

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 guarantee, either directly or through delegation.

(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. Except for the Angel Investor Program guarantee and the Structured Finance Program, 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. Except for the Angel Investor Program guarantee and the Structured Finance Program, 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).
Amended by R.2005 d.274, effective August 15, 2005.
See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).
Rewrote (a) and (d).

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) Except as otherwise provided in this subsection, direct loans are available in a maximum amount of \$1,250,000 for fixed asset financing and \$750,000 for working capital.

1. For the Smart Growth Pre-development Loan Program, the maximum loan amount will be \$1 million.

2. For the Brownfields Redevelopment Loan Program, the maximum loan amount will be \$750,000.

3. The maximum amount of combined total financing under the Smart Growth Pre-development and Brownfield Redevelopment loan program(s) is \$1.0 million.

4. The maximum amount of total financing for the New Jersey Growth Fund Program shall be \$1 million per transaction.

5. For the urban loan product, the maximum loan amount will be \$3 million.

6. For companies awarded financing under the Edison Innovation R&D Fund by the New Jersey Commission on Science and Technology (NJ CST), the Authority may award up to 20 percent of the approved NJ CST grant, not to exceed \$100,000 in convertible debt financing for non-research and development related costs.

(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) Proceeds of Smart Growth Pre-development loans shall be used for the purposes of pre-development site preparation costs to be determined by the Authority. Such costs may include, but are not limited to, land assemblage, demolition, removal of materials and debris and engineering costs.

(f) Proceeds of Brownfield Redevelopment loans shall be used for financing those remediation costs deemed eligible by the New Jersey Department of Environmental Protection pursuant to the Municipal Landfill Site Closure, Remediation and Redevelopment Agreement that has been entered into by the applicant with the New Jersey Department(s) of Environmental Protection and Treasury, and the New Jersey Commerce and Economic Growth Commission.

(g) Proceeds of urban loans shall be used for fixed asset financing as set forth in (c) above, not to exceed 50 percent of total project costs, in the nine urban centers designated in the New Jersey State Development and Redevelopment Plan (Atlantic City, Camden, East Orange, Elizabeth, Jersey City, New Brunswick, Newark, Paterson and Trenton).

(h) 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 (h)1 below or at a variable interest rate as provided in (h)2 below.

1. Fixed Rate Interest:

i. Interest on Smart Growth Predevelopment, Brownfield Redevelopment, fixed asset or working capital loans will be fixed at the time of closing and shall be indexed to the United States Treasury Bill 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, whether the business is new to the State

or expanding operation in the State, and the increase in tax ratable values.

ii. The Loans to Lenders component of the Fund for Community and 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.

iii. The rate to be charged for the New Jersey Growth Fund Program is fixed at four percent 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 two times the highest Prime Rate as published in the Wall Street Journal. Factors to be considered when calculating the additional interest basis points may include the special criteria detailed in N.J.A.C. 19:31-3.2(f).

iv. The rate to be charged for the urban loan is fixed at the time of closing at 50 percent of the Federal Discount Rate, with a floor of three percent.

v. The rate to be charged on the convertible debt portion of the Edison Innovation R&D Fund is fixed at two percent and shall be capitalized during the first five years of the financing, during which time no principal or interest payments are required. The principal and capitalized interest shall be automatically converted into equity in the event that a qualified financing in the minimum amount of \$500,000 shall occur during such five-year period. If no such qualified financing shall occur during that time, the principal and capitalized interest shall be amortized over the next five-year period and shall be payable monthly, with interest.

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 (h)1 above.

3. In addition to any interest charged on a New Jersey Growth Fund or Edison Innovation R&D Fund loan, the Authority may also require the payment of additional fees and incentives, including, but not limited to, warrants, stock, stock options, a percentage of royalties, and a percentage of sales proceeds.

(i) The term of a fixed asset or working capital loan is a maximum of 10 years, although the amortization may be for a longer time based on the use of proceeds and the applicant's ability to repay. Smart Growth Predevelopment and Brownfield Redevelopment loans will have a maximum term of three years. The New Jersey Growth Fund term is a maximum of 10 years, and may allow for interest only payments for a portion of the term, or for interest and payment deferrals, with the repayment schedule to be determined on revenue and operational milestone achievement.

(j) The Authority may make direct loans in excess of \$1,250,000 and up to \$2 million for fixed assets. An applicant for a direct loan in excess of \$1,250,000 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.

(k) Notwithstanding (j) 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 (j)2 above shall be eligible for a direct loan in excess of \$1,250,000 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.

(l) For purposes of (j) and (k) above, the direct loan term shall not exceed 10 years.

(m) For New Markets Loans:

1. The maximum amount of total financing for a New Markets loan is \$10 million, except for projects that provide extraordinary economic development benefits when the maximum amount of total financing for a New Markets loan is \$25 million.

2. The rate for loans shall be fixed at three percent and shall be interest only for at least the first seven years of the term of the loan.

