

Review of the Florida Black Business Investment Board and Black Business Investment Corporations

Report Number 2006-105

September 2005

Prepared for
The Florida Senate

Prepared by
Committee on Commerce and Consumer Services

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Background

In the early 1980s, the Florida Legislature enacted a number of laws to encourage state agencies to contract with minority-owned businesses for goods and services.¹

In March 1984, Governor Graham created the Governor's Advisory Council on Minority Enterprise Development to advise the Governor on matters affecting minority business enterprises and minority economic development.² The council's report identified "several impediments to black business development in Florida: limited access to capital, limited access to technical assistance, and limited access to business opportunities."³ One recommendation of the council was that the state create a program to develop black-owned enterprises, providing both capital and management support. Specifically, the council recommended that capital be provided to an authority governed by a board with substantial commercial or financial expertise, and that the authority should invest in "financial consortiums of regulated financial institutions designed to aid minority enterprises..."⁴ In addition, the council stated that initial non-recurring needs for the authority are estimated at \$15 million.⁵

In response to the council's report, the Legislature enacted the Florida Small and Minority Business Assistance Act.⁶ This act found that there were economic disparities between blacks and other minorities and the general population caused primarily by "the vestiges of racial discrimination" and that

"assisting qualified blacks in obtaining adequate capital and management skills for business ventures, as well as eradicating

¹ Chapters 82-196, 83-3, and 83-333, L.O.F.

² Executive Order 84-58.

³ June 17, 2005; <http://www.fbbib.com/about/history.htm>

⁴ pp. 33-34, *Initial Report of the Governor's Advisory Council on Minority Enterprise Development* (Draft), December, 1984.

⁵ pp. 38, *Initial Report of the Governor's Advisory Council on Minority Enterprise Development* (Draft), December, 1984.

⁶ Ch. 85-104, L.O.F., which became Part IV, ch. 288, F.S., and reenacted by s. 28, ch. 94-322, L.O.F.

existing market barriers, are essential elements of a strategy to advance business development among black Floridians.”⁷

This act created various mechanisms to assist small and minority businesses, including creation of the Florida Black Business Investment Board (FBBIB).⁸ The act found that the public interest was served by:

- increasing opportunities for employment of blacks, as well as the population in general;
- providing role models and establishing business networks for the benefit of future generations of aspiring black entrepreneurs; and
- strengthening the economy of the state by increasing the number of qualified black business enterprises and improving the welfare of economically depressed neighborhoods.⁹

This finding was later expanded to include:

- establishing a partnership between the public and private sector to leverage state funds resources from the private sector;¹⁰ and
- taking measures to increase access of black businesses to both debt and equity capital.¹¹

In addition to establishing the FBBIB, the Legislature appropriated \$4,950,000 through a capitalization program to invest in regional Black Business Investment Corporations (BBIBs), which is defined as not-for-profit subsidiaries of financial institutions or a consortium of financial institutions investing in or lending to black business enterprises.¹²

⁷ Preamble, ch. 85-104, L.O.F.

⁸ Additional mechanisms created by this act include establishing a Small and Minority Business Advisory Council within the Department of Commerce; requiring state agencies to consider the impact of proposed rules on Florida small and minority businesses; required the Division of Purchasing within the Department of General Services (DGS) to establish a system to record and measure the use of minority business enterprises in state contracting; requiring DGS to certify minority business enterprises; authorizing state agencies to reserve contracts for competitive bidding to minority business enterprises; and establishing the Minority Business Enterprise Assistance Office within DGS.

⁹ Section 9, ch. 85-104, L.O.F., which became s. 288.704, F.S.

¹⁰ Section 1 of ch. 2002-180, L.O.F.

¹¹ Section 47, ch. 99-251, L.O.F.

¹² Section 9 of ch. 85-104, L.O.F., which became s. 288.707(2)(b), F.S.

Review of the Florida Black Business Investment Board and Black Business Investment Corporations

The objective of this report is to review the responsibilities of the FBBIB, the BBICs, and the Office of Tourism, Trade and Economic Development (OTTED) in implementing the FBBIB/BBIC capitalization program; to summarize legislative changes to the program; to identify relevant findings from the 2003 audit of the FBBIC / BBIC by the Chief Inspector General in the Executive Office of the Governor; to review the recent BBIC recertification efforts; and to offer recommendations to resolve the recertification impasse and restructure the program.

Methodology

To accomplish these objectives, staff of the Senate Committees on Commerce and Consumer Services and Transportation and Economic Development Appropriations, and staff of the Legislative Auditing Committee reviewed FBBIB and BBICs program documents, the 2003 audit of the FBBIB and BBICs by the Governor's Chief Inspector General, and documents relating to recent recertification efforts. Staff also interviewed staff of OTTED, FBBIB and BBICs.

Findings

Florida Black Business Investment Board

Initially created within the Florida Department of Commerce, the FBBIB now contracts with OTTED to promote the creation and growth of black business enterprises.¹³ The board consists of twelve members, which includes:¹⁴

- Six members appointed by the Governor and subject to confirmation by the Senate, who must be experienced in investment finance and business development;
- One member each from the private sector appointed by the President of the Senate and the Speaker of the House of Representatives, who must be experienced in investment finance and business development;
- Three representatives of BBICs, who must be selected from among and by the chairs of the BBICs;
- The vice chair of Enterprise Florida, Inc., or his or her designee, as an ex officio, nonvoting member; and
- The chair of the Florida Development Finance Corporation, as an ex officio, nonvoting member of the board.

The board is also authorized to appoint two at-large members to the board from the private sector, each of whom may serve a 1-year term. However, such members may not serve on an executive committee.¹⁵

One member of the board is appointed by the Governor as the chairperson of the board, and serves at the pleasure of the Governor. The board is required to meet at least four times each year, upon the call of the chair or the vice chair or at the request of a majority of the membership. Board members serve without compensation, but members, the president of the

¹³ A “black business enterprise” is defined as a business that is at least 51 percent owned by Black Americans and managed and controlled by such persons. Section 288.707(2)(a), F.S.

¹⁴ Section 288.707(3)(a), F.S.

¹⁵ Section 288.707(3)(h), F.S.

board, and other board employees may be reimbursed for all reasonable, necessary, and actual expenses as determined by the board.¹⁶

The 1985 act granted the FBBIB broad powers, to include:

- Encourage financial institutions to participate in consortiums for the purpose of investing in black business enterprises;
- Ensure that capitalization funds available to the board are disbursed on a statewide basis and are not concentrated in one geographical area;
- Provide and pay for such advisory services and technical assistance as may be necessary or desirable to carry out the purposes of this act;
- Engage in special programs to enhance the development of black business enterprises as authorized by this act; and
- Do any and all things necessary or convenient to carry out the purposes of, and exercise the powers given and granted to the board and exercise any other powers, rights, or responsibilities of a corporation.¹⁷

In addition, the 1985 act authorized the FBBIB to invest, under conditions made by law or contract, in black business investment corporations which agree to conduct programs of assisting the development of black business enterprises. All investments must be used to develop black business enterprises.¹⁸

The FBBIB is authorized to appoint a president to be the chief administrative and operational officer of the board to direct and supervise the administrative affairs and general management of the FBBIB. The board “may delegate to its president those powers and responsibilities it deems appropriate, except for appointment of the president.”¹⁹ The board is authorized to adopt bylaws for the regulation of its affairs and the conduct of its business and adopt policies to implement the provisions of law conferring duties upon it.²⁰

¹⁶ Section 288.707(3), F.S.

¹⁷ Section 288.709, F.S., 1986 edition.

¹⁸ Section 13, ch. 85-104, L.O.F., incorporated as s. 288.711, F.S.

¹⁹ Section 288.708(1), F.S.

²⁰ Section 288.709(1), F.S.

Over the past twenty years, the mission of the FBBIB has evolved. Initially, the FBBIB served “as a catalyst for the development of competitive black-owned businesses in Florida.”²¹ Today, the FBBIB has expanded its “base of activities and services to include other minorities in order to connect diverse communities and grow the network of business partnerships and alliances.”²² The board also retains its historical commitment to serve the needs of the black-business community.²³

Current subsidiaries of the FBBIC include:

- The Florida Black Business Support Corporation, Inc. (FBBSC), a subsidiary of FBBIB that serves as the statewide investment corporation providing direct loans, loan guarantees, venture capital, and franchising financial and technical assistance for minority-owned businesses. It also promotes special programs such as the Governor’s “Front Porch” Initiative. The FBBIB is the sole shareholder of the FBBSC. The FBBSC is also known as the statewide BBIC, which ostensibly serves areas not served by the eight regional BBICs. In addition, the FBBIB has implemented a new pilot program, the Preferred Lender Financing Program, which aims to be a resource to all minority-owned businesses in Florida.²⁴ The program is intended to provide access to capital, technical assistance, mentoring, information, advocacy, and procurement opportunities to minority-owned businesses in the state.²⁵

²¹ Page 1, 2003 Annual Report of the FBBIB.

²² Page 1, 2003 Annual Report of the FBBIB. In 2002, the Legislature required the FBBIB to study the feasibility of including other minority business enterprises within the programs, services, and activities of the FBBIB and the regional BBICs. Section 11, ch. 2002-180, L.O.F. Over the past two years, the FBBIB has expanded services to other minorities through a strategic partnership with the Florida State Hispanic Chamber of Commerce – Access Florida, the Preferred Lender Financing Program (pilot), and its purchase of a controlling interest in Indigo Key, Inc.

²³ The 2002 FBBIB resolution to expand services to other minorities reiterated this commitment. October 24, 2002 FBBIB Minutes.

²⁴ Office of Program Policy Analysis and Government Accountability (OPPAGA), “Profile No. 6126,” *Florida Government Accountability Report*, at <http://www.oppaga.state.fl.us/profiles/6126/>, (updated June 23, 2005).

²⁵ FBBIB Business Plan for the Preferred Lender Financing Program, DRAFT, December, 2004.

- The Minority Business Information Center (MBIC), which serves as the principal minority information and data collection and dissemination resource for the state of Florida. It provides technical support and monitoring of the businesses in which the FBBIC invests. Additionally, it serves as a resource for collecting and storing minority business information. It supports marketing and demographic research, white papers, financial information services, technology training, business courses and seminars, application software and web-based services, trade shows, exhibits, job fairs, and customized information databases.²⁶
- A component of the MBIC, Indigo Key, Inc., which is an applications service provider that facilitates procurement opportunities for Florida minority businesses.²⁷
- Access Florida Opportunity, LLC, a subsidiary of FBBIB and a certified Community Development Entity (CDE). This entity was created to compete for participation in the federal New Markets Tax Credit program.²⁸

The capitalization program is the legislative mechanism for appropriating funds to be invested in the regional BBICs and the FBBSC, which is the statewide BBIC. Capitalization program funds are appropriated to the FBBIB through OTTED. Unless otherwise specified in the General Appropriations Act proviso, the FBBIB has the discretion to allocate the funds to the regional BBICs, under the conditions specified by contract.

As it relates to the capitalization program, the duties of the FBBIB include:²⁹

- Establish certification criteria for BBICs and certify at least once every 5 years, each of the BBICs. Certification criteria must include administrative capacity, fiduciary controls, and, in the case of existing black business investment corporations, solvency and soundness of prior loan decisions;

²⁶ Office of Program Policy Analysis and Government Accountability (OPPAGA), “Profile No. 6126,” *Florida Government Accountability Report*, at <http://www.oppaga.state.fl.us/profiles/6126/>, (updated June 23, 2005).

²⁷ *Id.*

²⁸ <http://www.fbbib.com/affiliates>.

²⁹ Section 288.7091, F.S.

- Ensure that any appropriations by the Legislature to the FBBIB on behalf of the BBICs are provided in the manner and amount prescribed by the Legislature;
- Include in the criteria for loan decisions, occupational forecasting results which target high growth jobs;³⁰
- Facilitate the formation of BBICs in under-served communities and establish in these areas memoranda of understanding with local financial institutions that will provide loan guarantees for loans to black business enterprises;³¹
- Annually, prepare a report detailing the performance of each BBIC, addressing the number of jobs created and/or retained, success and failure rates among loan recipients, and the amount of funds leveraged from other sources;³² and
- Annually, provide for a financial audit of its accounts and records by an independent certified public accountant.

FBBIB certification criteria, application and allocation process for capitalization program funds, and minimum contract specifications with the BBICs are set forth in ch. 8K-2, F.A.C., which, subsequent to the dissolution of the Department of Commerce, has been adopted as policy by the FBBIB.³³

³⁰ As established by the Workforce Estimating Conference. See s. 216.136(9), F.S.

³¹ FBBIB staff report that the FBBIB Support Corporation, a subsidiary of FBBIB that operates as a state-wide BBIC, serves rural counties that are not served by regional BBICs and, statewide, provides franchise lending and other financing that the regional BBICs are incapable of providing.

³² The annual report is compiled from information submitted by the regional BBICs. Section 288.714, F.S., created by the 1985 act, also requires the FBBIB to submit an annual report to the Governor and Legislature on the operation and accomplishments of the FBBIB, “including the specified outcome measures reporting the results of the service efforts of entities involved in accomplishing board goals and objectives.” See page 33, Report No. 12393, State of Florida, Office of the Auditor General.

³³ The substance of the ch. 8K-2, F.A.C., was last adopted as recertification criteria on June 29, 2004. FBBIB staff indicate that subsequent to the dissolution of the Department of Commerce in 1996, the FBBIB continued to rely on the provisions of the rule to guide FBBIB policy. This rule was also adopted by reference in the 1995 version of the contract between the FBBIB and the regional BBICs. However, it was not referenced in the 2002 version of the contract.

Since 1985, the Legislature has appropriated \$9.2 million in operating funds to FBBIB.³⁴ Over this same period, \$18.6 million has been appropriated through the capitalization program, \$9.15 million of which has been distributed, through early 2002, to regional BBICs.

The FBBIB has additional obligations through an annual contract with OTTED.³⁵ The FBBIB must provide an annual report and a Quarterly Performance Measure Report that contains details of the performance of each BBIC and all other performance criteria required by the contract. These measures include:

- Number of jobs created or retained by regional and statewide BBICs;
- Dollar amount and procurement opportunities generated for black businesses;
- Matching dollars leveraged by the FBBIB; and
- Number of businesses provided assistance through the statewide BBIC.

Black Business Investment Corporations

Since 1985, the eight regional BBICs have worked independently and in concert with the FBBIB to advance business development among black Floridians. The BBICs are not-for-profit subsidiaries of financial institutions or consortia of financial institutions investing in or lending to black business enterprises.³⁶ BBICs provide loans, loan guarantees, and technical assistance to black business enterprises.³⁷ They are each governed by a board of directors consisting of representatives of

³⁴ The latest annual appropriation for operations was \$451,210. Specific Appropriation 2496, ch. 2005-70, L.O.F. Section 288.7092(4)(a), F.S., provides that the state's operation investment in the FBBIB is the budget contracted by OTTED, "less funding that is directed by the Legislature to be subcontracted to a specific recipient."

³⁵ 2005 contract between OTTED and the FBBIB. Also see s. 288.7092(6), F.S., which requires the FBBIB to "comply with the performance measures, standards, and sanctions in its contracts" with OTTED.

³⁶ Section 288.707(2)(b), F.S. Until 2003, the Metro-Broward BBIC was a for-profit corporation.

³⁷ Some of the BBICs also provide additional economic development related services to their communities.

participating financial institutions, local governments, and other members of the community.

Pursuant to contracts, the FBBIB has a non-voting investment interest in all of the regional BBICs.³⁸ This interest was established, and is periodically expanded, through the purchase of membership certificates, with state appropriated capitalization program funds. This purchase is conditioned upon matching investments made by local financial institutions, and the provision of technical assistance and loans or loan guarantees to local black businesses in the counties served by the BBICs, as provided by contract.

The only duties of the BBICs prescribed in the Florida Statutes is the requirement that they coordinate with Enterprise Florida, Inc., and OTTED to avoid duplication and to develop local business and the necessary infrastructure to support each BBIC.³⁹

BBICs are accountable to their respective boards and to the FBBIB by contract. In addition, four BBICs are certified as Community Development Financial Institutions (CDFIs) by the US Department of the Treasury.⁴⁰

State capitalization funding to the BBICs is provided through contracts with the FBBIB.⁴¹ These contracts require the BBICs to:

- Repay to the FBBIB a pro-rata share of all capital, not to exceed the aggregate contribution, upon dissolution of the corporation;
- Maintain books, records, documents and other evidence according to Generally Accepted Accounting Principles (GAAP), procedures

³⁸ These contracts are also referred to as “Membership Agreements.”

³⁹ Section 288.7095, F.S.

⁴⁰ The four BBICs are Metro Broward Capital Corporation, BAC Funding Consortium, Inc., BBIF of Central Florida, and Tampa Bay BBIC.

(<http://www.cdfifund.gov/docs/certification/cdfi/CDFI-state.pdf>)

CDFI certification is important because it provides access to financial and technical assistance from the program. To date, three BBICs have received funding: Tampa Bay BBIC (\$47,600, 1999); BAC (\$1m, 1999); and Metro-Broward (\$200,000, 2001). CDFI certification is also important because it attracts financial investments from banks, as they can obtain CRA credit that may not be available to them if they invest in non-CDFI certified institutions.

