

CHAPTER 31

**NEW JERSEY DEVELOPMENT AUTHORITY FOR
SMALL BUSINESSES, MINORITIES' AND
WOMEN'S ENTERPRISES**

Authority

N.J.S.A. 34:1B-47 et seq., specifically 34:1B-50(f).

Source and Effective Date

R.1995 d.420, effective July 6, 1995.
See: 27 N.J.R. 1953(a), 27 N.J.R. 2956(a).

Executive Order No. 66(1978) Expiration Date

Chapter 31, New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, expires July 6, 2000.

Chapter Historical Note

Chapter 31 was enacted as R.1990 d.350, d.351 and d.352, effective July 16, 1990. See: 22 N.J.R. 608(a), 610(a), 612(a); 22 N.J.R. 2173(a), 2176(a), 2178(a). Subchapter 3, Direct Loans, was repealed by R.1992 d.82, effective February 18, 1992. See: 23 N.J.R. 2626(a), 24 N.J.R. 624(a). Chapter 31 was readopted as R.1995 d.420, effective July 6, 1995. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

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SUBCHAPTER 3. (RESERVED)

SUBCHAPTER 1. DIRECT LOAN PROGRAM

12A:31-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the New Jersey Development Authority for Small Businesses,

Minorities' and Women's Enterprises to implement a direct loan program for eligible businesses to use for working capital, contract financing or the acquisition of fixed assets.

(b) This program provides for the Authority to provide loans to eligible businesses.

(c) Applications and questions concerning participation in the program should be directed to:

New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises
200 South Warren Street
PO Box 990
Trenton, New Jersey 08625-0990

Amended by R.1991 d.393, effective August 5, 1991.
See: 23 N.J.R. 828(a), 23 N.J.R. 2313(a).

In (a): added "New Jersey" to text.

Amended by R.1992 d.82, effective February 18, 1992.
See: 23 N.J.R. 2626(a), 24 N.J.R. 624(a).

Revised (a)-(b).

Amended by R.1992 d.330, effective September 8, 1992.
See: 24 N.J.R. 2131(a), 24 N.J.R. 3093(b).

Revised (c).

12A:31-1.2 Definitions

The words and terms in this subchapter shall have the following meanings unless the context clearly indicates otherwise:

"Applicant" means an eligible business, as defined by N.J.S.A. 34:1B-48, seeking a direct loan.

"Authority" means the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises established pursuant to N.J.S.A. 34:1B-47 et seq., or the staff thereof.

"Board" means the board of directors of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises.

"Direct loan" means a loan or line of credit, or other non-grant financing instrument or structure approved by the Board and advanced by the Authority to an eligible business for the purpose of fixed asset acquisition, working capital or contract financing.

"Eligible business" means a small business, minority business or women business determined to be eligible to receive assistance and participate in programs of the Authority.

"Executive Director" means the chief executive officer of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises.

"Loan recipient" means an eligible business which has been approved to receive or has received a direct loan.

SUBCHAPTER 2. LOAN GUARANTEE PROGRAM

12A:31-2.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises to implement a loan guarantee program for eligible businesses to help those businesses acquire private sector financing that would not otherwise be available without a guarantor for the loan.

(b) This program provides for the Authority to make available, for eligible businesses, loan guarantees to help those businesses obtain private sector financing.

(c) Applications and questions concerning participation in the program should be directed to:

New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises
200 South Warren Street
CN 990
Trenton, New Jersey 08625

Amended by R.1991 d.394, effective August 5, 1991.
See: 23 N.J.R. 830(a), 23 N.J.R. 2314(a).

In (a): added "New Jersey" to text.
Amended by R.1992 d.330, effective September 8, 1992.
See: 24 N.J.R. 2131(a), 24 N.J.R. 3093(b).
Revised (c).

12A:31-2.2 Definitions

The words and terms in this subchapter shall have the following meanings unless the context clearly indicates otherwise:

"Applicant" means an eligible business, as defined by N.J.S.A. 34:1B-48, seeking a loan guarantee.

