

UNITED STATES SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C.

In the Matter of	)	FINAL AGENCY DECISION
	)	PERMANENTLY REVOKING
ATLANTA MICRO FUND, INC.	)	AUTHORITY TO PARTICIPATE IN
	)	SBA MICROLOAN PROGRAM
(Microloan Intermediary)	)	
	)	

This Final Agency Decision ("Decision") relates to ATLANTA MICRO FUND, INC. ("AMF"), a Georgia non-profit corporation authorized by the U.S. Small Business Administration ("SBA" or "the Agency") to participate as a Microloan Intermediary in the Agency's Microloan Program.

In accordance with 13 C.F.R. § 120.1600(a)(1), the Agency served AMF with notice, dated January 18, 2017, of the proposed permanent revocation of AMF's authority to participate in all aspects of the Microloan Program pursuant to 13 C.F.R. § 120.1540(b) (hereinafter referred to as "Notice" or "Notice of Proposed Enforcement Action").

Based upon a review of the record, including SBA records and submissions by AMF, and for the reasons detailed below, the Agency hereby renders its Decision as follows:

- AMF's authority to participate in all aspects of SBA's Microloan Program, including all powers associated therewith, is hereby PERMANENTLY REVOKED pursuant to 13 C.F.R. § 120.1540(b).
- AMF is hereby PERMANENTLY REMOVED from the Microloan Program pursuant to 13 C.F.R. § 120.1540(b)(1).
- Wells Fargo is hereby DIRECTED TO LIQUIDATE all remaining funds in AMF's Deposit Account Nos. [REDACTED] and [REDACTED] and IMMEDIATELY DELIVER the funds to SBA for application to AMF's outstanding debt to SBA pursuant to 13 C.F.R. § 120.1540(b)(2) and Para. 1.c. of the Deposit Account Control Agreement dated February 15, 2016 by and among SBA, AMF and Wells Fargo.
- AMF is hereby ORDERED TO PAY IMMEDIATELY all outstanding debt owed to SBA under SBA Loan No. [REDACTED], which as of June 30, 2017 has a balance of \$126,432.08, plus per diem interest at the rate of \$1.29, pursuant to 13 C.F.R. § 120.1540(b)(3).
- All unused grant funds under Grant No. [REDACTED] are hereby FORFEITED by AMF pursuant to 13 C.F.R. § 120.1540(b)(4), and SBA shall immediately take all necessary steps to DEOBLIGATE such funds.

- Pursuant to 13 C.F.R. § 120.706(e), AMF is hereby ORDERED TO SURRENDER possession of AMF's SBA microloan portfolio to SBA, and the microloan portfolio and all rights associated therewith are hereby TRANSFERRED ON A PERMANENT BASIS to SBA, in accordance with SBA's rights as a secured creditor, and pursuant to SOP 52 00 A, Para. 4.B.4., and 13 C.F.R. § 120.1540(b)(6).
- AMF, and its officers, directors and employees, are ordered to maintain all databases, records, files, and other documents associated with its dealings with SBA and its activities as a Microloan Intermediary and to cooperate fully, allow such access, provide all such information and documents to, and follow such instructions from SBA, and any SBA designated agent, as are associated with administering and implementing the foregoing permanent revocation and removal.

This Decision is effective immediately.

## **I. OVERVIEW**

Section II of this Decision describes the background of the Microloan Program and AMF's participation in the Program. Section III explains the enforcement action history. Section IV discusses the grounds for the proposed enforcement action, analyzes AMF's responses, if any, to the grounds, and sets forth SBA's final decision on each ground. Section V addresses AMF's additional objection to the Notice. Section VI summarizes the Final Agency Decision. Section VII provides AMF with notice of its appeal rights in this matter.

## **II. BACKGROUND**

### **A. Overview of the SBA Microloan Program**

The purpose of the Microloan Program is to assist women, low income, veteran, and minority entrepreneurs, and other small businesses in need of small amounts of financial assistance.<sup>1</sup> The SBA Microloan Program provides small businesses with small short-term loans for working capital or the purchase of inventory, supplies, furniture, fixtures, machinery or equipment. The maximum amount of an SBA microloan is \$50,000.

SBA does not make microloans directly to small business concerns under the Microloan Program.<sup>2</sup> Instead, as required by statute, SBA makes direct loans to Microloan Intermediaries for the purpose of making short-term, fixed interest rate microloans to startup, newly established, and growing small business concerns.<sup>3</sup> SBA also makes grants under the program to Microloan Intermediaries to be used to assist Microborrowers and potential Microborrowers with marketing, management, and other business based training and technical assistance.

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<sup>1</sup> See 15 U.S.C. §636(m)(1) and SOP 52 00 A, Para. 1.2

<sup>2</sup> See 15 U.S.C. §636(m)(1)

<sup>3</sup> *Id.*

Microloan Intermediaries must be approved by SBA in order to participate in the SBA Microloan Program. Microloan Intermediaries are generally private, non-profit organizations.<sup>4</sup> In order to become a Microloan Intermediary, an applicant organization must have at least one year of experience making microloans to small businesses and providing, as an integral part of its microloan program, intensive marketing, management, and technical assistance to its borrowers.<sup>5</sup> Approved Microloan Intermediaries receive a 10-year loan of up to \$750,000 from SBA and are also eligible for a technical assistance grant.<sup>6</sup> Microloan Intermediaries may request additional loans of up to \$2,500,000 (subject to available appropriated funds) for a maximum Microloan Program debt of \$5,000,000.<sup>7</sup> A Microloan Intermediary remains in the SBA Microloan Program until all debt to SBA is repaid, unless the Microloan Intermediary voluntarily withdraws or there is an enforcement action to remove the Microloan Intermediary from the Program.

As set forth in 13 C.F.R. § 120.711, a Microloan Intermediary is required to operate in accordance with applicable SBA statutes, regulations, policy notices, SBA Standard Operating Procedures, and the information in the Microloan Intermediary's application to SBA, all of which govern the Microloan Program. Additionally, a Microloan Intermediary is subject to the terms and conditions of its SBA Loan Authorization(s) and SBA Grant Agreement(s). (The foregoing are collectively referred to hereafter as the "Microloan Program Requirements.")

