

STATE OF CALIFORNIA

DEPARTMENT OF BUSINESS OVERSIGHT

In the Matter of:

STATE ASSISTANCE FUND FOR
ENTERPRISE, BUSINESS AND
DEVELOPMENT CORPORATION

ORDER TO CEASE AND DESIST
(FINANCIAL CODE SECTION 581)

The Commissioner of Business Oversight ("Commissioner") issues this Order to Cease and Desist to the State Assistance Fund for Enterprise, Business and Development Corporation ("SAFE-BIDCO") pursuant to Financial Code section 581.

I. FINDINGS OF FACT**A. SAFE-BIDCO's Financial Condition**

The Department of Business Oversight has conducted an independent, full-scope safety and soundness examination of SAFE-BIDCO, using financial information from the fiscal year ending on June 30, 2016. On July 6, 2017, the Commissioner issued a Report of Examination ("Report") to SAFE-BIDCO. The findings contained in that Report are hereby incorporated by reference and summarized below.

1. Operating Losses

SAFE-BIDCO incurred net operating losses of approximately \$260,000 for the 2015-16 fiscal year. (Report at p. 5.) In the fiscal year prior, SAFE-BIDCO incurred net operating losses of approximately \$320,000. (*Id.*) SAFE-BIDCO incurred net operating losses for 11 of the past 12 fiscal years. (*Id.* at p. 6.)

2. Declining Capital

SAFE-BIDCO's years of operating losses have led to a declining net asset (or capital) position. The table below illustrates that decline for the fiscal years 2013 through 2016:

Net Asset (Capital) Position (\$000)	Fiscal Year Ending 6/30/12	Fiscal Year Ending 6/30/13	Fiscal Year Ending 6/30/14	Fiscal Year Ending 6/30/15	Fiscal Year Ending 6/30/16
	\$3,494	\$2,452	\$1,877	\$1,557	\$1,298

(Id. at p. 6; Report of Examination for 2014-15 at p. 5.)

3. Declining Loan Production

As its net assets have declined, SAFE-BIDCO's lending activity has also declined. According to SAFE-BIDCO, the total number of loans it has made in the past five fiscal years, and their dollar value, are as follows:

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

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

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

TRIBAL LOANS		
Fiscal Year	Number of Loans	Approx. Value of Loans
2015-16	1	\$100,000
2014-15	0	\$0
2013-14	1	\$130,000
2012-13	1	\$60,000
2011-12	1	\$95,000

IRP LOANS		
Fiscal Year	Number of Loans	Approx. Value of Loans
2015-16	1	\$181,000
2014-15	4	\$225,000
2012-13	4	\$783,000
2013-14	4	\$325,000
2011-12	4	\$357,000

(Response to Memorandum of Understanding (“Response”) at p. 37.) According to SAFE-BIDCO, the total number of loan guarantees that SAFE-BIDCO facilitated under the Small Business Loan Guarantee Program in the past five fiscal years is as follows:

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

(Response at p. 37.)

B. SAFE-BIDCO's Non-Compliance with Memorandum of Understanding

1. SAFE-BIDCO Enters into MOU with Department

In July 2016, the Department entered into a Memorandum of Understanding ("MOU") with SAFE-BIDCO. That MOU called for SAFE-BIDCO to do two things:

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

2. SAFE-BIDCO's Response to MOU

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

- SAFE-BIDCO submitted a Budget Change Proposal to the Legislature for the 2016-17 fiscal year, seeking an additional \$15,000,000 in loan funds and a one-time appropriation of \$500,000.
- SAFE-BIDCO would engage in a joint venture with a private organization to obtain funds through the federal EB-5 Visa Program. Through this joint venture, SAFE-BIDCO hopes to receive \$35 million in loan funds annually for the next five years.

- At the request of the United States Department of Agriculture, SAFE-BIDCO would assume a \$1.2 million loan portfolio and receive a \$1,000,000 infusion in loan funds.

(Response at pp. 6-7.) For all the reasons set forth in the Report of Examination, two of the three proposed funding sources have not come to fruition, and are highly unlikely to do so. (Report at pp. 3-4.) Thus, SAFE-BIDCO has not provided a viability plan that is realistic, feasible, and achievable.

In addition, SAFE-BIDCO failed to develop and submit to the Commissioner a written resolution plan to voluntarily liquidate. Instead, SAFE-BIDCO has responded as follows:

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

Response at p. 4.

II. DISCUSSION

A. Legal Standard

Under the Financial Code, the Commissioner may issue an order requiring a licensee to cease and desist from certain acts or omissions (Fin. Code, § 581), and containing “any other action or requirement the [C]ommissioner deems necessary or advisable” (*id.* at § 553). The Commissioner may issue such an order if she finds that the licensee has engaged in “any unsafe or unsound act with respect to the business of the subject institution” (*id.* at § 580(a)), or has violated any provision of law (*id.* at § 580(b)). Under Financial Code section 31400, SAFE-BIDCO is under a duty to “transact its business in a safe and sound manner and . . . maintain itself in a safe and sound condition.”

