

## 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) The Authority is empowered to own and lease equipment and/or real estate to eligible applicants.

(c) There are four types of guarantees available: Fixed Asset Guarantees, Working Capital Guarantees, Special Guarantees, and Film Production Assistance Program Guarantees.

#### 1. Under the Fixed Assets Guarantee program:

i. The Authority may guarantee the lesser of \$2.0 million or 90 percent of the principal amount of the financing.

ii. The financing can either be:

(1) A taxable or tax-exempt Authority-issued bond financing (see N.J.A.C. 19:31-1); or

(2) Any other form of financing other than as stated in (b)1ii(1) above, including, but not limited to, bank loans, lease financing, seller take-back financing, Federal take-back financing and financings described in (b)3ii(1) and (2) below ("conventional financing");

iii. Proceeds of guaranteed conventional financing 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 financing or an Authority-issued tax-exempt or taxable bond (see N.J.A.C. 19:31-1), subject to the terms and conditions of the Internal Revenue Code; and

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

#### 3. Under the Special Guarantee program:

i. The Authority may guarantee any amount;

ii. The Authority guarantee shall be of:

(1) A loan or guarantee from a governmental entity which may be the Federal or State government, a department of the Federal or State government, an agency of the Federal or State government or a political subdivision of the State of New Jersey;

(2) A loan made under the Community Lending Program of the Federal Home Loan Bank of New York;

(3) Bonds issued by the Authority as a part of a bond issue for the benefit of multiple borrowers (whether or not such bond issue consists of multiple series of bonds issued for the benefit of individual borrowers);

(4) Conventional financing. An applicant for a conventional financing guarantee shall:

(A) Be in an industry and municipality that is targeted by the Authority as set forth in N.J.A.C. 19:30-5;

(B) Demonstrate to the Authority that it has viable options to vacate the State or locate to another state, has been offered economic incentives by the competing state and that, without the special guarantee the applicant will not undertake the relocation or expansion in the State; and

(C) Create or maintain a minimum of 200 permanent full-time jobs in the State. The Authority's assistance shall not exceed \$50,000 per job created and/or maintained; or

(5) Structured finance. An applicant for structured finance assistance shall:

(A) Be in an industry or municipality that is targeted by the Authority as set forth in N.J.A.C. 19:30-5;

(B) Demonstrate to the Authority that it has viable options to vacate the State, has been offered economic incentives by the competing state and that, without the structured finance assistance, the applicant will not undertake the relocation or expansion in the State;

(C) Create a minimum 400 permanent full-time jobs in an urban aid or targeted municipality (500 full-time jobs if located in a non-targeted municipality) or retain a minimum of 600 full-time jobs in the State.

I. If the applicant does not meet the new or retained jobs criteria as set forth in (c)3ii(5)(C) above, it can qualify for structured finance assistance if the aggregate number of jobs to be created and retained total at least 750 of which at least 300 are new jobs created.

II. The Authority's exposure (if any) shall not exceed \$50,000 per job;

(D) The project site must be in compliance with Metropolitan Planning Area (PA 1) or Suburban Planning Area (PA 2) of the State Plan N.J.S.A. 52:18A-196 et seq. as well as all local laws and ordinances; and

(E) The maximum time allowed for acquisition of machinery, equipment, furniture and fixtures or the construction of a new facility shall be five years from the commencement of the project although the actual lease term may be for a longer period; and

(F) The maximum amount of sales tax benefit to be awarded for a project shall be determined by the type of municipality in which the project will be located. The percent of sales tax benefit shall be as follows:

I. Urban aid municipality—100 percent;

II. Targeted municipality—75 percent;

III. Non-targeted municipality—50 percent; and

IV. If a project is in a targeted or non-targeted municipality, an additional 10 percent sales tax benefit shall be awarded if the project utilizes a Brownfield Site, bringing the sales tax benefit to 85 percent and 60 percent, respectively;

(G) Sales tax benefit shall have a rolling cap of \$40 million per two-year period based on the State's fiscal year. By example, if the sales tax benefit granted in 2001 was \$18 million, the amount available for 2002 would be \$22 million.