⁴¹ Between 1985 and early 2002, \$9,150,000 in Capitalization Program funds have been distributed to BBICs for investment in local black business enterprises.

and practices which “sufficiently and properly” reflect all costs of any nature expended in the performance of the contract and all investments, loans, or loan guarantees made with proceeds from the capitalization program funds;

- Make available for inspection by the FBBIB all records and accounts of the BBICs relating in any manner to the FBBIB’s contribution or the contract;
- Establish procedures and maintain records, documents, and other evidence to demonstrate that the businesses assisted meet the requirements of law for financial assistance from the corporation (standards set forth in s. 288.71, F.S.);
- Report to the FBBIB at each quarter and annually its operations and accomplishments which must include the number of black business enterprises which have participated in the BBICs programs, the status of back enterprises, and the total number of jobs; and
- Offer products and services to businesses in surrounding areas.⁴²

The contract between the FBBIB and the individual BBICs may be terminated under the following circumstances:

- Upon surrender of the corporate charter of the BBIC;
- By repurchase of the investment certificate by the BBIC for the initial amount invested by the FBBIB and a pro-rata share of any earnings by, or profits of, the BBIC during the time of the contract;
- Upon failure (in whole or in part) by the BBIC to perform any of the obligations under the contract and such failure is not cured within 30 days from the FBBIB notice of such failure; or
- If it is in the best interest of the FBBIB to terminate the contract.⁴³

If the contract is terminated, the BBIC must repay any amount contributed

⁴² These are as specified in the 2002 version of the contract between the FBBIB and the regional BBICs.

⁴³ The four provisions above are included in the contracts for the years 1995 and 2002. However, the provision allowing termination, if in the best interest of FBBIB, was not included in the contract from 1987, the first contract between the FBBIB and the BBICs. The Office of the Attorney General reviewed the contract provisions in 1995 and in a letter dated November 27, 1995, from William Roberts to Judy Jones, OAG recommended that the FBBIB retain the fourth circumstance, the “in the best interest of the FBBIB” provision, in the contract with the BBICs.

by FBBIB and not actively invested within 15 days of written demand by FBBIB. Additionally, the BBIC must repay any amount contributed by the FBBIB and actively invested within 30 days of written demand by FBBIB to the extent that the repayment of the outstanding investment is actually received back by the BBIC from the loan recipient.

Initially, capitalization by the state was contingent upon local match by private financial institutions. The 1995 contract allowed the BBICs up to one year to secure the private match for new capitalization funds.⁴⁴ In 1998, the Legislature reiterated, through the General Appropriations Act proviso, this requirement.⁴⁵ However, in 2000 OTTED amended the contract with the FBBIB to allow for in-kind contributions to qualify as “matching dollars for loans or loan guarantees to be made from the Statewide Black Business Investment Fund” and instructed the FBBIB to use this allowance to determine the private match for BBICs.⁴⁶

The 2002 contract does not directly address whether in-kind contributions qualify for the private match requirement, only specifying that the capitalization funds may not exceed the amount of private membership.⁴⁷

Capitalization Program Funding to the BBICs

The Legislature appropriated capitalization program funds in FYs 1985/6,⁴⁸ 1994/5,⁴⁹ 1995/6,⁵⁰ and in every year from FY 1998/9 through

⁴⁴ By reference to the FBBIB Rule Chapter 8K-2, F.A.C.

⁴⁵ The proviso stated that the BBICs “shall receive funds on an equal matching basis and be in good financial standing with the Black Business Investment Board.” Specific Appropriation 1729, ch. 98-422, L.O.F.

⁴⁶ August 23, 2000, letter to Tony Nelson from Doris Maloy, Senior Government Analyst, Office of the Governor. In-kind contributions include the donation of equipment contributed as technical assistance, and goods and services such as time donated by loan officers and advertising/marketing support. In addition, the letter specified that cash contributions could include investment income and fees. The context of the letter indicates, and a recent interview with OTTED staff confirms, that this “in-kind match” allowance was intended to apply to the capitalization funds appropriated in 1998.

⁴⁷ The 2003 IG report also noted that the contract between the FBBIB and each BBIC does not define private membership support. The report recommended the contract specify the type of resources that qualify as private support and include a deadline for obtaining the private support. Audit Finding #5, pg. 8 of the FBBIB/BBIC Audit, Audit Number 2003-1, 10/13/03, Office of the Chief Inspector General, Executive Office of the Governor.

FY 2005/6.⁵¹ However, since FY 1998/9, the regional BBICs received capitalization funds only in 1998/9 and 2001/02.⁵² Between 1985 and 2001, \$9,000,000 in state funds were distributed to BBICs for investment in local black business enterprises. Table 1 lists the cumulative capitalization program distributions for the eight regional BBICs.

Table 1: Annual Capitalization Program Distributions

| BBIC | Total Capitalization Program ⁵³ | Total Private Cash Match ⁵⁴ |
|---|--|--|
| BACFC, Inc. Miami | \$1,537,500 | \$2,848,167 |
| BBIF of Central Florida Orlando | \$1,162,500 | \$960,000 |
| E Central Florida BBIC Daytona Beach | \$437,500 | \$0 |
| First Coast BBIC Jacksonville | \$1,537,500 | \$1,452,500 |
| Metro-Broward EDC Ft. Lauderdale | \$1,037,500 | \$1,200,000 |
| NW Florida BBIC | \$1,037,500 | \$1,637,156 |

⁴⁸ \$5 million lump sum was appropriated in s. 199, ch. 85-119, L.O.F.

⁴⁹ \$2 million was appropriated in Specific appropriation 277A, ch. 94-357, L.O.F. Proviso stipulated that of the \$2 million appropriated, at least \$150,000 should be distributed to each existing BBIC.

⁵⁰ \$1million was appropriated in s. 1680AP, ch. 95-429, L.O.F.

⁵¹ \$2 million, Specific Appropriation 1729, ch. 98-422, L.O.F.,
\$1.75 million, Specific Appropriation 1670, ch. 99-226, L.O.F.;
\$0.5 million, Specific Appropriation 2088, ch. 2000-166, L.O.F.;
\$1.2 million, Specific Appropriation 2365, ch. 2001-253, L.O.F.;
\$1.2 million, Specific Appropriation 2481, ch. 2002-394, L.O.F.;
\$1.2 million, Specific Appropriation 2315B, ch. 2003-397, L.O.F.;
\$1.56 million, Specific appropriation 2480H, ch. 2004-268, L.O.F.;
\$1.2 million, Specific Appropriation 2496, ch. 2005-70, L.O.F.

⁵² These figures were provided by FBBIB staff, June 2005.

⁵³ These figures were taken from the latest FBBIB contracts with the respective BBICs.

⁵⁴ This is the total private cash match according to information provided by FBBIB staff, January 2005. It is important to note that after 2000, the BBICs were allowed to consider in-kind contributions toward their private match, which may demonstrate that they have met the required private match.

| | | |
|---|--------------------|---------------------|
| Tallahassee | | |
| Palm Beach County BBIC Riviera Beach | \$1,037,500 | \$1,282,500 |
| Tampa Bay BBIC Tampa | \$1,362,500 | \$1,284,800 |
| TOTAL | \$9,150,000 | \$10,665,123 |

In 2002, the Legislature appropriated \$1.2 million to the FBBIB and Statewide Black Business Investment Corporation Capitalization Program.⁵⁵ While FBBIB records indicate that \$700,000 was allocated to the BBICs, no funds were distributed.⁵⁶

In 2003, the Legislature appropriated an additional \$1.2 million to the FBBIB and Statewide Black Business Investment Corporation Capitalization Program.⁵⁷ These funds were not allocated by the FBBIB to the BBICs. The FBBIB reports that it informed the BBICs that distribution of these funds “would be subject to the completion” of the IG audit.⁵⁸

⁵⁵ Specific Appropriation 2481, ch. 2002-394, L.O.F.

⁵⁶ This information was provided by FBBIB staff. FBBIB minutes from August 2002 through June 2005 do not report any decision made by the board as to allocation or distribution of funds for FY 2002/3.

⁵⁷ Specific Appropriation 2315, ch. 2003-397, L.O.F. The appropriation proviso “to the FBBIB and Statewide Black Business Investment Corporation Capitalization Program” can be read to mean either that the funds were exclusively for the FBBIB for the “statewide” program that serves the FBBIB’s BBIC or for the FBBIB as well as the eight regional BBICs. FBBIB minutes do not address this issue. However, in 2005 the FBBIB staff indicated they interpreted the appropriation proviso to mean that the funds were “expressly earmarked” to the board, and not the regional BBICs. See FBBIB Staff *Statement Supporting Termination of FBBIB/BBIC Agreements*, March 1, 2005. The proviso for 2003 referenced in this document is identical to the 2002/3 appropriation proviso. In that year, \$700,000 was allocated, although not distributed, to the regional BBICs. In recent interviews, House of Representatives Appropriations Committee staff and OTTED staff stated they recalled that appropriations for 2002/03 and 2003/04 was intended to capitalize the FBBIB’s BBIC.

⁵⁸ FBBIB Staff *Statement Supporting Termination of FBBIB/BBIC Agreements*, March 1, 2005. Another document from the FBBIB staff indicates that because the BBICs “have failed to comply with the statutory requirements and as a result, appropriated funds have not been released from the FBBIB to the BBICs for the last three years.” *Current Issues Related to the Florida Black Business Investment Board*, January 2005. FBBIB minutes from August 2002 through June 2005 do not report any decision made by the board as to allocation or distribution of funds for FY 2003/4.

In 2004, the Legislature appropriated \$1.56 million to the capitalization program, with the condition that funds

...shall be allocated equally among each of the local Black Business Investment Corporations and the Statewide Black Business Investment Board. The release of funds for each corporation is contingent on certification by the Office of Tourism, Trade and Economic Development that the corporation is meeting contractual obligations required to carry out its statutory mission.⁵⁹

In 2005 the Legislature appropriated \$1.2 million to the capitalization program under similar conditions:

Funds in Specific Appropriation 2496 for the Florida Black Business Investment Board and the Statewide Black Business Investment Corporation Capitalization Program shall be allocated equally among each of the Black Business Investment Corporations and the statewide Black Business Investment Board. The release of capitalization funds to the FBBIB for distribution to each corporation is contingent on certification by the FBBIB that the corporations are meeting contractual obligations. The release of capitalization funds to the FBBIB is contingent on certification by the Office of Tourism, Trade and Economic Development that the FBBIB is meeting its statutory mission.⁶⁰

Major Legislative Changes

In an effort to improve program accountability and address emerging issues, since 1994 the Legislature has made changes to the provisions governing the FBBIB, with implications for the BBICs and the capitalization program.

In 1993, the Legislature created the Florida Commission on Minority Economic and Business Development to affirm the purpose, accomplishments, and benefits of the Florida Small and Minority Business Assistance Act, and to recommend measures to increase the number of minority businesses and to ensure the “integrity, competency, and

⁵⁹ Specific Appropriation 2480H of ch. 2004-268, L.O.F.

⁶⁰ Specific Appropriation 2496 ch. 2005-70, L.O.F.

efficiency in the administration of ...business development services...”⁶¹
In response to commission recommendations, the 1994 Legislature abrogated the scheduled repeal of the program,⁶² thereby maintaining the provisions in the act.⁶³ The Legislature also created a new statutory section to set forth specific duties of the FBBIB, including:⁶⁴

- Establish certification criteria for the BBICs, encompassing such issues as administrative capacity, fiduciary controls, and, in the case of existing BBICs, solvency and soundness of prior loan decisions;⁶⁵
- Establish, in communities that are not currently served by an existing BBIC, memoranda of understanding with local financial institutions that will provide loan guarantees for loans to black business enterprises;
- Annually, prepare a report detailing the performance of each BBIC, addressing the number of jobs created and/or retained, success and failure rates among loan recipients, and the amount of funds leveraged from other sources;⁶⁶ and
- Adopt rules that prescribe criteria used by the board to evaluate applications for financial assistance to black business enterprises.⁶⁷

In 1996, the Legislature abolished the Department of Commerce and created OTTED within the Executive Office of the Governor to assume many of the department responsibilities, including oversight of the FBBIB.

⁶¹ Section 1 of ch. 93-290, L.O.F.

⁶² Section 32 of ch. 85-104, L.O.F. With the scheduled repeal of the act, there would also be no mechanism to continue monitoring or funding the regional BBICs.

⁶³ Section 28 of ch. 94-322, L.O.F. Also see recommendations from the Florida Commission on Minority Economic and Business Development, “Final Report”, February 1994, and the House of Representatives Committee on Tourism and Economic Development, as presented in their “Report on Florida’s Small and Minority Business Assistance Act,” February 1994.

⁶⁴ Chapter 94-271, L.O.F.

⁶⁵ In 1995, the FBBIB’s rule, Chapter 8K-2, F.A.C., was amended to include certification criteria.

⁶⁶ Some of these performance requirements were also required, indirectly, in s. 288.714, F.S., and pursuant to the contracts between the FBBIB and the regional BBICs. In 1993 and 1994, audits by the Office of the Auditor General criticized the quality of the reporting by the BBICs to the FBBIB. See Reports No. 12066 and 12393, State of Florida, Office of the Auditor General.

⁶⁷ See ch. 8K-2, F.A.C.

⁶⁸ The Legislature also changed the composition of the FBBIB to require that at least one member of the FBBIB be a member of a BBIC.⁶⁹ In addition, the statute was amended to require that any proposed rules affecting the operation or administration of financial well being of any of the BBICs must first be approved by a majority of the BBICs.⁷⁰

In 2002, the Legislature substantially amended provisions relating to the FBBIB by establishing the board as a not-for-profit corporation in public/private partnership with the state. The membership appointment process was diversified and expanded to include three board chairs of regional BBICs and the vice chair of Enterprise Florida, Inc. The law provided criteria to measure Florida's return on investment from activities of the board. The law required the board to seek private sector support that will equal the state's support by July 1, 2007, and prescribed items constituting private sector support.⁷¹ Additionally, board responsibilities were expanded to include:

- Facilitating the formation of BBICs in communities not currently served by such corporations;
- Ensuring that any appropriations by the Legislature to FBBIB on behalf of the BBICs are provided to FBBIB in the manner and amount prescribed by the Legislature;
- Providing for an annual financial audit report of its accounts and records to be conducted by an independent certified public accountant;
- Complying with the performance measures, standards, and sanctions in its contract with OTTED; and
- Reporting to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2003, on the feasibility of including all minority business enterprises within the scope of its duties.⁷²

⁶⁸ ch. 96-320, L.O.F.

⁶⁹ Section 64 of ch. 96-320, L.O.F.

⁷⁰ Section 65 of ch. 96-320, L.O.F. This provision was repealed by ch. 2003-268, L.O.F.

⁷¹ Chapter 2002-180, L.O.F.

⁷² In response to this requirement, the FBBIB contracted with KPMG to conduct the feasibility study. In response to the study, the FBBIB expanded services to the minority community through a strategic partnership with the Florida State Hispanic Chamber of Commerce – Access Florida, the Preferred Lender Financing Program (pilot), and its purchase of a controlling interest in Indigo Key, Inc.

In 2003, the Legislature removed the requirement that bylaws of policies affecting the BBICs be approved by the majority of the BBICs, and required BBICs to be certified by the FBBIB every 5 years.⁷³

Governor’s Chief Inspector General’s Audit of the FBBIB/BBIC

In 2002, the FBBIB requested that the Office of Chief Inspector General (IG) conduct an audit of the FBBIB/BBICs to “assess the overall effectiveness and efficiency of the FBBIB and the BBICs operations and to determine whether the organizations were operating in accordance with the purposes for which they were statutorily created.”⁷⁴

In October 2003, the IG issued its audit revealing “a breakdown in accountability” and finding that the BBICs were not meeting program objectives.⁷⁵

Audit findings included, in part, that:

- The organizational structure of the FBBIB and BBICs should be restructured to provide more effective and efficient delivery of services;
- The BBICs performance measurement data was not reliable, properly collected, documented, verified, and reported;
- BBIC loan and loan guarantee portfolios could not be accurately determined and loan files frequently did not contain adequate documentation; and
- The FBBIB and BBICs did not adequately monitor sub-recipient auditing and reporting activities.

The FBBIB generally agreed with the IG’s findings.⁷⁶ In response to the IG’s report, FBBIB acknowledged that the program had deficiencies and

⁷³ Chapter 2003-268, L.O.F.

⁷⁴ *Current Issues Related to the Florida Black Business Investment Board*, FBBIB, January, 2005.

⁷⁵ Audit Number 2003-1, *Florida Black Business Investment Board/Black Business Investment Corporations Audit*, October 13, 2003. Executive Office of the Governor, Office of the Inspector General.

was willing to implement reforms to address IG report findings. The FBBIB also noted that it has no authority to enforce the practices of the BBICs. In addition, the FBBIB stated that the current organizational configuration presents an impediment to achieving the program objectives.

Specifically, FBBIB indicated that it would develop uniform lending policies and uniform reporting procedures for use by all of the BBICs. The FBBIB also stated that it would define the contract requirements with more specificity so that the BBICs better understand what kind of information should be reported. Further, FBBIB stated that it would “enforce the agreement” if the BBICs failed to fulfill their requirements under the contract.