Microloan Intermediaries are required to establish two accounts for every direct loan received from SBA: (1) a Microloan Revolving Fund ("MRF"), a deposit account into which proceeds from the SBA loan to the Microloan Intermediary, contributions from non-federal sources and payments from microloan borrowers must be deposited;<sup>8</sup> and (2) a Loan Loss Reserve Fund ("LLRF"), a deposit account the Microloan Intermediary must maintain in order to pay any shortage in the MRF caused by delinquencies or losses on microloans.<sup>9</sup> The Microloan Intermediary must maintain an LLRF balance equal to 15% of the outstanding balance of the notes receivable owed to the Microloan Intermediary by its microloan borrowers.<sup>10</sup> Microloan Intermediaries are required to sign a security agreement pledging the MRF and LLRF accounts, along with the microloan notes, as collateral for the direct loan from SBA. SBA perfects its security interest in the microloan notes by filing a UCC financing statement and perfects its security interest in the MRF and LLRF accounts by entering into a Microloan Deposit Account Control Agreement ("DACA") with the Microloan Intermediary and the depository institution holding the accounts.<sup>11</sup>

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<sup>4</sup> See 15 U.S.C. §636(m)(11)

<sup>5</sup> 15 U.S.C. §636(m)(2)(B)

<sup>6</sup> 15 U.S.C. §636(m)(3)(C) and 15 U.S.C. §636(m)(4)(A)

<sup>7</sup> 15 U.S.C. §636(m)(3)(C) and SOP 52 00 A, Para. 3.B.1

<sup>8</sup> 13 C.F.R. §120.709

<sup>9</sup> 15 U.S.C. §636(m)(3)(D); 13 C.F.R. §120.710

<sup>10</sup> *Id.*

<sup>11</sup> SOP 52 00 A, Para. 3.C.4.

At all times, the sum of the balances in the MRF and the LLRF, and the outstanding balance of the performing microloans<sup>12</sup> in the Microloan Intermediary's portfolio must equal 115% of the outstanding loan balance owed by the Microloan Intermediary to SBA ("Required Collateral Coverage").<sup>13</sup> SBA requires Microloan Intermediaries to report to SBA the status of the microloan portfolio and the MRF and LLRF accounts within thirty days after the end of each quarter.<sup>14</sup> These quarterly reports allow SBA to monitor the condition of the Microloan Intermediary's microloan portfolio and to ensure that the Microloan Intermediary maintains the Required Collateral Coverage. Microloan Intermediaries are also required to submit to SBA annual audited financial statements within 180 days of the Microloan Intermediary's fiscal year end.<sup>15</sup> All of these requirements are in place to protect SBA against loss.

## **B. AMF's Participation in the Microloan Program**

AMF is a non-profit entity that was approved in 2005 to participate in the SBA Microloan Program as a Microloan Intermediary. Pursuant to the records submitted by AMF, during its participation in the SBA Microloan Program, AMF has funded 112 microloans. AMF reported that the total amount of the microloans, funded between February 2, 2006 and June 19, 2013, was \$504,707.81. As a Microloan Intermediary, AMF has received both loan and grant funding from SBA.

Pursuant to a Loan Authorization and Agreement (Direct Recovery Loans) dated October 14, 2009 ("Loan Authorization"), SBA approved AMF's application for a loan from SBA in the amount of \$300,000.<sup>16</sup> On December 21, 2009, AMF executed the Loan Authorization, agreeing to the conditions imposed therein, and executed a Note in favor of SBA in the original principal amount of \$300,000, payable in monthly installments of \$2,835.77 with a ten (10) year maturity (SBA Loan No. [REDACTED]).<sup>17</sup> The Note, which is currently in default and has been accelerated by SBA, is secured by a Security Agreement dated December 21, 2009, under which AMF granted SBA a security interest in all funds held in AMF's MRF and LLRF accounts and the notes for the microloans made by AMF as a result of funding received from SBA, and all proceeds thereof. SBA's security interest in the deposit accounts is perfected under a Deposit Account Control Agreement ("DACA") dated February 15, 2016 by and among AMF, SBA and Wells Fargo, covering the AMF MRF and the AMF LLRF.<sup>18</sup>

In October 2014, SBA was notified that AMF had new management and that Teela Spiller was the new point of contact.<sup>19</sup> In January 2015, SBA was informed that AMF was "seating a new

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<sup>12</sup> Per SOP 52 00 A, Para. 3.D.5. any microloan with an uncured payment delinquency of more than 120 days is considered to be in default.

<sup>13</sup> SOP 52 00 A, Para. 3.B.8.

<sup>14</sup> SOP 52 00 A, Para.4.A.3.

<sup>15</sup> *Id.*

<sup>16</sup> See Fn. 3 *supra*.

<sup>17</sup> Two other SBA loans to AMF approved in 2005 and 2008—SBA Loan No. [REDACTED] in the original principal amount of \$100,000 and SBA Loan No. [REDACTED] in the original principal amount of \$55,000—were repaid by AMF as part of a restructuring plan with SBA in 2013.

<sup>18</sup> See Fn. 11 *supra*.

<sup>19</sup> See Email from Teela Spiller to Earnest Knott, October 16, 2014 at 3:25 p.m.

board;”<sup>20</sup> however, no further notification was received regarding new board members. Since January 2015, the sole point of contact for AMF has been Teela Spiller.

### **III. ENFORCEMENT ACTION HISTORY**

#### **A. Administrative History**

Since 2011, AMF has consistently failed to file timely quarterly reports and AMF has not maintained the Required Collateral Coverage. Since 2011, SBA has sent numerous letters and emails and engaged in discussions with AMF regarding these serious compliance issues. These issues did not improve even after AMF implemented its most recent leadership change in October 2014.