(H) The Authority may reduce the amount of sales tax benefit that is available to any applicant if the amount of sales tax benefit available under the cap is not sufficient to provide the total sales tax benefit that would have otherwise been available.

(I) If a firm does not meet their new job projections, it shall return to the State a proportionate percentage of the sales tax benefit.

iii. Notwithstanding (c)3ii(4) above, a company that is not targeted by the Authority as set forth in N.J.A.C. 19:30-5, but can meet the criteria set forth in (c)3ii(4)(B) above shall be eligible for a special guarantee if it can demonstrate that at least 400 permanent full-time jobs will be maintained in New Jersey and the Authority's exposure shall not exceed \$50,000 per job maintained.

#### 4. Under the Film Production Assistance Program:

i. The Authority may guarantee the lesser of \$1.5 million or 30 percent of the principle amount of the financing;

ii. The Authority, prior to the granting of any guarantee, shall require:

(1) That funding for the film project, as defined in P.L. 1974, c.80 (N.J.S.A. 34:1B-180(3)), has been secured and is in place through a financial institution;

(2) The film production company, as defined in P.L. 1974, c.80 (N.J.S.A. 34:1B-180(3)), to enter into a completion bond or similar security with the Authority in such form, amount, and terms as shall be determined by the Authority; and

(3) That a minimum of one-half the estimated total production costs have been obtained from other sources;

iii. The Authority shall provide in any agreement between the Authority and a film production company for a guarantee that the lender shall retain a security interest in the assets of the film production company, including, but not limited to, all revenues, payments, money, and proceeds generated by the company's film project, and the Authority shall have a subrogated security interest in the collateral to the extent necessary to insure the Authority's full recovery of the amount of any guarantee;

iv. At least 50 percent of the material and production costs for any assisted project shall be purchased and/or spent in the State of New Jersey;

v. More than 70 percent of the filming days must take place in the State of New Jersey;

vi. Film production companies must provide in their employment contracts that not less than the prevailing wage rate, as determined by the Commissioner of Labor, pursuant to P.L. 1963, c.150 (N.J.S.A. 34:11-56.25 et seq.), shall be paid to workers employed in the performance of contracts in connection with a proposed project, including construction, reconstruction, rehabilitation or demolition of property and improvements thereon; and

vii. The total Authority exposure to any entity or related entities shall not exceed \$1.5 million at any one time. Related entities shall mean any person(s) or entity(ies) with ownership interests of 10 percent or more.

(d) 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. A Special Guarantee term shall not exceed the term of the financing. Film Production Assistance Program guarantee terms will be determined on a project-by-project basis. Factors to be considered in determining the terms of the guarantee are as set forth in N.J.A.C. 19:31-2.4.

Amended by R.1997 d.270, effective July 7, 1997.  
See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

In (b), substituted "three types" for "two types" and added "and Special Guarantees"; in (b)1ii(1), inserted "Authority issued"; added (b)1ii(2); substantially amended (b)2ii; in (b)iii, substituted "financing proceeds" for "loan proceeds"; inserted (b)3; and in (c), added last sentence.

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Inserted a new (b); recodified former (b) and (c) as (c) and (d); and in the new (c)3, inserted "or locate to another state" following "State" in ii(4)(B), and substituted a reference to companies for a reference to existing New Jersey companies in iii.

Amended by R.2000 d.482, effective December 4, 2000.

See: 32 N.J.R. 3555(a), 32 N.J.R. 4275(b).

Inserted (c)3ii(5).

Amended by R.2001 d.242, effective July 16, 2001.

See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (b), deleted the second sentence; rewrote (c).

Amended by R.2004 d.139, effective April 5, 2004.

See: 36 N.J.R. 143(a), 36 N.J.R. 1787(b).

In (c), rewrote the introductory paragraph and added 4; in (d), added the last sentence.

