

CHAPTER 31**AUTHORITY ASSISTANCE PROGRAMS****Authority**

N.J.S.A. 34:1B-1 et seq., specifically 34:1B-5(k) and (l).

Source and Effective Date

R.1990 d.410, effective August 20, 1990.
See: 22 N.J.R. 1545(a), 22 N.J.R. 2536(a).

Executive Order No. 66(1978) Expiration Date

Chapter 31, Authority Assistance Programs, expires on August 20, 1995.

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SUBCHAPTER 1. BOND FINANCING PROGRAM**19:31-1.1 Program description**

(a) The Authority is empowered to issue tax-exempt and taxable bonds, the proceeds of which can be used to provide low-interest loans to businesses and certain nonprofit organizations to finance projects which provide or maintain employment and/or tax ratables.

(b) Most bond financings are not guaranteed by the Authority or the State, and are payable solely from revenues generated by the project being financed.

(c) The general credit of neither the Authority nor the State is pledged to secure the bonds.

19:31-1.2 Bond purchaser

(a) The applicant shall secure a written commitment from a bond purchaser.

(b) A bond purchaser shall be:

1. A commercial bank or other institutional lender;
2. An underwriter or placement agent;
3. A privately owned entity; or
4. An individual.

(c) A bond purchaser cannot be a substantial user or owner of the project (as defined by the Internal Revenue Code) or be related to the project owner.

(d) A bond purchaser other than a commercial bank or institutional lender must submit an Application to Purchase Bonds, which will be reviewed by the Authority to determine acceptability to purchase a bond. This application includes requests for identification of, or information about:

1. The officers, directors, partners, owners and stockholders of the applicant;
2. Litigation involving the applicant;
3. Applicant's counsel, principal banks of account, and accountant; and
4. Financial statements of applicant.

(e) The bond purchaser establishes the amount, term, interest rate, collateral, etc., for the bond in negotiation with the applicant.

19:31-1.3 Bond financing

(a) Typically, the bonds are secured by a loan agreement and a mortgage on project assets.

(b) The funds raised by the bond issue are loaned by the Authority to pay for eligible project costs. The borrower signs an agreement with the Authority pledging to make payments sufficient to cover principal and interest on the bond. This agreement is then assigned to the bond purchaser.

(c) The borrower makes payments directly to the bond purchaser or trustee.

19:31-1.4 Eligibility standards

(a) Generally, to be eligible for bond financing:

1. A project must serve a public purpose; that is, maintain or expand employment in New Jersey, assist in the economic development or redevelopment of a municipality, maintain or increase the tax base of the municipality, and maintain or diversify business and industry in the State; and

2. Applicants must represent to the Authority that they would not proceed with their project in the present time, place, or scope without the Authority's assistance.

(b) The Authority generally will not approve financial assistance to a project involving relocation within New Jersey if the relocation will result in a job loss and/or hardship for the existing employees or if the relocation endangers the maintenance of tax ratables in a particular community.

(c) There is no minimum size for borrowings under the program, but loan requests of less than \$500,000 should be carefully reviewed by the applicant to assure that participation in the program is cost effective.

(d) Tax-exempt bonds are subject to the terms and conditions of the Internal Revenue Code (IRC); therefore, it is advisable to consult with financial and legal advisors to determine the eligibility of the project. The interest income earned is exempt from most Federal and New Jersey State taxes.

(e) Taxable bonds issued through the Authority are not subject to the IRC. Loans may be made to borrowers for various projects and purposes including, but not limited to:

1. Office buildings;
2. Healthcare financings;
3. Warehouses and distribution facilities;
4. Manufacturing projects;
5. Commercial and retail projects;
6. Debt refinancing; and
7. Working capital needs.

19:31-1.5 Application procedures

(a) A prospective applicant should consult with the Authority to determine if the project is eligible.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project shall be submitted to the Authority for review, together with the Application fee.

(c) The Application includes requests for information about:

1. The applicant's business, including financial statements and projections;

2. The project to be undertaken;
3. The officers, directors, partners, owners and stockholders of the applicant;
4. Litigation involving the applicant;
5. Other users of the project, if applicable;
6. Municipal approvals, if applicable;
7. Contractors, subcontractors, architects, engineers, and planners who will work on the project, if known;
8. Equipment to be purchased as part of the project; and
9. The relocation of any part of the applicant's or user's business, if applicable.

(d) Applications are logged in and assigned a number and project officer for review and processing.

(e) Applications are assigned to a bond counsel firm from the Authority's list of designated bond counsel to review the project for eligibility under Federal and State law (see N.J.A.C. 19:31-1.6). At the time of application, applicants may request assignment of one of the designated bond counsel firms, which request may be approved by the Authority at its discretion.

(f) Applications are processed through several levels of staff review, and may then be recommended for consideration and official action of the Members of the Authority (Members) at a public meeting. The applicant has no right to have its Application presented to the Members.

19:31-1.6 Bond counsel review and fees

(a) The Authority is represented in bond transactions by bond counsel, a private law firm with particular experience and expertise in this specialized area of law. The bond counsel firm:

1. Reviews Applications to determine eligibility under Federal and State law;
2. Assists the Authority in drafting the necessary resolutions to be adopted concerning projects;
3. Publishes notice of public hearing;
4. Drafts financing documents to be used in the transaction;
5. Prepares certain Federal forms for filing with the IRS relating to bond financing;
6. Delivers an opinion at the settlement of the transaction indicating, among other things:
 - i. The project qualifies for Authority assistance;
 - ii. The Authority has taken all necessary steps to accomplish the transaction; and

iii. The interest income to be earned on the Authority bonds issued for the project is exempt from most Federal and/or State income taxes.

(b) Bond counsel fees are paid by the applicant usually at the closing of the transaction, and may, subject to certain limitations, be included as a project cost to be financed out of the Authority bond issue.