On June 4, 2015, SBA sent AMF an email detailing AMF’s significant compliance issues, including failure to submit required reports and lack of Required Collateral Coverage, and instructed AMF to provide a detailed plan for bringing AMF into compliance with the Microloan Program Requirements.<sup>21</sup> On June 18, 2015, AMF informed SBA that it could not update the Microloan Program Electronic Reporting System (“MPERS”) to provide required reports or determine whether AMF was in compliance with the Required Collateral Coverage until AMF completed a reconstruction of records and an internal audit.<sup>22</sup> On June 19, 2015, SBA again instructed AMF to provide a compliance plan.<sup>23</sup> AMF failed to comply with SBA’s request, and instead reiterated that AMF was conducting an internal audit and could not submit any reports until both an internal and external audit were complete.<sup>24</sup> Also on June 19, 2015, SBA instructed AMF to provide to SBA two critically important items: (1) bank statements for AMF’s MRF and LLRF for the month ending May 31, 2015, and (2) an aging report on AMF’s microloan portfolio through May 31, 2015.<sup>25</sup> On June 25, 2015, AMF requested more time to respond to SBA’s instruction.<sup>26</sup>

On July 6, 2015, AMF informed SBA that it had closed its MRF and LLRF accounts at Citizens Trust Bank, without SBA’s consent or prior notification, and established new accounts at Wells Fargo.<sup>27</sup> On September 21, 2015, having failed to receive a compliance plan from AMF in response to the June 19, 2015 request, SBA again instructed AMF to submit a compliance plan.<sup>28</sup> SBA instructed AMF to provide targeted completion dates for the following: (1) updates to MPERS, (2) submission of updated financial statements, (3) documentation to perfect SBA’s security interest in the newly-established AMF MRF and AMF LLRF, (4) submission of status reports with bank statements, (5) submission of grant reimbursement requests, and (6) resolution of AMF’s deficiency in Required Collateral Coverage. On September 30, 2015, SBA

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<sup>20</sup> See Email from Teela Spiller to Earnest Knott, January 13, 2015 at 12:07 p.m.

<sup>21</sup> See Email from Daniel Upham to Teela Spiller, June 4, 2015 at 11:23 a.m.

<sup>22</sup> See Email from Teela Spiller to Daniel Upham, June 18, 2015 at 2:00 a.m.

<sup>23</sup> See Email from Daniel Upham to Teela Spiller, June 19, 2015 at 1:49 p.m.

<sup>24</sup> See Email from Teela Spiller to Daniel Upham, June 19, 2015 at 2:41 p.m.

<sup>25</sup> See Email from Daniel Upham to Teela Spiller, June 19, 2015 at 3:05 p.m.

<sup>26</sup> See Email from Teela Spiller to Daniel Upham, June 25, 2015 at 10:15 p.m.

<sup>27</sup> See Emails from Teela Spiller to Daniel Upham and Earnest Knott, July 6, 2015 at 4:01 p.m. and 9:50 p.m.

<sup>28</sup> See Email from Daniel Upham to Teela Spiller, September 21, 2015 at 1:44 p.m.

again reiterated AMF's compliance deficiencies and demanded that AMF provide reports on the current balances in the AMF MRF and the AMF LLRF, with bank statements.<sup>29</sup> AMF finally submitted documentation to perfect SBA's security interest in the new AMF MRF and AMF LLRF in February 2016,<sup>30</sup> but none of the other requested documents were ever submitted.

SBA program office officials met with AMF at SBA Headquarters on October 21, 2015, to discuss AMF's ongoing compliance issues. At that meeting, AMF submitted a preliminary report from an accounting firm documenting the discovery phase of an internal audit. The document listed a number of adjustments necessary to reconcile AMF's financial records, and indicated that further investigation would be needed. It is unknown whether the internal audit was ever completed, but in any event, AMF has failed to provide SBA with the required audited annual financial statements for AMF's fiscal years 2013, 2014, 2015 and 2016.

AMF's last payment on the Note was made to SBA in September 2015. SBA granted AMF a verbal deferment of 60 days for the October and November 2015 payments; however, AMF never made another payment on the Note. AMF again came to SBA Headquarters for a meeting on January 29, 2016 to discuss AMF's continuing serious compliance issues and AMF's default on the Note. On March 1, 2016, AMF requested another deferment on the Note until June 30, 2016 and a temporary reduction in monthly payments from July 2016 until December 31, 2016.<sup>31</sup> By email dated March 4, 2016, SBA denied AMF's request for further deferment and reduction in payment.<sup>32</sup> SBA also offered AMF the opportunity to voluntarily exit the SBA Microloan Program due to AMF's serious compliance issues, in lieu of SBA taking an enforcement action. AMF was silent on the opportunity to voluntarily exit. Due to AMF's continuing default on the Note, on May 31, 2016, SBA accelerated the Note and made demand upon AMF for payment in full of the outstanding balance due under the Note, which was \$125,922.73 as of May 31, 2016.<sup>33</sup> No payments have been made by AMF since the date of SBA's demand.

## **B. Notice of Proposed Enforcement Action**

On January 18, 2017, SBA issued a Notice of Proposed Enforcement Action to AMF.<sup>34</sup> In accordance with the procedures required by 13 C.F.R. § 120.1600(a)(1), the Notice advised AMF that SBA was proposing the permanent revocation, pursuant to 13 C.F.R. § 120.1540(b), of AMF's authority to participate in all aspects of the SBA Microloan Program, including: (1) removal from the SBA Microloan Program, (2) liquidation of the AMF MRF and AMF LLRF by SBA, and application of the liquidated funds to any outstanding balance owed to SBA, (3)

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<sup>29</sup> See Email from Daniel Upham to Teela Spiller, September 30, 2015 at 12:07 p.m.

<sup>30</sup> See Emails from Teela Spiller to Daniel Upham, February 29, 2016 at 11:25 a.m. and 12:08 p.m.

<sup>31</sup> See Email from Teela Spiller to Grady Hedgespeth, March 1, 2016 at 8:04 a.m.

<sup>32</sup> See Email from J. Christopher Webb to Teela Spiller, March 4, 2016 at 12:50 p.m.

<sup>33</sup> See Letter from Daniel Upham to Teela Spiller (May 31, 2016).

<sup>34</sup> See Notice of Proposed Permanent Revocation of Atlanta Micro Fund, Inc.'s Authority to Participate in the SBA Microloan Program (Notice) and Notice of Issuance of Instruction Letter to Wells Fargo Placing an Immediate Indefinite Freeze on Atlanta Micro Fund, Inc.'s Microloan Revolving Fund and Loan Loss Reserve Fund Accounts, from Linda S. Rusche, Director, SBA Office of Credit Risk Management, to Teela Spiller, Executive Director, AMF (January 18, 2017).

payment of outstanding debt to SBA by AMF, (4) forfeiture (deobligation) of any unused grant funds by AMF, (5) seizure and transfer on a permanent basis of all of AMF's SBA microloan portfolio and rights associated with the foregoing to SBA, and (6) taking such other actions available under law.<sup>35</sup> The Notice was sent (i) via UPS Next Day Air to Teela Spiller, AMF's Registered Agent, at her street address on file on that date with the Georgia Corporations Division, (ii) via certified mail to AMF's principal office address, and (iii) via email to Teela Spiller, who is also AMF's Chief Executive Officer.

