
2015-16	0	\$0
2016-17	0	\$0

ENERGY EFFICIENCY LOANS		
Fiscal Year	Number of Loans	Approx. Value of Loans
2011-12	5	\$1,254,824
2012-13	1	\$51,500
2013-14	0	\$0
2014-15	0	\$0
2015-16	0	\$0
2016-17	0	\$0

MICROLOANS		
Fiscal Year	Number of Loans	Approx. Value of Loans
2011-12	1	\$25,000
2012-13	3	\$76,874
2013-14	0	\$0
2014-15	9	\$40,722
2015-16	0	\$0
2016-17	0	\$0

(SAFE-BIDCO's Letter of July 28, 2017 [Historical Lending Activity Report].)

SAFE-BIDCO's loan production through the IRP program has been as follows:

INTERMEDIARY RELENDING PROGRAM LOANS		
Fiscal Year	Number of Loans	Approx. Value of Loans
2011-12	4	\$357,000
2012-13	4	\$783,000
2013-14	4	\$325,000
2014-15	4	\$225,000
2015-16	2	\$406,000
2016-17	15	\$1,360,169 ⁵

(*Id.*)

As SAFE-BIDCO's direct lending activity has declined, its guarantee review activity as an FDC has increased. SAFE-BIDCO has reviewed and approved loan guarantees for the California Small Business Loan Guarantee Program as follows:

LOAN GUARANTEES	
Fiscal Year	Number of Loan Guarantees
2011-12	16
2012-13	21
2013-14	24
2014-15	25
2015-16	24
2016-17	14

⁵ Again, the 2016-17 figures take into account a one-time acquisition of loan funds and a loan portfolio by SAFE-BIDCO in 2017.

1 (*Id.*) The fees that SAFE-BIDCO earns through its FDC services are less lucrative than the interest
2 generated from direct lending. SAFE-BIDCO states that its involvement in the Small Business Loan
3 Guarantee Program ended in June 2017. (SAFE-BIDCO's Letter of August 18, 2017 at p. 3.)

4 **G. SAFE-BIDCO's Memorandum of Understanding with the Department**

5 By 2016, the Department was aware of SAFE-BIDCO's declining condition and directed
6 SAFE-BIDCO to take steps towards self-rehabilitation. In July 2016, the Department entered into a
7 Memorandum of Understanding ("MOU") with SAFE-BIDCO. That MOU called for SAFE-
8 BIDCO to do two things:

- 9 1. Adopt and implement a written plan to maintain [SAFE-BIDCO] as a viable entity. The
10 plan shall set forth a comprehensive budget covering the fiscal year 2016 - 2017,
11 including current strategic initiatives to raise the [SAFE-BIDCO's] net assets (capital).
12 The plan shall be acceptable to the Commissioner.
- 13 2. Develop a written resolution plan with appropriate procedures to voluntarily liquidate
14 [SAFE-BIDCO]. The plan shall be acceptable to the Commissioner.

15 **H. SAFE-BIDCO's Response to Memorandum of Understanding**

16 **1. New Revenue Sources Proposed by SAFE-BIDCO**

17 In response to the MOU, SAFE-BIDCO acknowledged that it is "concerned about its self-
18 sufficiency," and that it needed additional funding to remain viable. (RMOU at p. 5.) In its response,
19 SAFE-BIDCO identified three specific funding opportunities that it was pursuing:

- 20 • SAFE-BIDCO submitted a Budget Change Proposal to the Legislature for the 2016-17 fiscal
21 year, seeking an additional \$15,000,000 in loan funds and a one-time appropriation of
22 \$500,000.
- 23 • SAFE-BIDCO would engage in a joint venture with a private organization to obtain funds
24 through the federal EB-5 Visa Program.⁶ Through this joint venture, SAFE-BIDCO hopes to
25 receive \$35 million in loan funds annually for the next five years.
- 26 • As part of the IRP program, the USDA would assign SAFE-BIDCO a \$1.2 million loan
27 portfolio and \$1 million in loan funds.

28 (RMOU at pp. 6-7.) Of these three potential sources, however, only the third has come to fruition.