(c) The borrower also is responsible for paying other professional fees associated with financing the project, including, but not limited to:

1. Printing fees;
2. Real estate commissions;
3. Consulting fees; and
4. Bond purchaser counsel fees.

(d) Applicants may be charged a fee by bond counsel even though the project does not close with Authority bonds.

19:31-1.7 Approval process

(a) Only the Members acting at a duly constituted public meeting can authorize or approve assistance to a project. These public meetings will satisfy the requirements for public hearings in accordance with the IRC. The Authority staff is not empowered to authorize or approve such assistance.

(b) The following approvals are required:

1. A preliminary resolution prepared by bond counsel making certain affirmative findings and determinations concerning the eligibility for assistance.

i. Such official action permits an applicant to begin making expenditures on the project without jeopardizing the tax-free eligibility.

ii. If an applicant makes substantial expenditures on a project prior to such official action, the expenditures may not be eligible for tax-free financing. The applicant should consult with bond counsel for advice as to how the IRC applies to expenditures.

iii. A preliminary approval is not by itself sufficient authorization to permit the issuance of bonds;

2. A final bond resolution prepared by bond counsel authorizing bonds to be issued, subject to the following:

i. Receipt of a written commitment acceptable to the Authority from a bond purchaser;

ii. Substantial agreement among the interested parties as to the form and substance of the financing documents; and

iii. Availability under the State volume cap for bond financing in accordance with the IRC; and

3. Approval of the Governor.

(c) Bond counsel may prepare a combination resolution granting both preliminary and final bond approval at a single meeting, if the requirements set forth in (b)1 and 2 above have been met.

(d) The bond closing must occur within a specified period of time, usually not exceeding 90 days from the date of final bond approval.

19:31-1.8 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General.

19:31-1.9 Post-closing review

The loan agreement executed with the Authority includes certain public purpose covenants and obligations that must be observed by the applicant during the term of the financing. Failure to comply with these covenants and obligations may result in cancellation of the bond.

SUBCHAPTER 2. LOAN GUARANTEE PROGRAM

19:31-2.1 Program description

(a) The Authority is empowered to guarantee a portion of the principal amount of a financing which would increase or maintain employment and/or tax ratables in New Jersey, and which would not be made without the guarantee.

(b) There are two types of guarantees available: Fixed Asset Guarantees and Working Capital Guarantees.

1. Under the Fixed Asset Guarantee program:

i. The Authority may guarantee the lesser of \$1.5 million or 90 percent of the principal amount of the financing;

ii. The financing can either be a conventional loan, or a taxable or tax-exempt bond financing (see N.J.A.C. 19:31-1);

iii. Proceeds of guaranteed conventional loans can be used for the acquisition of land, buildings, machinery and equipment, the expansion of an existing building or the renovation of machinery, equipment, and buildings; and

iv. Use of the proceeds of tax-exempt bond financing is governed by the Internal Revenue Code.

2. Under the Working Capital Guarantee program:

i. The Authority may guarantee the lesser of \$1 million or 90 percent of the principal amount of the financing;

ii. The financing can be either a conventional loan or a taxable bond, as tax-exempt bonds cannot be used to provide working capital; and

iii. The loan proceeds can be used for refinancing of existing debt, purchase of inventory, or operating expenses.

(c) Both the Fixed Asset Guarantee and the Working Capital Guarantee have a maximum term of 10 years for the guarantee, although the financing can be for a longer term.

19:31-2.2 Eligibility standards

(a) Generally, preference for guarantees is given to projects which:

1. Are job intensive;
2. Will create or maintain tax ratables;
3. Are located in an economically distressed area; and/or
4. Represent an important economic sector of the State.

(b) For fixed asset financing guarantees, the applicant will be required to invest at least 10 percent equity into the project.

19:31-2.3 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project shall be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;
2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;
3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;
4. A current interim statement, if the most recent annual financial statement is more than six months old;
5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;

6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;

7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person;

8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements; and

9. A formal commitment letter from the lender providing the loan, including all terms, conditions, collateral, and a statement of the requirement for the Authority guarantee.

(d) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;
2. Aging of accounts receivable;
3. Aging of accounts payable; and/or
4. Any additional information deemed necessary to evaluate the Application.

(e) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Members at a public meeting. The applicant has no right to have its Application presented to the Members.

19:31-2.4 Evaluation process

(a) When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;

2. An analysis of historic and projected financial statements and a comparison to industry peers;

3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;

4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;

5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended,

the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;

6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;

7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and

8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing (a) above, a determination is made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financing.

(c) If a positive determination is made, the requested financing is presented to the Members for approval.

19:31-2.5 Approval process

(a) Only the Members can approve a loan guarantee.

(b) When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter is issued to the applicant and the bank which will be providing the loan.

1. The commitment letter incorporates the bank's commitment, and contains all terms, conditions and collateral required by the Authority.

2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as beneficiary and collateral assignee.

3. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) When the commitment letter has been accepted by the applicant and the bank, and returned to the Authority, a list of closing instructions is mailed to the attorneys for the applicant and bank.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the funds are made available to the applicant.

19:31-2.6 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General.

SUBCHAPTER 3. DIRECT LOAN PROGRAM**19:31-3.1 Program description**

(a) The Authority is empowered to make direct loans to applicants which are unable to obtain funding from conventional sources even with the help of an Authority guarantee.

(b) Direct loans are available in a maximum amount of \$500,000 for fixed asset financing and \$250,000 for working capital.

(c) Proceeds of fixed asset loans can be used for the acquisition of land, buildings, machinery and equipment, the expansion of an existing building or the renovation of machinery, equipment, and buildings.

(d) Proceeds of working capital loans can be used for refinancing of existing debt, purchase of inventory, or operating expenses.

(e) Interest on fixed asset and working capital loans is equal to the lower of the Federal Discount Rate at the time of approval or at the time of the loan closing, with a minimum of five percent.