The Notice set forth the following grounds for the proposed enforcement action:

1. 13 C.F.R. § 120.1425(c)(2)(ii) - Failure to meet performance standard of fulfilling reporting requirements, including (1) the failure to submit quarterly reports, as required by SOP 52 00 A, Para.4.A.3; and (2) the failure to submit audited financial statements, as required by SOP 52 00 A, Para. 4.A.3 and by Para. 4.(c) of the Loan Authorization.
2. 13 C.F.R. § 120.1425(c)(2)(iii) - Failure to meet performance standard of managing program funds and matching funds in a satisfactory and financially sound manner, specifically the failure to maintain the collateral coverage required by 15 U.S.C. § 636(m)(3)(D)(ii), 13 C.F.R. §120.710(b), SOP 52 00 A, Para. 3.B.8, and Para. 4.(d)(4) of the Loan Authorization.
3. 13 C.F.R. §120.1425(c)(2)(viii) - SBA's determination that AMF has increased SBA's financial and program risk by its (1) failure to make payments as required under the terms of the Note; (2) failure to submit quarterly reports as required by SOP 52 00 A, Para. 4.A.3.; and (3) failure to properly service the microloan portfolio as required by SOP 52 00 A, Para.3.F.16.
4. 13 C.F.R. § 120.1425(c)(1) – Violation of the laws, regulations or policies of the Microloan Program.

As required by 13 C.F.R. § 120.1600(a)(1)(i), the Notice set forth in reasonable detail the underlying facts and reasons for SBA's proposed enforcement action.<sup>36</sup> The Notice was issued after consideration and evaluation of SBA records relating to AMF and was signed by Linda S. Rusche, Director of SBA's Office of Credit Risk Management.<sup>37</sup>

The Notice also notified AMF that SBA was concurrently issuing a letter to Wells Fargo, with a copy to AMF, instructing Wells Fargo to place an immediate indefinite freeze on the AMF MRF and AMF LLRF.<sup>38</sup>

SBA advised AMF that pursuant to 13 C.F.R. § 120.1600(a)(2)(i), AMF had the right to object

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<sup>35</sup> See Notice at pg 1.

<sup>36</sup> See *generally* Notice.

<sup>37</sup> See Notice at pg 12.

<sup>38</sup> See Notice at pg 1.

to the proposed enforcement action by filing a written objection with SBA within 30 calendar days of receipt, and that the objection must (1) set forth all grounds known to AMF to contest the proposed enforcement action, (2) set forth all mitigating factors, and (3) include documentation that AMF believes is most supportive of the objection.<sup>39</sup> SBA also advised AMF that pursuant to 13 C.F.R. § 120.1600(a)(2)(iii), AMF could request within 30 days of receipt of the Notice a clarification of the reasons given by SBA in the Notice.<sup>40</sup> Further, SBA advised AMF that pursuant to 13 C.F.R. § 120.1600(a)(2)(iv), AMF could request within 30 days of receipt of the Notice additional time to respond to the Notice.<sup>41</sup>

### **C. AMF's Response to the Notice of Proposed Enforcement Action**

By email dated February 20, 2017, AMF stated that it intended to file a formal response by February 27, 2017.<sup>42</sup> By email dated February 21, 2017, SBA informed AMF that SBA was treating AMF's February 20, 2017 email as a request for extension of time and gave AMF until February 27, 2017 to respond to the Notice.<sup>43</sup> Via emails dated February 27, 2017 and February 28, 2017, AMF requested an additional 60 days to respond to the Notice.<sup>44</sup> The February 27, 2017 email also included links to 151 documents and 1 attachment, 140 of which are copies of emails between AMF and SBA staff previously transmitted by the parties ("February 27 Response Documents"), and included a second attachment that is a letter dated February 20, 2017 addressing certain findings in the Notice ("February 20 Letter"). By letter dated March 1, 2017, SBA granted AMF's request for a 60 day extension, from February 27, 2017 until April 28, 2017, to file a written objection to the Notice.<sup>45</sup>

Via email dated April 28, 2017, AMF submitted a letter responding to the Notice ("Response Letter"), and 14 attachments and links to documents ("April 28 Response Documents").<sup>46</sup> Included in the April 28 Response Documents are four copies of previously-transmitted emails between AMF and SBA staff and nine documents that had also been previously submitted to SBA. In the Response Letter, AMF also requested a "telephone interview" to "clarify the documentation provided." 13 C.F.R. § 120.1600(a)(2) requires that any objection to a proposed enforcement action must be submitted in writing, thus SBA did not grant AMF's request for a "telephone interview" and is considering only AMF's voluminous written submissions, which need no clarification as they speak for themselves.

SBA has reviewed the Response Letter, the February 27 Response Documents, the February 20 Letter and the April 28 Response Documents (collectively, the "AMF Response"), and determined that AMF has not set forth sufficient grounds to contest the regulatory failures described in the Notice of Proposed Enforcement Action. Furthermore, for the reasons

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<sup>39</sup> See Notice at pg 9.

<sup>40</sup> See Notice at pg 9-10.

<sup>41</sup> See Notice at pg 10.

<sup>42</sup> See Email from Teela Spiller to Daniel Upham February 20, 2017 at 9:45 p.m.

<sup>43</sup> See Email from Linda S. Rusche to Teela Spiller, February 21, 2017 at 4:39 p.m.

<sup>44</sup> See Emails from Teela Spiller to Linda S. Rusche, February 27, 2017 at 11:59 p.m. and February 28, 2017 at 12:01 a.m.

<sup>45</sup> See Letter from Linda S. Rusche to Teela Spiller, March 1, 2017.

<sup>46</sup> See Email from Teela Spiller to Linda Rusche with attachments, April 28, 2017 at 11:12 p.m.



discussed more fully below, SBA has determined that the alleged mitigating factors set forth by AMF are insufficient to overcome or justify the ongoing and fundamental failures identified herein.