⁶ Under that program, foreign nationals become eligible for permanent residence in the United States if they make the necessary investment in a commercial enterprise. (8 U.S.C. § 1153(b)(5).)

1 With respect to the Budget Change Proposal, the Assembly Committee on Jobs, Economic
2 Development, and the Economy responded by requesting that the State Auditor's Office conduct a
3 program audit of SAFE-BIDCO. The State Auditor did so and issued a report in April 2017. In that
4 report, the State Auditor concluded that it is "reluctant to recommend" additional State funding
5 absent fundamental changes in its structure and spending (e.g., placing SAFE-BIDCO in the State
6 Treasurer's Office). (State Auditor's Report at pp. 31-34.)

7 With respect to the joint venture, SAFE-BIDCO has reported no concrete progress towards
8 receiving \$35 million from this project. SAFE-BIDCO has proposed a joint venture whereby:
9 (1) SAFE-BIDCO and its partner would form a private placement fund through a Nevada limited
10 liability company, (2) the partner would hire licensed agents to attract EB-5 investors, (3) such
11 investors would provide equity investment capital for the fund, and (4) SAFE BIDCO would borrow
12 monies from the fund to lend to small businesses. (Letter of Intent re: Fund Creation at pp. 1-4.)
13 However, SAFE-BIDCO has not articulated a timeline for any of this to occur. Currently, SAFE-
14 BIDCO does not have a joint venture agreement in place with its partner -- just a letter of intent that
15 apparently expired in or about May 2017. (*Id.* at p. 1.) As of this writing, the U.S. Citizens and
16 Immigration Services, which administers the EB-5 Visa Program, has yet to approve SAFE-
17 BIDCO's business plan as being compliant with program rules. Further, the EB-5 Visa Program
18 itself is set to expire on September 30, 2017.

19 2. Plan for Self-Liquidation

20 In response to the Department's request for a written resolution plan to voluntarily liquidate,
21 SAFE-BIDCO responded as follows:

22 If neither of the funding options comes to fruition then the only remaining step is for the
23 appropriate entity to introduce legislation in the FY 16/17 to restructure or dissolve the
24 corporation.

25 SAFE-BIDCO was created by the State and operated as one share [sic] corporation under the
26 direction of a Board comprised of appointees to act on behalf of the State. Because of this
27 relationship the Board does not feel it is within its authority to close the corporation without
28 Legislative direction.

(RMOU at p. 4.)

I. SAFE-BIDCO Is Ordered to Submit a Liquidation Plan.

On July 20, 2017, the Commissioner issued an Order to Cease and Desist to SAFE-BIDCO
pursuant to Financial Code section 581. That Order called for SAFE-BIDCO to submit, within 30

1 days, “a written liquidation plan that is consistent with sound business practice and fiduciary
2 responsibility to the public.”

3 On August 18, 2017, SAFE-BIDCO submitted to the Commissioner the letter attached hereto
4 as Exhibit A.

5 **II. DISCUSSION**

6 **A. Legal Standard**

7 SAFE-BIDCO is obligated to “transact its business in a safe and sound manner and . . .
8 maintain itself in a safe and sound condition.” (Fin. Code, § 31400.) Financial Code section 592
9 authorizes the Commissioner to take possession of the property and business of a licensee if it finds
10 any of the following:

- 11 (a) The licensee has violated any provision of (1) any division subject to the
12 jurisdiction of the commissioner [or] (4) any provision of any order issued
13 by the commissioner. . . .
- 14 (b) The licensee is conducting its business in an unsafe or unsound manner.
- 15 (c) The licensee is in such condition that it is unsafe or unsound for the
16 licensee to transact appropriate licensee business.

17 In determining whether SAFE-BIDCO’s operations and condition are “safe and sound” under
18 Sections 592 and 31400, the Commissioner is guided by Financial Code section 32101(c). There,
19 the Legislature declared that SAFE-BIDCO, having been entrusted with “limited state resources,”
20 must use “sound business practices” and exercise “fiduciary responsibility.”

21 **B. SAFE-BIDCO Failed to Comply with the Commissioner’s Order of July 20,
22 2017.**

23 SAFE-BIDCO has violated the Commissioner’s Order of July 20, 2017. In that Order, and in
24 subsequent communications, the Commissioner directed SAFE-BIDCO to provide a detailed
25 liquidation plan that meets a fiduciary standard of care. SAFE-BIDCO failed to submit such a plan.