The BBICs collectively disagreed with the IG’s findings.⁷⁷ Generally, the BBICs disputed the assumptions and standards that the IG used to evaluate the BBIC practices and program responsibilities. In response, the BBICs stated that the corporations were created to be independent organizations to address the specific economic needs of their respective communities, and the audit did not evaluate the BBICs based on the respective policies and procedures of each individual corporation. According to the BBICs, auditors lacked the historical perspective and knowledge of their respective business plans and general banking practices. In addition, each BBIC has established “its own unique way of collecting, documentation, verifying, and reporting data” in response to local needs and availability of resources.⁷⁸

The BBICs also disputed the IG’s findings related to the required matching of state funds. The IG found that some of the corporations did not meet the required private membership support. According to the BBICs, the IG did not take into consideration private in-kind services, citing the directive

⁷⁶ Attachment to Audit Number 2003-1, *Florida Black Business Investment Board/Black Business Investment Corporations Audit*, October 13, 2003. Executive Office of the Governor, Office of the Chief Inspector General.

⁷⁷ Attachment to Audit Number 2003-1, *Florida Black Business Investment Board/Black Business Investment Corporations Audit*, October 13, 2003. Executive Office of the Governor, Office of the Chief Inspector General.

⁷⁸ Page 4 of BBICs response to IG Report, included as an addendum to the report.

in 2000 by OTTED to authorize the inclusion of in-kind services in the private match requirement.⁷⁹

Although the BBICs disputed the IG's findings, they recognized that their operations could be improved and stated that they were willing to work with the FBBIB to effect those changes. In recent interviews, the BBICs indicated that they were pursuing uniform lending policies and applications to be used by all eight of the BBICs.

Recertification of BBICs

To date, recertification for past capitalization program funds and future participation in the program is at an impasse. A series of actions by the FBBIB and the regional BBICs have created obstacles to a resolution between the FBBIB and the regional BBICs.

In 1994, the Legislature mandated that the FBBIB establish certification criteria for BBICs.⁸⁰ The criteria must include "administrative capacity, fiduciary controls, and, in the case of existing Black Business Investment Corporations, solvency and soundness of prior loan decisions."⁸¹ In 2003, this section was amended to require the FBBIB to certify each BBIC at least every 5 years.⁸²

In 2003, the annual contract between the FBBIB and OTTED contained the following provision:

⁷⁹ August 23, 2000, letter to Tony Nelson from Doris Maloy, Senior Government Analyst, Office of the Governor. In-kind contributions include the donation of equipment contributed as technical assistance, and goods and services such as time donated by loan officers and advertising/marketing support. In addition, the letter specified that cash contributions could include investment income and fees. The context of the letter indicates, and a recent interview with OTTED staff confirms, that this "in-kind match" allowance was intended to apply to the capitalization funds appropriated in 1998.

⁸⁰ Section 1, ch. 94-271, L.O.F. In 1995, the FBBIB's rule, ch. 8K-2, F.A.C., was amended to include certification criteria.

⁸¹ Section 288.7091(1), F.S.

⁸² Section 3, ch. 2003-268, L.O.F. Arguably, this provision requires recertification of all BBICs under contract with the FBBIB by 2008. Also, rule 8K-2.009(3), F.A.C., was amended in 1995 to require BBICs to "seek and receive recertification every five years for as long as the Board has an investment in the corporation."

Pursuant to the terms of the Contract and, in particular, the terms of Article 5, FBBIB agrees to assist in the creation and growth of black business enterprises and in furtherance of such role agrees to ... establishment of the criteria for BBIC certification and recertification and initiation of the process mandated in Section 288.7091(1), Florida Statutes.⁸³

In response, the FBBIB formed a special task force to develop recertification criteria⁸⁴ and review each of the regional BBICs to determine whether to recommend each BBIC for statutory recertification.⁸⁵ Additional documents state that the task force was formed to address “both legislative mandates and problems discovered in the IG audit.”⁸⁶

The task force, which included accountants, bankers, economic developers, consultants, and an FBBIB member, met three times in March and April of 2004. The task force was provided a mission and goals statement to guide them in developing the recertification criteria. The mission of the task force was to evaluate each BBIC and “determine the ability of each of them to receive additional investments” from the FBBIB. In establishing the criteria, the task force was instructed to consider:

- The administrative capacity, fiduciary controls, financial solvency and soundness of prior loan decisions as outlined in ss. 288.7091(1), F.S.;
- Chapter 8K-2, Florida Administrative Code;
- The October 2003 audit findings and recommendations of the Office of the Chief Inspector General;

⁸³ Exhibit A to the Funding and Program Agreement, STATEMENT OF WORK, 2003/2004 Funding and Program Agreement between the FBBIB and OTTED, July 1, 2003.

⁸⁴ *Current Issues Related to the Florida Black Business Investment Board*, FBBIB, January, 2005.

⁸⁵ Also see FBBIB minutes for 2/5/04. It should be noted that the FBBIB’s Statewide Investment Corporation was not made subject to recertification.

⁸⁶ *Current Issues Related to the Florida Black Business Investment Board*, FBBIB, January, 2005. Additionally, in their response to the IG Report, the FBBIB stated that they would pursue recertification of the BBICs in response to the IG’s finding that the organizational structure of the FBBIB and regional BBICs should be restructured to provide more effective and efficient delivery of services.

- The contract terms and conditions between the FBBIB and the BBICs; and
- The expanded mission of the FBBIB to serve other minorities.⁸⁷

On June 29, 2004, the FBBIB adopted the task force recertification criteria and set a timeline for the recertification process with a deadline of July 31, 2004.⁸⁸ In part, the criteria the task force adopted included ch. 8K-2, F.A.C., which was a Department of Commerce rule formerly used to regulate the FBBIB and BBICs. The board also approved the related Recertification Application, which incorporated the rule requirements as well as the other considerations evaluated by the task force in the development of the recertification criteria. In addition, the recertification criteria were amended to expressly provide the BBICs with a right to appeal an unfavorable recertification decision to the FBBIB.⁸⁹

In early July, FBBIB sent recertification applications to the BBICs, and scheduled a workshop for the BBIC presidents to review the application and the recertification process.⁹⁰ In addition, the BBICs were notified that the FBBIB staff would review the applications for a “determination of completeness” before submission to the task force members.⁹¹

At the same time the BBICs were pursuing recertification, the coalition of BBIC presidents conveyed by letter to the FBBIB that “some BBICs believe it is time to move on and not request or accept any more dollars from the state...”⁹² It was also requested that the FBBIB adopt a resolution to “write off” previous state contributions to those BBICs that chose to give up future state capitalization funding.⁹³ The letter also offered that the BBICs would continue to submit annual audits and reports to show that the funds continue to be used to support qualified black-owned

⁸⁷ *Recertification Task Force Mission and Goals*, FBBIB, March 23, 2004.

⁸⁸ FBBIB Minutes, June 29, 2004, and e-mail from Hilmon Sorey to BBICs Presidents, July 1, 2004.

⁸⁹ E-mail from Hilmon Sorey to BBICs Presidents, July 1, 2004.

⁹⁰ The workshop was held on July 12, 2004

⁹¹ E-mail from Hilmon Sorey to BBICs Presidents, July 1, 2004.

⁹² July 19, 2004, letter from the Coalition of Community Investment Corporations to the FBBIB. The coalition was formed to by the BBIC Presidents to “operate as a single entity to further the mission that we jointly share throughout the State of Florida.”

⁹³ The letter stated that some of the private institutions had “written off” their investments as “CRA” requirements or as investments in “community development.”

businesses. In this same letter, the BBICs requested an extension of the application deadline.⁹⁴

FBBIB minutes for the August 5, 2004 board meeting indicate that a representative of the coalition and FBBIB members discussed the coalition's letter and that board members were interested in "exploring a possible modification of the FBBIBs and BBICs partnership structure and relationship." The board requested the BBICs further outline their proposal for this changed relationship structure.⁹⁵ The coalition responded with a resolution that all existing investments contracts between the BBICs and the FBBIB "be assigned the expiration date of December 31, 2004." Further, the resolution stated that new contracts contain expiration dates.⁹⁶ Hilmon Sorey, President of the FBBIB responded with concerns that the resolution "does not address the feasibility of your proposed structure in relation to" current statutory and contractual requirements.⁹⁷

Concurrent with this dialogue, all eight BBICs submitted recertification applications. On October 4, 2004, the FBBIB requested additional information from the BBICs. On October 14, 2004, the FBBIB mailed the recertification materials submitted by the BBICs to the task force for review.

The task force met on December 7, 2004, to review the applications and provided the following recommendation to FBBIB:

At the December 2004 Task Force meeting the quality of the applications submitted was discussed. The Task Force resolved that based on the recertification application and supporting documents submitted by the BBICs and reviewed and evaluated by the Task Force against the recertification criteria and other related

⁹⁴ The deadline was initially extended until August 5, 2004, and later extended to September 30, 2004.

⁹⁵ FBBIB Minutes, August 5, 2004, Orlando, Florida.

⁹⁶ September 29, 2004, Resolution from the Coalition of Community Investment Corporations to the FBBIB. It appears that the intent of the request for an expiration date was to negate the recovery provisions of the current contract between the FBBIB and the respective BBICs.

⁹⁷ E-mail from Hilmon Sorey to BBICs Presidents, October 7, 2004. According to FBBIB minutes from November 3, 2004, Mr. Sorey "opined that the resolution did not satisfy the Board's request...[for] a detailed plan regarding a new structure between the Board and the BBICs."

considerations, it was unanimously recommended that the Board of Directors of FBBIB not to recertify any of the eight BBICs. FBBIB subsequently informed each of the BBIC presidents and the FBBIB Board of the Task Force's action.⁹⁸

On December 9, 2004, FBBIB staff gave preliminary notice to all BBICs that the task force did not recommend recertification.⁹⁹ On December 14, 2004, one task force member and FBBIB staff met with the BBIC presidents to discuss the task force recommendations and a process to allow the BBICs to terminate their contractual obligations for past capitalization fund investments by the FBBIB.¹⁰⁰

On January 20, 2005, FBBIB wrote to BBICs and recommended termination and waiver of the FBBIBs right to recover past investments, pursuant to the current contract, with the eight following conditions:

- BBICs adopt resolutions accepting termination;
- BBICs agree to surrender their charters;
- BBICs agree to use all capitalization money in a manner consistent with law;
- BBICs continue to provide FBBIB quarterly reports and annual audits;
- That there will be no additional FBBIB contributions to BBICs;
- FBBIB and BBICs may work together in the future only on an individual and case-by-case basis;
- That OTTED must approve these conditions; and
- That failure to comply with the above conditions will trigger termination rights of the FBBIB under section 5.2 of the Agreement (contract).¹⁰¹

⁹⁸ Memo from James Carras, Consultant to FBBIB Recertification Task Force, to Hilmon Sorey, dated July 15, 2005, regarding FBBIB Recertification Process. A recording from the task force meeting indicates that the "other considerations" were the BBICs efforts to terminate or amend their contractual relationship with the FBBIB.

⁹⁹ E-mail from Hilmon Sorey to the BBICs, December 9, 2004.

¹⁰⁰ While we have no minutes of what was discussed at the meeting, subsequent correspondence between the FBBIB staff and the BBICs state that the topic of discussion was the options related to termination of contracts and repayment of state investments in the respective BBICs to the FBBIB. January 20, 2005 letter from Hilmon Sorey to BBIC Presidents.

¹⁰¹ Letter from Hilmon Sorey to coalition, dated January 20, 2005.

On January 27, 2005, the BBICs responded to the FBBIBs letter regarding termination of the contracts, stating that the BBICs desired expiration dates in the investment agreements with FBBIB but not termination of the relationship altogether.¹⁰² On January 31, 2005, FBBIB staff responded to the BBICs, stating that it was not in the FBBIB's best interest to modify the contracts to include expiration dates and that membership agreements (investments) "by their very nature do not expire."¹⁰³ The letter also stated that FBBIB staff was withdrawing their offer of January 20th and planned to recommend to the FBBIB to terminate the contracts and invoke the termination provision in the contracts, which would require the return of all past investments. On February 1, the coalition sent Raoul Sinclat, FBBIB chair, a letter requesting the board intervene on behalf of the BBICs.

On February 15, 2005, FBBIB staff reiterated its recommendation to terminate contracts and recover state investments.¹⁰⁴ In addition, the General Counsel to the FBBIB sent the BBICs a memo outlining a process for the BBICs to present a collective or individual "position statement supporting or objecting to the board making a determination that it is in the board's best interest to terminate the agreements with the BBICs" prior to the March FBBIB meeting.¹⁰⁵ The memo further stated that the FBBIB would consider such submission prior to the meeting. The FBBIB chair later reported that the BBICs did not collectively or individually provide written position statements.¹⁰⁶

On March 10, 2005, the FBBIB voted to terminate the membership agreements with the BBICs, but deferred invoking the recovery provision in contracts. The FBBIB minutes show that there were five specific reasons that the FBBIB management recommended termination of the BBIB/BBIC contracts:

¹⁰² Letter from coalition to Hilmon Sorey, dated January 27, 2005.

¹⁰³ Letter from Hilmon Sorey to coalition, dated January 31, 2005.

¹⁰⁴ Letter from Hilmon Sorey to Coalition, dated February 15, 2005.

¹⁰⁵ Memo from Guilene Theodore regarding procedures for FBBIB to Terminate Contracts with the BBICs, February 15, 2005.

¹⁰⁶ FBBIB minutes, March 10, 2005, Tampa, Florida.

- The current organizational structure and operations of the BBICs and their lack of accountability to the FBBIB impede the FBBIB's ability to meet its statutory and programmatic objectives.
- The contractual provisions do not provide the FBBIB with any mechanism to effectuate meaningful reforms in response to deficiencies identified in the IG's report.
- The FBBIB has stated its desire to change its strategic direction consistent with what was represented in the response to the audit, including moving toward a single statewide loan portfolio, a more centralized loan approval committee and a more centralized loan servicing and improved quality controls. The terms of the agreements do not provided the tools necessary to make such changes.
- The current relationship between the FBBIB and the BBICs under the contracts provides a less than optimum impact to the target communities in terms of growth of business enterprises required to fulfill the statutory and programmatic purposes of the FBBIB.
- Over the past several months, the BBICs have expressed dissatisfaction with the current relationship between the FBBIB and the BBICs.¹⁰⁷

FBBIB minutes indicate that the BBICs were allowed to raise their objections to the board's action.¹⁰⁸

On March 18, 2005, the chairperson of the FBBIB informed the coalition that the FBBIB had voted to terminate the FBBIB/BBIC contracts, and that the FBBIB wanted to establish a new relationship with the BBICs.¹⁰⁹ The letter stated that this new relationship would have "measurable goals and objectives with an eye toward self-sustainability by your organization." The letter also requested the BBICs "provide a business plan outlining your organization's viability and capacity to assist the Board in serving Florida black businesses and how your organization can participate in the Board's Preferred Lender Financing Program." In response, the BBICs agreed to work with the FBBIB, but also stated that "under no

¹⁰⁷ *Id.*

¹⁰⁸ FBBIB minutes, March 10, 2005, Tampa, Florida.

¹⁰⁹ Letter from Hilmon Sorey to Inez Long, March 18, 2005.

circumstances will the BBICs voluntarily agree to permit the FBBIB to receive back its investment.”¹¹⁰

After the FBBIB terminated their contracts with the BBICs, the communication shifted to address the unallocated, undistributed capitalization program funds. On June 17, the FBBIB decided that these funds could be distributed to the BBICs if the current statutory and 2004/5 and 2005/6 the General Appropriations Act proviso requirements were met.¹¹¹

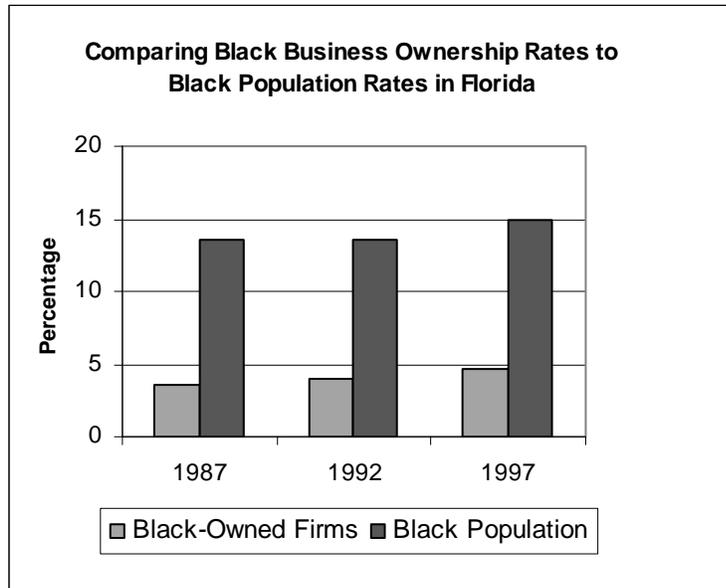
Through mid-July, 2005, negotiations over a plan to distribute these funds continued between the FBBIB and the BBICs, with no resolution. OTTED staff also participated in these negotiations.

Persistence of Disparity

Although the number of black-owned firms continues to increase, and in fact grow at a faster rate than all other businesses in Florida, the disparity between the proportion of black-owned and non-black-owned businesses persists. The chart below illustrates this disparity by comparing the percentage of total firms in Florida that are owned by blacks and the percentage of Florida’s population that is black. While blacks historically make up around 14-15 percent of Florida’s population, they own only between 3.5 percent and 4.5 percent of the businesses in Florida. The magnitude of the disparity gap has remained approximately the same since 1987.

¹¹⁰ Letter from Frances Wimberly, President of the newly formed Florida Consortium of BBICs, Inc., to Raoul Siclait, April 4, 2005.