#### **IV. GROUND FOR ENFORCEMENT ACTION**

**A. AMF has failed to meet the performance standard of fulfilling reporting requirements as required by SOP 52 00 A, Para. 4.A.3. and Para. 4.(c) of the Loan Authorization. Thus, SBA has sufficient grounds for the enforcement action pursuant to 13 C.F.R. § 120.1425(c)(2)(ii).**

In Section I of the Notice, SBA charged and the below evidence demonstrates that AMF failed to meet the performance standard of fulfilling reporting requirements as required by SOP 52 00 A, Para. 4.A.3. and Para. 4.(c) of the Loan Authorization. For the following reasons, it is SBA's final decision that AMF has failed to meet the performance standard of fulfilling reporting requirements.

**1. AMF has failed to submit quarterly reports as required by SOP 52 00 A, Para. 4.A.3.**

Pursuant to SOP 52 00 A, Para. 4.A.3, AMF is required to submit regular reports to SBA through MPERS so that SBA can monitor the status of AMF's microloan portfolio and determine compliance with the Required Collateral Coverage. On a quarterly basis, AMF must update MPERS with current repayment, aging, and servicing data for all microloans made by the Microloan Intermediary. These quarterly updates are called Portfolio Status Reports ("PSRs"). In addition to submitting PSRs via MPERS, AMF must also use MPERS to submit MRF and LLRF quarterly status reports, including three months of bank statements for each account. The MRF and LLRF quarterly status reports detail account transactions for the previous quarter. SBA uses the MRF and LLRF reports and bank statements in conjunction with the PSRs to ensure that SBA Microloan Program funds are used appropriately, and to determine compliance with the Required Collateral Coverage.

As detailed above in Section III.A. of this Decision, since 2011, AMF has consistently failed to submit the required quarterly PSRs, MRF and LLRF status reports and bank statements, either on time or at all. AMF's last MRF and LLRF quarterly status report was received by SBA on March 24, 2014, for the quarter ended December 31, 2013. AMF's last PSR was received by SBA on October 7, 2014, with portfolio data as of September 30, 2014. Due to AMF's failure to fulfill these reporting requirements, AMF is unable to demonstrate that it is in compliance with the Required Collateral Coverage, and that AMF appropriately managed SBA Microloan Program funds.

In the AMF Response, AMF does not set forth sufficient grounds to contest SBA's finding that AMF has failed to submit quarterly reports as required. While the April 28 Response Documents include several documents that appear to identify AMF's microloan borrowers and the payment status of their loans, these documents are copies of documents previously

submitted to SBA<sup>47</sup> and, as discussed in the Notice, contain admitted errors. AMF has not submitted any official information on its microloan portfolio via MPERS since October 7, 2014. In the February 20 Letter, AMF asserts that it is unable to submit reports prior to executing a file audit because the loan files were in disarray when new management took responsibility for the program in October 2014. It is now almost three years since new management took over, and AMF has not submitted any of the required quarterly reports. SBA finds the AMF Response inadequate and unconvincing.

2. AMF has failed to submit audited financial statements as required by SOP 52 00 A, Para. 4.A.3., and by Para. 4.(c) of the Loan Authorization

Pursuant to SOP 52 00 A, Para. 4.A.3. and Para. 4.(c) of the Loan Authorization, AMF must submit audited financial statements annually, within 180 days of the end of AMF's fiscal year. Audited financial statements must be prepared by an independent public accountant, and must be prepared pursuant to the procedures and standards prescribed by the American Institute of Certified Public Accountants (AICPA), Generally Accepted Auditing Standards (GAAS), Generally Accepted Government Auditing Practices (GAGAP) and 2 C.F.R. Part 200, Subpart F (Audit Requirements for Federal Awards), if applicable.<sup>48</sup> SBA uses the audited financial statements to examine the Microloan Intermediary's use of SBA Microloan Program funds, the financial position of the Microloan Intermediary, and any operational issues, exceptions or concerns noted by the auditing accountant.

As stated in the Notice, AMF's last audited financial statements submitted to SBA were for AMF's fiscal years 2011 and 2012. The Notice recites that AMF has failed to provide SBA with AMF's audited financial statements for fiscal years 2013, 2014, and 2015, as required. In its Response Letter, AMF did not address its failure to submit audited financial statements as required, and indeed admitted that it is a "failing revolving loan fund." Further, subsequent to the receipt of the AMF Response, AMF once again violated the performance standard by failing to submit its fiscal year 2016 financial statements, which were due to SBA on or before June 30, 2017.

**B. AMF has failed to meet the performance standard of managing program funds and matching funds in a satisfactory and financially sound manner as required by 15 U.S.C. § 636(m)(3)(D)(ii), 13 C.F.R. § 120.710(b), SOP 52 00 A, Para. 3.B.8., and Para. 4.(d)(4) of the Loan Authorization. Thus, SBA has sufficient grounds for the enforcement action pursuant to 13 C.F.R. § 120.1425(c)(2)(iii).**

In Section II of the Notice, SBA charged and the below evidence demonstrates that AMF failed to meet the performance standard of managing program funds and matching funds in a satisfactory and financially sound manner as required by 15 U.S.C. § 636(m)(3)(D)(ii), 13 C.F.R. § 120.710(b), SOP 52 00 A, Para. 3.B.8., and Para. 4.(d)(4) of the Loan Authorization. For the following reasons, it is SBA's final decision that AMF has failed to meet the

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<sup>47</sup> The same documents were received via email on February 29, 2016, February 27, 2017 and April 28, 2017.

<sup>48</sup> SOP 42 00 A, Para. 4.A.3.C.

performance standard of managing program funds and matching funds in a satisfactory and financially sound manner.

1. AMF has failed to maintain the collateral coverage required by 15 U.S.C. § 636(m)(3)(D)(ii), 13 C.F.R. § 120.710(b), SOP 52 00 A, Para. 3.B.8., and Para. 4.(d)(4) of the Loan Authorization

By statute, AMF must maintain an LLRF at 15% of the outstanding balance of AMF's microloans.<sup>49</sup> Furthermore, AMF is required to maintain collateral coverage equal to 115% of the loan balance owed to SBA on the Note.<sup>50</sup> At all times, the sum of the balances in the AMF MRF and the AMF LLRF and the outstanding balance of AMF's performing microloans must equal 115% of AMF's outstanding loan balance owed to SBA on the Note (defined above as "Required Collateral Coverage").<sup>51</sup> AMF has had shortfalls in the Required Collateral Coverage since 2011.