"Authority" means the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises established pursuant to N.J.S.A. 34:1B-47 et seq., or the staff thereof.

"Board" means the board of directors of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises.

"Eligible business" means a small business, minority businesses or women's business determined to be eligible to receive assistance and participate in programs of the Authority.

"Executive Director" means the chief executive officer of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises.

"Loan guarantee" means a guarantee for the repayment of commercial private source loans, which guarantee does not exceed 90 percent of the outstanding loan balance.

"Loan guarantee recipient" means an eligible business which has been approved to receive or has received a loan guarantee.

"Loan Review Committee" means a committee established by the Chairman of the Board consisting of not more than four Board members, which shall review applications.

"Minority" means a person who is:

1. Black, which is a person having origins in any of the black racial groups in Africa; or
2. Hispanic, which is a person of Spanish or Portuguese culture, with origins in Mexico, South or Central America or the Caribbean islands, regardless of race; or
3. Asian-American, which is a person having origins in any of the original peoples of the Far East, Southeast Asia, and Indian subcontinent, Hawaii, or the Pacific Islands; or
4. American Indian or Alaskan native, which is a person having origins in any of the original peoples of North America.

"Minority business" means a business which at least 51 percent of the beneficial ownership of the business is held by minorities, and in which the majority of the management are minorities.

"Small business" means a business which has its principal place of business in the State, is independently owned and operated, has 100 or fewer full-time employees, and in which at least 51 percent of the beneficial ownership of the business is held by persons other than minorities or women and the majority of the management of which is other than minorities or women.

"Women" means females, regardless of race.

"Women's business" means a business in which at least 51 percent of the beneficial ownership of the management are women.

Amended by R.1991 d.394, effective August 5, 1991.
See: 23 N.J.R. 830(a), 23 N.J.R. 2314(a).

Revised text to definition of "Loan guarantee" and added new "Loan Review Committee" definition.
Amended by R.1992 d.330, effective September 8, 1992.
See: 24 N.J.R. 2131(a), 24 N.J.R. 3093(b).
Revised "authority".

12A:31-2.3 Application for loan guarantee

(a) Each application for a loan guarantee shall be accompanied by a non-refundable application fee of not less than \$500.00.

(b) Each application for a loan guarantee shall be accompanied by written evidence that the applicant has been denied a loan having similar terms as that sought from the Authority.

(c) Each application for a loan guarantee shall be accompanied by a business plan, including financial projections, for three years or for the term of the loan, whichever is less, provided in a format as determined by the Authority.

(d) Each application for a loan guarantee shall be accompanied by the following items:

1. A representative list of the names and addresses of the suppliers of the applicant;
2. A representative list of the current and prior clients of the applicant for the past two years where applicable;
3. The resumes of the principals and key employees of the applicant business;
4. The financial and operating statements of the applicant for the past three years and current personal financial statements for the principals of the applicant.
5. Any proof of certification by a public entity which certifies that the business is beneficially owned by, and that the majority of the management are, minorities or women; and
6. Any other information that the Authority and/or the Executive Director may, in the exercise of their discretion, deem necessary.

Administrative Correction to (d)6:
Beneficiary changed to beneficially.

See: 22 N.J.R. 2330(a).

Amended by R.1991 d.394, effective August 5, 1991.

See: 23 N.J.R. 830(a), 23 N.J.R. 2314(a).

In (c): added provision of financial projections to text; In (d), deleted 5, recodifying existing 6-7 as new 5-6. Added Executive Director provision to new (d)6.

Amended by R.1992 d.81, effective February 18, 1992.

See: 23 N.J.R. 2627(a), 24 N.J.R. 625(a).

Revised (d)4.