3. New Markets loans will have terms of no less than seven years and may be up to 10 years.

4. For New Market loans, the projects must be located within areas designated for smart growth land use development and designated by the New Jersey Development and Redevelopment Plan as in Planning Areas One or Two or is a designated center or endorsed plan. Additionally, projects

must be located in communities and census tracts as approved by the Community Development Financial Institutions Fund (CDFI) as described in (m)4i through iii below and must have at least one of the characteristics described in (m)5 below.

i. A poverty rate of at least 20 percent;

ii. In the case of a tract not located within a Metropolitan area as defined by the United States Census, where the median income family income for such tract does not exceed 80 percent of the Statewide median family income; or

iii. In the case of a tract located within a Metropolitan area, where the median family income for such tract does not exceed 80 percent of the greater of Statewide median income or the Metropolitan area median family income.

5. Additionally, New Markets loans must be located in at least one of the following types of designated areas:

i. CDFI Hot Zone, Empowerment Zone, Renewal Community, HOPE VI Redevelopment area or Small Business Administration HUB Zone;

ii. A brownfield redevelopment area, locally designated redevelopment area, or New Jersey Urban Enterprise Zone;

iii. A census tract with an unemployment rate of 1.5 times the national average; or

iv. A census area with a poverty rate greater than 30 percent or with median incomes of less than 60 percent of the area median income.

6. In addition to any interest charges on a New Markets loan, the Authority shall also require the payment of additional fees, including a one-time monitoring fee of \$1,000 and a management fee of five percent of the loan amount, with the exception of non-profit borrowers that will be charged a 3.5 percent management fee.

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).

Amended by R.2004 d.346, effective September 20, 2004.
See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a).

Rewrote the section.

Amended by R.2005 d.274, effective August 15, 2005.
See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

In (b), added 4; rewrote (g) and (h).

Amended by R.2005 d.319, effective September 19, 2005.
See: 37 N.J.R. 2153(a), 37 N.J.R. 3722(a).

In (b), added 4; in (g)1 added iv.

Amended by R.2006 d.242, effective July 3, 2006.
See: 38 N.J.R. 1563(a), 38 N.J.R. 2887(c).

Inserted "at least the first seven years of" in (g)1iv.

Amended by R.2006 d.369, effective October 16, 2006.
See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Deleted (b)5 and (g)1iv; deleted the last sentence of (h); and added (l).

Amended by R.2008 d.89, effective April 7, 2008.

See: 39 N.J.R. 5071(a), 40 N.J.R. 1927(b).

In the introductory paragraph of (b), substituted "\$1,250,000" for "\$750,000" and "\$750,000" for "\$500,000"; in the introductory paragraph of (i), substituted "\$1,250,000" for "\$750,000" twice; and in (j), substituted "\$1,250,000" for "\$750,000".

Amended by R.2008 d.90, effective April 7, 2008.

See: 40 N.J.R. 110(a), 40 N.J.R. 1928(a).

Added (b)5 and (b)6; added new (g); recodified former (g) through (l) as (h) through (m); in the introductory paragraph of (h), substituted "(h)1" for "(g)1" and "(h)2" for "(g)2"; added (h)1iv and (h)1v; in (h)2, substituted "(h)1" for "(g)1"; in (h)3, inserted "or Edison Innovation R&D Fund" and "and incentives"; in (i), substituted "amortization may be" for "repayment schedule is usually" and "longer" for "shorter", and inserted "the use of proceeds and"; in (k), substituted "(j)" for "(i)" and "(j)2" for "(i)2"; in (l), substituted "(j) and (k)" for "(i) and (j)"; and in the introductory paragraph of (m)4, substituted "(m)4i" for "(l)4i" and "(m)5" for "(l)5".

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.

(d) For Smart Growth Pre-development loans, projects must be located in Planning Areas 1 and 2, designated centers or in municipalities with endorsed plans as defined by the State Redevelopment Plan, must evidence municipal support and be part of a local redevelopment plan.

(e) For Brownfield Redevelopment Loans, project sites must be the subject of a Municipal Landfill Site Closure, Remediation and Redevelopment Agreement that has been entered into by the applicant with the New Jersey Departments

of Environmental Protection, Treasury and the New Jersey Commerce, Economic Growth and Tourism Commission.

(f) For New Jersey Growth Fund loans, projects will be considered eligible if they have the following characteristics:

1. Technology that has a strong likelihood and clear timeline to achieve commercialization;
2. A meaningful and defined market and customer base for the technology;
3. A management team possessing appropriate skill sets, capacity and financial resources and willingness to strengthen management through other means such as advisory or consultant services;
4. A meaningful customer base, partners, strategic alliances and professional relationships;
5. An ability to leverage the Authority's resources by evidence of other fund raising and need for future capital requirements;
6. A clear record of specific operational and research milestones achieved to date and proposed schedule and means to achieve future milestones;
7. A current and complete business plan including a detailed financial model; and
8. Location of the business in either an Innovation Zone, Urban Enterprise Zone or area targeted for smart growth redevelopment as determined by the New Jersey Development and Redevelopment Plan; or
9. A Business that is located in a targeted industry.

Amended by R.2004 d.346, effective September 20, 2004.

See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a).

Added (d) and (e).

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

In (e) substituted "and" for "and" following "Commerce", added "and Tourism" following "Growth"; added (f).

Amended by R.2005 d.319, effective September 19, 2005.

See: 37 N.J.R. 2153(a), 37 N.J.R. 3722(a).

Added (g) and (h).

Amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Deleted (g) and (h).

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;