(f) The term of a fixed asset or working capital loan is a maximum of 10 years, although the repayment schedule is usually for a shorter time based on the applicant's ability to repay.

Amended by R.1992 d.126, effective March 16, 1992.

See: 24 N.J.R. 177(b), 24 N.J.R. 970(b).

Revised (e).

19:31-3.2 Eligibility standards

(a) Generally, preference for direct loans is given to projects which:

1. Are job intensive;
2. Will create or maintain tax ratables;
3. Are located in an economically-distressed area; and/or
4. Represent an important economic sector of the State.

(b) For fixed asset loans, the applicant will be required to invest at least 10 percent equity into the project.

(c) The applicant must demonstrate to the Authority that it is unable to obtain conventional, affordable financing on its own or with the availability of an Authority guarantee.

19:31-3.3 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project must be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;
2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;
3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;
4. A current interim statement, if the most recent annual financial statement is more than six months old;
5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;
6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;
7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person; and
8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements.

(d) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;
2. Aging of accounts receivable;
3. Aging of accounts payable; and/or
4. Any additional information deemed necessary to evaluate the Application.

(e) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Members at a public meeting. The applicant has no right to have its Application presented to the Members.

19:31-3.4 Evaluation process

(a) When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;
2. An analysis of historic and projected financial statements and a comparison to industry peers;
3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;
4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;
5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;
6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;
7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and
8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing (a) above, a determination is made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financing.

(c) If a positive determination is made, the requested financing is presented to the Members for approval.

19:31-3.5 Approval process

- (a) Only the Members can approve a direct loan.
- (b) When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor.
- (c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter is issued to the applicant.

1. The commitment letter contains all terms, conditions and collateral required by the Authority.
2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as beneficiary and collateral assignee.
3. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) When the commitment letter has been accepted by the applicant and returned to the Authority, a list of closing instructions is mailed to the attorney for the applicant.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the funds are made available to the applicant.

19:31-3.6 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General.

SUBCHAPTER 4. URBAN CENTERS SMALL LOAN PROGRAM
19:31-4.1 Program description

(a) The Authority is empowered to make direct loans to owners and operators of retail and commercial businesses located in downtown urban areas who are unable to obtain funding from conventional sources to upgrade their properties and to remain in such areas.

(b) Applicants may be eligible for loans in amounts ranging from \$5,000 to \$50,000.

(c) Proceeds of loans are to be used primarily to renovate, remodel or expand the interior and/or exterior of the facility, but a limited amount of the funds can be used for working capital.

(d) Interest on these loans is equal to the lower of one percent below the Federal Discount Rate at the time of approval or at time of loan closing, with a minimum of four percent and a maximum of 10 percent.

(e) The term of the loan is a maximum of 10 years, although the repayment schedule is usually for a shorter term based on the applicant's ability to repay.

19:31-4.2 Eligibility standards

To be eligible, an applicant must be located in the downtown area of a targeted municipality (see N.J.A.C. 19:30-5).

19:31-4.3 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project must be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;
2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;
3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;
4. A current interim statement, if the most recent annual financial statement is more than six months old;
5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;
6. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person; and
7. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements.

(d) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;
2. Aging of accounts payable; and/or
3. Any additional information deemed necessary to evaluate the Application.

(e) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Members at a public meeting. The applicant has no right to have its Application presented to the Members.

19:31-4.4 Evaluation process

(a) When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;
2. An analysis of historic and projected financial statements and a comparison to industry peers;
3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;
4. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;
5. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;
6. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and
7. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing the above, a determination is made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financing.

(c) If a positive determination is made, the requested financing is presented to the Members for approval.

19:31-4.5 Approval process

(a) Only the Members can approve an Urban Centers loan.

(b) When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter is issued to the applicant.

1. The commitment letter contains all terms, conditions and collateral required by the Authority.

2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as beneficiary and collateral assignee.

3. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) When the commitment letter has been accepted by the applicant, and returned to the Authority, a list of closing instructions is mailed to the attorney for the applicant.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the funds are made available to the applicant.

19:31-4.6 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General.

SUBCHAPTER 5. EXPORT REVOLVING LINE OF CREDIT

19:31-5.1 Program description

(a) The Authority is empowered to extend revolving lines of credit for production of goods and services for export to applicants which are unable to obtain funding from conventional sources.

(b) Lines of credit are available up to an amount of \$250,000.

(c) Funds provided under this program must be used to finance the purchase of materials and other production costs for specific, firm contracts and can be used for pre- and post-expert working capital.

(d) Interest on advances under the line of credit is set at the Federal Discount Rate at the time of each borrowing.

(e) The amount of each borrowing, including principal and interest, is payable in full upon collection of the accounts receivable created as a result of the specific contract.

(f) Generally, any borrowing under the line of credit is to be repaid within 180 days of the advance.

19:31-5.2 Eligibility standards

(a) Eligibility criteria for the export revolving line of credit are as follows:

1. The applicant is in or entering the export market for goods or services, at least 50 percent of the cost of which must be added in New Jersey; and

2. The applicant must have a firm contract to sell;

i. The contract payment must be secured by an irrevocable, assignable, and United States bank-confirmed letter of credit; or

ii. The accounts receivable must be accepted and insured by the Foreign Credit Insurance Association.

19:31-5.3 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project must be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;

2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;

3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;

4. A current interim statement, if the most recent annual financial statement is more than six months old;

5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;

6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;

7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person; and

8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements.

(d) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;

2. Aging of accounts receivable;

3. Aging of accounts payable; and

4. Any additional information deemed necessary to evaluate the Application.

(e) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Members at a public meeting. The applicant has no right to have its Application presented to the Members.

19:31-5.4 Evaluation process

(a) Once all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;
2. An analysis of historic and projected financial statements and a comparison to industry peers;
3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;
4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;
5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of the applicant's management;
6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;
7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and
8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing the above, a determination is made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financing.

(c) If a positive determination is made, the requested financing is presented to the Members for approval or disapproval.