26 SAFE-BIDCO’s letter of August 18, 2017 contains virtually no information of substance
27 about a proposed liquidation process – e.g., a proposed liquidator, the cost of liquidation, how long
28 liquidation would take, a description of all assets to be liquidated, how much liquidation is expected

1 to yield, and a description of the claims and liabilities to be paid from the liquidation.⁷ Simply put,
2 SAFE-BIDCO's letter gives the Commissioner no reason to believe that SAFE-BIDCO is properly
3 prepared to undertake a successful liquidation.

4 **C. SAFE-BIDCO Is Not Maintaining Itself in a Safe and Sound Condition.**

5 The Commissioner ordered SAFE-BIDCO to develop a liquidation plan because it is not
6 maintaining itself in a safe and sound condition. As noted above, SAFE-BIDCO has experienced net
7 losses for eleven of the past thirteen fiscal years (with the two profitable years being the result of
8 singular, non-recurring events). SAFE-BIDCO's aggregate loss for the last seven years is
9 approximately \$2,066,000. Also concerning is SAFE-BIDCO's net asset position in its General
10 Operating Fund, which has gone from approximately \$3 million to \$833,000 in five years.

11 SAFE-BIDCO's declining asset base has at least three consequences. First, SAFE-BIDCO
12 now has little or no capacity to make loans from its own lending capital. For the past two fiscal
13 years, SAFE-BIDCO made \$0 in Small Business Administration loans, Energy Efficiency loans, and
14 Microloans.⁸ Thus, SAFE-BIDCO's ability to perform a key function – lending from its own capital
15 – is compromised. (See SAFE-BIDCO letter dated August 18, 2017 at p. 2 [stating that “most of
16 [SAFE-BIDCO's loan production] has been outside of the BIDCO program”].)

17 Second, SAFE-BIDCO is not in a position to rehabilitate its finances by increasing its stream
18 of interest income. SAFE-BIDCO is now trapped in a cycle. Because SAFE-BIDCO cannot cover
19 its expenses, its capital position has continually declined. Because SAFE-BIDCO's capital has
20 declined, SAFE-BIDCO is unable to make more loans. Because SAFE-BIDCO is unable to make
21 more loans, it cannot earn more interest to cover its expenses. SAFE-BIDCO acknowledges the self-
22 perpetuating nature of this problem. (RMOU at p. 5 [“operating deficits have eroded SAFE-
23 BIDCO's lending capital”]; *see also* State Auditor Report at pp. 12-13 [“Because of declining loan
24 revenue, it is likely that SAFE-BIDCO will continue to make fewer loan than it did previously,

25 ⁷ The Commissioner rejects any suggestion that SAFE-BIDCO could not have reasonably
26 known or understood that a detailed liquidation plan should contain such rudimentary information
27 about the liquidation process.

28 ⁸ Instead, most of SAFE-BIDCO's activity has been through the IRP program and the
California Small Business Loan Guarantee Program. Those programs, however, are less lucrative
and less capable of promoting sustainability than interest income generated by direct lending from
SAFE-BIDCO's own capital.

1 creating a downward spiral of fewer loans loan revenue, pushing SAFE-BIDCO closer to
2 insolvency.”].)

3 Third, SAFE-BIDCO’s current condition puts at risk its ability to pay its expenses and debts,
4 including a \$2.5 million debt owed to the State of California. As described above, SAFE-BIDCO’s
5 net asset position (particularly in its General Operating Fund) has been evaporating rapidly. SAFE-
6 BIDCO itself has admitted that – without additional funding – it would need to dissolve in the 2017-
7 18 fiscal year. (See RMOU at p. 5.)

8 **D. Lacking a Sound Business Plan, SAFE-BIDCO Is Conducting Its Business in an**
9 **Unsafe and Unsound Manner.**

10 Finally, SAFE-BIDCO lacks a sound business plan to address the above circumstances.
11 Specifically, SAFE-BIDCO has not articulated any viable strategy for rehabilitating its capital
12 condition, or for ensuring the protection of its creditors.