### 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) For all Film Production Assistance Program guarantees, the Authority shall require, in addition to the requirements of (a) through (d) above:

1. A copy of the completion bond;
2. Copies of distribution agreements, as may be available, with major intended markets specified, and details including, but not limited to, companies, territories, and/or countries involved, and duration of exhibition in all major intended markets;
3. Specifics on target audience(s) for film project;
4. A listing and copies of credentials for all principals signed to participate in the film project in the following categories: producing, directing, acting, screenwriting, and cinematography;
5. A complete breakdown of the film project budget;
6. A copy of the proposed shooting schedule, including dates and locations;
7. A copy of the screenplay and brief treatment of the film project, specifying chain of title and/or assignment of rights to literary property;
8. The location of production office; and
9. Proof of liability insurance in an amount acceptable to the Authority.

(f) 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.

Amended by R.2004 d.139, effective April 5, 2004.  
See: 36 N.J.R. 143(a), 36 N.J.R. 1787(b).

Added a new (e) and recodified former (e) as (f).

#### 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;
8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches; and
9. For projects funded under the Film Industry Production Assistance Guarantee Program, the Authority may utilize a consultant or subject matter experts such as the staff of the New Jersey Motion Picture and Television Commission to review each application and its technical elements for the purpose of assisting the Authority in an investigation and analysis of the financial soundness of the film project or film production company. This review will be considered by the Authority in addition to its own credit evaluation based on the criteria in (a)1 through 8 above.

(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.

Amended by R.2004 d.139, effective April 5, 2004.  
See: 36 N.J.R. 143(a), 36 N.J.R. 1787(b).  
Added (a)9.

#### 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 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 guarantee is delivered to the lender.

Amended by R.1995 d.435, effective August 21, 1995.  
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

#### 19:31-2.6 Attorney General review

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

Amended by R.1995 d.435, effective August 21, 1995.  
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

## 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 \$750,000 for fixed asset financing and \$500,000 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) For the Authority's Direct Loan Program, the applicant shall elect in writing, at or prior to the time of closing, a fixed interest rate as set forth in (e)1 below or a variable interest rate as provided in (e)2 below.

1. Fixed Rate Interest: Interest on fixed asset and working capital loans will be fixed at the time of closing and shall be indexed to the United States Treasury Bill rate of like term plus any additional basis points to be determined by the Authority pursuant to the criteria set forth herein; with a floor of four percent and no more than a maximum of the highest Prime Rate as published in the Wall Street Journal plus three percent. Factors to be considered when calculating the additional interest basis points may include the applicant's creditworthiness, quality of collateral, the project's location—municipality, whether the applicant is locating to a former brownfield site, the industry type, the leveraging of total project costs to public dollars, the employment impact to public dollars, whether the business is new to the State or expanding operation in the State, and the increase in tax ratable values. The Loans to Lenders component of the Fund for Community Economic Development will charge an interest rate to be fixed at three percent for the first five years. For those loans that extend beyond five years, the rate will adjust to four percent on the first day of the sixth year. For those loans that extend beyond seven years, the rate will adjust to five percent on the first day of the eighth year. The maximum term of a Loans to Lenders Loan will be 10 years. The rate to be charged for the Seed Capital Program is fixed at closing at the Federal Discount Rate with a floor of three percent.

2. Variable Rate Interest: Interest on fixed asset and working capital loans is at a rate no less than three percent or the Federal Discount Rate, whichever is greater, and no more than one percent below the highest Prime Rate as published in the Wall Street Journal at the time of closing. The interest rate will be variable, adjusted

on the first business day of each calendar quarter in accordance with the relationship of the original calculated interest rate to the Prime Rate or the Federal Discount rate. The maximum increase in the variable interest rate over a five-year period will be five percentage points greater than the original calculated interest rate. Factors to be considered when calculating the interest rate are as set forth in (e)1 above.

(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.

