

CHAPTER 31

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

Authority

N.J.S.A. 34:1B-50(t).

Source and Effective Date

R.2000 d.268, effective June 2, 2000.
See: 32 N.J.R. 1490(a), 32 N.J.R. 2444(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 31, New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, expires on November 29, 2005. See: 37 N.J.R. 1679(a).

Chapter Historical Note

Chapter 31, New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, was adopted as R.1990 d.350, d.351 and d.352, effective July 16, 1990. See: 22 N.J.R. 608(a), 610(a), 612(a); 22 N.J.R. 2173(a), 2176(a), 2178(a).

Subchapter 3, Direct Loans, was repealed by R.1992 d.82, effective February 18, 1992. See: 23 N.J.R. 2626(a), 24 N.J.R. 624(a).

Pursuant to Executive Order No. 66(1978), Chapter 31, New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, was readopted as R.1995 d.420, effective July 6, 1995. See: 27 N.J.R. 1953(a), 27 N.J.R. 2956(a).

Pursuant to Executive Order No. 66(1978), Chapter 31, New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, was readopted as R.2000 d.268, effective June 2, 2000. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 3. (RESERVED)

SUBCHAPTER 1. DIRECT LOAN PROGRAM

12A:31-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises to implement a direct loan program for eligible businesses to use for working capital, contract financing or the acquisition of fixed assets.

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

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

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

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

In (a): added "New Jersey" to text.
Amended by R.1992 d.82, effective February 18, 1992.
See: 23 N.J.R. 2626(a), 24 N.J.R. 624(a).

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

Revised (c).
Amended by R.2000 d.268, effective July 3, 2000.
See: 32 N.J.R. 1490(a), 32 N.J.R. 2444(a).
In (c), amended address.

12A:31-1.2 Definitions

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

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

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

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

"Direct loan" means a loan or line of credit, or other non-grant financial assistance, including a participation in a bank loan, as approved by the Board.

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

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

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

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

“Minority” means a person who is:

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

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

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

“Women” means females, regardless of race.

“Women’s business” means a business in which at least 51 percent of the beneficial ownership of the business is held by women, and in which the majority of the management are women.

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

Added new definition “Loan Review Committee” and revised “Micro-loan” definition.

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

Revised definitions.

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

Revised “authority”.

Amended by R.2000 d.268, effective July 3, 2000.

See: 32 N.J.R. 1490(a), 32 N.J.R. 2444(a).

In “Applicant”, added a reference to the Authority; rewrote “Direct loan”; and deleted “Micro-loan” or “ML”.

12A:31-1.3 Application for a direct loan

(a) Each application for a direct loan shall be accompanied by a nonrefundable application fee of \$300.00.

(b) Each application for a direct loan shall be accompanied by written evidence that the applicant has been unable to acquire financing similar to that sought from the Authority.

(c) Each application for a direct loan from a start-up business shall be accompanied by a business plan, if available, and financial projections for three years or for the term of the loan, whichever is less, provided in a format as determined by the Authority.

(d) An application for a direct loan from an existing business which has been operating for a period of more than one year may include financial projections of net income and cash flow for at least one year, provided in a format as determined by the Authority.

(e) Each application for a direct loan shall be accompanied by the following items:

1. A representative list of the names and addresses of the suppliers of the applicant;
2. A representative list of the current and prior clients of the applicant for the past two years where applicable;
3. The resumes of the principals and key employees of the applicant business;
4. The financial and operating statements of the applicant for the past three years and current personal financial statements of the principals of the applicant;
5. Any proof of certification by a public entity which certifies that the business is at least 51 percent beneficially owned by, and in which the majority of the management are, minorities or women; and
6. Any other information that the Authority and/or the Executive Director may, in the exercise of their discretion, deem necessary.

Amended by R.1991 d.393, effective August 5, 1991.

See: 23 N.J.R. 828(a), 23 N.J.R. 2313(a).

In (c): added phrase regarding financial projections.

Deleted (d)5 and recodified existing 6-7 as (d)5 and 6. Added Executive Director provision to (d)6.

Amended by R.1992 d.82, effective February 18, 1992.

See: 23 N.J.R. 2626(a), 24 N.J.R. 624(a).

Revised text.

Amended by R.1997 d.154, effective April 7, 1997.

See: 28 N.J.R. 4077(b), 29 N.J.R. 1340(a).

In (a), increased application fee from \$250 to \$300.

Amended by R.2000 d.268, effective July 3, 2000.

See: 32 N.J.R. 1490(a), 32 N.J.R. 2444(a).

In (c), inserted "from a start-up business" following "loan", and substituted " , if available, and" for "including" following "plan"; and in (d), substituted a reference to existing businesses for a reference to businesses, and deleted a former second sentence.

12A:31-1.4 Allocation of direct loan assistance

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

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

(c) The Authority may provide direct loans to an eligible business for the purpose of fixed asset acquisition, working capital, or contract financing. The term of the direct loan shall not exceed 15 years. The maximum amount of the loan shall not exceed \$1,000,000. The interest rate shall be as described in (e) below.