12A:31-2.4 Allocation of loan guarantee assistance

(a) Of the financial assistance allocated by the Authority from the funds made available pursuant to the provisions of section 33 of P.L. 1984, c.218 (N.J.S.A. 5:12-181), 50 percent shall be made available to women, and 50 percent shall be made available to minorities and all such funds shall be invested in accordance with geographic restrictions established by the act.

(b) Of the financial assistance allocated by the Authority from sources other than those funds made available pursuant to the provisions of section 33 of P.L. 1984, c.218 (N.J.S.A. 5:12-181), 50 percent shall be made available to small businesses, 25 percent shall be made available to minorities, and 25 percent shall be made available to women.

(c) The Authority may provide loan guarantees to an eligible business in the following manners:

1. For the purpose of fixed asset acquisition for an eligible business, the term of the loan guarantee shall not exceed a period of 10 years. The maximum amount of the guarantee shall not exceed \$1,000,000 or 90 percent of the loan balance, whichever is less.

2. For the purpose of acquiring working capital for an eligible business, the term of the loan guarantee shall not exceed a period of 10 years. The maximum amount of the guarantee shall not exceed \$600,000 or 90 percent of the loan balance, whichever is less.

Amended by R.1991 d.394, effective August 5, 1991.

See: 23 N.J.R. 830(a), 23 N.J.R. 2314(a).

Stylistic revisions throughout text.

Amended by R.1992 d.330, effective September 8, 1992.

See: 24 N.J.R. 2131(a), 24 N.J.R. 3093(b).

Revised (c)1 and 2.

12A:31-2.5 Time of application for a loan guarantee

An applicant may apply to the Authority at any time for a loan guarantee. However, the Authority may establish deadlines for receipt and approval of applications as it deems necessary.

12A:31-2.6 Evaluation of applications for loan guarantees

(a) The Authority shall evaluate each application for a loan guarantee considering the following factors:

1. The debt to equity ratio of the applicant;
2. The general financial condition of the applicant;
3. The likelihood that the applicant will not default on the loan for which it seeks the guarantee; and
4. The length of time that the applicant has been in business as well as the success and growth potential of the applicant.

(b) After evaluation of the application, the Authority shall forward the application to the Loan Review Committee for their review.

(c) After review of the application by the Loan Review Committee, the Loan Review Committee shall forward the application to the Board for its consideration.

(d) The Authority shall review the application and advise the applicant that:

1. The application has been approved;
2. The application has been approved contingent on modification;
3. The application has been rejected; or
4. The application is continuing to be considered pending receipt of additional information.

(e) No loan guarantee approved by the Authority shall be granted to an eligible business until it has forwarded to the Authority a commitment fee of one-half of one percent of the total amount of the loan guarantee and a guarantee fee of one half of one percent of the total amount of the loan guarantee times the number of years that the guarantee is to be in effect.

Amended by R.1991 d.394, effective August 5, 1991.
See: 23 N.J.R. 830(a), 23 N.J.R. 2314(a).

Added new subsection (c), recodifying (c)-(d) as new (d)-(e). Revised text to clarify role of Loan Review Committee in the application evaluation process.

Amended by R.1992 d.330, effective September 8, 1992.
See: 24 N.J.R. 2131(a), 24 N.J.R. 3093(b).

Revised (a) and (b).

12A:31-2.7 Reporting and compliance

(a) Upon receipt of a loan guarantee, the loan guarantee recipient shall be required to submit a report to the Authority every year which shall include the following:

1. The number of employees working for the loan guarantee recipient;
2. Any financial or technical assistance which the loan guarantee recipient has obtained;
3. Any substantive change in ownership or financial condition of the loan guarantee recipient; and
4. Any other information which the Authority and/or the Executive Director may, in the exercise of their discretion, require.

(b) Upon receipt of a loan guarantee from the Authority, the loan guarantee recipient shall be required to submit an annual financial statement prepared on a reviewed basis by a certified public accountant or a public accountant if the loan guarantee is less than \$500,000. Recipients of a loan guarantee of more than \$500,000 shall be required to submit audited financial statements prepared by a certified public accountant or a public accountant utilizing GAAP every third year after closing of the loan guarantee. Reviewed statements will be required at other times.