19:31-5.5 Approval process

(a) Only the Members can approve an Export Revolving Line of Credit.

(b) When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter is issued to the applicant.

1. The commitment letter contains all terms, conditions and collateral required by the Authority.

2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as beneficiary and collateral assignee.

3. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) When the commitment letter has been accepted by the applicant, and returned to the Authority, a list of closing instructions is mailed to the attorney for the applicant.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the funds are made available to the applicant.

19:31-5.6 Attorney General review

All financing documents, including the Application, are subject to review by the Attorney General.

SUBCHAPTER 6. NEW JERSEY TRADE ADJUSTMENT ASSISTANCE CENTER

19:31-6.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"Certification" means the process of determination by the USDOC that a company is eligible to apply for assistance under this program.

"Certified Firm" means a company which has been determined to be eligible to apply for assistance under this program.

"Petitioner" means a manufacturing or producing company seeking assistance under this program.

"TAAC" means the New Jersey Trade Adjustment Assistance Center.

"USDOC" means the United States Department of Commerce.

19:31-6.2 Program description

(a) The Authority operates a TAAC for the State of New Jersey under a cooperative agreement with the International Trade Administration of the USDOC.

(b) The TAAC works with manufacturing/producing firms (generally, Standard Industrial Classification Numbers 2000 to 3999) whose sales or production and employment have declined due to the impact in the marketplace of like or directly competitive imported products.

(c) After a petitioner achieves certification, the TAAC may assist in the development of a business plan in order to identify the specific types of assistance needed.

(d) If the plan is approved by USDOC, the TAAC is empowered to provide project management and partial funding from USDOC to implement the assistance.

19:31-6.3 Eligibility standards

(a) To be eligible, a manufacturing/producing company must have a decline in sales or production in the aggregate or for a product representing 25 percent of sales, and a decline in employment of at least five percent.

(b) The decline must be due to the competition of imported products, which products must represent an increasing share of the U.S. market.

(c) Determinations on eligibility are made by the USDOC in response to a petition package submitted, with the assistance of the TAAC.

19:31-6.4 Application and approval process

(a) The petitioner should consult with the TAAC to determine its potential eligibility.

(b) In response to a request for assistance from a potentially-eligible petitioner, TAAC will work with the petitioner in preparing the petition for certification.

(c) If certification is granted, the certified firm may be assisted by the TAAC in developing the business plan and accompanying information to be submitted to the USDOC.

(d) If the plan is accepted by the USDOC, the TAAC may assist in obtaining implementation assistance, using business consultants, and in obtaining funding for the assistance.

(e) All approvals are made by the USDOC.

19:31-6.5 Cost of implementation assistance

(a) The certified firm is required to share in the costs.

(b) The determinations of the actual cost sharing will be made by USDOC, which may not provide more than 75 percent of the costs up to a dollar limit (set by USDOC, and revised from time to time).

SUBCHAPTER 7. LOCAL DEVELOPMENT FINANCING FUND

Authority

N.J.S.A. 34:1B-1 et seq.

Source and Effective Date

R.1992 d.421, effective October 19, 1992.
See: 24 N.J.R. 2534(a), 24 N.J.R. 3735(a).

19:31-7.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement "The New Jersey Local Development Financing Fund Act" (P.L. 1983, c. 190). This Act established the Local Development Financing Fund, a special depository fund for the purpose of providing financial assistance to certain commercial and industrial projects in certain municipalities who sponsor these projects.

19:31-7.2 Definitions

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

"Act" means the New Jersey Local Development Financing Fund Act (P.L. 1983, c.190) as amended and supplemented.

"Eligible project" means a project which has been approved by the Authority to receive financial assistance from the Local Development Financing Fund.

"Eligible project costs" means the costs of planning, developing, executing and making operative, an industrial or commercial redevelopment project. Eligible project costs include:

1. The cost of purchasing, leasing, condemning, or otherwise acquiring land or other property, or an interest therein, in the designated project area or as necessary for a right-of-way or other easement to or from the project area;
2. The cost incurred for, or in connection with, or incidental to, acquiring and managing the land, property or interest;
3. The cost incurred for, or in connection with, the relocating and moving of persons displaced by acquisition;

4. The cost of development or redevelopment, including:

i. The comprehensive renovation or rehabilitation of the land, property or interest;

ii. The cost of equipment and fixtures which are part of the real estate, and the cost of production machinery and equipment necessary for the operation of the project;

iii. The cost of energy conservation improvements designed to encourage the efficient use of energy resources, including renewable and alternative energy resources and cogenerating facilities; and

iv. The disposition of land or other property for these purposes.

5. The cost of demolishing, removing, relocating, renovating, altering, constructing, reconstructing, installing or repairing any land or any building, street, highway, alley, utility, service or other structure or improvement;

6. The cost of acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements necessary to the project; and

7. The cost incurred or incidental cost including, but not limited to:

i. Administrative, appraisal and economic analysis;

ii. Engineering service;

iii. Planning service;

iv. Design service;

v. Architectural service;

vi. Surveying service; and

vii. Other professional service.

“Financial assistance” means, but is not limited to, loans, loan guarantees, grants, secondary mortgages, and equity participation provided by the fund.

“Fund” means the Local Development Financing Fund.

“Municipality” means a New Jersey municipality qualifying for aid pursuant to the State formula for State aid to municipalities (see N.J.S.A. 52:27D-178) for services and to offset property taxes.

“Project” means an industrial or commercial enterprise within a municipality that would not be undertaken in its intended scope but for the assistance provided for under the Act and these rules.

“Sponsor” means the governing body of a municipality or, with the approval of the government of the municipality, a local development corporation, community development corporation, municipal port authority, or governing body of a county, or, with the approval of the government of a county, a county development corporation or other public entity designated by the Authority as a sponsor (see N.J.S.A. 40:68A-29).