(g) The Authority may make direct loans in excess of \$750,000 and up to \$2 million for fixed assets. An applicant for a direct loan in excess of \$750,000 shall:

1. Be in an industry or municipality that is targeted by the Authority as set forth in N.J.A.C. 19:30-5 or located in the Port District;

2. Demonstrate to the Authority that it has viable options to vacate the State, has been offered economic incentives by the competing state and, without the special guarantee, the applicant shall not undertake the relocation or expansion in the State; and

3. Create or maintain a minimum of 200 permanent full-time jobs in the State. The Authority's assistance shall not exceed \$50,000 per job created and/or maintained.

(h) Notwithstanding (g) above, an existing New Jersey company that is not targeted by the Authority as set forth in N.J.A.C. 19:30-5, but can meet the criteria set forth in (g)2 above shall be eligible for a direct loan in excess of \$750,000 if it can demonstrate that at least 400 permanent full-time jobs shall be maintained in New Jersey and the Authority's exposure shall be maintained in New Jersey and the Authority's exposure shall not exceed \$50,000 per job maintained.

(i) For purposes of (g) and (h) above, the direct loan term shall not exceed 10 years.

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).

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

Added (g) through (i).

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (g)1, substituted "or" for "and" following "industry".

Amended by R.2001 d.242, effective July 16, 2001.

See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (b), substituted "\$750,000" for "\$500,000" and "\$500,000" for "\$250,000"; in (g) and (h), substituted "\$750,000" for "\$500,000".

Amended by R.2002 d.223, effective July 15, 2002.

See: 34 N.J.R. 1247(a), 34 N.J.R. 2469(a).

Rewrote (e).

Amended by R.2002 d.333, effective October 7, 2002.

See: 34 N.J.R. 2412(a), 34 N.J.R. 3531(a).

Rewrote (e).

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Rewrote (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

ty's guarantee. The life insurance must name the Authority as 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.

Amended by R.1995 d.435, effective August 21, 1995.  
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

### 19:31-3.6 Attorney General review

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

Amended by R.1995 d.435, effective August 21, 1995.  
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

## SUBCHAPTER 4. DOWNTOWN BEAUTIFICATION 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 \$100,000.

(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 one percent below the Federal Discount Rate at the time of loan approval, with a minimum of three 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.

Amended by R.1995 d.435, effective August 21, 1995.  
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).  
Amended by R.2001 d.242, effective July 16, 2001.  
See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).  
In (b), substituted "\$100,000" for "\$50,000".

Amended by R.2002 d.223, effective July 15, 2002.

See: 34 N.J.R. 1247(a), 34 N.J.R. 2469(a).

In (d), substituted "three" for "four".

Amended by R.2002 d.333, effective October 7, 2002.

See: 34 N.J.R. 2412(a), 34 N.J.R. 3531(a).

In (d), substituted "approval," for "closing" following "time of loan".

### 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;

"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 one-half of the Federal Discount Rate at the time of loan approval, or three percent, whichever is greater.

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Amended by R.2002 d.223, effective July 15, 2002.

See: 34 N.J.R. 1247(a), 34 N.J.R. 2469(a).

In (c), substituted "three for "five".

Amended by R.2002 d.333, effective October 7, 2002.

See: 34 N.J.R. 2412(a), 34 N.J.R. 3531(a).

In (c), substituted "approval," for "closing" following "time of loan".

#### 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;

17. Whether the project is linked with housing production or renovation (market or affordable) utilizing at least 25 percent of the total buildable area of the site;

18. Whether the business is located within five miles of and is working cooperatively with a public or nonprofit university on research and development;

19. Whether the business provides employee health benefits under a group health plan as defined under section 14 of P.L. 1997, c.146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c.162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes; and

20. Any additional information deemed necessary to evaluate a specific application.

(b) A landlord shall file the information set forth in (a) above, in addition to the following:

1. A copy of the assignment by each tenant to forego any claim of right it may have to a grant; and

2. A copy of the agreement between the landlord and tenants which establishes the tenants agreed to cooperation to annually submit to the Authority its:

- i. Number of new employees in eligible positions;
- ii. Total employees at commencement of the Agreement between the Authority and landlord;
- iii. Payroll records; and
- iv. Any withholdings during the grant year.