13 **1. SAFE-BIDCO Has No Viable Plan for Improving Sustainability.**

14 In July 2016, the Commissioner asked SAFE-BIDCO to articulate and put into action a plan
15 to obtain additional funding. But the plan SAFE-BIDCO submitted has proven unfeasible. SAFE-
16 BIDCO’s Budget Change Proposal for the 2016-17 fiscal year, seeking \$15.5 million, was not
17 approved. Instead, that request led to a program audit, which yielded an unfavorable State Auditor’s
18 Report. SAFE-BIDCO did not submit a similar Budget Change Proposal for the 2017-18 or 2018-19
19 fiscal year.

20 SAFE-BIDCO’s plan to obtain \$35 million through EB-5 investors remains largely
21 hypothetical. SAFE-BIDCO has articulated no timeline for that plan, which involves entering into a
22 joint venture agreement with a partner, jointly forming a private placement fund through a Nevada
23 limited liability company, hiring licensed agents to attract EB-5 investors, capitalizing the fund
24 through such foreign capital investments, and then borrowing monies from that fund to lend to
25 California small businesses. Clearly, that project remains at its infancy. According to SAFE-
26 BIDCO’s most recent report, it has yet to finalize any contract with its joint venture partner, or to
27 obtain federal approval of its business plan. The EB-5 Visa program itself is set to expire in
28 September 2017.

2. SAFE-BIDCO Has No Viable Plan for Protecting Creditors.

According to its letter of August 18, 2017, SAFE-BIDCO’s current plan is to continue
operating for at least another six months, during which time SAFE-BIDCO would take various steps

1 towards developing new funding sources. Significantly, none of those steps are expected to generate
2 actual revenue within the six months⁹ Rather, they are threshold steps for plans that could take
3 months or even years to bear financial fruit. If any positive developments materialize within six
4 months, then SAFE-BIDCO apparently intends to continue operating indefinitely. If, however,
5 positive developments do not materialize, then SAFE-BIDCO would commence liquidation in
6 February 2018 “as needed.” In describing these plans, SAFE-BIDCO provides no analysis about the
7 risks of waiting until February 2018, or beyond, to liquidate. SAFE-BIDCO does not discuss its
8 likely ongoing operating losses, or the dangers of an eleventh-hour liquidation. SAFE-BIDCO also
9 does not say how much revenue it realistically expects to receive from its proposed sources, and by
10 when.

11 Accordingly, the Commissioner concludes that SAFE-BIDCO is not operating pursuant to a
12 sound business plan, and is conducting business in an unsafe and unsound manner.

13 III. FINDINGS

14 Based on the facts set forth above, the Commissioner finds that the following factors are true
15 with respect to SAFE-BIDCO:

- 16 (1) SAFE-BIDCO has failed to comply with the Commissioner’s Order of July 18, 2017, in
17 violation of Financial Code section 592(a);
- 18 (2) SAFE-BIDCO has failed to transact its business in a safe and sound manner or to
19 maintain itself in a safe and sound condition, in violation of Financial Code section
20 31400;
- 21 (3) SAFE-BIDCO has conducted its business in an unsafe and unsound manner, within the
22 meaning of Financial Code section 592(b); and
- 23 (4) SAFE-BIDCO is in such condition that it is unsafe and unsound for it to transact
24 appropriate licensee business, within the meaning of Financial Code section 592(c).

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27 ⁹ In addition to its plan to attract EB-5 investment dollars, SAFE-BIDCO intends to: (1) amend
28 its statutorily-defined corporate structure, apply to the U.S. Treasury for certification as a
Community Development Financial Institution, and then to the U.S. Small Business Administration
Community Advantage Guarantee Pilot Program, and (2) “[c]ontinue conversations with prospective

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Commissioner of Business Oversight shall take possession of
3 the property and business of SAFE-BIDCO. Such possession shall be effective upon the service of
4 this Order on SAFE-BIDCO, on or after September 18, 2017.

5 Dated: September 15, 2017
6 Sacramento, California

7 
8 JAN LYNN OWEN
9 Commissioner of Business Oversight

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28 COIN investors” (i.e., the Department of Insurance, California Organized Investment Network).
(See SAFE-BIDCO’s Letter of August 18, 2017 at pp. 2-3.)