19:31-7.3 Application for financial assistance

(a) Each application for financial assistance from the Fund shall be accompanied by a non-refundable application fee of \$500.00.

(b) Each application for financial assistance from the Fund shall be accompanied by evidence of the support of the municipality in which the project is located. For purposes of these rules, evidence of municipal support shall mean an approved resolution of the governing body of the municipality.

(c) Each application for financial assistance from the Fund shall be accompanied by a benefit statement prepared by the applicant. The benefit statement shall address:

1. The number of permanent jobs to be created in the municipality in which the project is located, excluding the period of construction or development;

2. The number of jobs preserved by the completion of the project in the case of an existing enterprise;

3. The increase in the valuation of real property in the municipality as a result of the completion of the project;

4. Whether the project will result in the maintenance or provision of at least the same number of housing units at comparable rates as exists prior to the undertaking of the project;

5. Whether the project will be located in an area targeted for economic development and receiving Federal, State and/or local development assistance under other programs;

6. The extent to which the project will contribute to an economic revitalization of the municipality and/or the region;

7. The extent to which the project will advance State and/or regional planning and development strategies; and

8. The extent to which the location of the project is accessible to and promotes the use of public transportation.

(d) Each application for financial assistance from the Fund shall be accompanied by evidence of private source or other public source financing commitments.

(e) Each application for financial assistance from the Fund shall be accompanied by evidence of all requisite Federal and/or State environmental permits necessary for the project.

(f) Each application for financial assistance from the Fund shall be accompanied by a plan for the utilization of minority and women contractors and equal opportunity for employment in connection with the project (see N.J.A.C. 19:31-7.6).

19:31-7.4 Financial assistance

(a) No more than 20 percent of the total financial assistance provided from the Fund shall be in the form of grants or other non-lending assistance.

(b) The total amount of financial assistance provided to project applicants in any county during any year shall not exceed 20 percent of the appropriation made during that year to the Fund.

(c) No financial assistance from the Fund shall be granted to an individual applicant project unless at least 50 percent of the total eligible project cost consists of private resources. For purposes of these rules, private resources shall include, but are not limited to:

1. Conventional private sector mortgages;
2. Purchase money mortgages;
3. Industrial Revenue Bonds;
4. Leases;
5. Loans guaranteed by the Federal Small Business Administration, or similar loan guarantees of other governmental and/or quasi-governmental entities; and
6. Equity investments in the project.

(d) The Fund shall provide loans in the form of permanent subordinate mortgage financing for eligible project cost at or below market rates of interest, as determined by the Authority (see N.J.A.C. 19:31-7.5(c)).

(e) The applicant shall secure interim financing on all projects involving construction, unless the Authority agrees otherwise in writing. The interim lender shall assume full responsibility for monitoring the construction of a project and for its timely completion. The interim lender may be the first mortgage lender or another experienced, qualified construction lender and shall be approved by the Authority.

(f) The applicant shall have such equity in the project as the Authority may deem appropriate to insure the applicant's ability to repay the loan from the Fund.

(g) The applicant shall certify in writing that it is unable to provide additional funds in the project beyond its stated commitment and that without assistance from the Fund the

project would be economically unviable and unable to proceed.

(h) Assistance other than loans from the Fund may be approved where the Authority deems such assistance necessary to the success of the project. Such assistance shall not be provided for projects that can be funded by loans.

19:31-7.5 Terms of financial assistance

(a) The minimum loan amount from the Fund shall be \$50,000 and the maximum loan amount from the Fund shall be \$2,000,000.

(b) The term of a loan from the Fund can be up to 25 years.

(c) The interest rate on a loan from the Fund will be the lower of one-half of the Federal Discount Rate at the time of approval or at the time of the loan closing, with a minimum of five percent.

19:31-7.6 Evaluation of applications

(a) The Authority shall evaluate and rank each application for financial assistance considering the following factors:

1. The number of unemployed persons in the municipality in which the project is located;
2. The number of permanent full-time jobs to be created and/or maintained directly by the project, excluding the period of construction or development;
3. The number of jobs preserved by the completion of the project for an existing enterprise that otherwise would leave the State;
4. The increase in the valuation of real property in the municipality as a result of the completion of the project;
5. The percentage of the total eligible project costs to be financed from private and/or other public sources;
6. Whether the project results in the maintenance or provision of at least the same number of housing units at comparable rates that exist prior to the undertaking of the project within the municipality or surrounding area;
7. Whether the project will be located in an area targeted for economic development and/or will be receiving Federal, State and/or local development incentives under other programs;
8. The extent to which the project will contribute to an economic revitalization of a municipality or region, and will promote or add to the rehabilitation of the physical environment of the immediate area or municipality in which it is to be located;
9. The degree to which the project will facilitate the advancement of State or regional planning development strategies;

10. The extent to which the locations of the project are accessible to and/or promote the use of public transportation;

11. The degree of support for, participation in, and/or consultation about the project, within the community in which the project will be located;

12. The likelihood that the project will create and/or preserve private sector jobs, which will last for a period of at least two years; and

13. The likelihood that the project will result in providing a significant increase in the real property tax base of the municipality in which the project is located.

(b) After the evaluation and ranking is completed, the projects will be presented to the members of the Authority for their review and approval.

19:31-7.7 Minority and women business set-aside plans and requirements

(a) Each project approved to receive financial assistance from the Fund shall set a target level of the aggregate project construction costs for the purpose of providing contracting opportunities for minority businesses and women businesses.

(b) The developer and/or general contractor of the project shall identify the minority and/or women businesses that will participate in the project by construction trade, together with the contract sum to be paid to each minority business.

(c) In determining the target level and compliance therewith, a developer and/or general contractor must proceed in accordance with N.J.A.C. 12A:10-2.