(c) Upon receipt of a loan guarantee, the loan guarantee recipient shall inform the Authority of any contemplated substantive changes in the business.

Amended by R.1991 d.394, effective August 5, 1991.
See: 23 N.J.R. 830(a), 23 N.J.R. 2314(a).

In (a): revised time period from three months to one year.

In (a)4: added Executive Director provision.

Amended by R.1992 d.81, effective February 18, 1992.
See: 23 N.J.R. 2627(a), 24 N.J.R. 625(a).

Revised (b).

12A:31-2.8 Rescission of a loan guarantee

(a) The Authority may, at its discretion, rescind all or part of a loan guarantee commitment prior to closing when it has become reasonably evident that:

1. Other commitments of financial resources made to the loan guarantee recipient have been withdrawn or have been amended in such a manner so as to undermine the ability of the loan guarantee recipient to utilize the loan guarantee in the manner it proposed to the Authority;
2. The loan guarantee recipient is no longer capable of meeting any financial obligations made to the Authority;
3. The loan guarantee recipient has supplied false or incorrect information, or has misrepresented information on a material matter, whether written or oral, upon which the Authority relied when issuing the loan guarantee; or
4. The loan guarantee recipient is not of good moral character. Lack of good moral character shall include, but is not limited to, convictions of offenses or crimes.

(b) Upon determination by the Authority that a loan guarantee shall be rescinded, the Authority shall send a certified letter, return receipt requested, to the loan recipient informing it of the rescission.

New Rule, R.1991 d.394, effective August 5, 1991.
See: 23 N.J.R. 830(a), 23 N.J.R. 2314(a).

Existing 2.8 recodified to N.J.A.C. 12A:31-2.9, Information confidentiality. Existing text was repealed and replaced by new rule text.

12A:31-2.9 Information confidentiality

(a) All records of the Authority such as minutes, annual reports, program guidelines, regulations, applications for financial assistance and other information not classified as nonpublic information shall be deemed public information available for examination and copying upon request. If the above information is requested by the public and is not readily available and must be photocopied or otherwise reproduced by the Authority, the Authority shall charge a fee of \$.50 for pages 1 to 10, \$.25 for pages 11 to 20 and \$.10 for pages 21 and above. The public may obtain general information concerning Authority programs by contacting the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, CN 990, Trenton, New Jersey 08625.

(b) The following shall not be deemed to be public records subject to inspection, examination and available for copying pursuant to N.J.S.A. 47:1A-1 et seq.:

1. All confidential reports, executive memoranda and evaluations submitted to the Authority, the directors, or to any other state agency or instrumentality;
2. All personnel records;
3. All records concerning applications for employment with the Authority;
4. All records concerning financial or proprietary information submitted by applicants for Authority assistance;

5. All records concerning financial or proprietary information submitted by individuals, corporations, partnerships and other entities doing or seeking to do business with the Authority;

6. All reports, correspondence and other documents or data provided or discussed in executive session at a meeting held by the Board of Directors, except that any action taken or other information required to be disclosed to the public pursuant to N.J.S.A. 10:4-6 et seq. shall not be deemed to be nonpublic records within the scope of this section; and

7. Any other reports, correspondence or other documents or data which the Authority in its discretion deems to be nonpublic pursuant to N.J.S.A. 47:1A-1 et seq.

Repeal and New Rule, R.1991 d.394, effective August 5, 1991.

See: 23 N.J.R. 830(a), 23 N.J.R. 2314(a).

"Information confidentiality" had been codified at N.J.A.C. 12A:31-2.8. Section has been repealed and replaced with new rule text.

Amended by R.1992 d.330, effective September 8, 1992.

See: 24 N.J.R. 2131(a), 24 N.J.R. 3093(b).

Revised (a).

SUBCHAPTER 3. (RESERVED)