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

B. Application of Facts to Legal Standard

Having considered all of the facts and circumstances, the Commissioner cannot conclude that SAFE-BIDCO’s current and continuing operation is consistent with “sound business practice” or its “fiduciary responsibility” to the public. As explained in the Report of Examination, SAFE-BIDCO’s inability to meet expenses, declining net assets, and inability to make interest-generating loans are interrelated and self-perpetuating. (Report at p. 5.) SAFE-BIDCO has admitted that, due to this

1 downward spiral, it may have to dissolve by as early as the 2017-18 fiscal year if it does not receive
2 additional funding. (See Response at p. 5.) In spite of its deteriorating condition, SAFE-BIDCO has
3 not articulated and implemented a realistic and feasible viability plan, in violation of the MOU.
4 (Report at pp. 3-4.) In addition, SAFE-BIDCO has failed to develop an exit strategy – i.e., a written
5 plan to unwind operations and self-liquidate. That failure also violates the MOU.

6 **III. ULTIMATE FINDINGS**

7 On the basis of the Findings of Fact set forth above, the Commissioner finds that all of the
8 following are true with respect to SAFE-BIDCO:

9 1. SAFE-BIDCO is not maintaining itself in a safe and sound condition, in violation of
10 Financial Code section 31400;

11 2. SAFE-BIDCO has engaged and participated in, and is continuing to engage and
12 participate in, unsafe or unsound acts with respect to its business, within the meaning of Financial
13 Code section 580;

14 3. If SAFE-BIDCO does not take the action set forth in Section IV below, such omission
15 would cause significant dissipation of SAFE-BIDCO's assets and earnings, within the meaning of
16 Financial Code section 581(b); and

17 4. If SAFE-BIDCO does not take the action set forth in Section IV below, such omission
18 would weaken the condition of SAFE-BIDCO, within the meaning of Financial Code section 581(c).
19

20 **IV. ORDER**

21 On the basis of the Ultimate Findings set forth above, separately and cumulatively, and
22 having determined that the requirement for issuance of an order under Financial Code section 581 has
23 been satisfied, the Commissioner deems the following actions and requirements to be necessary and
24 advisable (Fin. Code, § 553):

25 1. Within 30 days of the effective date of this Order, SAFE-BIDCO shall develop and
26 submit to the Commissioner a written liquidation plan that is consistent with sound business practice
27 and fiduciary responsibility to the public. This written liquidation plan shall include (but not be
28

1 limited to) detailed information regarding the point at which SAFE-BIDCO intends to commence
2 self-liquidation, and a timeline for such self-liquidation.

3 2. Until and unless the Commissioner orders otherwise, SAFE-BIDCO shall not do any
4 of the following without first obtaining the written approval of the Commissioner or her delegate:

- 5 a. Engage in any new lines of business or offer any new loan products;
6
7 b. Enter into any new contracts;
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9 c. Make any expenditures in excess of \$7,500; and
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11 d. Hire any new employees or consultants.

12 3. Within 10 days of the effective date of this Order, SAFE-BIDCO shall submit the
13 following documents and information to the Commissioner regarding its condition and viability
14 plans:

- 15 a. Any budgetary proposals that SAFE-BIDCO has submitted to the Department
16 of Finance for the 2017-2018 or the 2018-2019 fiscal year;
17
18 b. Any letter-of-intent, contract, or other business agreement that SAFE-BIDCO
19 has entered into in connection with its plan to obtain funding through the EB-5 Visa program;
20
21 c. Any comment, feedback, or other correspondence that SAFE-BIDCO has
22 received from the Department of Homeland Security in connection with its plan to obtain funding
23 through the EB-5 Visa program; and
24
25 d. Data regarding SAFE-BIDCO's lending activity, assets, liabilities, and net
26 assets for the 2016-2017 fiscal year.

27 4. SAFE-BIDCO shall submit monthly financial statements to the Commissioner within
28 fifteen (15) business days from the end of each month for the purpose of monitoring of the
Corporation's net asset (capital) position.

This Order supersedes the Department of Business Oversight's Memorandum of
Understanding dated July 11, 2016, which is hereby terminated. The provisions of this Order shall

not bar, estop, or otherwise prevent the Department of Business Oversight or any other state agency or department from taking any further action against SAFE-BIDCO. This Order shall be effective on the date of issuance. The provisions of this Order shall be binding upon SAFE-BIDCO, its institution-affiliated parties, and any successors or assigns thereof.

The provisions of this Order shall remain effective and enforceable except to the extent that and until such time as any provisions have been modified, terminated, suspended, or set aside by the Commissioner.

Dated: July 20, 2017
Sacramento, California

_____/s/_____
JAN LYNN OWEN
Commissioner of Business Oversight