EXHIBIT A



August 18, 2017

Small Business Loans

Commissioner Jan Lynn Owen
Department of Business Oversight
1515 K Street, Suite 200
Sacramento, CA 95814-4052
ATTN: Aaron Prosperi & Frank Bushnell

RE: Timeline for wind down of BIDCO license.


Dear Commissioner Owen:

Attached hereto is SAFE-BIDCO's Board of Director's response and timeline for the restructuring of SAFE-BIDCO and the relinquishment of the "BIDCO" portion of the corporation. A copy of this correspondence has been electronically forwarded to Assistant Deputy Commissioner Bushnell and Deputy Commissioner Prosperi.

Attachments:

- Letter to Commissioner Owen from the Board
- Time line
- State Loan repayment schedule
- Loan Fund balances

Respectfully Submitted,


Mary Jo Dutra
President/CEO

Electronically copied: Assistant Deputy Commissioner Fran Bushnell
Deputy Commissioner Aaron Prosperi

STATE ASSISTANCE FUND FOR ENTERPRISE, BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATION

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Small Business Loans

August 18, 2017

Commissioner Jan Lynn Owen
Department of Business Oversight
1515 K Street, Suite 200
Sacramento, CA 95814-4052
ATTN: Aaron Prosperi & Frank Bushnell

RE: Timeline for wind down of BIDCO license.

Dear Commissioner Owen:

Attached hereto is SAFE-BIDCO's response and timeline for the restructuring of SAFE-BIDCO and the relinquishment of the "BIDCO" portion of the corporation. We did want to point out that we had a positive year for FY ending 6/30/17. We did not have a loss as originally anticipated, in fact we increased our net asset position by nearly half a million dollars.

We would like to clarify a couple of items regarding our loan production, most of which has been outside of the BIDCO program:

- Our records show that in FY 2015-16 we had two SBA guaranteed loans totaling \$406,000 and \$150,000 in FY16/17. Despite the SBA guarantee, these loans are within our USDA IRP portfolio and counted as IRP loans. We are working on a different report format that will identify these loans to avoid future confusion.
- Our Energy Loan fund, microloan portfolio (self-funded from earned income) and Native American Loan Fund are all small and not sold on the secondary market for fund recapitalization.
- We received microloan funds from the USDA, an increase in micro loans (under \$50,000) will be reflected by the end of 2017.
- The Native American Loan Fund has received an additional USDA grant and has seen similar activity.

STATE ASSISTANCE FUND FOR ENTERPRISE, BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATION

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- The increase in the IRP funding came as a result of a loan and a 16 loan portfolio assumption which nearly doubled our IRP loan portfolio and increased our IRP fund by \$1 million.
- The Energy Loan Program has sunset with the funds released to SAFE-BIDCO.
- State Loan Guarantee Program activity over the past 7 years has been increasing. We were allowed access to the fund on an equal level as other Financial Development Corporations and we committed to assisting the State to encumber the State Small Business Credit Initiative (SSBCI) dollars awarded to the state through the Federal Jobs Act Bill. Our involvement in the SLGP ended in June of 2017.

Our loan portfolio remains healthy, we have very few problem loans, and those loans are paying as agreed.

SAFE-BIDCO is current on its financial obligations including outstanding loans (current State repayment schedule attached).

The Board of Directors of SAFE-BIDCO held a special meeting on August 15, 2017. After due consideration, including a review of its financials and other associated documents, the Board of Directors voted to continue operations of the nonprofit, and resolved to restructure SAFE-BIDCO to better meet small business financial needs.

SAFE-BIDCO was and remains a unique concept to encourage and promote small business startups and expansions while creating jobs. In order to capitalize on SAFE-BIDCO's proven skill set of lending and expand its ability to deliver important financial products and services in the State's underserved communities, SAFE-BIDCO needs to modify its statutory structure and pursue certification as a community development financial institution (CDFI) under the U.S. Department of The Treasury's Community Development Financial Institutions Fund. As a CDFI, SAFE-BIDCO will be able to build lending and technical assistance capacity and continue to provide loans to borrowers who have limited access to traditional financing; the time frame for accomplishing this transfer is noted in the attached time line.