(c) A business shall submit on a form prescribed by the Authority a detailed payroll report indicating all employment positions of the business and the employees who filled those positions located in New Jersey that ceased to exist or to be located in New Jersey within three months of the date of the application.

(d) If the applicant meets all of the program criteria set forth in the rules, the grant shall be recommended for consideration and official actions by the members of the Authority at a public meeting. The applicant has no right to have its application presented to the members of the Authority for consideration.

Amended by R.1997 d.270, effective July 7, 1997.  
See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

In (a)5, deleted “, including resumes and signed, dated personal financial statements” following “more of the stock”.

Amended by R.2004 d.94, effective March 1, 2004.  
See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

In (a), inserted new 12 through 19 and recodified existing 12 as 20; rewrote (b); inserted new (c); recodified and amended existing (c) as (d).

### 19:31-10.8 Evaluation process

(a) When all of the required information is received, the Authority staff shall review the materials to determine what percentage and term of grant, if any, the applicant would be eligible to receive based on the eligible positions for new employees. This evaluation shall be based on an evaluation of the application and 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 for the past two years and projections of profitability and financial stability over the term of the grant) solely for the purpose of potential disqualification, debarment, and conflict of interest, providing a grant to an applicant shall constitute “financial assistance” under N.J.A.C. 19:30-2.2(a), and the terms and conditions of N.J.A.C. 19:30-2 shall apply to an applicant for a grant.

(b) If a positive determination is made, the requested business employment incentive grant request shall be presented to the members of the Authority for approval.

### 19:31-10.9 Approval process

(a) Only the members of the Authority can approve a business employment incentive grant.

(b) When the members of the Authority approve a request, the minutes of the meeting at which such approval occurs shall be submitted to the Governor.

(c) The members’ approval shall become effective 10 working days after the Governor’s receipt of the minutes, provided no gubernatorial veto of the action has occurred.

(d) If there has been no veto, a Commitment Letter shall be issued to the applicant, which contains all terms and conditions of the grant. The business must execute and return the Commitment Letter within 30 days. Failure to execute and return the Commitment Letter to the Authority within 30 days will result in rescission of the grant. The Chief Executive Officer of the Authority may, at his or her discretion, extend the expiration date of a Commitment Letter upon request by the business.

(e) When all required documentation as outlined in the Commitment Letter is submitted by the business, in form and content satisfactory to the Authority, a Grant Agreement shall be prepared by the Authority and forwarded to the business for execution.

(f) If the business does not execute and return the Grant Agreement within 60 days from the date of issuance, the grant shall be rescinded.

(g) If the business does not commence the project within one year from the date of approval by the Members of the Authority, the grant shall be rescinded. The Chief Executive Officer of the Authority may, at his or her discretion, extend

the expiration date of the grant upon request by the business.

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Rewrote (d) and (e); inserted new (f) and (g).

#### 19:31-10.10 Rescission and withholding of grant payments

(a) The Authority, in addition to any other remedies available pursuant to law, may withhold, reduce or terminate payment of a grant or any portion thereof due to a business. The circumstances under which this may occur include the following:

1. Failure to comply with the requirements of this subchapter or other applicable State laws or rules;
2. Failure to comply with any condition or requirement of the Grant Agreement;
3. Failure to maintain the stipulated employment levels;
4. Submission of false or misleading information, or failure to submit relevant information; or
5. Insolvency, bankruptcy or other conditions which affect the financial integrity of the business.

(b) The Authority shall provide written notice to the business of its intent to withhold, reduce or terminate the grant. The business may request in writing reconsideration of the Authority's decision. The determination to withhold, reduce or terminate a grant is solely within the Authority's discretion.

(c) In the event a grant is to be terminated, the business shall immediately refund the total amount due as determined by the Authority. Refunds shall be made payable to the State of New Jersey for deposit in the Property Tax Relief Fund and mailed to the:

Business Employment Incentive Program  
Division of Taxation  
CN 248  
Trenton, NJ 08625

#### 19:31-10.11 Prevailing wage

Projects that receive grants from this program shall be exempt from the Authority's prevailing wage requirements for the purposes of that grant and its determination. If the company should apply to the Authority for any other form of financial assistance, the prevailing wage requirement shall be applied.