Because of AMF's reporting failures, the precise amount of AMF's shortfall in the Required Collateral Coverage was unknown on the date of the Notice. Based on AMF's outstanding Note balance of \$126,158.70 as of November 30, 2016, SBA determined that the amounts in the AMF MRF and the AMF LLRF and the value of AMF's performing microloans should have equaled no less than \$145,082.51. As of September 30, 2013, the last date upon which SBA had sufficient official information in MPERS to make a calculation before issuance of the Notice, AMF's shortfall in the Required Collateral Coverage was \$63,446.54.

Subsequent to the date of the Notice, SBA requested and obtained from Wells Fargo copies of AMF's LLRF and MRF bank account statements for the period from February 1, 2016 to January 31, 2017. The bank statements indicate that as of January 31, 2017, there was \$28.00 in the LLRF and \$34.55 in the MRF, for a total of \$62.55.<sup>52</sup> In the AMF Response, AMF self-reported (by providing a copy of an Excel spreadsheet previously submitted to SBA) the following information regarding the status of its microloan portfolio as of February 27, 2016:

<b>Days Past Due</b>	<b>Number of Loans</b>	<b>Dollars Outstanding</b>
0 to 30	1	\$2,179.17
31-60	0	\$0.00
61-90	2	\$2,096.83
91-120	0	\$0.00

<sup>49</sup> 15 U.S.C. § 636(m)(3)(D)(ii); 13 C.F.R. § 120.710(b).

<sup>50</sup> SOP 52 00 A, Para. 3.B.8.

<sup>51</sup> *Id.*

<sup>52</sup> Pursuant to 13 C.F.R. § 120.1600(a)(3)(iii), prior to issuing a notice of decision in an enforcement proceeding, SBA in its discretion can request additional information from other parties and conduct any other investigation it deems appropriate. *See* Letter from Wells Fargo, N.A to SBA, March 8, 2017 with attachments.

Over 120	38	\$102,067.61
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As set forth in the table above, the most current unofficial self-reported information included in the AMF Response shows that as of February 27, 2016 the value of AMF's performing microloans (less than 120 days past due) was \$4,276.00.

AMF's Required Collateral Coverage Amount as of June 30, 2017 is \$145,396.89. The verified amount in the AMF LLRF and MRF bank accounts (\$62.55), plus the most current unofficial self-reported amount of AMF's performing microloans (\$4,276.00), equal a total of \$4,338.55. Thus, the record shows that AMF has a substantial deficiency of at least \$141,058.34 in the Required Collateral Coverage.

In the AMF Response, AMF acknowledges that it is "a failing revolving loan fund," but that current management should not be held responsible for the state of the organization because it was failing when current management accepted responsibility in October 2014.<sup>53</sup> Furthermore, AMF states that SBA knew or should have known of the failing status of AMF's portfolio prior to the change in management in October 2014.<sup>54</sup> A review of the AMF Response and SBA's records shows that although AMF was a troubled organization prior to October 2014, current management has failed to correct AMF's deficiencies in the almost three years it has controlled the organization. AMF's continued reliance on the failures of its pre-October 2014 management for its serious compliance issues, including its failure to maintain the Required Collateral Coverage, is not justified and does not refute SBA's charges.

In the AMF Response, AMF also alleges that SBA grant reimbursement funds could have been used to replenish the LLRF, but SBA denied AMF extensions to submit grant reimbursement requests to which it was entitled and refused to provide assistance to AMF.<sup>55</sup> Email correspondence between SBA and AMF in December 2014 indicates that SBA informed AMF that it was deobligating a grant that had expired on June 30, 2014 and asked AMF to confirm that it was not going to seek reimbursement under that grant.<sup>56</sup> AMF responded by requesting that the grant not be deobligated as these "were much needed resources," and stated that a reimbursement request had not been made because new management was unaware that it was available.<sup>57</sup> On December 3, 2014, SBA provided AMF with two additional weeks to submit the final grant reports and any pending reimbursement requests for technical assistance expenses incurred prior to the expiration date of June 30, 2014.<sup>58</sup> By email dated December 17, 2014, AMF informed SBA that AMF was unable to provide justification for the grant reimbursement.<sup>59</sup> Based on this communication, SBA deobligated the grant. Thus, the record

<sup>53</sup> See Letter from Teela Spiller to Linda Rusche, February 20, 2017.

<sup>54</sup> See Letter from Teela Spiller to Linda Rusche, February 20, 2017; *see also* Email from Teela Spiller to Linda Rusche, February 27, 2017 at 11:59 p.m.; *see also* Response Letter, April 28, 2017.

<sup>55</sup> Response Letter, April 28, 2017.

<sup>56</sup> See Email from Earnest Knott to Teela Spiller, December 2, 2014 at 2:41 p.m.

<sup>57</sup> See Email Correspondence from Teela Spiller to Earnest Knott December 2, 2014 at 6:24 p.m.

<sup>58</sup> See Email from Teresa Clouser to Teela Spiller, December 3, 2014 at 10:01 a.m.

<sup>59</sup> See Email from Teela Spiller to Teresa Clouser, December 17, 2014 at 11:13 a.m.; *see also* Email from Teresa Clouser to Teela Spiller, December 17, 2014 at 3:03 p.m.

shows that the grant was deobligated because AMF could not produce the required documentation for grant reimbursement (including proof that AMF had provided Microloan borrowers with marketing, management and technical assistance) despite having been given an extension of time to do so. After a careful and thorough review of the documentation submitted by AMF and SBA's records, SBA has determined that AMF's grant was properly deobligated.