¹¹¹ Draft of FBBIB Minutes, June 17, 2005, Orlando, Florida. The minutes have yet to be adopted by the FBBIB.



Source: The chart is based on data from the U.S. Census Bureau; the Census Bureau conducts a survey of minority business ownership every five years, the most recent data available is for 1997. The 2002 data is scheduled to be released in late 2005.

Conclusions

The FBBIB/BBIC capitalization program was created by the Legislature to assist qualified black-owned businesses in obtaining capital that may not be available to them in the private market.

In an effort to improve program accountability and address emerging issues, since 1994 the Legislature has made changes to the provisions governing the FBBIB, with implications for the BBICs and the capitalization program.

Since 1987, \$9.15 million of capitalization program funds have been invested by the FBBIB in regional BBICs, with a contractual requirement that such funds be matched by private investments. The BBICs have a contractual responsibility to report to the FBBIB on the performance of these investments.

Since 2002, the BBICs have not received annually appropriated capitalization program funds, due to decisions made by the Legislature, the FBBIB, and most recently due to unmet conditions imposed by the Legislature.

The FBBIB has a fiduciary responsibility to the state to monitor and enforce the investment contracts with the BBICs, and to periodically recertify BBICs as eligible for such investments.

Recertification of the BBICs was initiated to address the unfavorable audit findings by the Governor's Inspector General and directives from OTTED in their contract with the FBBIB. The audit also recommended the relationship be restructured to provide more effective and efficient delivery of services.

To date, recertification for past capitalization program funds and future participation in the program is at an impasse. A series of actions by the FBBIB and the regional BBICs have created obstacles to a resolution between the FBBIB and the regional BBICs.

While OTTED is responsible for contracting with the FBBIB, and monitors the activities of the BBICs through the submission of activity reports through the FBBIB, and OTTED staff has been involved in the

recent negotiations between the FBBIB and the BBICs, they have not proposed a specific resolution to the impasse. However, OTTED staff have represented that the Governor would support a proposal which “increases accountability and adds value to the program.”

Recommendations

Contractual Certification

Fiscal Year 2004/05 General Appropriations Act proviso requires certification that the BBICs are meeting their contractual obligations. To be eligible to receive available appropriations from previous years, we recommend that the FBBIB, by October 31, 2006, evaluate whether each BBIC has met the terms of the 2002 contractual obligations. If any BBIC is deemed eligible for capitalization funds, the FBBIB should be required to negotiate measurable performance measures and standards, approved by OTTED, for inclusion in individualized contracts with the respective BBIC. If these measures and standards are not met, the capitalization funds would be required to be returned to the FBBIB.

Whether or not any of the BBICs are deemed to qualify for available appropriations from previous years, the BBICs should continue to be subject to contractual reporting requirements. In addition, the FBBIB should retain ownership of the membership certificates granted by the respective BBICs when capitalization funds were provided.

Statutory Certification

Section 288.7091(1), F.S., requires certification at least once every 5 years. To participate prospectively in the capitalization program, the Legislature should require OTTED to develop recertification criteria and contract with an appropriate independent entity to certify that the BBICs have the administrative capacity and fiduciary controls to operate as a viable financial institution, and evaluate the solvency and soundness of their prior loan decisions. Future participation in the capitalization program should be contingent upon recertification. This recertification could be funded through an application fee. Likewise, to qualify for future capitalization funding, the FBBIB Statewide BBIC should undergo the same certification process.

The statutes should provide for financial and compliance audits of the FBBIB and the recertified BBICs. The audits should be conducted in accordance with the rules of the Auditor General and a compliance

supplement developed by OTTED, in consultation with the Auditor General.

Restructuring

If any of the BBICs are recertified for future participation in the capitalization program, the Legislature should consider restructuring the capitalization program to address the potential conflict of interest that allows the chairs of entities that participate in the capitalization program to vote on policies that affect funding for their respective organizations. The Legislature should also address the potential conflict that allows the allocation of capitalization program funds to the BBICs, or allows the FBBIB to allocate capitalization funds to its statewide BBIC. To remove this conflict of interest, the Legislature could:

- Provide specific pro-rata allocation in the General Appropriations Act for BBICs, if otherwise qualified.
- Require the FBBIB divest itself of their statewide BBIC, making it a separate entity, outside of the purview of the FBBIB.
- Provide that a person who has an interest in an entity that participates in the capitalization program may not be eligible to be a FBBIB board member.

Before considering restructuring, the Legislature may want to consider the following options:

- Require OPPAGA to conduct a performance audit of the FBBIB, to include their relationship with BBICs.
- Explore alternative models for addressing the disparity of access to capital between black and non-black businesses. Such models may include:
 - An expanded or fully funded FBBIB model now in operation;
 - A separate entity to periodically certify and monitor BBICs receiving capitalization program funds; or
 - Programs in operation in other states

Review of the Florida Black Business Investment Board and Black Business Investment Corporations

Appendixes

**Appendix A – Governor’s Office of Chief Inspector General
Audit of the FBBIB/BBICs**

**Executive Office of the Governor
Office of the Inspector General**

**Florida Black Business Investment Board / Black Business
Investment Corporations Audit**

Audit Number 2003-1

Date: October 13, 2003



JEB BUSH
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

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850-488-7146
850-487-0801 fax

October 13, 2003

Honorable Jeb Bush
Governor of Florida
The Capitol
Tallahassee, FL 32399

Dear Governor Bush:

Enclosed is audit #2003-1 of the Florida Black Business Investment Board/ Black Business Investment Corporations. The audit was conducted by the staff of the Chief Inspector General’s Office. The Investment Board’s response and the Investment Corporations’ collective response to the preliminary report have been incorporated in the final report.

If you have any questions or would like to discuss this further, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Derry Harper".

Derry Harper
Chief Inspector General



Governor's Mentoring Initiative

BE A MENTOR. BE A BIG HELP.
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FLORIDA BLACK BUSINESS INVESTMENT BOARD/BLACK BUSINESS INVESTMENT CORPORATIONS AUDIT

EXECUTIVE SUMMARY

The Office of the Chief Inspector General performed an audit of the Florida Black Business Investment Board, Inc. (Investment Board) and the nine Black Business Investment Corporations (Investment Corporations) for the period July 1, 2001, through December 31, 2002. The audit objectives were designed to assess the overall effectiveness and efficiency of the operations of the Investment Board and the Investment Corporations and to determine whether they were operating in accordance with the purposes for which they were statutorily created.

The Investment Board functions as the statewide administrator for the program while the Investment Corporations provide loans and loan guarantees to disadvantaged black business enterprises with the primary objective of increasing employment opportunities in the black community.

The findings in this report revealed a breakdown in accountability. Also, in the past two years, the Investment Board has experienced significant changes in leadership, organizational structure, strategic direction, and considerable staff turnover. The Investment Board has made progress in achieving its objectives, managing its challenges, and increasing its accountability. However, there is still significant opportunity for improvement.

The Investment Board’s response addressed and generally agreed with our findings and recommendations. The Investment Corporations’ collective response did not adequately address the findings and recommendations made in our report. Both responses are included in this report.

Synopsis of Findings:

- The Investment Corporations were not meeting program objectives.
- The organizational structure of the Investment Board and the Investment Corporations should be restructured to provide more effective and efficient delivery of services.
- The Investment Corporations’ performance measurement data was not reliable, properly collected, documented, verified, and reported.
- The performance of the Investment Corporations’ loan and loan guarantee portfolios could not be accurately determined. A review of the information provided for the audit period revealed that active loans appeared to have a much higher rate of delinquency and default than active loan guarantees.
- Some Investment Corporations did not meet the required private membership support.
- Investment Corporations’ loan files frequently did not contain adequate documentation.
- The Florida Black Business Support Corporation (Support Corporation) did not have a Florida Single Audit performed for the fiscal year ended September 30, 2001, as required by Section 215.97, Florida Statutes.
- The Investment Board and the Investment Corporations did not adequately monitor subrecipient auditing and reporting activities.
- Although the Investment Corporations used marketing tools to promote their

services, they did not target specific business sectors.

BACKGROUND

Sections 288.707-288.714, Florida Statutes, created the Investment Board in 1985. The Investment Board was originally created within the Department of Commerce and then transferred to the Office of Tourism, Trade, and Economic Development (OTTED) when the Department of Commerce was disbanded in 1996.

In addition, the Support Corporation was created in 1988 to act as the operating agent of the Investment Board, since the Investment Board was a policy board and not a fully functioning corporation. The Investment Board and the Support Corporation have a common board, although they are two separate organizations. In 2000, the Support Corporation began lending operations and functioning as the Statewide Black Business Investment Corporation, in addition to its previous duties.

In 2002, the Investment Board became a not-for-profit corporation, functioning as a public-private partnership, which is not a unit or entity of state government. Since the Investment Board became a fully functioning corporation, the Support Corporation shifted its focus solely to lending activities.

In addition, the statutes referred to above also created the opportunity for the establishment of regional Investment Corporations, which are also public-private partnerships. The following nine Investment Corporations have been established and are operating throughout the state: (See Appendix I for counties served.)

- BAC Funding Consortium, Inc.
- Black Business Investment Fund of Central Florida

- East Central Florida Black Business Investment Corporation
- First Coast Black Business Investment Corporation
- Florida Black Business Support Corporation, functioning as the Statewide Black Business Investment Corporation
- Metro-Broward Capital Corporation
- Northwest Florida Black Business Investment Corporation
- Palm Beach County Black Business Investment Corporation
- Tampa Bay Black Business Investment Corporation

The Board of Directors of the Investment Board consists of 13 voting and two ex-officio members. Of the 13 voting members, six are appointed by the Governor and must have a background in investment finance and business development, and are subject to Senate confirmation. One member is appointed by the President of the Senate, one is appointed by the Speaker of the House, and three are selected from among and by the Chairpersons of the Investment Corporations. Finally, the Board may, by resolution, appoint two at-large members from the private sector.

The Investment Board and the Investment Corporations were created to:

- Increase the opportunities for employment of blacks, as well as the population in general;
- Provide role models and establish business networks for the benefit of future generations of aspiring black entrepreneurs;

- Strengthen the economy of the state by increasing the number of qualified black business enterprises; and
- Take measures to increase access of black businesses to both debt and equity capital.

The Investment Board serves as the statewide administrator for the program. The Investment Corporations provide loans and loan guarantees as the primary instruments to accomplish the above objectives. These loans and loan guarantees are provided to black business enterprises, which are not able to obtain capital through conventional lending institutions. The Investment Corporations are considered lenders of last resort for black business enterprises classified as sub-prime borrowers by conventional lending institutions. Therefore, the loans and loan guarantees provided by the Investment Corporations are higher risk and may result in a higher rate of delinquency and default than those provided by conventional lending institutions.

The Investment Board contracts with OTTED within the Executive Office of the Governor to assist in carrying out its statutory mission. The Investment Corporations contract with the Investment Board to assist in carrying out their statutory mission.

The state has appropriated \$7.9 million for Investment Board operations and \$14.6 million for Investment Corporation capitalization from fiscal year 1985-86 through fiscal year 2002-03. The state has appropriated \$651,000 for Investment Board operations and \$1.2 million for Investment Corporation capitalization for fiscal year 2003-04.

SCOPE, METHODOLOGY AND OBJECTIVES

The scope of this audit covered the period July 1, 2001, through December 31, 2002, to determine:

- If management’s system of internal controls was adequate to ensure effective, efficient, and proper use of state resources;
- How many jobs black business enterprises have created or retained as a result of loans or loan guarantees provided by the Investment Corporations and the cost per job created or retained;
- If the organizational structure of the Investment Board and the Investment Corporations is efficient and effective in providing services to black business enterprises and assisting in their efforts to create and retain jobs;
- The performance of the Investment Corporations’ loan and loan guarantee portfolios;
- If the Investment Corporations’ performance measurement data was properly collected, documented, verified, and reported; and
- If the Investment Corporations utilize marketing programs and whether these programs are effective.

We judgmentally selected the following five Investment Corporations as a representative sample of all Investment Corporation activity:

- BAC Funding Consortium, Inc.
- First Coast Black Business Investment Corporation
- Florida Black Business Support Corporation, functioning as the Statewide Black Business Investment Corporation
- Northwest Florida Black Business Investment Corporation

- Palm Beach County Black Business Investment Corporation

Our audit was conducted in accordance with the *Standards for the Professional Practice of Internal Auditing* published by the Institute of Internal Auditors.

FINDINGS AND RECOMMENDATIONS

Audit Finding #1:

The Investment Corporations were not meeting program objectives.

A primary objective of the Investment Corporations is to provide loans and loan guarantees to black business enterprises which are not able to qualify for financing through conventional lending institutions. In order to provide loans and loan guarantees to as many black business enterprises as possible, another objective of the Investment Corporations is to facilitate creditworthiness enabling clients to receive financing through conventional lending institutions.

Upon reviewing loan files and interviewing several Investment Corporation Presidents, we noted many clients had established long-term lending relationships with the Investment Corporations, even though we were told many of them achieved creditworthiness and should be able to obtain financing from conventional lending institutions. One of the reasons cited for these long-term lending relationships was client satisfaction. While it is commendable the Investment Corporations fostered good client relationships, they were not meeting the objective of shifting clients to conventional lending institutions and thus not providing loans and loan guarantees to other qualified black business enterprises.

Investment Corporation Presidents indicated the Investment Corporations provided various types of technical assistance to their clients ranging from accounting to strategic business planning,

as well as, conducted on-site monitoring visits. However, upon review of loan files we found little documentation to support the types of technical assistance actually provided or on-site monitoring visits conducted. The Investment Corporations’ loan portfolios appeared to have a high rate of delinquency and default. Therefore, it appeared they were not providing adequate technical assistance and on-site monitoring to fully meet the needs of their clients and the objectives of the program.

Recommendation:

The Investment Corporations should review all lending relationships to identify clients who are creditworthy. These clients should be shifted to conventional lending institutions to enable the Investment Corporations to provide financing to other qualified black business enterprises. The Investment Corporations should consider the use of loan guarantees to aid in shifting clients from their direct lending products to conventional lending institutions. This will allow the Investment Corporations to stay involved with their clients.

The Investment Corporations should ensure all technical assistance and on-site monitoring visits are documented in the loan files. The Investment Corporations should also review the types of technical assistance and on-site monitoring provided to determine if it is meeting the needs of its clients and the objectives of the program.

Audit Finding #2:

The organizational structure of the Investment Board and the Investment Corporations should be restructured to provide more effective and efficient delivery of services.

The current organizational structure includes eight Investment Corporations serving 35 counties and the Statewide Black Business Investment Corporation

serving the other 32 counties (See Appendix 1). These Investment Corporations have been formed over the past eighteen years with little or no consideration to geographical areas served. In addition, more than one Investment Corporation can be created within a geographical area or county. For example, the Statewide Black Business Investment Corporation is located in Leon County, which is served by the Northwest Florida Black Business Investment Corporation also located in Leon County. Also, because the Statewide Black Business Investment Corporation serves many counties throughout the state, it is difficult to provide efficient and effective service to all clients.

Each Investment Corporation is independent and formulates its own policies and lending decisions resulting in a system of patchwork rules and services. The current system does not allow the program to function seamlessly as a unit, nor does it allow the Investment Board to function as the statewide administrator for the program.

Recommendation:

The Investment Board and Investment Corporations should review the current policies and procedures regarding the formation and re-certification of Investment Corporations to determine how changes can be made to the current organizational structure. The Investment Corporations should utilize geographical regions or districts, instead of specific counties. This will increase the areas served by each Investment Corporation and will also allow the Statewide Black Business Investment Corporation to direct its lending efforts in a concentrated geographical area. This will eliminate the possibility of Investment Corporations competing for limited private financial support.

In addition, the Investment Board should work with the Investment Corporations to

establish policies and procedures for lending decisions, which should be utilized by each Investment Corporation. This would allow the Investment Board to perform its duties as the statewide administrator of the program.

Audit Finding #3:

The Investment Corporations’ performance measurement data was not reliable, properly collected, documented, verified, and reported.

We sampled documentation to determine the validity and reliability of the Investment Corporations’ performance measurement data reported to OTTED via the Investment Board. A performance measure is valid if it captures information which relates to the programmatic mission and objectives and is reliable if it provides accurate and consistent results over time. In order to produce reliable results the performance measure’s definition must establish an explanation of the measure and the methodology and data sources used for its collection.

We judgmentally selected the performance measure “Number of jobs created or retained as a result of franchising and capitalization programs by the regional BBICs and the Statewide BBIC” for review. Although the performance measure appeared to be valid, it was not adequately defined on the Long Range Program Plan Performance Measure Validity and Reliability Form. Also, the methodology and data sources used for the collection of the performance measurement data were ambiguous and not adequately identified, resulting in performance measurement data which produced inconsistent results in successive reports.

We also reviewed the data collection, documentation, verification, and reporting process for the same performance measure. The process should include a system to provide assurance the

performance measurement data is properly collected, documented, verified and accurately reported. The system should include controls to ensure the integrity and accuracy of the information produced and should include documentation to support the information reported. The Investment Corporations did not have a requirement for or a system in place to ensure performance measurement data was accurately collected, documented, verified and reported.

The Investment Corporations did not adequately collect, document, or verify the number of jobs reported as created or retained each quarter. In many instances, job data was collected at the time of the initial loan application and was only adjusted if something came to the Investment Corporations’ attention indicating the business’s situation had changed. Documented site visits or detailed reviews of payroll records were not performed by the Investment Corporations, on a sample basis, to document and verify the number of jobs reported as created or retained. Consequently, some Investment Corporations reported the same jobs for each loan provided to a client, in effect double or even triple counting jobs, and reported jobs for clients who were no longer in business.