#### 19:31-10.12 Fees

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

(b) An annual servicing fee shall be paid to the Authority by the business and shall be deducted from the annual grant payment to the business. The servicing fee shall be 1.5 percent of the annual grant disbursement with a floor of \$500.00 and an annual cap of \$10,000.

(c) A nonrefundable Commitment Letter extension fee of \$750.00 shall be paid for every extension of a Commitment Letter expiration date beyond the initial expiration date.

(d) A nonrefundable fee of \$750.00 shall be paid for each request for any changes, additions or modifications to the grant.

(e) A nonrefundable fee of \$750.00 shall be paid for any extension to the expiration date of a grant.

Amended by R.1998 d.150, effective March 16, 1998.

See: 29 N.J.R. 5236(a), 30 N.J.R. 1053(b).

In (b), decreased the floor from \$1,500 to \$500.

Amended by R.2001 d.242, effective July 16, 2001.

See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (b), inserted "and an annual cap of \$10,000" following "\$500.00".

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Added (c) though (e).

#### 19:31-10.13 Attorney General review

All documents, including the application, for the program are subject to review by the Attorney General's office.

### SUBCHAPTER 11. PETROLEUM UNDERGROUND STORAGE TANK REMEDICATION, UPGRADE AND CLOSURE FUND

#### 19:31-11.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement those sections of P.L. 1997, c.235 (N.J.S.A. 58:10A-37.1 et seq.) which pertain to the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund. This Act established the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund, a special revolving fund for the purpose of financing remediation due to the discharge of petroleum from a petroleum underground storage tank or for the costs of upgrade and closure of a regulated tank.

#### 19:31-11.2 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. 1997, c.235 (N.J.S.A. 58:10A-37.1 et seq.).

"Applicant" means a corporation, partnership, limited liability corporation, individual, society, association, consortium, joint venture, commercial entity, county, municipality, or public school district which has been determined by the Department to be eligible for financial assistance or a grant.

"Authority" means the New Jersey Economic Development Authority.

"Department" means the Department of Environmental Protection.

"Discharge" means the intentional or unintentional release by any means of petroleum from a petroleum underground storage tank into the environment.

"Eligible owner or operator" means:

1. Any owner or operator other than the owner or operator of a petroleum underground storage tank storing heating oil for onsite consumption in a residential building who owns or operates less than 10 petroleum underground storage tanks in New Jersey, who has a net worth of less than \$2,000,000 and who demonstrates to the satisfaction of the Authority, the inability to qualify for and obtain a commercial loan for all or part of the eligible project costs;
2. The owner or operator of a petroleum underground storage tank storing heating oil for onsite consumption in a residential building; or
3. A public entity who owns or operates a petroleum underground storage tank in New Jersey.

"Eligible project" means a project determined by the Department to be eligible to apply to the Authority to receive financial assistance.

"Eligible project costs" means the reasonable costs for equipment, work or services required to effectuate a remediation, an upgrade or a closure which equipment, work or services are eligible for payment from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund. In the case of an upgrade or closure of a regulated tank, eligible project costs shall be limited to the cost of the minimal effective system necessary to meet all the regulatory requirements of Federal and State law. The limitation of eligible project costs to the minimal effective system shall not be construed to deem ineligible those project costs expended to replace a regulated tank rather than to improve the regulated tank. An owner or operator may perform an upgrade or a closure beyond the minimal effective system in which case the eligible project costs that may be awarded from the fund as financial assistance shall be that amount that would represent the cost of a minimal effective system. In the case of a remediation, eligible project costs shall not include the cost to remediate a site to meet residential soil remediation standards if the local zoning ordinances adopted pursuant to the "Municipal Land Use Law," P.L.