**C. AMF has increased SBA's financial and program risk by failing to make payments as required under the terms of the Note, failing to submit quarterly reports as required by SOP 52 00 A, Para. 4.A.3., and failing to properly service the microloan portfolio as required by SOP 52 00 A, Para. 3.F.16. Thus, SBA has sufficient grounds for the enforcement action pursuant to 13 C.F.R. § 120.1425(c)(2)(viii).**

In Section III of the Notice, SBA charged and the below evidence demonstrates that AMF increased SBA's financial and program risk by failing to make payments as required under the terms of the Note, failing to submit quarterly reports as required by SOP 52 00 A, Para. 4.A.3., and failure to properly service the microloan portfolio as required by SOP 52 00 A, Para. 3.F.16. For the following reasons, it is SBA's final decision that AMF has increased SBA's financial and program risk.

**1. AMF's failure to make payments as required under the terms of the Note has increased SBA's financial risk**

AMF's failure to make payments on the Note as required has increased SBA's financial risk. AMF has not made a payment on the Note since September 2015, and on May 31, 2016, SBA accelerated the Note and demanded payment in full due to AMF's default. AMF did not respond to SBA's demand letter, and has failed to make any further payment on the Note. AMF's outstanding Note balance is \$126,432.08 as of June 30, 2017, plus per diem interest at the rate of \$1.29.

In the AMF Response, AMF states that SBA's actions prevented AMF from pursuing opportunities that would have allowed it to generate income that could be used to make payments on the Note. First, AMF alleges that SBA improperly deobligated grant reimbursement funds that could have been used to make payments on the Note. As discussed above, SBA has reviewed the AMF Response and SBA's records and determined that AMF's grant was properly deobligated. Second, AMF alleges that SBA prevented AMF from assuming control of the portfolio of another Microloan Intermediary, which would have generated sufficient interest income to allow AMF to cover AMF's monthly payments to SBA.<sup>60</sup> Microloan Intermediaries are not permitted to sell or transfer microloan notes without prior approval from SBA.<sup>61</sup> SBA's records show that AMF failed to make any formal request to SBA regarding a transfer of another Microloan Intermediary's portfolio, and in any event, it is highly unlikely that such a request would have been approved, given AMF's ongoing serious

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<sup>60</sup> See Letter from Teela Spiller to Linda Rusche February 20, 2017; see also Email from Teela Spiller to Linda Rusche, February 27, 2017 at 11:59 p.m.; see also Response Letter, April 28, 2017.

<sup>61</sup> SOP 52 00 A, Paragraph 3.B.8(c), 3.D.8, and 3.F.16.

compliance issues. Third, AMF states that it had established a “referral relationship” with a Community Development Financial Institution (“CDFI”), which would have allowed AMF to receive compensation it could have used to make payments on the Note.<sup>62</sup> AMF alleges that it was given “grossly inaccurate information” by SBA in response to a technical question.<sup>63</sup> A review of SBA’s communication with AMF, including copies of emails submitted by AMF in response to the Notice, shows no evidence of communication with AMF regarding the “referral relationship” other than a series of emails in which AMF requested information about the 7(a) loan program and SBA representatives responded with questions to clarify the information request and then attempted to provide answers.<sup>64</sup> Finally, AMF alleges that it could have utilized the Treasury Offset Program to pursue collections, but that SBA did not provide any support for the strategy.<sup>65</sup> The purpose of the Treasury Offset Program is to collect delinquent debts owed to Federal agencies and states.<sup>66</sup> Although AMF’s Microloan Notes are collateral for SBA’s loan to AMF, AMF is the debtor on the SBA loan, not AMF’s Microborrowers. Therefore, AMF’s argument is without merit, because the Treasury Offset Program was not a remedy available to it. After careful review of SBA’s records and the AMF Response, SBA finds no evidence that its actions prevented AMF from making payments on the SBA Note.

In the AMF Response, AMF also claims that it requested deferments, but did not receive any instructions on how to make a formal request.<sup>67</sup> SBA’s records indicate that upon AMF’s request, SBA granted AMF a deferment of 60 days for the October and November 2015 payments due on the Note. On March 1, 2016, after failing to make the October, November and December, 2015 payments, and the January and February, 2016 payments, AMF requested an additional deferment on AMF’s loan payments until June 30, 2016 and a temporary reduction in monthly payments from July 2016 until December 31, 2016.<sup>68</sup> On March 4, 2016, SBA denied AMF’s request for further deferment and reduction in payment due to AMF’s “ongoing failure to achieve compliance with the Microloan Program’s rules and requirements.”<sup>69</sup>

Finally, AMF states that it is “morally and ethically wrong” to terminate AMF’s participation in the Microloan Program because AMF used funds “wholly unrelated to the [Microloan] Program” to make payments on the Note. According to AMF, current leadership has demonstrated good faith by repaying approximately \$30,000 to SBA.<sup>70</sup> The evidence does not support such an allegation. SBA’s records indicate that while AMF made regular loan payments to SBA from October 2014, when new management assumed control of AMF, until September 2015; the payments then stopped. New management made no further payments. Based on AMF’s default, SBA accelerated the Note on May 31, 2016, and demanded payment in full by

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<sup>62</sup> See Response Letter, April 28, 2017.

<sup>63</sup> *Id.*

<sup>64</sup> See Emails from Teela Spiller to Daniel Upham and Arlene Embrey, October 27, 2016 through November 1, 2016.

<sup>65</sup> See Response Letter, April 28, 2017.

<sup>66</sup> See United States Department of Treasury, Treasury Offset Program and Debt Management Services [https://www.treasury.gov/services/report-fwa/Pages/treasury\\_offset\\_program.aspx](https://www.treasury.gov/services/report-fwa/Pages/treasury_offset_program.aspx)

<sup>67</sup> See Response Letter, April 28, 2017.

<sup>68</sup> See Email from Teela Spiller to Grady Hedgespeth, March 1, 2016 at 8:04 a.m.

<sup>69</sup> See Email from J. Christopher Webb to Teela Spiller, March 4, 2016 at 12:50 p.m.

<sup>70</sup> See Response Letter, April 28, 2017.

June 30, 2016. To date, no further payments have been received, and the AMF Response fails to set forth any repayment plan or evidence that AMF has the financial capacity to repay the debt.

After careful review of the AMF Response and SBA's records, SBA has determined that the objections AMF asserts in response to SBA's determination that AMF has failed to make payments as required under the terms of the Note are without merit.

2. AMF's failure to submit quarterly reports as required by SOP 52 00 A, Para. 4.A.3. has increased SBA's financial risk.