As a result of the above factors, the Investment Corporations’ performance measurement data was not accurate and should be adjusted. These factors also affected our ability to determine the number of jobs created or retained as a result of the Investment Corporations’ efforts, as well as the cost per job created or retained.

Recommendation:

The Investment Board should work with the Investment Corporations and OTTED to develop an adequate definition and a uniform methodology for collecting and reporting the “Number of jobs created or retained as a result of franchising and

capitalization programs by the regional BBICs and the Statewide BBIC” performance measure which is reliable and provides an accurate reflection of the Investment Corporations’ performance. The Investment Board and the Investment Corporations should also develop a system to ensure the accurate collection, documentation, verification, and reporting of all information submitted to OTTED. The system should include, on a sample basis, performing detailed reviews of payroll records and documenting site visits.

Audit Finding #4:

The performance of the Investment Corporations’ loan and loan guarantee portfolios could not be accurately determined. A review of the information provided for the audit period revealed that active loans appeared to have a much higher rate of delinquency and default than active loan guarantees.

Section 288.7091(9), Florida Statutes, directs the Investment Board to prepare an annual report detailing the performance of each Investment Corporation, including the success and failure rates among loan recipients. We reviewed the loan and loan guarantee portfolios for the Investment Corporations to determine their performance. The information provided by the Investment Corporations was generally incomplete and inconsistent, resulting in insufficient data to evaluate the portfolios’ performance.

A review of the information provided for the audit period revealed that active loans appeared to have a much higher rate of delinquency and default than active loan guarantees. Loan guarantees are underwritten and administered by a conventional financial lending institution, with the Investment Corporations providing a guarantee for payment in case of default. Conventional financial institutions generally

possess staff experienced in performing underwriting and administrative activities. Based on review of the loan files and discussions with Investment Corporation staff, it appeared the major reason for the disparity between the performance of the loan and loan guarantee portfolios was the absence of Investment Corporation staff experienced in performing underwriting and administrative activities.

Another possible reason for the disparity was the failure to adequately document the performance of loan guarantee clients in the Investment Corporations’ files. The Investment Corporations should work with each financial lending institution to obtain an updated status on each loan guarantee client serviced by the financial institution.

These factors further increase the risks involved by affecting the Investment Corporations’ ability to effectively manage their portfolios and adequately serve their clients.

Recommendation:

The Investment Corporations should:

- Work with the Investment Board to develop a uniform definition or standard to enable consistent determination of which loans and loan guarantees are delinquent or in default.
- Analyze loan and loan guarantee portfolios to determine the actual delinquency and default rates based on the definitions or standards developed above.
- Review loan underwriting and administrative practices to determine controls, which should be added to strengthen the underwriting and administrative processes.
- Provide training for staff to gain expertise in underwriting and administrative activities.

Audit Finding #5:

Some Investment Corporations did not meet the required private membership support.

The contract between the Investment Board and each Investment Corporation states the Investment Board’s membership/investment in each Investment Corporation may not exceed the amount of private membership in each Investment Corporation.

Based on the review of all of the Investment Corporations’ audited financial statements for the fiscal years ended 2001 and 2002, we noted the Investment Board’s membership/investment exceeded the amount of private membership in the following Investment Corporations by:

- Black Business Investment Fund of Central Florida
 - \$115,000 as of 9/30/01
 - \$202,500 as of 9/30/02
- First Coast Black Business Investment Corporation
 - \$85,000 as of 9/30/02
- Northwest Florida Black Business Investment Corporation
 - \$200,000 as of 9/30/01
 - \$287,500 as of 9/30/02
- Tampa Bay Black Business Investment Corporation
 - \$77,700 as of 9/30/02

Furthermore, the Black Business Investment Fund of Central Florida and the Northwest Florida Black Business Investment Corporation did not obtain any additional private membership support for a period of two fiscal years and continued to receive additional Investment Board membership/investment, although the private membership support did not meet or exceed the Investment Board’s membership/investment in the Investment Corporation.

The above factors resulted in not maximizing private sector support and not leveraging the state’s investment in the Investment Corporations.

The contract between the Investment Board and each Investment Corporation does not define private membership support. Most Investment Corporations report capital raised from private sources as private membership support. However, one Investment Corporation reported in-kind resources as private membership support (e.g. donated office supplies, office space, promotional materials, etc.).

Recommendation:

Each Investment Corporation should obtain the required private membership support. The Investment Board should review the audited financial statements of each Investment Corporation to ensure it has obtained the required private membership support. In addition, the Investment Board should not provide additional membership/investment in an Investment Corporation until it has obtained the required private membership support.

The Investment Board should also revise its contracts with the Investment Corporations to include a deadline for obtaining the required private membership support and appropriate sanctions if the private membership support is not obtained. The contracts should also define private membership support to indicate the type(s) of resources which should be reported as private membership support.

Audit Finding #6:

Investment Corporations’ loan files frequently did not contain adequate documentation.

We reviewed loan files to determine if loans were issued in compliance with Sections 288.707-288.714, Florida Statutes and Investment Corporations’ policies and procedures. Upon review, we noted

instances where loan files did not contain the following types of documentation:

- Detailed reviews by the loan committee and legal staff.
- Invoices or payment documentation.
- Loan status reports and other documentation to determine if non-performing loans are being properly evaluated and followed up on.
- Franchise agreements for loans involving franchises.
- A request for a waiver of franchise royalty fees from the franchiser when the franchisee was in default of Investment Corporation loan payments.
- Documentation checklists or Executive Director/Presidential approvals indicating all appropriate documents had been completed and reviewed by appropriate individuals.
- Copies of UCC-1s indicating perfected liens on equipment purchased with or secured by Investment Corporation loan funds.

Inadequate documentation of loan files may result in an inability to demonstrate compliance with Florida Statutes, internal policies and procedures and program objectives. It also may result in the inability to make future lending decisions, exercise the Investment Corporations’ status as lien holder in bankruptcy proceedings, and defend against lawsuits.

We noted most Investment Corporations’ loan applications did not include a place to indicate the applicant was black and the business would have 51% black ownership and daily operation or a place to indicate the applicants/owners were U.S. Citizens, legal Florida residents, and the business was operated in Florida.

We also noted many of the Investment Corporations’ policies and procedures were not being followed primarily because they were outdated.

Recommendation:

The Investment Corporations should:

- Ensure all loan files contain all appropriate documentation to include, but not be limited to, completed loan applications, franchise agreements, UCC-1s, document checklists, detailed staff and legal review, payment information, and loan status.
- Revise loan applications to include a place to indicate if the applicants are black, U.S. Citizens, legal Florida residents and the business is operated in Florida. The application should also contain a certification section for the applicant to certify all of the above information is true and correct.
- Perform and document independent verification of information obtained from loan applicants. Examples of such verification include copies of driver’s licenses, social security cards, and a Certificate of Incorporation from the Secretary of State.
- Revise policies and procedures to reflect the current operating environment and ensure they are adhered to.

Audit Finding #7:

The Support Corporation did not have a Florida Single Audit performed for the fiscal year ended September 30, 2001, as required by Section 215.97, Florida Statutes.

The Support Corporation acted as the operating agent for the Investment Board for all of the Support Corporation’s 2001 fiscal year and the majority of its 2002 fiscal year. As such, the Support Corporation received state financial

assistance directly from OTTED. As of July 2002, the Support Corporation discontinued functioning as the operating agent for the Investment Board. Therefore, the Investment Board is the entity now receiving state financial assistance directly from OTTED. However, the Support Corporation still functions as the Statewide Black Business Investment Corporation and receives state financial assistance from the Investment Board (This portion of the Support Corporation’s state financial assistance for 2002 and whether a Florida Single Audit was performed is included with the other Investment Corporations in Finding #8).

A review of the Support Corporation’s financial statement audit for the fiscal year ended September 30, 2001, revealed the Support Corporation expended at least \$930,000 of state financial assistance, thereby exceeding the \$300,000 threshold requiring a Florida Single Audit to be conducted in accordance with Section 215.97, Florida Statutes.

The Support Corporation’s independent auditors did not review the Support Corporation’s financial records to determine if a Florida Single Audit was required. Consequently, the independent auditors did not perform a Florida Single Audit for the Support Corporation’s 2001 fiscal year as required by Section 215.97, Florida Statutes.

The Investment Board did not have a financial statement audit performed for fiscal year 2001 as it was only a policy board and did not have any fiscal operations to report. Financial statement audits for the Support Corporation’s and the Investment Board’s 2002 fiscal year are in progress.

Section 215.97(7)(k), Florida Statutes allows a state awarding agency to take appropriate corrective action to enforce compliance with the Florida Single Audit Act. Such corrective action could include repayment of state financial assistance for

the period in question or prohibition against receiving further state financial assistance.

Recommendation:

The Investment Board’s and Support Corporation’s independent auditors should review the Investment Board’s and Support Corporation’s financial records each fiscal year to determine if the Investment Board and the Support Corporation are required to have a Florida Single Audit. If it is determined a Florida Single Audit is required, the independent auditor should ensure one is performed.

Audit Finding #8:

The Investment Board and Investment Corporations did not adequately monitor subrecipient auditing and reporting activities.

The Investment Board and the Investment Corporations did not consider monitoring subrecipient activities a priority, and therefore did not have a system in place to identify and inform all subrecipients of their responsibilities under the Florida Single Audit Act (Act) (215.97, Florida Statutes). In addition, the Investment Board and Investment Corporations did not adequately monitor subrecipient audit reports in accordance with the Act.

We identified nine non-state entities (each Investment Corporation) as subrecipients of the Investment Board under the Act. However, we did not analyze the Investment Corporations’ records to determine potential subrecipients of the Investment Corporations.

Each Investment Corporation and some Investment Corporation clients obtained a financial statement audit. Although the Investment Board and Investment Corporations reviewed these audit reports, we did not see any evidence that they followed-up on the audit findings presented in the reports. Furthermore, they did not

follow-up with subrecipients to verify they did not meet the threshold and, therefore, were not required to obtain a Florida Single Audit.

Section 215.97(7)(k), Florida Statutes allows a state awarding agency to take appropriate corrective action to enforce compliance with the Florida Single Audit Act. Such corrective action could include repayment of state financial assistance for the period in question or prohibition against receiving further state financial assistance.

The Investment Board did not have a system in place to adequately monitor quarterly deliverables submitted by each Investment Corporation. The Investment Board received and forwarded to OTTED information from each Investment Corporation, which was not reviewed or verified. The Investment Board did not, on a sample basis, trace information provided by each Investment Corporation to original documentation to verify its validity and reliability.

Recommendation:

The Investment Board and Investment Corporations should:

- Develop a policy requiring the use of the Florida Single Audit Act Checklist for Non-State Organizations – Recipient/Subrecipient vs. Vendor Determination (FSAA_CL2) to appropriately identify subrecipients. The policy should also require all subrecipient contracts, loan agreements, and loan guarantee documents to contain the standard contract audit language developed by the Auditor General, thereby meeting the Investment Board’s and Investment Corporations’ requirement to inform subrecipients of their responsibilities under the Act.
- Establish a system for following up on subrecipient audit reports and findings.

The system should require each subrecipient to develop a corrective action plan (CAP) to address audit findings. The CAP should be approved by the Investment Board (for Investment Corporations) and Investment Corporations (for clients) and reviewed periodically with the subrecipient to determine corrective actions taken.

- Establish a system to follow-up with subrecipients to determine if they were required to obtain a Florida Single Audit.

The Investment Board should develop policies and procedures requiring the review of all quarterly deliverables received from each Investment Corporation for accuracy and reasonableness. The policies and procedures should also require the Investment Board, on a sample basis, to trace information provided by each Investment Corporation to original documentation to verify its validity and reliability.

Audit Finding #9:

Although the Investment Corporations used marketing tools to promote their services, they did not target specific business sectors.

The Investment Corporations are charged with promoting the formation, retention, and expansion of black business enterprises. In order to accomplish this objective, the Investment Corporations must first market their services to the community and to the black business enterprises they seek to promote. To market their services, the Investment Corporations have developed tools such as videos, brochures, pens and calendars and

have also been heavily involved in civic and business organizations.

We reviewed some of these tools and also interviewed several Investment Corporation Presidents about their marketing efforts. The Presidents indicated they did not employ any additional or mass marketing strategies because doing so attracted more clients than they had the ability to serve. Most of the clients they received were by word of mouth throughout the community. Consequently, the Investment Corporations may not be effectively promoting black business enterprises.

While we agree additional or mass marketing campaigns may create an undue burden on Investment Corporations’ staffs, we believe a marketing strategy targeting specific business sectors or specific types of clients could enhance the Investment Corporations’ loan portfolios and more effectively promote black business enterprises.

Recommendation:

The Investment Corporations should consider revising their marketing strategy to include targeting specific business sectors or specific types of clients as a way to enhance their loan portfolios and to ensure a greater return on their investment.

CONCLUSION

The Investment Board and Investment Corporations have faced many challenges in the last two years and have strived to meet these challenges and worked to improve accountability. However, as noted in this report, there are significant opportunities for improvement.

APPENDIX I

| Investment Corporation | Location | Counties Served |
|---|-----------------|--|
| BAC Funding Consortium, Inc. | Miami | Miami-Dade |
| Black Business Investment Fund of Central Florida | Orlando | Lake, Orange, Osceola, Seminole |
| East Central Florida Black Business Investment Corporation | Daytona Beach | Brevard, Flagler, Putnam, Volusia |
| First Coast Black Business Investment Corporation | Jacksonville | Clay, Duval, Nassau, St. Johns |
| Florida Black Business Support Corporation/Functioning as the Statewide Black Business Investment Corporation | Tallahassee | Alachua, Baker, Bradford, Charlotte, Citrus, Collier, Columbia, Desoto, Dixie, Gilchrist, Glades, Hamilton, Hardee, Hendry, Hernando, Highlands, Jefferson, Lafayette, Lee, Levy, Madison, Manatee, Marion, Monroe, Okeechobee, Pasco, Polk, Sarasota, Sumter, Suwannee, Taylor, Union |
| Metro-Broward Capital Corporation | Ft. Lauderdale | Broward |
| Northwest Florida Black Business Investment Corporation | Tallahassee | Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Leon, Liberty, Okaloosa, Santa Rosa, Wakulla, Walton, Washington |
| Palm Beach County Black Business Investment Corporation | Riviera Beach | Indian River, Martin, Palm Beach, St. Lucie |
| Tampa Bay Black Business Investment Corporation | Tampa | Hillsborough, Pinellas |

**OFFICE OF THE CHIEF INSPECTOR GENERAL’S
RESPONSE TO THE INVESTMENT BOARD’S
COMMENTS AND INVESTMENT CORPORATIONS’
COLLECTIVE COMMENTS TO THE DRAFT AUDIT
REPORT**

The Investment Board’s response addressed and generally agreed with our findings and recommendations. The Investment Corporations’ collective response did not adequately address the findings and recommendations made in our report. It also did not concur with the Investment Board’s response making it difficult for the Investment Board to act as the statewide administrator for the program and create effective change for the organization as a whole. As evidenced by the responses and as stated in our report the current organizational structure does not allow the program to function seamlessly as a unit, nor does it allow the Investment Board to function as the statewide administrator for the program.

We believe the efforts of the Investment Board and the Investment Corporations to provide loans and loan guarantees to black entrepreneurs to create jobs in the community will not be as successful as they could and should be until the basic problems with the organizational structure are resolved.

In preparing to respond to our audit report the Chairman of the Investment Board, during an Investment Board meeting where all Investment Corporation Presidents were in attendance, instructed the Investment Corporations to coordinate any questions and their collective response through the Chairman of the Investment Board Audit Committee. We received a separate response from BAC Funding Corporation (Miami). BAC was given the opportunity to respond collectively with the other Investment Corporations and either chose not to participate or chose to respond separately as well as collectively. This response is available for review upon request.



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Ryder System

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Hilmon S. Sorey, Jr.

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Wachovia Bank

Dann Mosley
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Governor's Office
Inspector General

September 26, 2003

James B. Thomas
Director of Auditing
Office of the Chief Inspector General
Office of the Governor
The Capitol, 21st Floor
Tallahassee, Florida 32399-0001

Dear Mr. Thomas:

This letter represents the response of the Florida Black Business Investment Board, Inc. (Investment Board) to the August 28 preliminary audit findings and recommendations of the Office of the Chief Inspector General. We appreciate the opportunity to supply comments.

We agree that the Investment Board has made progress in achieving its objectives, managing its challenges, and increasing its accountability. However, we also agree there remains significant opportunity for improvement.

It should be noted that the Investment Corporations were established as separate corporations, and function as autonomous entities. The relationship of the Investment Board to the Investment Corporations is a contractual one, with the Investment Board lacking the ability to direct or control their operations, except through withholding funds.

The response of the Investment Board is attached. The practices of the Investment Corporations are as varied as their numbers, which made it virtually impossible to reach a consensus on the Investment Board's response. Therefore, the responses of the Investment Corporations are appended, as well.

Sincerely,


Hilmon S. Sorey, Jr.
President

Attachments

Cc: Board of Directors, Florida Black Business Investment Board

1711 S. Gadsden Street • Tallahassee, Florida 32301 • [M] 850.487.4850 [F] 850.487.2003
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Florida Black Business Investment Board, Inc.
Response to the
Office of the Chief Inspector General’s Audit
September 26, 2003

Finding #1: The Investment Corporations were not meeting program objectives.