1975, c.291 (N.J.S.A. 40:55D-1 et seq.) does not allow for residential use. Eligible project costs shall include the cost of a preliminary assessment and site investigation, even if performed prior to the award of financial assistance from the fund if the preliminary assessment and site investigation were performed after the effective date of the Act. Eligible project costs shall not include the costs of any remediation performed at a site where the petroleum underground storage tank was removed prior to December 1, 1996.

"Facility" means one or more operational or nonoperational petroleum underground storage tanks under single ownership at a common site.

"Financial assistance" means a grant or loan or a combination of both.

"Fund" means the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund.

"Operator" means any person in control of, or having responsibility for, the daily operation of a facility.

"Owner" means any person who owns a facility.

"Petroleum underground storage tank" means a tank of any size, including appurtenant pipes, lines, fixtures, and other related equipment that normally and primarily stored petroleum, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10 percent or more below the ground.

"Public entity" means any county, municipality, or public school district, but shall not include any authority created by those entities.

"Regulated tank" means a petroleum underground storage tank that is required to be upgraded pursuant N.J.S.A. 58:10A-21 et seq. or 42 U.S.C. §§ 6991 et seq.

"Remediation" means all necessary actions to investigate and clean up any known, suspected, or threatened discharge of petroleum, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, as those terms are defined in N.J.S.A. 58:10B-1.

"Upgrade" means the replacement of a regulated tank, the installation of secondary containment, monitoring systems, release detection systems, corrosion protection, spill prevention, or overfill prevention thereof, or any other necessary improvement to the regulated tank in order to meet the standards for regulated tanks adopted pursuant to section 5 of P.L. 1986, c.102 (N.J.S.A. 58:10A-25) and 42 U.S.C. §§ 6991 et seq.

Amended by R.2000 d.297, effective July 17, 2000.  
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In "Applicant", inserted a reference to limited liability corporations.

**19:31-11.3 Eligibility**

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

1. Owners or operators of regulated tanks to finance eligible project costs of an upgrade or closure of regulated tanks pursuant to 42 U.S.C. §§ 6991 et seq. or N.J.S.A. 58:10A-21 et seq.;
2. Owners or operators of petroleum underground storage tanks to finance eligible project costs of remediation due to the discharge of petroleum from one or more tanks.

**19:31-11.4 Amount and terms of financial assistance and conditional hardship grants**

(a) Financial assistance may be for 100 percent of the eligible project costs. Loans for upgrade, remediation or closure, or any combination, for any one facility, shall not exceed \$1,000,000. Grants for any one facility shall not exceed \$250,000. If a combination loan and grant is awarded, the Authority shall release the loan monies prior to the release of the grant monies.

(b) A public entity applying for financial assistance from the fund may only be awarded financial assistance in the form of an interest free loan.

(c) An applicant shall not receive financial assistance from this Fund if assistance was previously made under Hazardous Discharge Site Remediation fund at that site.

(d) The total amount of financial assistance awarded as grants in any one year may not exceed one third of the total amount of financial assistance awarded in that year.

(e) An applicant, other than a public entity, may apply for and receive a conditional hardship grant based on Authority findings of:

1. Eligibility;
2. Financial hardship; and
3. Satisfaction of statutory criteria at N.J.S.A. 58:10A-37.5(c).

(f) In order to be eligible for a conditional hardship grant, the applicant shall:

1. Have owned or operated the subject petroleum underground storage tank as of December 1, 1996 and continually thereafter or shall have inherited the property from a person who owned the petroleum underground storage tank as of that date; and
2. Not have a taxable income of more than \$100,000 or a net worth, exclusive of the applicant's primary residence, of over \$100,000.

(g) A finding of financial hardship by the Authority shall be based on a review of the applicants financial condition and a determination that an applicant cannot reasonably be expected to repay all or a portion of the eligible project costs if the financial assistance were to be awarded as a loan. The amount of an award of a conditional hardship grant shall be the amount of that portion of the eligible project costs the Authority determines the applicant cannot reasonably be expected to repay.