19:31-7.8 Rescission of financial assistance from the Fund

(a) The Authority may at its discretion rescind part or all of the financial assistance from the Fund when it has become evident after the granting of financial assistance that:

1. The commitment of other financial resources from private sources has been withdrawn;
2. The project is judged no longer capable of repaying the Fund for the financial assistance it has received;
3. The project is judged incapable of achieving its target requirement, pursuant to N.J.A.C. 19:31-7.7, or that the project is not employing good faith efforts to achieve the requirements under N.J.A.C. 19:31-7.7; or
4. The participants in the project are found not to be of a good moral character. Such a finding may be based on convictions of felony offenses or any other conduct of the applicant which may be viewed in a nonfavorable light by a reasonable person.

(b) Upon determination of the Authority that financial assistance from the Fund shall be rescinded, the Authority shall send a certified letter to the applicant and the sponsor informing them of the rescission.

SUBCHAPTER 8. HAZARDOUS DISCHARGE SITE REMEDIATION FUND

Source and Effective Date

R.1994 d.192, effective April 18, 1994.
See: 25 N.J.R. 4468(a), 26 N.J.R. 1706(c).

Law Review and Journal Commentaries

How to Obtain Public Funds for Private Cleanup. Daniele Cervino. 139 N.J.L.J. No. 8, S8 (1995).

19:31-8.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement those sections of P.L. 1993, c.139 which pertain to the Hazardous Discharge Site Remediation Fund. This Act established the Hazardous Discharge Site Remediation Fund, a special, revolving fund for the purpose of financing remediation activities at sites at which there is, or is suspected of being, a discharge of hazardous substances or hazardous waste.

19:31-8.2 Definitions

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

“Act” means P.L. 1993, c.139.

“Authority” means the New Jersey Economic Development Authority.

“Applicant” means a corporation, partnership, individual or municipal governmental entity which has been determined by the Department to be eligible for financial assistance or a grant.

“Department” means the Department of Environmental Protection and Energy.

“Discharge” shall have the same meaning as set forth at N.J.A.C. 7:26E.

“Eligible project” means a project determined by the Department to be eligible to apply to the Authority to receive financial assistance or a grant from the Hazardous Discharge Site Remediation Fund.

“Financial assistance” means loans and loan guarantees.

"Fund" means the Hazardous Discharge Site Remediation Fund.

"Innocent party" means a person who:

1. Acquired the property prior to December 31, 1983;
2. Who can demonstrate that the hazardous substance or hazardous waste that was discharged at the property was not used by that person, or by any person that had permission to use the site from the person applying for an innocent party grant; and
3. Who can certify that he or any person that had permission to use the site from the person applying for the innocent party grant did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered.

"Members" means the members of the Authority.

"Preliminary assessment" shall have the same meaning as set forth at N.J.A.C. 7:26E.

"Remediation" shall have the same meaning as set forth at N.J.A.C. 7:26E.

"Remediation funding source" means the methods of financing the remediation of a discharge.

"Site investigation" shall have the same meaning as set forth at N.J.A.C. 7:26E.

Amended by R.1994 d.375, effective July 18, 1994.
See: 26 N.J.R. 1612(b), 26 N.J.R. 2918(a).

19:31-8.3 Eligibility

(a) Financial assistance from the fund may be made for eligible projects to:

1. Owners or operators of industrial establishments who are required to perform remediation activities pursuant to P.L. 1983, c.330, as amended, (N.J.S.A. 13:1K-6 et seq.), upon closing operations or prior to the transfer of ownership or operations of an industrial establishment;
2. Persons who have discharged a hazardous substance or who are in any way responsible for a hazardous substance pursuant to P.L. 1976, c.141, as amended, (N.J.S.A. 58:10-23.11 et seq.);
3. Persons who voluntarily undertake the remediation of a discharge of a hazardous substance or hazardous waste, pursuant to the Department's voluntary cleanup program, and who have not been ordered or directed to perform the remediation by the Department or by a court pursuant to section 27b(3) of the Act; or
4. Municipal governmental entities that own or hold a tax sale certificate on real property on which there has been a discharge or on which there is a suspected discharge of a hazardous substance or hazardous waste pursuant to section 27c of the Act.

(b) No person, other than a municipal governmental entity shall be eligible for Financial Assistance from the Fund to the extent that person is capable of establishing a remediation funding source.

(c) Grants from the fund may be made to:

1. Municipal governmental entities that own or hold a tax sale certificate on real property on which there has been a discharge or on which there is a suspected discharge of a hazardous substance or hazardous waste. These grants may be utilized to perform preliminary assessments and site investigations on these properties; and

2. Persons other than municipal governmental entities who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant pursuant to section 28 of the Act.

(d) The determination of eligibility will be made by the Department in accordance with sections 28 through 31 of the Act.

(e) No financial assistance or grant from the Remediation Fund shall be rendered to a person who is currently in violation of an administrative or judicial order, judgment or consent agreement regarding violation or threatened violation of an environmental law regarding the subject property, unless the violation, fee, penalty or assessment is currently being contested by the applicant in a manner prescribed by law or unless the violation resulted from a lack of sufficient money to perform the required remediation activities.

(f) An applicant for financial assistance or a grant shall certify to the Department and to the Authority that they cannot establish a remediation funding source for all or part of the remediation costs. This requirement does not apply to grants to innocent parties or to financial assistance or grants to municipal governmental entities.

Amended by R.1994 d.375, effective July 18, 1994.
See: 26 N.J.R. 1612(b), 26 N.J.R. 2918(a).

19:31-8.4 Terms of financial assistance

(a) Loans from the Fund or loans guaranteed by the Fund shall be for a term of not more than 10 years.

(b) Interest on loans from the Fund shall be equal to the lower of the Federal Discount Rate at the time of approval (see N.J.A.C. 19:31-8.10) or at the time of the loan closing, with a minimum of five percent.

(c) Upon transfer of ownership of any real estate for which a loan was made from the Fund or a loan was guaranteed by the Fund, the unpaid balance of the loan shall become immediately due and payable.