RECOMMENDATIONS:

- a) *The Investment Corporations should review all lending relationships to identify clients who are creditworthy. These clients should be shifted to conventional lending institutions to enable the Investment Corporations to provide financing to other qualified black business enterprises.*
- b) *The Investment Corporations should consider the use of loan guarantees to aid in shifting clients from their direct lending products to conventional lending institutions. This will allow the Investment Corporations to stay involved with their clients.*
- c) *The Investment Corporations should ensure all technical assistance and on-site monitoring visits are documented in the loan files.*
- d) *The Investment Corporations should also review the types of technical assistance and on-site monitoring provided to determine if it is meeting the needs of its clients and the objectives of the program.*

Board’s Response:

- a) We generally agree with this recommendation. It should be noted that the Investment Board has no authority to enforce practices of the Investment Corporations, which are separate entities. The Investment Board will work with the Investment Corporations to re-engineer their lending relationships in order to identify clients who are creditworthy.
- b) The Investment Board will work with the Investment Corporations to increase leverage of their allocated capitalization through the use of loan guarantees.
- c) Investment Corporations agree that technical assistance and on-site monitoring visits should be documented in the loan files. The Investment Board will work with the Investment Corporations to develop procedures for improving such documentation.
- d) The Investment Board will work with the Investment Corporations to ensure that the technical assistance and on-site monitoring meet the needs of clients and the program’s objectives.

Finding #2: The organizational structure of the Investment Board and the Investment Corporations should be restructured to provide more effective and efficient delivery of services.

RECOMMENDATIONS:

- a) *The Investment Board and Investment Corporations should review current policies and procedures regarding the formation and re-certification of Investment Corporations to determine how changes can be made to the current organizational structure.*
- b) *The Investment Corporations should utilize geographical regions or districts, instead of specific counties. This will increase the area served by each Investment Corporation and will also allow the Statewide Black Business Corporation to direct its lending efforts in a concentrated geographical area. This will eliminate the possibility of Investment Corporations competing for limited private financial support.*
- c) *The Investment Board should work with the Investment Corporations to establish policies and procedures for lending decisions, which should be utilized by each Investment Corporation. This will allow the Investment Board to perform its duties as the statewide administrator of the program.*

Board’s Response:

- a) The Investment Board will lead a re-certification process for all Investment Corporations, as mandated by section 288.7091(1), FS.
- b) We do not agree. The goal is to provide accessibility to services by all eligible citizens. We are not sure that either geographical regions by districts or county designation is the most effective way to achieve this goal. Centralization of fundraising at the statewide level may be more consistent with current practices of private financial institutions and may, therefore, provide greater funding for the overall organization.
- c) We agree that additional policies and procedures are necessary and that new policy and procedures should be uniformly applied by all Investment Corporations. As the statewide program administrator, the Investment Board is constrained by the fact that the Investment Corporations are independent, autonomous entities and operate as such in their lending decisions.

As you have clearly determined, there are major impediments to the Investment Board’s achievement of its program objectives through its current organizational configuration. Historically, the Investment Board has operated as a decentralized model over the last 18 years. The Investment Board is considering a re-engineered process toward the establishment of the following operating system:

- 1. Single statewide loan portfolio, going forward;
- 2. More centralized loan approval committee and process;
- 3. More centralized loan servicing; and,

4. Greater use of telecommunication technology to improve processes and controls.

Finding #3: **The Investment Corporations’ performance measurement data was not reliable, properly collected, documented, verified, and reported.**

RECOMMENDATIONS:

- a) *The Investment Board should work with the Investment Corporations and OTTED to develop an adequate definition and a unique methodology for collecting and reporting the number of jobs created or retained as a result of franchising and capitalization programs by the regional BBICs and the Statewide BBIC performance measures which is reliable and provides an accurate reflection of the Investment Corporations’ performance.*
- b) *The Investment Board and the Investment Corporations should also develop a system to ensure the accurate collection, documentation, verification, and reporting of all information submitted to OTTED. The system should include, on a sample basis, performing detailed reviews of payroll records and documenting site visits.*

Board’s Response:

- a) *The Investment Board is committed to achieving its mandated program objective and performance goals under its contract with OTTED. A realigned system to provide improved quality controls through central loan servicing and loan approval functions is being evaluated.*
- b) *The Investment Board will develop common definitions and a reporting system for jobs created and retained. Although the Investment Corporations are independent corporations, the Investment Board will strongly encourage them to utilize the uniform reporting system to provide the required information to OTTED and other interested parties on a timely basis.*

Finding #4: **The performance of the Investment Corporations’ loan and loan guarantee portfolios could not be accurately determined. A review of the information provided for the audit period revealed that active loans appeared to have a much higher rate of delinquency and default than active loan guarantees.**

RECOMMENDATIONS:

- a) *Work with the Investment Board to develop a uniform definition or standard to enable consistent determination of which loans and loan guarantees are delinquent or in default.*

- b) *Analyze loan and loan guarantee portfolios to determine the actual delinquency and default rates based on the definitions or standards developed above.*
- c) *Review loan underwriting and administrative practices to determine controls which should be added to strengthen the underwriting and administrative processes.*
- d) *Provide training for staff to gain expertise in underwriting and administrative activities.*

Board’s Response:

- a) *The Investment Board will work with the Investment Corporations to re-engineer their loan and loan guarantee management processes for improved control and uniform information/reporting to OTTED and the legislature.*
- b) *Since the Investment Corporations are independent, the Investment Board is unable to direct the use of common default and delinquency definitions. However, the Investment Board will work with and encourage the Investment Corporations to 1) develop uniform definitions and standards for loans in delinquency or default; 2) determine the actual delinquency and default rates; 3) review loan underwriting and administrative practices to determine controls to be added to strengthen underwriting and administrative activities; and 4) provide training for staff, as needed.*

Finding #5: Some Investment Corporations did not meet the required private membership support.

RECOMMENDATIONS:

- a) *Each Investment Corporation should obtain the required private membership support.*
- b) *The Investment Board should review the audited financial statements of each Investment Corporation to ensure it has obtained the required private membership support.*
- c) *The Investment Board should not provide additional membership/investment in an Investment Corporation until it has obtained the required private membership support.*
- d) *The Investment Board should also revise its contracts with the Investment Corporations to include a deadline for obtaining the required private membership support and appropriate sanctions if the private membership support is not obtained.*
- e) *The contracts should also define private membership support to indicate the type(s) of resources which should be reported as private membership support.*

Board’s Response:

- a) The Investment Corporations are required to achieve private membership support under their contracts with the Investment Board. If this requirement is not satisfied, no additional capitalization can be transferred to them.
- b) The Investment Board will review the audited financial statements of each Investment Corporation on an annual basis to ensure that they have obtained the required private membership support.
- c) The Investment Board will enforce the agreement, if the appropriate level of private membership support has not been achieved.
- d) The Investment Board will consider the establishment of a specific timeframe in which the Investment Corporations should have obtained the private membership support. Additionally, appropriate sanctions will be negotiated.
- e) The Investment Board will define private membership support and negotiate this definition into the Investment Corporation’s contract.

Finding #6. Investment Corporations’ loan files frequently did not contain adequate documentation.

RECOMMENDATIONS:

- a) *Ensure all loan files contain all appropriate documentation to include, but not be limited to, completed loan applications, franchise agreements, UCC-1s, document checklists, detailed staff and legal review, payment information, and loan status.*
- b) *Revise loan applications to include a place to indicate if the applicants are black, U.S. Citizens, legal Florida residents and the business is operated in Florida. The application should also contain a certification section for the applicant to certify all of the above information is true and correct.*
- c) *Perform and document independent verification of information obtained from loan applicants. Examples of such verification include copies of driver’s licenses, social security cards, and a Certificate of Incorporation from the Secretary of State.*
- d) *Revise policies and procedures to reflect the current operating environment and ensure they are adhered to.*

Board’s Response:

The Investment Board will survey best practices of the Investment Corporations and other private lenders to develop a common application, credit analysis and underwriting methodology and encourage their universal use by all Investment Corporations. Pending a realignment of certain processes, the independent Investment Corporations will be encouraged to use the common applications and methodologies.

The Investment Board will encourage the Investment Corporations to establish procedures to collect and verify all information included in the loan files and to revise policies and procedures as required.

Finding #7: The Support Corporation did not have a Florida Single Audit performed for the fiscal year ended September 30, 2001, as required by Section 215.97, Florida Statutes.

RECOMMENDATION:

The Investment Board’s and Support Corporation’s independent auditors should review the Investment Board and Support Corporation’s financial records each fiscal year to determine if the Investment Board and the Support Corporation are required to have a Florida Single Audit. If it is determined a Florida Single Audit is required, the independent auditor should ensure one is performed.

Board’s Response:

The Investment Board’s independent auditors will be directed to determine the appropriateness of the Florida Single Audit Act and bring the Investment Board and the Support Corporation into compliance.

Finding #8: The Investment Board and Investment Corporations did not adequately monitor subrecipient auditing and reporting activities.

RECOMMENDATIONS:

- a) *Develop a policy requiring the use of the Florida Single Audit Act Checklist for Non-State Organizations – Recipient/Subrecipient vs. Vendor Determination (FSAA_CL2) to appropriately identify subrecipients. The policy should also require all subrecipient contracts, loan agreements, and loan guarantee documents to contain the standard contract audit language developed by the Auditor General, thereby meeting the Investment Board’s and Investment Corporations’ requirement to inform subrecipients of their responsibilities under the Act.*
- b) *Establish a system for following up on subrecipient audit reports and findings. The system should require each subrecipient to develop a corrective action plan (CAP) to address audit findings. The CAP should be approved by the Investment Board (for Investment Corporations) and Investment Corporations (for clients) and reviewed periodically with the subrecipient to determine corrective actions taken.*

- c) *Establish a system to follow-up with subrecipients to determine if they were required to obtain a Florida Single Audit.*
- d) *The Investment Board should develop policies and procedures requiring the review of all quarterly deliverables received from each Investment Corporation for accuracy and reasonableness. The policies and procedures should also require the Investment Board, on a sample basis, to trace information provided by each Investment Corporation to original documentation to verify its validity and reliability.*

Board’s Response:

The Investment Corporations are independent and the Investment Board has no control over the corporate practices; however the Investment Board will attempt to persuade the Investment Corporations to agree to a single auditor for all of them, and such auditor will determine the need for a Florida Single Audit by any Investment Corporation. The consolidation will result in costs savings associated with the auditing requirements of the Investment Board and the Investment Corporations.

A re-engineered system would provide the Investment Board with the mechanism to ensure reliable, accurate and verifiable information for reporting to OTTED through the ability to use and enforce common policies and procedures.

The Investment Board will develop policies and procedures for the accuracy and reasonableness of quarterly deliverables. The new Investment Corporation contracts will provide sanctions for non-compliance with required quarterly deliverables.

Finding #9: Although the Investment Corporations used marketing tools to promote their services, they did not target specific business sectors.

RECOMMENDATION:

The Investment Corporations should consider revising their marketing strategy to include targeting specific business sectors or specific types of clients as a way to enhance their loan portfolios and to ensure a greater return on their investment.

Board’s Response:

The Investment Board is evaluating the assumption of responsibility for developing a statewide marketing program and will target specific business sectors and clients on behalf of the entire organization.

The Investment Board, together with the Florida State Hispanic Chamber of Commerce, has begun developing joint marketing strategies through a newly-created, joint venture program—Access Florida. The mission of Access Florida is

to identify market-based growth opportunities in minority communities through research, education and policy development/advocacy for community development.

The Investment Board’s subsidiary, Indigo Key, Inc., has the unique capacity to market and facilitate business opportunity for all customers of the Investment Corporation enterprises and minority and small businesses in Florida. The current database includes more than 71,000 Florida companies. Indigo Key is currently negotiating with several Latin American governments and service providers that seek to link Florida businesses for international trade.

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FBBIB
Chairman of the Board
Lund Sirlat
Hydrex System

President
Hilmon S. Sorey, Jr.

BOARD OF DIRECTORS

Veronica Anderson
Anderson & Associates

Theodore Detzka
Wachovia Bank

Ronald Brazier
Ronald E. Brazier & Associates

Charles Gigg
The Gigg Agency

Bobby Henry
Watside Guaranty

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FBBIB Venture Fund, LLC

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Indigo Key, Inc.

Minority Business
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SEP 26 2003

Governor's Office
Inspector General

September 26, 2003

James B. Thomas
Director of Auditing
Office of the Chief Inspector General
Office of the Governor
The Capitol, 21st Floor
Tallahassee, Florida 32399-0001

Dear Mr. Thomas:

The enclosed document marked "Attachment II" should be made a part of the response by the Florida Black Business Investment Board, Inc. (Investment Board) to the August 28 preliminary audit findings and recommendations of the Office of the Chief Inspector General.

The practices of the Investment Corporations are as varied as their numbers, which made it virtually impossible to reach a consensus on the Investment Board's response to the audit. The attached "Summary of FBBIB/BBIC Audit" represents the collective response by the Investment Corporations' presidents and not the position of the Investment Board or its management.

Sincerely,

Hilmon S. Sorey, Jr.
Hilmon S. Sorey, Jr.
President

Attachment

Cc: Board of Directors, Florida Black Business Investment Board, Inc.

To: Raoul Siclait
From: BBIC Presidents and Chairman
Date: September 25, 2003
Re: Collective Audit Response
CC: Hilmon Sorey

ATTACHMENT II

SUMMARY OF FBBIB/BBIC AUDIT

The 2003 Audit of the Florida Black Business Investment Board (FBBIB) and the Black Business Investment Corporations (BBICs) appears to be inconsistently performed against the standards created from Florida statute 288.7, therefore are in opposition to this 1985 Legislation which created the BBIB and BBICs and well as is in opposition to all of the Contracts for Services (i.e., the Investment Agreements between FBBIB and BBICs) which date back to 1985.

The BBICs were intentionally created to be Independent Private Not-for-Profit Organizations. These organizations were charged to create operations, which would address the economic needs of there respective communities. The BBICs are managed by local Boards of Directors, which consist of bankers, business and community leaders. The Boards of Directors created the Operating Standards for these BBICs, creating Policies and Procedures for Management and organization operations, Loan and Administration Policies & Procedures, and these Boards of Directors oversee the general operation and management of these organizations.

As stated very clearly all Contract Investment Agreements executed between FBBIB and the BBICs, the BBICs, its Board, employees and subcontractors are not agents of the FBBIB.

This year’s Audit did not evaluate performance of the BBICs against the respective Policies & Procedures of these diverse organizations, instead it appears to have been done void of BBIC structure. The FBBIB is funded by and is considered as a State organization. All staff members are State employees and Annual budgets are provided by the State of Florida.

The historical role of the FBBIB has been to serve as a central depository of information and as a resource to support the activities of the BBICs and to identify other programs and initiatives, which would further advance Black Business Enterprise in the State of Florida. The FBBIB does not provide any funding to support the operations of the BBICs and does not regularly provide funding to the loan pools of the BBICs. As BBICs are not state agencies, but are private corporations with operational revenues from fee services and community partners.

The success and continued efforts of the BBICs is based on the ongoing support of their customers, local partners, Government, financial institution and various other private and not-for-profit businesses. This year’s audit does effectively

point out areas for improvement and should evoke further conversation between the FBBIB and BBICs with regards to the Loan Program. However, the FBBIB should review the Charter, which created the Florida Black Business Investment Trust Fund to further utilize the broad authority given to enhance the development of black-owned business in the State of Florida.

Audit Finding 1

Investment Corporations were not meeting program objectives

Response

Over the past 15 years, BBICs have helped to mainstream hundreds of Black business owners into mainstream banking relationships. In addition, BBICs assist the borrowers with establishing relationships with the banks through operating checking accounts, direct deposits and merchant services (MasterCard/Visa). Mainstreaming is a transition process for many of the BBIC customers. However, due to several crucial factors, commercial banks have not aggressive to accept BBIC customer loans. Some of these crucial factors are: (1) the onset of the Technology Revolution in which the impact of major banks can be seen with the elimination of many banking loan officer jobs, (2) the replacement of loan officers with the cheaper usage of the technology credit scores system and formulas (this qualification barometer is are constantly being raised) which has been used to drive loan decisions, (3) banks becoming centralized into regional centers and a movement up market away from small business loans (in fact currently, the state of Florida does not have a major National Association bank in any Floridian city as its headquarters) and (4) the weakening of the Community Reinvestment Act (CRA) laws as it relates to business loans.

In today’s market, as stated above, the typical customer of the BBIC is one that will not be serviced by a commercial financial institution; therefore “high delinquency” and longer BBIC portfolio relationships are the anticipated norm. If one refers back to the 1985 report of the Task Force that recommended the formation of the BBICs, one finds that the household income of Blacks lag behind all other ethnic groups in the state of Florida, the most recent Census report states this fact unchanged. A lack of capital contributes greatly to ones ability to repay loans on a timely basis. In other words, this is the nature of the market charged to be service by the BBICs.

Finally, technical assistance is integral component of many BBICs operations and a required of many of its loan receipt ants, each BBIC has developed its own unique way of performing this task such as daily journals, calendars and electronic data bases.