Once CDFI approval is received SAFE-BIDCO can apply for the SBA Community Advantage Guarantee Pilot Program, currently not available to SBA 7(a) lenders, to continue to make guaranteed loans outside of the BIDCO license on loans under \$250,000.

SAFE-BIDCO's joint venture with CalDev for EB-5 funds is still moving forward. The Economic Report, Business Plan, and application will be submitted to USCIS by the end of this month. There is no guarantee on the proposal's success but we remain hopeful. The proposed plan is reliant on SAFE-BIDCO's ability to secure guarantees on its loans. We request the Commission's indulgence in this endeavor. We are looking at all of our wind-down restructuring options.

Within the past two weeks several prospective investors have come forward interested in the Department of Insurance's COIN program. Once (if) the program is reinstated we can discuss details of the COIN program. AB 778 has been approved in committee and referred to Appropriations. We are waiting on program approval for recertification in the program.

SUMMARY:

- **Restructure nonprofit corporation**
 - Apply for CDFI status
 - Amend appropriate Finance Code sections
- **Concurrently continue to pursue EB-5 joint venture that would result in increased lending capacity and sustainable operations, but would require continuing BIDCO license**
- **Continue conversations with prospective COIN investors**
- **Set up OPEB trust fund for retirees**
- **If unsuccessful in materially improving the BIDCO's lending capacity and operating sustainably we would move to liquidate the BIDCO assets by February 2018**
 - Give up the BIDCO license
 - If not already resolved, ask for credit of the \$750,000 formerly placed into the State Loan Guarantee Program trust fund
 - If required by Controller, place outstanding unguaranteed SBA portfolio of BIDCO loans with collection agency or transfer collection of said loans to Controller (approximately \$2 million)
 - Repay outstanding balances not covered by \$750,000 plus loan portfolios
- **If the SAFE-BIDCO Board of Directors and the State Legislature determines the non-profit is no longer necessary or viable the non-profit will also be dissolved**
 - Work with USDA to reassign the portfolio (2-3 months)
 - Settle accounts
 - Move files to DGS for storage
 - Lay off staff
 - Close office

The timeline attached shows the BIDCO wind down if needed.

Respectfully submitted on behalf of the SAFE-BIDCO Board of Directors,



Glen Stanley,
Board Chairman

Wind-Down Time Line

(Attachement to SAFE-BIDCO 30 day response)

July 2017

- July 20th presented with Cease & Desist Order
- July 31st submitted items requested in Order within 10 days
- July 31st requested authorization to extend short term contract and requested authorization to pay medical insurance premiums in excess of \$7,500
- July 31st turned over SLGP guarantee files to iBank

August 2017

- August – EB-5 progress -Statistical Data report and Business Plan for EB-5 project received
- August 10th Executive Committee meets to discuss wind down plan for DBO
- August 15th Board of Director's meets to approve plan for submission to DBO
- Submit contract proposal for CDFI certification to DBO for approval
- August 19th submission of plan to DBO
- Contract with consultant for CDFI certification
- EB-5 project application to be submitted by the end of the month (2-4 mo review process)
- Work with JEDE Committee to determine regulatory changes needed for SAFE-BIDCO restructuring

September 2017

- September 1st contract for CDFI certification application to start (6 weeks)
- Relocate office by the end of the month
- Amend Finance Policy and Loan Practices as suggested by the Auditor General staff
- Amend Loan Committee Practices and Procedures based on Auditor General Staff suggestions
- Working with JEDE staff to formalize SAFE-BIDCO restructuring changes requiring Finance Code amendment
 - Board structure
 - Credit for \$750,000 not returned

October 2017

- Audit Committee to hold special meeting to review the CDFI Financial Proforma prior to application submission
- October 16th Application to US Treasury for CDFI Certification (2-4 months processing)

November 2017

- Check status of applications with consultants and partners
- Continue work on regulatory amendments as needed
 - Board restructure
 - State debt (request credit for \$750,000 from SLGP trust fund not returned)