19:31-8.5 Amount of financial assistance and grants

(a) Financial assistance and grants may be for up to 100 percent of the estimated applicable Remediation Costs, except that the cumulative maximum amount of financial assistance and grants to a person other than a municipal governmental entity in any calendar year, for one or more properties, shall be \$1,000,000.

(b) Financial assistance and grants to any one municipal governmental entity shall not exceed \$2,000,000 in any calendar year.

(c) Grants to an innocent party may be for up to 50 percent of the remediation costs except that no grant may exceed \$1,000,000.

(d) The amount of financial assistance or grant shall be based upon a scope of work for remediation which is in compliance with N.J.A.C. 7:26D, 7:26E, 7:26B and 7:14B as applicable.

19:31-8.6 Priority system for financial assistance and grants

(a) An eligible proposal, as determined by the Department, for financial assistance or a grant from the Fund shall be given priority for financial assistance or a grant by the Authority based on the date of receipt by the Authority of a completed application and the availability of sufficient moneys in the Fund for the purpose of the financial assistance or grant, subject to credit approval by the Authority and other criteria as established by this rule.

1. Availability of sufficient moneys in the Fund will be determined in accordance with the allocation method required by section 28(a) of the Act.

2. The Executive Director of the Authority and the Commissioner of the Department, or their designees, shall, from time to time, review the allocation of moneys in the Fund and the requirements of applicants for money from the fund and reallocate the moneys to the extent permissible under section 28(a) of the Act.

(b) Notwithstanding (a) above, top priority for financial assistance or grants will be given to persons or municipal governmental entities for remediation activities at sites which involve an imminent and significant threat of a discharge of a hazardous substance or hazardous waste and the discharge or threatened discharge poses an imminent and significant threat to a public water source, to human health or to a sensitive and significant ecological area as determined by the Department in accordance with section 28(a)3 of the Act.

19:31-8.7 Application for financial assistance

(a) Upon determination of eligibility by the Department, the Department will notify the Authority of the eligibility of the applicant, and the total amount of remediation costs and the amount of remediation costs for which the applicant is unable to establish a remediation funding source.

(b) The Authority will send an application to the applicant indicating what information is required.

(c) The applicant will be given priority for financial assistance based on the date of receipt by the Authority of a completed application.

(d) If the application is determined by the Authority to be incomplete, the applicant will have 30 days from receipt of written notice of incompleteness to file any additional information required by the Authority.

(e) If the applicant fails to file the additional information within the 30 day period, the filing date for the application shall be the date the additional information is received by the Authority.

(f) A completed application shall include, if applicable as determined by the Authority:

1. A history and description of the applicant's business;

2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;

3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds, or, for an individual, copies of tax returns for the three most recent years.

4. A current interim statement, if the most recent annual financial statement is more than six months old;

5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;

6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;

7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number and contact person;

8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements; and

9. In the case of a loan guarantee, a formal commitment letter from the lender providing the loan, including the terms, conditions, collateral and a statement of the requirement for the Authority guarantee.

(g) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;

2. Aging of accounts receivable;

3. Aging of accounts payable; and/or
4. Any additional information deemed necessary to evaluate the application.

(h) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Authority Members at a public meeting. Within 45 days of the receipt of a completed application, a determination will be made to recommend approval to the Members or deny the application. The applicant has no right to have its application presented to the Members.

Administrative Correction.
See: 26 N.J.R. 2462(b).

19:31-8.8 Evaluation process for financial assistance

(a) When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business;
2. An analysis of historic and projected financial statements and a comparison to industry peers;
3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;
4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;
5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;
6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;
7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and
8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing (a) above, a determination shall be made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financial assistance.

(c) If a positive determination is made, the requested financial assistance shall be presented to the members for approval.

19:31-8.9 Approval process for financial assistance

(a) Only the Members can approve a financial assistance or a grant.

(b) When the Members approve financial assistance or a grant, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter, notice of approval of financial assistance or grant, is issued to the applicant.

1. The notice of approval will contain all terms, conditions and collateral required by the Authority and will include, among other things, that:

i. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's financial assistance or guarantee. The life insurance must name the Authority as beneficiary and collateral assignee; and

ii. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) Within 90 calendar days for a private entity, or within 180 calendar days for a municipal governmental entity, of receipt of the notice of approval of financial assistance or grant application, an applicant shall submit to the Authority an executed contract for the remediation activities for which the financial assistance or grant application was made. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for alteration of the applicant's priority ranking for the awarding of financial assistance or a grant.

(f) When the notice of approval has been accepted by the applicant and returned to the Authority, a list of closing instructions shall be mailed to the attorney for the applicant.

(g) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing shall be scheduled and the funds made available to the applicant subject to approval by the Department.

Administrative Correction.
See: 26 N.J.R. 2462(b).

19:31-8.10 Disbursement of financial assistance and grants

(a) All requests for disbursements of the financial assistance or grant must be submitted by the applicant with a certification from the contractor or consultant that the requested moneys have been spent in accordance within a Department approved scope of work.

(b) The recipient of the financial assistance or grant must provide access, by the Authority and the Department, at reasonable times to the subject property to determine compliance with the terms and conditions of the financial assistance or grant.

(c) In the case of a grant, payment will be conditioned upon the subrogation to the Department of all rights of the recipient to recover remediation costs from the discharger or other responsible party.

(d) Where financial assistance to a person other than a municipal governmental entity is for a portion of the remediation cost, the applicant will be required to provide evidence that all moneys for which a remediation funding source has been established, have been expended, before the proceeds of the financial assistance will be disbursed.

19:31-8.11 Attorney General review

All financing documents, including the application, are subject to review by the Attorney General.

19:31-8.12 Fees

(a) Fees for financial assistance will be charged in accordance with the Authority's fee rules (see N.J.A.C. 19:30-6).

(b) A non-refundable application fee of \$500.00 shall accompany every application for a grant.