Recommendation:

For reporting, standardized forms with a glossary of terms/definitions should be implemented to report loans and other data to the FBBIB. In addition, standardized loan software, applications, loan policies and loan closing documents should be utilized by the BBIC’s for auditing clarity. The FBBIB

should aid the BBIC presidents by using their influence to get the Banks to earmark dollars to do more loans so that guarantees can be increased. Direct loans will continue to be used as a development tool for the smaller business customers that cannot meet bank criteria.

Audit Finding 2

The organizational structure should be restructured to provide more effective and efficient delivery of service.

Response

BBIC service areas are determined by the desires of private investors and local community support for such services in those counties. Un-served counties are the result of a lack of desire from private investors and local supporters for such loan services. The FBBIB in setting up the statewide BBIC did not garner the necessary private investor and community financial support in those counties thus making the provision of those much-needed services to be done in isolation of support.

Recommendation

The FBBIB should contract out to the Investment Corporations for the needed services/deliverables for un-served counties that are nearest each BBIC. This will do four very important things; (1) it will allow each BBIC to expand its service area, (2) it will allow for synergy and more efficiency in service provision, (3) it will allow for the leverage of existing private investor and community relationships currently held by BBICs and (4) it will allow for the much needed business development services to those un-served communities. This will eliminate any perceived competition and allow the FBBIB and the Investment Corporations to be more focused on their respective tasks, which collectively will serve the business owners and aspiring business owners better.

A centralized loan process is not supported nor recommended. There are several specific reasons for this opinion, (1) the Black community’s problem will not be solved by the BBICs moving away from them in the local markets such as the major banks have done. Centralization of the loans makes BBIC no more than a bank for the Black business community, (2) the Federal government understood the necessity of local community direct lending to underserved businesses when it established, expanded and encouraged Community Development Financial Institutions (CDFI) through the U. S. Department of Treasury. Most all of the BBICs are certified all would lose CDFI organizations and certification if they were to centralize loan operations. A loss by the BBICs of CDFI certification would mean a tremendous loss of additional opportunity for capitalization and organizational resource support and (3) the customer that is served by the BBIC is not familiar with the business loan process therefore requires a great deal of technical assistance in assessing, preparing, investigating, underwriting, documentation (loan packaging) to evaluate the credit worthiness. In order to make monies available to many of these clients, a community of people via BBICs Loan Committee comes together to assist a local citizen that generally someone knows or may be in a position to help. Such a collection of local support is what makes the BBICs successful.

Audit Finding 3

The Investment Corporations' performance measurement data was problematic.

Response

Each Investment Corporation had established its own unique way of collecting, documenting, verifying and reporting data, largely in part based upon their other investor's and community supporters desire for specific information, the clientele they serve and the availability of resources.

My Recommendation

BBICs should adopt the Loan Policy, which was developed by the BBIB ten years ago. This loan policy document in conjunction with a standardized loan software system and other standardized forms such as loan closing documents and applications should be utilized to minimize audit confusion. BBICs are in the business of developing businesses, creating/improving business worth and jobs creation, not over whelming Black businesses with documentation. With respect to job creation and or retention information, BBIC will include continue to include a question on the application and follow up annually with confirmations, similar as utilized by the Federal Dept. of Labor, that law which lists number of jobs, classifications and income information.

Audit Finding 4

The Investment Corporations' loan and loan guarantee portfolios accuracy problems and rate of delinquencies being problematic.

Response

As stated in audit finding #1, a direct loan will inherently carry a higher delinquency than guarantees (loans made by the banks) because the banking loans are done for clients that have higher credit scores which means that these business owners are less leveraged, have stronger payment history and a more established debt history experience. Direct loans clients tend to be the opposite, they have lower credit scores and/or tend to have less business capacity and capital and therefore require serious attention/contact /site visits to eliminate and or reduce collection problems.

BBICs produce a loan activity report on a monthly basis, which is updated by information requested and received from the banks on all guarantee loans. This information is combined with the monthly information generated on direct loans. In some cases for Direct loans that are in the Special Asset Division of the bank, are more difficult to obtain updated information because of privacy laws and particularly the BBIC type/grade of loans, because the Special Asset personnel do not devote a great deal of time to these smaller size loans. However, regular site visits with these clients are continued by the BBIC, thus minimizing problems.

Recommendation

BBICs should adopt the Loan Policy, which was developed by the BBIB ten years ago. This loan policy document defines clearly when a loan should be defined as

default; it also recommends loan-underwriting methodology. The loan policy in conjunction with a standardized loan software system and other standardized forms such as loan closing documents and applications should be utilized to minimize audit confusion. All BBICs should get engaged in memberships with their local RMA banking associations for continued training opportunities.

Audit Finding 5

Some Investment Corporations did not meet the required private membership support

Response

During the fiscal period 2000-2002, private membership matching support (previously limited only to dollars) was eliminated and amended to thus include a wide range of variables such as, interest income, donated services/in kind services and bank participation to be utilized matching dollars for BBIC investment matching. This is shown in the attached letter from the Governor’ Office dated August 18, 2000, that provided that the FBBIB and BBIC organizations use the same criteria for private matches. This letter was made an amendment to the Program Agreement between OTTED and the FBBIB signed and dated August 9, 2000. As you will see from this letter, all BBICs were and are not in default as stated in the audit.

Recommendation

Allowing other community partners to assist in the capacity development of BBICs is good and should be continued particularly in this soft economy. It encourages broader base community support within the community. The BBIC organizations should be allowed the same match opportunity as the statewide BBICs, which is exactly what the Governor’s Office concluded in 2000.

Audit Finding 6

Investment Corporations’ loan files frequently did not contain adequate documentation

Response

Each BBIC’s loan documentation is based upon experience and an internal loan operational system that met the need. Each uses a credit committee that consists mainly of senior bank managers, finance managers and business people. Minutes of the meeting and approvals are kept. Additionally, an analysis for each credit that details the financial condition, findings, recommendations and approvals are done.

Recommendation

BBICs should adopt the Loan Policy, which was developed by the BBIB ten years ago. This policy has a unified set of policies, file documentation checklists and forms. All BBIC should use these documents in all loan closing and all lien filings. BBICs should utilized at each fiscal year end an accountant or outside party the audit all new and old files and send the results of this credit file audit to the FBBIB along with its regular financial audit at year end.

Audit Finding 7

This finding does not apply to any of the BBIC organizations.

Audit Finding 8

The Single Audit Requirement was not properly monitored.

Response

The average loan does not reach the threshold, probably as is the case with most of the loans that the BBICs make. Therefore there is no mention of this within the loan files or elsewhere.

Recommendation

BBIC should adopt unified language and documentation to appear in each loan file and the annual audits of each of the Investment Corporations. This language will ultimately establish that each borrower receives a copy of the guideline, certify their receipt of the same and insure that all concerned are related parties and entities are aware and in full compliance. It is important to note that this requirement should be avoided if it is going to require additional cost on the borrowers business.

Audit Finding 9

Although the Investment Corporation used marketing tools to promote their services, they did not target specific business sectors

Response

The mission of the BBICs and audience is very specifically targeted by statute. Because of the transient nature of this state along with a customer base that is very much capital poor, a single focus on any one industry could prove fatal. Additionally, each BBIC has very specific and diverse demographics with respect to industry and to narrow our already targeted efforts would indeed not promote black business enterprises on a broad scope.

Recommendation

The FBBIB should provide support to the BBIC organizations with marketing from a statewide basis. Their reach could be more global and access to the requisite tools is more readily accessible to them.

Conclusion

I agree that this audit can afford the Investment Board and the Investment Corporations an opportunity to improve upon the successes already achieved. When this endeavor was initiated in 1985, there was an effort to standardize many of the things that are mentioned in this report, which worked for a time but through changes in the industry and growth, each Investment Corporation as well as the Investment Board made policy changes.

Appendix B – FBBIB Recertification Task Force Summary

To: Hilmon Sorey, President, Florida Black Business Investment Corporation

From: James Carras, Principal, Carras Community Investment, Inc.
Consultant to FBBIB Recertification Task Force

Date: July 15, 2005

RE: FBBIB Recertification Process

This memo is response to your request for a summary report of the process and findings of the FBBIB Task Force on Recertification.

Section 288.7091(1) Florida Statutes, requires the Florida Black Business Investment Board, Inc. (FBBIB) to establish certification criteria for black business investment corporations (BBICs) and certify them at least once every five years. The certification criteria need to include administrative capacity, fiduciary controls, and, in the case of existing BBICs, solvency and soundness of prior loan decisions. In order to undertake a recertification process, the Board of Directors of the FBBIB created a BBIC Recertification Task Force to recommend certification and recertification criteria, review recertification applications received from the BBICs for compliance with the established recertification criteria, Florida law, The Office of the Chief Inspector General's audit and the Membership Agreement between FBBIB and each of the BBICs, and recommend to the FBBIB Board of Directors whether to recertify each of the BBICs;

The Recertification Taskforce was created by the FBBIB Board of Directors to be external to the Board process. Therefore, five members were named to the Recertification Task including:

Chairman, Darryl Sharpton, Sharpton, Brunson & Co.
Member, Michelle Braun, Bank of America
Member, Machel Maner, Wachovia Bank
Member, Rodney Jackson, Bank of Pensacola
Member, J. Stephen Fancher, Florida Export Finance Corporation

James Carras, Carras Community Investment, Inc. served as Consultant to the Task Force.

The Recertification Task Force met on four occasions and discussed the establishment of criteria, application contents and process and ultimate review of submitted applications from the BBICs.

The Task Force discussed the history of the Florida Statute that created FBBIB and the BBIC's, the relationship that has evolved between the FBBIB and BBICs and other organizational models that may provide a future direction for the FBBIB and the BBICs. The Task Force requested that Consultant Carras review those applicable models including the U.S. Small Business Administration (Section 504 Certified Development Companies and Small Business Investment Companies), the U.S. Treasury Department Community

Appendix B – FBBIB Recertification Task Force Summary

Development Financial Institutions, bank holding companies and subsidiary banks, and the State of Florida Department of Transportation regional model.

The Task Force members discussed each Florida Statute requirement as well as “expectations of critical stakeholders” and corresponding sample performance measures. This review led to the following list of criteria that were discussed and decided to be included in the recertification process:

1. Focus on retaining existing and promote expanding and new black-owned businesses.
2. Through the capitalization of new and existing businesses, promote the creation of new jobs, especially those that have a high growth potential as a sustainable job i.e. franchises, construction companies.
3. Executed local and regional strategic partnerships through Memoranda of Understanding.
4. Timely, detailed accurate, valid report submissions on performance measures, ROI.
5. Conduct annual financial audits and provide copies.
6. Private sector match.
7. Administrative capacity including
 - Adequate staff funding
 - Adequate administrative funding
 - Management
 - Loan administration and servicing
8. Fiduciary controls including:
 - Process – loan procedures/guidelines
 - Loan loss reserves
 - Defaults
 - Cash management
 - Insurance coverage
9. Adoption of uniform credit policies, etc.
10. Solvency
11. Soundness of prior loan decisions

The Certification/Recertification Application was prepared within the framework of the suggested criteria and reviewed with a group of BBICs in July 2004. The final Certification/Recertification Application was sent to all eight of the BBICs and all of them responded. A scoring system was prepared by FBBIB staff and used by each Task Force member who reviewed each application.

At the December 2004 Task Force meeting the quality of the applications submitted was discussed. The Task Force resolved that based on the recertification application and supporting documents submitted by the BBICs and reviewed and evaluated by the Task Force against the recertification criteria and other related considerations, it was unanimously recommended that the Board of Directors of FBBIB not to recertify any of the eight BBICs. FBBIB subsequently informed each of the BBIC presidents and the FBBIB Board of the Task Force’s action.

Appendix C – FBBIB Task Force Recertification Criteria and Application

Florida Black Business Investment Board Task Force Re-certification Criteria

8K-2.002 Definitions.

As used in these rules, except where the context clearly indicates a different meaning:

- (1) “Black Business Enterprise” means any business concern which is organized to engage in commercial transactions, and which is at least 51 percent owned by one or more black Americans as defined in paragraph 288.703(3)(a), Florida Statutes, and whose management and daily operations are controlled by such persons.
- (2) “Black Business Investment Corporation” or “corporation” means a corporation established under Florida law which is controlled by one or more financial institutions and whose stock qualifies as an asset investment for the controlling financial institutions under the rules of the state Comptroller, the state Insurance Commissioner, the Comptroller of the Currency, the Federal Home Loan Bank Board or the Federal Reserve Board, if any are applicable.
- (3) “Board” means the Florida Black Business Investment Board created pursuant to Section 288.707, Florida Statutes.
- (4) “Board funds” means any moneys invested or loaned by the Board to a Black Business Investment Corporation.
- (5) “Controlled by” means owning 51 percent or more of the voting shares in a corporation unless a higher percentage is required by a regulatory authority for the purposes of making an authorized investment in which case the higher percentage shall apply.
- (6) “Financial Institution” means, as specified in subsection 288.703(7), Florida Statutes, a bank, trust company, insurance company, savings and loan association, credit union, federal lending agency, or foundation.
- (7) “Foundation” means a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code.
- (8) “Investments” by the Board means funds invested in a non-voting stock, preferred or common, a loan or other form of Black Business Investment Corporation pursuant to Section 288.711(2), Florida Statutes.
- (9) “Private equity” means cash or its equivalent representing ownership capital used or invested by the corporation in the furtherance of its purposes.
- (10) “Capital base” means the total sum invested by the Florida Black Business Investment Board as well as the total matching funds invested by participating financial institutions and other private investors.
- (11) “Solvent” means the ability to make payment of obligations as they mature and become due from assets then owned and anticipated income.
- (12) “Administrative capacity” means the ability of the organization to successfully conduct operations in the normal and ordinary course of its business.
- (13) “Reasonable plan” means a financial and textual document designed for an informed reader with the expectation that the presentation is understandable and supportable given the stated goals of the writer.
- (14) “Competitive plan” means that the proposal must be able to be favorably compared to plans commonly or characteristically available among similar type plans or in juxtaposition to competing submissions. Criteria relevant to competitiveness include the specification of actions anticipated for success in facing opponents in the marketplace, anticipated return of the Board’s investment, anticipated return on the Board’s investment, and the anticipated annualized rate of loss.

8K-2.003 Application Procedure.

- (1) Applications for investment by the Board may be made by a qualified Black Business Investment Corporation at any time and at set times as provided by the Board. Upon receipt of an application, the Board staff will review the

Appendix C – FBBIB Task Force Recertification Criteria and Application

application for completeness. Should the application be incomplete, written notice and a request for additional information will be mailed by the staff within 10 working days of receipt. The Board may provide for preliminary review of applications for certification or re-certification by a designated committee or task force, which shall review the applications in accordance with the criteria set forth herein, and make recommendations to the Board. The Board may fund those proposals which it determines will best further the purpose and intent of the Florida Small and Minority Business Assistance Act of 1985.

(2) Each application should be accompanied by the Black Business Investment Corporation's Articles of Incorporation and By-laws, indicating any provision for the representation on the corporate board of directors of black persons experienced in investment finance and business development, regulatory approvals where appropriate, and an operating plan which must include:

- (a) The proposed method by which the corporation will assure that only qualified black businesses will participate in its program;
- (b) The proposed method by which the corporation will assure that other financing is not reasonably available;
- (c) The types of investments it plans to make in qualified black businesses;
- (d) The geographic area which the corporation will serve and the types of businesses or geographic areas, if any, in which it plans to place priority attention;
- (e) The methods by which the corporation will assure it will meet the conditions outlined in Section 288.71, Florida Statutes;
- (f) Any minimum or maximum limit on investment in a black business enterprise it will make;
- (g) Any special qualifications in addition to items (a)-(f), inclusive, it will require of applicant black business enterprises; and
- (h) The method by which costs of administering the corporation will be paid, including the methods for compensating its officers and professional employees, and any limitation upon the amount of administrative costs which may be paid from the capital funds, including the Board's investment, of the corporation.
- (i) The proposed minimum policies and procedures which will govern the applicant's use of its capital base or a statement incorporating by reference the Board's Policy and Procedures Minimum Guideline Standards Manual, which manual is incorporated herein by this reference. Any such policies and procedures proposed by the applicant shall be reviewed for approval by the Board based upon the degree to which they will serve the purposes and establish the controls set forth in Sections 288.707-.714, Florida Statutes, these rules, and the applicants investment agreement.
- (j) Information demonstrating that the applicant will have the administrative capacity to assist black businesses in its geographic area of service delivery.
- (k) The method by which the corporation will ensure that the criteria for loan decisions target high growth jobs pursuant to Section 288.7091(3), Florida Statutes.
- (l) The proposed amount and source of funds that will be used to match the Board's investment.
- (m) The proposed source of funds to cover operating expenses.
- (n) The proposed method of covering investment losses and the anticipated annualized rate of loss.
- (o) The proposed form of Board investment.
- (p) Projected yearly return to the Board on the investment, if any.
- (q) The proposed method by which the Board's investment will be repaid, if any.
- (r) The proposed security to be provided to the Board, if any.

8K-2.004 Board Investments; Type and Conditions.

(1) The Board shall determine the type of investment it desires to make in the applicant Black Business Investment Corporation, which may be either non-voting stock, preferred or common, a loan or some other evidence of non-voting investment authorized by the Board.