(h) Loans from the fund shall be for a term of not more than 10 years. Interest on loans from the fund, except loans to public entities, shall be equal to an amount fixed between two percent and the prime rate at time of approval, or at the time of closing if the prime rate is lower, except as set forth in (b) above. The Authority shall determine the interest rate based on the applicant's ability to repay the loan.

(i) If the facility for which the loan was made is sold, the unpaid balance of the loan shall become immediately due and payable in full. Upon the sale of the facility for which a conditional hardship grant was made, the conditional hardship grant shall become immediately payable in full, to the extent required by N.J.S.A. 58:10A-37.16. No repayment of a conditional hardship grant shall be required for a remediation necessitated by a discharge at the applicant's primary residence.

Amended by R.2000 d.297, effective July 17, 2000.  
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).  
Rewrote the section.

#### 19:31-11.5 Priority system for financial assistance

(a) Upon the Authority's approval of an application for financial assistance, the Authority shall award financial assistance upon availability of sufficient monies in the fund. When monies in the fund are not sufficient at any time to fully fund all applications for financial assistance that have been approved by the Authority, the Authority shall award financial assistance to approved applicants, notwithstanding the date of application in the following priority as determined by the Department.

1. Upgrades of regulated tanks required to be upgraded pursuant to 42 U.S.C. §§ 6991 et seq., including necessary remediation at the site of the regulated tank;
2. Closure of any regulated tank required to be upgraded pursuant to 42 U.S.C. §§ 6991 et seq., including necessary remediation at the site of the regulated tank;
3. Upgrades of regulated tanks requiring upgrade pursuant to N.J.S.A. 58:10A-21 et seq. but not pursuant to 42 U.S.C. §§ 6991 et seq. and necessary remediation at the site of the regulated tank;
4. Any necessary remediation at the sites of petroleum underground storage tanks other than those given priority in (a)1, 2 and 3 above;
5. Closure of any regulated tank required to be upgraded pursuant to N.J.S.A. 58:10A-21 et seq., but not pursuant to 42 U.S.C. §§ 6991 et seq.

(b) Notwithstanding the priority for the award of financial assistance, whenever there has been a discharge, and the discharge poses an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area, an approved application shall be given priority over all other applications.

#### 19:31-11.6 Application for financial assistance

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

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

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

(d) 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.

(e) A completed application from an applicant 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 sheet, operating statement, 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.

(f) 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;

4. Submission of documentation or other information on the nature and scope of the work to be performed, cost estimates, and proofs of the actual costs of all work performed;

5. Demonstration of an ability to repay the amount of any loan and to provide adequate collateral to secure the loan; and/or

6. Submission of documentation and a certification as applicable that the applicant was unable to qualify for and obtain a commercial loan for all or part of the eligible project costs.

(g) Within 45 days of the receipt of a completed application, a determination will be made to recommend approval to the members of the Authority or deny the application. The applicant has no right to have its application presented to the members of the Authority.

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (e), substituted a reference to applicants for a reference to businesses in the introductory paragraph, and deleted a former 9.

#### 19:31-11.7 Evaluation process for financial assistance

(a) When all of the required information is received, the Authority shall 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 and 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 of the Authority for approval.

#### 19:31-11.8 Approval process for financial assistance

(a) Only the members of the Authority can approve financial assistance from the Fund.

(b) When the members approve financial assistance, 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 shall be issued to the applicant.

1. The notice of approval shall contain all terms, conditions and collateral required by the Authority and in the case of a loan may include, among other things, that:

- i. Life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's financial assistance. The life insurance must name the Authority as collateral assignee; and
- ii. Personal or corporate guarantees of owners of 10 percent or more of the applicant are required, and there may be a requirement for collateral apart from the applicant's collateral to secure the guarantees, based on the amount to be loaned.

(e) Within 120 calendar days of receipt of the notice of approval of financial assistance, an applicant shall submit to the Authority an executed contract for the remediation upgrade and/or closure activities for which the financial assistance was approved. The contract shall indicate the nature and scope of the work to be performed, cost estimates of the work, and, as available, proofs of the actual costs of all work performed. 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.