AMF's failure to submit the required quarterly reports, as discussed above in Section IV.A.1., has also increased SBA's financial risk. SBA cannot confirm the status of AMF's microloan portfolio because, as discussed above, the most recent official information updated in MPERS is as of September 30, 2014. Due to AMF's failure to fulfill these reporting requirements, AMF is unable to demonstrate that it is in compliance with the Required Collateral Coverage. As discussed above in Section IV.A.1., AMF does not set forth sufficient grounds to contest SBA's finding that AMF has failed to submit quarterly reports as required. AMF's reporting failures have increased SBA's financial risk.

3. AMF's failure to properly service the microloan portfolio as required by SOP 52 00 A, Para. 3.F.16.

AMF's actions have not only increased SBA's financial risk, they have increased SBA's program risk by jeopardizing the integrity of the SBA Microloan Program. It is unclear whether any of the approximately 41 microloans in AMF's portfolio are being actively serviced as required by SOP 52 00 A, Para. 3.F.16. Additionally, as documented in the Notice, SBA's Georgia District Office has received two complaints from microloan borrowers regarding AMF's microloan servicing and business practices that substantiate a lack of good recordkeeping and clear communication by AMF to the detriment of the small business. These complaints were received by SBA via email in November 2015 and March 2016. AMF's failure to properly service the microloan portfolio increases SBA's program risk and adversely affects the reputation of the Microloan Program.

In its Response Letter, AMF states that it "tried to collect debt every day," but notwithstanding SBA's attempts to verify, AMF provided no details or evidence that it has been properly servicing its microloan portfolio.<sup>71</sup> AMF also did not provide any response regarding the complaints received from AMF borrowers, which complaints were attached to the Notice.

**D. AMF has violated laws, regulations, and policies of the Microloan Program as described above. Thus, SBA has sufficient grounds for the enforcement action pursuant to 13 C.F.R. §120.1425(c)(1).**

In Section IV of the Notice, SBA charged, and the evidence contained herein demonstrates that

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<sup>71</sup> See Response Letter, April 28, 2017.

AMF violated the laws, regulations, and/or policies of the Microloan Program. Each of the violations described and discussed above is also a violation of SBA Microloan Program laws, regulations, and/or policies.

For the foregoing reasons, it is SBA's final decision that AMF has violated the laws, regulations and policies of the Microloan Program.

## **V. ANALYSIS OF AMF'S ADDITIONAL OBJECTION**

### **A. AMF's assertions regarding bias are without merit.**

In addition to AMF's responses to the specific enforcement grounds, the Response Letter includes general allegations that certain SBA officials misled AMF, acted in bad faith, and showed bias towards AMF.<sup>72</sup> AMF also claimed that it was denied the opportunity to formally file grievances against SBA officials.<sup>73</sup> After a thorough review of AMF's claims, SBA has determined that the actions of the SBA employees were taken in their respective capacities as employees of SBA in accordance with SBA's authority to oversee Microloan Intermediaries. There is no evidence of bias, bad faith or any inappropriate motive on the part of these SBA employees. In fact, it was quite the contrary in that AMF has been given multiple opportunities to bring the organization into compliance over several years and has been given extra time to respond to the Notice. Accordingly, after careful review of AMF's submissions and SBA's record, SBA has determined that AMF's allegations are without merit.

## **VI. CONCLUSION**

It is SBA's final decision to permanently revoke AMF's authority to participate in all aspects of SBA's Microloan Program based on the grounds set forth above. It is SBA's determination that the foregoing grounds, either individually or in the aggregate, are sufficient to support the Decision.

In view of the foregoing, from and after the date hereof, AMF shall no longer have the authority to participate as a Microloan Intermediary in, and is permanently removed from, the SBA Microloan Program. The revocation of AMF's Microloan Program authority precludes AMF from continuing to service its microloan portfolio. Revocation of AMF's Microloan Program authority and SBA's exercise of its rights as a secured creditor require the surrender of the microloan portfolio, and all rights associated therewith, to SBA. In addition, all unused grant funds under Grant No. [REDACTED] are forfeited by AMF, and SBA will immediately take all necessary steps to deobligate the funds. Further, all funds held in the AMF MRF and AMF LLRF by Wells Fargo will be liquidated immediately and transferred to SBA for application to the balance due under the Note. Finally, AMF is ordered to pay the outstanding balance under the Note. SBA will credit AMF for the amount of funds received from Wells Fargo. To the extent that AMF immediately complies with the order to surrender all microloan files, SBA will credit AMF with the balance of any performing microloans that SBA is able to

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<sup>72</sup> See Response Letter, April 28, 2017.

<sup>73</sup> See Email from Teela Spiller to Linda Rusche, April 28, 2017 at 11:12 p.m.



identify from a review of the files.

In making this Decision, SBA has been guided by the following principles: (1) protection of the integrity of the SBA Microloan Program and the protection of taxpayers from a Microloan Intermediary that has failed to comply with applicable law, regulations and SBA Microloan Program Requirements; (2) SBA's evaluation of the impact of the identified grounds and the proposed actions on the identified risk to the SBA microloan portfolio of AMF; and (3) the inability of management of AMF to accomplish any action to mitigate the serious issues identified herein dictates more severe enforcement action.

A formal enforcement action is warranted because the record demonstrates, *inter alia*, that there are significant problems in AMF's systems or controls, substantial law violations, serious compliance problems, and serious reporting failures. Although AMF may have contributed in the past to SBA's mission under the Microloan Program, it has become apparent that AMF's actions and inactions have significantly increased the risk to the SBA Microloan Program. SBA has determined that the remaining SBA Microloan Intermediary doing business in Atlanta will be able to adequately serve the Atlanta market after the departure of AMF. Accordingly, the nature, extent and severity of AMF's breaches and violations, including its default, its reporting deficiencies, the increased financial and program risk to SBA, and inability of AMF's management to correct the deficiencies, and program integrity considerations, all warrant the permanent revocation of AMF's authority to participate as a Microloan Intermediary in the Microloan Program.

## **VII. NOTICE OF APPEAL RIGHTS**

Pursuant to 13 C.F.R. § 120.1600(a)(5), AMF may appeal this Decision only in the appropriate federal district court.

Dated at Washington, D.C. this 29th day of August, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
Linda S. Rusche  
Director  
Office of Credit Risk Management