(2) The Board shall attach the following conditions upon its investment, except (a)-(d), inclusive, will not apply to any program for which the Board agrees to establish a fund with a Black Business Investment Corporation for the purpose of purchasing not more than a fifty percent (50%) participation in any qualified loan, loan guaranty, or

Appendix C – FBBIB Task Force Recertification Criteria and Application

equity investment from private persons supporting black business enterprises domiciled in Florida:

(a) The amount of money to be invested by the Board shall be set by the Board, but may not exceed the amount of private equity invested in the corporation by its voting and non-voting owners unless the corporation has previously received an investment

by the Board and the corporation agrees to raise such private equity investment as may be needed to match the Board's new investment within a reasonable period of time approved by the Board, not to exceed one year. At a minimum, the Board shall consider the following criteria in making investments: geographic area, type of services, amount of private equity, certification status, compliance with the rules in this chapter and prior investment agreements, prior success in fulfilling the goals of Sections 288.707-.714, Florida Statutes, success in meeting the standards of prior operating plans, reasonableness of the new operating plan, - 93 competitiveness of the proposed plan, reasonableness of the proposed rate of return and anticipated annualized rate of loss, except that applicants not previously funded shall not be evaluated based upon prior success, investment agreements, or operations under the program.

(b) The corporation shall agree to the performance criteria which the board shall set forth in its investment agreement.

(c) The corporation shall agree to segregate the Board's investment and an equal amount of its private equity, along with any other funds it receives for the same purpose as the Board's investment, to be used only for the benefit of black business enterprises domiciled in Florida.

(d) The corporation shall further agree to invest any of the Board's funds which are not actually disbursed to a black business enterprise in proportion to the Board's investment in the corporation, or authorized by the Board for operating or investment funds, in a fund created and administered by the Board in which the Board may fix earnings and such other terms and conditions it may desire, including the authority of the Board to use such earnings it may designate for purposes of the Board.

(e) The corporation shall agree to use the capital base under the conditions required by Sections 288.71 and 288.7091(3), Florida Statutes, and the rules of this chapter.

(f) The corporation shall furnish to the Board reports quarterly as provided in the investment agreement by the Board to fulfill the Board's obligations under the statutes as amended or to serve other reasonable purposes such as acquiring information for potential investors, and shall make all books and other records available for the Board's inspection at any reasonable hour.

(g) In addition, the Board may attach such other conditions as the parties agree to in the investment agreement, such as conditions related to security, return of investment, or losses, as it may determine to be necessary, from time to time, in each individual case to assure compliance with applicable statutes, the rules of this chapter, and the commitments made in the application process. Such conditions shall be set forth in the investment agreement.

(h) The corporation shall agree to invest no more than 20 percent of its capital base in direct loans to black business enterprises.

(i) The corporation shall agree that it will not amend its policies and procedures which govern the corporation's use of its capital base without prior approval of the Board, which approval will be based on the same criteria as applied to the original approval of policies and procedures, including the rules of this Chapter and Sections 288.707-.714, Florida Statutes.

(j) The corporation shall include in the criteria for loan decisions, occupational forecasting results set forth in Section 216.136(10), Florida Statutes, which target high growth jobs.

(k) The corporation shall identify the matching funds and their use in assuring compliance with rules for use of the capital base, and assure compliance can be ascertained by the Board.

(3) The Board's investments shall be limited to certified Black Business Investment Corporations established pursuant to this chapter.

(4) The Board's investments in certified Black Business Investment Corporations shall be made according to Rule 8K-2.010,

8K-2.005 Community Support.

The Board may give priority and special consideration to those applying corporations which demonstrate community support in the nature of Community Black Business Development Plans which include, without limitation:

- (1) Identification and coordination of public and private efforts by local governments, minority entrepreneurial training and support organizations, minority purchasing councils, chambers of commerce or other business organizations, community organizations, private businesses, and others.
- (2) Unique or special ways of assuring the meeting of conditions required by Section 288.71, Florida Statutes, through an integrated community plan of public and private action.
- (3) Substantial additional leverage of the Black Business Investment Corporation's capital through the use of other public and private resources in the community.
- (4) Any other factors which demonstrate commitments of community support, especially innovative public-private partnerships.

8K-2.006 Accountability.

The following procedures shall govern the accountability for the Board's investment in any Black Business Investment Corporation:

- (1) Each Black Business Investment Corporation shall use an accounting system which meets generally accepted accounting principles.
- (2) Each Black Business Investment Corporation shall maintain such property, personnel, financial, performance and other records and accounts as are necessary to properly account for funds invested in it.
- (3) Each Black Business Investment Corporation shall file its annual audit, including a management letter, with the Board no later than 90 days after the close of the corporation's fiscal year.
- (4) Unless otherwise provided by law or the Board, all records shall be retained for a period of not less than three (3) years.

8K-2.007 Misuse of Funds; Penalty; Appeal.

The following procedures shall apply to the misuse or alleged misuse of funds invested by the Board:

- (1) Funds shall be deemed to be misused when a Black Business Investment Corporation does not use the segregated funds in accordance with the approved program and operating instructions contained in the investment agreement under which the Board has made its investment in the corporation.
- (2) Any person may file a petition, including a statement of facts, with the Board alleging misuse of funds. Upon determining that the petition is not frivolous and has merit, the Board shall convene a meeting of its Board of Directors and conduct a hearing and make a determination on the matter.

8K-2.008 Local Impact Projects.

(1) In addition to investments in qualified black business enterprises, any black business investment corporation in which the Board has invested is authorized to enter into joint ventures or other agreements, including contracts and investments, with any person in order to develop projects that will have an impact on the black community and develop additional black business enterprises within a specific area or areas of the state designated by the Board from time to time; provided that the:

- (a) Investment does not exceed twenty percent (20%) of the corporation's total capitalization;
- (b) Project has a significant potential for developing black business enterprises;
- (c) Project meets the need for shopping, services or jobs within the black community; and
- (d) Project is economically feasible and would not develop a significant amount of black business enterprises or jobs without involvement of the investment corporation.

(2) In addition to any investment made under the provisions of Rule 8K-2.004, the Board may provide an investment incentive not to exceed 50% of the corporation's share of financing in any local impact project. The investment may be made in advance of or coincident with any participation by other investors in any local impact project.

8K-2.009 Certified Corporations.

(1) At a minimum, in its decision whether to certify a Black Business Investment Corporation the Board shall consider the following factors as they apply to past and anticipated performance:

(a) The soundness of loan decisions by a corporation. Soundness shall be evaluated in light of industry practices, rates of loss experienced, and compliance with established policies.

(b) The administrative capacity of the corporation to serve black businesses in the geographical area.

(c) The existence and use of appropriate fiduciary controls. The system of internal controls required should comprise what is customarily found within the financial industry. Examples of controls that are considered generally accepted as necessary and prudent would include collateral documents secured in a vault, original loan and guarantee documents secured in a locked fire proof cabinet, dual signatory on disbursement checks, reconciliation of loan payments to loan receivable general ledger control totals.

(d) The success of the corporation in meeting the public policy objectives of Section 288.707(1), Florida Statutes.

(e) The ability to meet the requirements of the Application Procedure in this chapter.

(f) The ability to meet the requirements of accountability in the rules of this chapter. Demonstration of ability would include an information system design and functionality capable of tracking and reporting on the goals and objectives set forth by rules of this chapter and any additional performance goals set forth by the applicant within the certification submission. Examples would include compliance with filing of any financial statements as might be required in the investment contract, accounting reports containing matching funds data, and statistical reports, such as the number of employees and total salary data on each borrower that may be required in the investment contract.

(g) The compliance with the rules of this chapter and Sections 288.707 through 288.714, Florida Statutes, or any successor provisions.

(h) The performance of the corporation in fulfilling its commitments under prior investment agreements and applications.

(i) The solvency of the corporation.

(2) A Black Business Investment Corporation must be certified prior to or in conjunction with applying for new funds and must maintain certification status for so long as the Board has an investment in the corporation.

(3) A Black Business Investment Corporation must seek and receive recertification every five years for as long as the Board has an investment in the corporation. The certification of a Black Business Investment Corporation that fails to seek or receive recertification shall expire on the day which is five years from the date of the corporation's most recent certification. Failure to maintain certification of a corporation shall constitute a default by the corporation under the investment agreement. The Board shall consider recertification of a corporation not less than six months prior to the end of the corporation's certification period, based only upon the information the Board has available on file. If the Board approves recertification at that time, the certification shall be extended for a five year period from the end of the then current certification period. If the Board does not approve the recertification at that time, the affected corporation shall be notified, and afforded an opportunity, before its certification expires or is considered again, to appear before the Board and appeal the denial, and provide additional information for consideration.

(4) The Board shall revoke the certification of a Black Business Investment Corporation upon the motion of any member of the Board and affirmed by a majority vote as set out in its Bylaws after reconsideration of the factors set forth in subsection (1) and a finding of a default of the investment agreement.

(5) Any decision concerning certification, re-certification, or appeal of a denial of such certification or re-certification may be made by the Board at any scheduled meeting of the Board, but only if consideration thereof is referenced in the agenda for the meeting and after affording the affected corporation a reasonable opportunity to be heard.

(6) In making any decision concerning the certification status of a Black Business Investment Corporation, the Board's determination shall be based upon the degree to which the corporation has and will meet the obligations and standards under Sections 288.707-.714, Florida Statutes, and rules set forth in this chapter as they may be amended from time to time, and the degree to which investment in the corporation has and will serve the purposes expressed in

Section 288.707(1), Florida Statutes.

8K-2.010 Investment Agreements.

(1) Prior to the transfer of any funds to the corporation, each investment by the Board in a certified Black Business Investment Corporation shall be evidenced by a written agreement executed by the parties which shall satisfy the conditions of this rule, express the full understanding of the parties concerning all outstanding investments by the Board in the corporation, and supersede all prior investment agreements.

(2) At a minimum, the Investment Agreement shall provide for:

- (a) A term, the duties of the respective parties, implementation of the operating plan, termination, default, remedies upon default, and maintenance of the capital base;
- (b) Compliance with Florida Statutes and rules promulgated by the Board as they exist from time to time;
- (c) Expression of the terms and conditions approved in the Application Procedure and a procedure for approval by the Board of material changes in the approved operating plan, including without limitation changes in the minimum policies and procedures of the corporation.

Florida Black Business Investment Corporation Certification (Recertification) Application

OVERVIEW

In order to be certified or re-certified as a black business investment corporation (BBIC), an applicant organization must be a legal entity, and meet the certification eligibility requirements outlined below.

There are 12 requirements for re-certification:

12. Primary focus on retaining and promoting black-owned businesses and supporting the creation of new black-owned businesses
13. Provide capital to new and existing black-owned businesses that, in turn, promote the creation of new jobs, especially those that have a high growth potential as a sustainable job, e.g. franchises, construction companies
14. Executed local and regional strategic partnerships through Memoranda of Understanding
15. Timely, detailed, accurate and valid report submissions on performance measures and ROI
16. Conduct annual independent financial audits and provide copies
17. Private sector leveraging and match
18. Administrative capacity including:
 - Adequate staff funding
 - Adequate administrative funding
 - Management
 - Loan administration and servicing
19. Fiduciary controls including:
 - Process – loan procedures and guidelines
 - Loan loss reserves
 - Defaults
 - Cash management
 - Insurance coverage
20. Adoption of uniform credit policies
21. Solvency
22. Soundness of prior loan decisions
23. Compliance with the FBBIB/BBIC contractual obligations.

In order to be certified or re-certified by FBBIB an applicant must satisfactorily meet each of these 12 criteria.

Appendix C – FBBIB Task Force Recertification Criteria and Application

Instructions:

1. Please review the certification (recertification criteria) before completing this application.
2. Please complete the following application and provide copies of support documentation where indicated.
3. Send your application for re-certification to FBBIB.
4. The BBIC application must be received by FBBIB no later than **July 30, 2004.**

APPLICANT BBIC INFORMATION

BBIC Name _____

Address _____

City _____ State _____ Zip _____

President _____

Telephone _____ Fax _____

Email _____ Website _____

Federal Tax Identification Number _____

DUNS Number _____

To the best of my knowledge and belief, all information in this application is true and correct. The submission of the application has been duly authorized by the governing body of the BBIC. (Please attach a copy of the board's resolution)

Authorized representative signature _____

Date _____

I. CORPORATE STRUCTURE AND GOVERNANCE

A. Provide a certified copy of the applicant BBIC’s State of Florida Articles of Incorporation, and a copy of the current Bylaws and an Administrative Letter of Good Standing.

B. Board of Directors

1. What are the requirements for representation on the board of directors?

2. Attach a list of current Board officers, members, terms, professional titles and contact information. **TAB**_____

C. Attach a copy of the applicant BBIC’s most recent business and/or strategic plan. **TAB**_____

D. Attach minutes of all Board of Directors meetings for the past two years.

E. Organizational structure:
For profit corporation Yes___ No___
LLC Yes___ No___
Non profit corporation Yes___ No___

F. Provide evidence either in organizational documents (i.e. Articles of Incorporation, By Laws) or Board resolutions that documents the organization’s primary focus is on retaining existing businesses and promoting the expansion of new black-owned businesses. **TAB**_____

G. Describe the continuing professional development experiences of the BBIC president and staff during the past five years.

II. ASSET INFORMATION

A. How does the BBIC ensure that only qualified black-owned businesses participate in its financing programs?

B. How does the BBIC determine if other financing is not reasonably available to the black-owned business applicant?

C. Describe the types of investments made by the BBIC in qualified black businesses during the past two years.

| | | | | | | | |
|------------------------|-----|-------|-------|-------|--------|--------|-------|
| Direct loans | Yes | _____ | No | _____ | Number | _____ | |
| Mezzanine | | Yes | _____ | No | _____ | Number | _____ |
| Equity | | Yes | _____ | No | _____ | Number | _____ |
| Loan guarantees | | Yes | _____ | No | _____ | Number | _____ |
| Technical assistance | Yes | _____ | No | _____ | Number | _____ | |
| Procurement assistance | Yes | _____ | No | _____ | | | |

Procurement contracts facilitated during the past two years:
Number of contracts _____ Amounted \$ _____

D. For each product offered, describe typical terms, underwriting criteria etc.

E. Provide a copy of your Loan Policies and Procedures Manual. **TAB** _____

F. Describe the geographic area being served by the BBIC and any proposed changes to this market:

G. Describe the types of businesses in which the BBIC places priority attention and any planned changes:

Appendix C – FBBIB Task Force Recertification Criteria and Application

H. What is the minimum and maximum limit on investment in a black business enterprise the BBIC will make?

I. What are the special qualifications the BBIC requires of applicant black business enterprises other than statutory?

J. Please provide a schedule of all loans and loan guarantees, including borrowers contact information, amortization table and current balance.

TAB _____

K. Historical Performance Chart

| | 2002 | 2003 | Current year |
|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|
| Total Assets | | | |
| • Cash and Cash equivalents | | | |
| • Loans receivables | | | |
| • Equity investments | | | |
| • Outstanding loan guarantees | | | |
| No. of loan applications received | | | |
| No. of applications approved | | | |
| No. of applications rejected | | | |
| No. of loans outstanding | | | |
| No. of delinquent loans | >90 days _____ >120 days _____ | >90 days _____ >120 days _____ | >90 days _____ >120 days _____ |

III. MATCHING FUNDS AND PARTNERSHIP

A. Is the BBIC in compliance with the FBBIB/BBIC investment agreement’s private sector matching requirements?

Yes____ No____

Explain_____

B. If not, what is the BBIC’s plan for complying with this requirement?

C. List all executed local and regional strategic partnerships through Memoranda and Letters of Understanding. (Please provide copies of documents).

TAB_____

IV. ORGANIZATIONAL CAPACITY

A. List each staff member of the BBIC by name, title and whether they are full time equivalent.

| Name | Title | Full Time Equivalent |
|------|-------|----------------------|
| | | |
| | | |
| | | |
| | | |
| | | |

B. Provide a brief job description of each position. **TAB**_____

C. Provide resumes for each staff person. **TAB**_____

D. Provide the BBIC’s operational budget for the current year. **TAB**_____

E. Provide the BBIC’s regular office hours of operation (i.e. one or more persons in office).

V. FINANCIAL AND FIDUCIARY CONTROLS

A. Provide a copy of the BBIC’s annual financial audits for the past two years.
TAB_____

B. Describe the BBIC’s liability insurance coverage and limits of coverage and policy expiration date.
 (Include the name of the insurer and policy number).

VI. COMPLIANCE

A. Is the applicant in compliance with Section 288.711?

Yes____ No____

If no, please explain.

B. Does the applicant have a policy requiring the use of the Florida Single Audit Act Check list for non-state organizations, recipients/ sub recipients versus vendor determination to appropriately identify sub recipients?

C. Has the applicant BBIC provided quarterly and annual performance information on a timely basis to FBBIB during the past two years?

Yes____ No____

If no, please explain and submit performance reports

D. Has financial information been submitted by the applicant BBIC on a timely basis during the past two years as required by the investment agreement?

If no, please explain and submit performance reports.

VII. SOLVENCY

A. Has the BBIC spent FBBIB capitalization funds and the equal amount of private membership funds for operating purposes?

Yes___ No___

If yes, explain:

B. What is the source of the BBIC’s operating funds?

C. Is the BBIC in full compliance with all the terms and conditions of the investment agreement?

Yes___ No___

If no, explain: _____

D. Explain your loan loss reserve policy regarding direct loans. _____

Do you comply with your policy? If yes, demonstrate compliance:

E. Explain your loan guarantee loss reserve policy. _____

Do you comply with your policy? If yes, demonstrate compliance:

Appendix C – FBBIB Task Force Recertification Criteria and Application