19:31-8.13 Public record

All information submitted to the Department and/or the Authority as part of an application for financial assistance or grant shall be deemed a public record subject to the provisions of P.L. 1963, c.73 (N.J.S.A. 47:1A-1 et seq.).

SUBCHAPTER 9. NEW JERSEY BOAT INDUSTRY LOAN GUARANTEE FUND**Source and Effective Date**

R.1994 d.376, effective July 18, 1994.

See: 26 N.J.R. 1613(a), 26 N.J.R. 2919(a).

19:31-9.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1993, c.358. This Act established the New Jersey Boat Industry Loan Guarantee Fund, a special, revolving fund for the purpose of providing loan guarantees to manufacturers, assemblers and distributors of luxury boats in New Jersey.

19:31-9.2 Definitions

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

“Act” means P.L. 1993, c.358.

“Authority” means the New Jersey Economic Development Authority.

“Boat” means a vessel or watercraft, other than a personal watercraft or sea plane on the water, used or capable of being used as a means of transportation on water, which may be temporarily or permanently equipped with machinery for propulsion.

“Boat manufacturer or distributor” means an independently owned and operated business which:

1. Manufactures, assembles or distributes boats in the State, the retail value of which is at least \$100,000 each, or manufactures or provides marine products in the State for such boats; and

2. Prior to January 1, 1991, manufactured, assembled or distributed boats in the State the retail value of which was at least \$100,000 each, or manufactured or provided marine products in the State for such boats.

“Cost” means the expenses incurred in connection with the operation of a boat manufacturer or distributor, which can be reasonably expected to be recovered through the financing of the operation, and which shall include, but not be limited to, the costs of planning, fixed assets, materials, working capital, floor plan funding and any other costs determined by the Authority to be necessary to carry out the purposes of the Act.

“Fixed assets” means any real property, interests in real property, plant, equipment, and other assets commonly accepted as fixed assets.

“Marine products” means those parts and materials utilized in the design, construction and maintenance of boats, which shall include, but not be limited to, parts and materials used in boat engines, generators, transmissions, exhaust systems and electrical, plumbing, heating and cooling systems, except that marine products shall not include any oil or oil-based products or materials.

“Members” means the members of the Authority.

“Participating bank” or “bank” means a State- or Federally-chartered bank, savings bank or savings and loan association or a bank organized under the laws of a foreign government, deemed eligible by the Authority for participation in the program.

"Program" means the New Jersey Boat Industry Loan Guarantee Program established by the Authority pursuant to the Act.

"State" means the State of New Jersey.

"Working capital" means those liquid capital assets other than fixed assets.

19:31-9.3 Eligibility

(a) Boat manufacturers and distributors are eligible for guarantees of loans and lines of credit made by participating banks to pay for eligible costs provided that:

1. The Authority, after consultation with the Office of Labor Statistics in the Division of Planning and Research of the Department of Labor, shall determine that the loan for which a guarantee is requested, is expected to result in a net increase in the number of jobs for residents of the State subsequent to August 10, 1993; and

2. The Authority is satisfied that the boat manufacturer or distributor has the ability, reputation and creditworthiness necessary to reach a market and generate sales.

(b) To be eligible for the program, applications must be received by July 18, 1995.

19:31-9.4 Terms of guarantees

(a) Guarantees by the Fund shall be for a term of not more than five years.

(b) Borrowings against lines of credit which are guaranteed by the Fund must be evidenced by purchase orders and the line of credit must be paid down upon receipt of payment by the borrower of the invoices represented by the applicable purchase orders.

19:31-9.5 Amount of guarantees

(a) Guarantees by the Fund may be, generally, for the lesser of \$1.5 million or 90 percent of the principal amount of the loan or line of credit.

(b) In no event will the fund provide guarantees in an amount in excess of \$35,000 per new or maintained job which can reasonably result from the loan or line of credit financing which the Fund will guarantee.

19:31-9.6 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance ("Application") concerning the project must be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;

2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;

3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;

4. Annual financial statements for the three years ending immediately prior to January 1, 1991, including the balance sheets, operating statements and reconciliation of source and application of funds;

5. A current interim statement, if the most recent annual financial statement is more than six months old;

6. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;

7. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;

8. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person;

9. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements; and

10. A formal commitment letter from the participating bank providing the loan, including all terms, conditions, collateral, and a statement of the requirement for the Authority guarantee.

(d) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;

2. Aging of accounts receivable;

3. Aging of accounts payable; and/or

4. Any additional information deemed necessary to evaluate the Application.

(e) Applications are processed through several layers of staff review, and may then be recommended for consideration and official actions of the Members at a public meeting. The applicant has no right to have its Application presented to the Members.

19:31-9.7 Evaluation process

(a) When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;

2. An analysis of historic and projected financial statements and a comparison to industry peers (primary emphasis will be placed on the record of profitability and financial stability prior to January 1, 1991 and projections of recovered profitability and financial stability over the term of the guarantee);

3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;

4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;

5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;

6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;

7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and

8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing (a) above, a determination is made as to the merits of the request, the likelihood of repayment, the adequacy of the collateral available to secure the requested financing and the number of jobs to be created.

(c) If a positive determination is made, the requested financing is presented to the Members for approval.

19:31-9.8 Approval process

(a) Only the Members can approve a loan guarantee.

(b) When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter is issued to the applicant and the bank which will be providing the loan.

1. The commitment letter incorporates the bank's commitment, and contains all terms, conditions and collateral required by the Authority.

2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as beneficiary and collateral assignee.

3. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) When the commitment letter has been accepted by the applicant and the bank, and returned to the Authority, a list of closing instructions is mailed to the attorneys for the applicant and bank.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the funds are made available to the applicant.

19:31-9.9 Attorney General review

All financing documents, including the application, are subject to review by the Attorney General.

19:31-9.10 Fees

Fees for loan guarantees will be charged in accordance with the Authority's fee rules (see N.J.A.C. 19:30-6).