December 2017

- Check status of applications with consultants and partners
- Check with appropriate Agencies in the event funds need to be placed for collection
- In the event we continue as a CDFI, work out repayment plan if required with Controller's office
- Create OPEB trust fund (update actuarials in January – need to be done within 6 months of the year end financials)

January 2018

- EB-5 application results should be returned by the end of the month
- CDFI determination should be returned by the end of the month (if not already received) at which time application for SBA Community Advantage Pilot will be submitted, unless the EB-5 project has been approved or the COIN investors have committed to the program

February 2018

- If none of the revenue generating events have materialized Board will hold special meeting in February to commence BIDCO desolvement as needed
 - BIDCO
 - Cease SBA guaranteed lending
 - Place SBA, microloan and energy loan portfolios with appropriate agencies for collection
 - Payoff State Loan or confirm repayment plan
- If the non-profit is deemed unnecessary by the Board or Legislature SAFE-BIDCO will dissolve the non-profit as well
 - Non-profit
 - Work with USDA for reassignment of USDA IRP loans and funds (2-3 months)
 - Settle accounts
 - Payoff State Loan
 - Move files as required by DGS
 - Layoff staff
 - Close office

This timeline will be amended monthly as needed and to keep DBO current on progress.

S.E.L.F. LOAN RECONCILIATION

Loan Date	Loan Amount	Due Date
11/01/02	\$135,000.00	11/12/22
11/16/02	\$250,000.00	12/03/22
02/13/03	\$250,000.00	03/01/23
10/16/03	\$250,000.00	10/16/23
06/22/04	\$350,000.00	06/23/24
06/28/04	\$350,000.00	06/28/24
09/14/04	\$32,093.04	09/13/24
07/21/05	\$235,679.48	07/21/25
11/13/06	\$256,227.48	11/12/26
12/10/2007	\$278,000.00	12/09/27
11/6/2008	\$113,000.00	11/06/28
TOTAL	<u>\$2,500,000.00</u>	

LOAN FUND BALANCES

EFFECTIVE 6/30/17

FUND	BANK BALANCE	LAIF BALANCE	GUARANTEED LOAN PORTFOLIO	** ACTUAL LOAN LOSS RESERVE	SERVICE FEE INCOME ON UN-GTD LOANS	INTEREST ON UN-GTD LOANS	TOTAL	***REQUIRED LOAN LOSS RESERVE	* (1) REMAINING LOAN FUNDS	* (2) REMAINING ADMIN FUNDS
USDA										
IRP	447,092.01	2,446,035.46	2,033,460.32	135,050.00	9,169.26	1,150,916.37	5,951,623.42	131,232.00		
RMAP	170,700.40	0.00	30,000.00	5,000.00	0.00	3,869.70	234,570.10	0.00	260,000.00	40,000.00
TRIBAL	270,074.33	0.00	203,655.86	13,523.00	0.00	39,865.32	533,572.51	6,110.00	399,500.00	
SUBTOTAL	887,866.74	2,446,035.46	2,267,116.18	153,573.00	9,169.26	1,194,651.39	6,719,766.03	137,342.00	659,500.00	40,000.00
SAFE-HIDCO										
EELF - 4/2027	118,819.82	689,835.40	763,377.45	19,827.00	0.00	185,314.10	1,737,519.77	7,634.00		
MICRO - 12/2046	73,704.10	0.00	39,258.25	20,855.00	0.00	32,522.63	124,629.98	17,344.00		
SBA - 2/2028	1,17,994.86	33,708.00	280,545.26	66,647.00	18,941.61	45,946.56	430,489.29	18,347.00		
SUBTOTAL	310,518.78	723,543.40	1,083,180.96	107,329.00	18,941.61	283,783.29	2,292,639.04	43,325.00		
GRAND TOTAL	1,198,385.52	3,169,578.86	3,350,297.14	260,902.00	28,110.87	1,458,434.68	9,012,405.07	180,667.00		

* RMAP Admin Grant & Tribal Loan Grant

* (1) RMAP loan & Tribal grant amounts

* (2) RMAP admin grant remaining

** Existing loan loss reserve, see *** for actual required amounts

*** Required loan loss reserve

Note - SB LLR is overstated by \$64k, with an adjustment the total available funds would increase to \$2,356,639.04