General

Determination of Initial Unsecured Credit Limit

NFGD is concerned that the layout of the Model Business Practices (MBPs) create an implication that all or most of the Suppliers will automatically be entitled to an unsecured credit limit. While agreeable to MBPs that address process concerning granting of an unsecured credit limit, the decision to grant or deny such is based on upon a variety of factors. In the end, the ultimate decision lies with the Creditor.

To avoid confusion about the intent of the MBPs, NFGD suggests that a principle be added clarifying that the MBPs concerning unsecured credit limits are intended to address process and do not create an entitlement to such.

Definitions

NFGD suggests the following modification to the definition:

> **Material Change:** Any change in the Applicant's (or Guarantor's) financial or other condition that might reasonably affect the amount of secured and unsecured credit extended to that Applicant or may impact the Applicant's ability to perform on its obligations.

Model Business Practices

1.3 Determination of Initial Unsecured Credit Limit

NFGD suggests the following change to 1.3.1.2 to provide for information contained within policy and procedures manuals:

1.3.1.2	Determination of the amount of credit to extend to a particular Applicant may be based on Applicant-Creditor agreement, regulatory policy or ~~both~~ Governing Documents.

NFGD suggests the following change to 1.3.1.3 to provide for a reference to a tariff of a state mandated checklist, perhaps contained within Regulations:

1.3.1.3	The Creditor should make available to all Applicants a Credit Application Form that includes a checklist or other reference of required supporting financial documents.

NFGD sees the quantity of copies within 1.3.1.4 as an arbitrary number. Our opinion is that one set of copies is sufficient because the Creditor can make its own copies as needed. Another alternative is to specify the number of copies required within the application process. In either case, NFGD suggests that 1.3.1.4 modified as shown below would be more appropriate:

1.3.1.4	The Applicant should submit to the Creditor the original ~~and two copies of the~~ completed Credit Application Form and ~~three sets of the~~ required supporting financial documents.

NFGD is concerned that completion of a Credit Review within 5 days of receipt of the completed application (application being considered complete when all required supporting documents are received) in general, is not always practical given varying staffing levels and an uneven workload. Never the less, the applicant should not have to wait until the 30th day to receive the results of the evaluation if it has been completed earlier. NFGD believes 1.3.1.12, as modified below, strikes a reasonable balance:

1.3.1.12 The Creditor should complete the creditworthiness evaluation as soon as possible after receipt of the completed application and supporting documents; however, under no circumstances shall the completed evaluation period exceed ~~within~~ 30 days.

1.4 Reconsideration of Unsecured Credit Limit

NFGD notes that periodic creditworthiness re-evaluations are a routine administrative function and that 1.4.1.5, as written, could be interpreted to prohibit reconsideration of an unsecured credit limit (in either direction!) as a result of this periodic process. The suggested modifications below address a potential misinterpretation:

1.4.1.5 A Creditor may periodically re-evaluate the creditworthiness of an Applicant and whenever it becomes aware of an adverse Material Change in the Applicant's financial condition.

1.5 Disqualification/Remedies

NFGD suggests the following modification to 1.5.1.4 to address potential restrictions of moving Applicant's customers from Consolidated Billing to Dual Billing:

1.5.1.4 When a Creditor requests security or a deposit and the required security or deposit is not tendered within the period specified in the appropriate Governing Documents (e.g., Billing Services Agreement), the Creditor may begin taking actions to reduce its exposure, including:

- (If the Applicant is a Supplier) Cease processing any Switch Requests that add to the Customers served by the Applicant;
- Moving any of the Applicant's Customers currently on Applicant Consolidated Billing to Dual Billing, effective on the Customer's next normally scheduled bill (if allowable under the Billing Agreement, tariff or state regulations);
- Reducing the sales of any other products or services the Creditor may have been selling to the Applicant until the credit exposure no longer exceeds the Applicant's credit limit; and/or
- Taking remedial action, including disqualification of the Applicant, as allowed by the Applicable Regulatory Authority.

1.7 Calling on Security

NFGD suggests that the last clause: . . . "if the petition is not dismissed within 20 days" be stricken. Assuming the Creditor position and being aware of the 20-day automatic stay of the Bankruptcy Code, there is no point in waiting to see if the petition is going to be dismissed. Once a petition is filed all credit actions are governed by the Bankruptcy Code. If the security is in the form of cash and technically an asset of the bankrupt estate, a Motion must be brought before the Court before the cash can be offset against any outstanding or current balance. Depending on the language of the instrument, a Letter of Credit or Surety bond may have notice or claim requirements that must be initiated or perfected with the 20-day period. Creditors' attorneys will advise their clients as to appropriate actions to take within the Bankruptcy Code and local jurisdictional practices.

1.7.1.4 The Creditor may call upon the security posted by the Applicant without prior notice if the Applicant files a petition for bankruptcy (or equivalent,

including the filing of an involuntary petition in bankruptcy against the Applicant~~, if the petition is not dismissed within 20 days~~).

1.8 Confidentiality

1.8.1.2, as written, appears to be a "blanket" statement. It should not be necessary for the Creditor or Applicant to execute a non-disclosure agreement unless proprietary and/or confidential information is to be submitted and reviewed in order to complete the creditworthiness evaluation. If the source documents are all a matter of public record, such as: third party credit reports, bond ratings, SEC documents or annual reports, there should be no need to execute a non-disclosure agreement. As such, NFGD recommends insertion of a qualifying language as follows:

1.8.1.2 When entering into the creditworthiness evaluation process, if proprietary and/or confidential information is to be submitted and reviewed, the Applicant and the Creditor should execute a non-disclosure agreement, unless non-disclosure is provided for within the Governing Documents.

Non-Disclosure Agreement

On Paragraph number 3, the use of "will not, and will" in the first sentence is confusing. It appears as if the author changed direction with the sentence structure mid thought. Please review and provide clarification.