(d) Except as provided in this subsection, the interest rate on direct loans shall be fixed at a rate no less than the highest prime rate as published in the Wall Street Journal minus one percentage point at the time of approval with a floor of four percent. For direct loans awarded to the graduates of the Entrepreneurial Training Institute Program, the interest rate on direct loans shall be fixed at a rate no less than the highest prime rate as published in the Wall Street Journal minus two percentage points at the time of approval with a floor of three percent. Factors to be considered when establishing an interest rate may include the project's location-municipality, the leveraging of total project cost to public dollars, the employment impact to public dollars, whether the business is new to the State or expanding operations in the State, and the amount of other public and private investment. Interest rates shall be fixed for a period of five years. For loans having a term of over five years, the interest rate shall be reset at the end of year five, and then again at the end of year 10, as applicable, pursuant to the formulae described in this subsection.

Amended by R.1991 d.393, effective August 5, 1991.

See: 23 N.J.R. 828(a), 23 N.J.R. 2313(a).

Stylistic revisions throughout (a) and (b).

Amended by R.1992 d.82, effective February 18, 1992.

See: 23 N.J.R. 2626(a), 24 N.J.R. 624(a).

Revised section.

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

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

Revised (c)-(d); added (e).

Amended by R.1993 d.243, effective June 7, 1993 (operative July 1, 1993).

See: 25 N.J.R. 891(a), 25 N.J.R. 2484(b).

Amended by 1994 d.565, effective November 21, 1994.

See: 26 N.J.R. 5759(a), 26 N.J.R. 1434(a), 26 N.J.R. 4631(a).

Amended by R.1997 d.154, effective April 7, 1997.

See: 28 N.J.R. 4077(b), 29 N.J.R. 1340(a).

In (e), changed method of calculating interest rate.

Amended by R.1999 d.150, effective May 17, 1999.

See: 31 N.J.R. 739(a), 31 N.J.R. 1359(a).

Rewrote (e).

Amended by R.2000 d.268, effective July 3, 2000.

See: 32 N.J.R. 1490(a), 32 N.J.R. 2444(a).

In (a) and (b), deleted P.L. references; deleted a former (d); and recodified former (e) as (d).

Amended by R.2002 d.332, effective October 7, 2002.

See: 34 N.J.R. 2191(a), 34 N.J.R. 2549(b), 34 N.J.R. 3529(a).

Rewrote (d).

12A:31-1.5 Time of application for a direct loan

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

Amended by R.1992 d.82, effective February 18, 1992.

See: 23 N.J.R. 2626(a), 24 N.J.R. 624(a).

Revised text.

12A:31-1.6 Evaluation of applications for direct loans

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

1. The debt to equity ratio of the applicant;
2. The general financial condition of the applicant;
3. The likelihood that the applicant will not default on the direct loan;
4. The credit history of the applicant, length of time the applicant has been in existence as well as the success and growth potential of the applicant;
5. The relevant business experience of the applicant and the character of the individuals who are principals of the applicant;
6. The viability of the proposed project and its contribution to the community and creation of jobs; and
7. The quality of the collateral to be offered to secure the loan.

(b) After evaluation of the application by the Authority staff, the application is considered by the Loan Review Committee for review. Final determination of a loan request can only be made by the members of the Authority.

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

(d) The Authority shall have 120 days in which to review the application and advise the applicant that:

1. The application has been approved;
2. The application has been approved contingent on modification;

3. The application has been rejected; or
4. The application is continuing to be considered pending receipt of additional information.

(e) No direct loan approved by the Authority shall be disbursed to an eligible business until that business has forwarded to the Authority a commitment fee of one-half of one percent of the total amount of the direct loan which has been approved by the Board or \$100.00, whichever is greater and a closing fee of one-half of one percent of the total amount of the direct loan which has been approved by the Board. In the case of a line of credit, the fees shall be computed based on the maximum amount of the line of credit.

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

Added new (b), recodifying existing (b)-(d) as (c)-(e). Revised text to explain role of Loan Review Committee in the application evaluation procedure.

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

Revised text.

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

Revised (b).

Amended by R.2000 d.268, effective July 3, 2000.
See: 32 N.J.R. 1490(a), 32 N.J.R. 2444(a).

Rewrote (a) and (b).

12A:31-1.7 Reporting and compliance

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

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

(b) Upon receipt of a direct loan from the Authority, the loan recipient shall be required to submit an annual financial statement prepared on a reviewed basis by a certified public accountant or a public accountant, except that recipients of a direct loan of \$50,000 or less shall be required to submit annual tax returns. The Authority shall accept financial statements prepared at standards higher than required in this subsection.

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

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

In (a), revised time requirement from three months to one year.

In (a)4, added Executive Director provision.

Amended by R.1992 d.82, effective February 18, 1992.

See: 23 N.J.R. 2626(a), 24 N.J.R. 624(a).

Revised text.

Amended by R.2000 d.268, effective July 3, 2000.

See: 32 N.J.R. 1490(a), 32 N.J.R. 2444(a).

Rewrote (b).

12A:31-1.8 Rescission of a direct loan

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

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

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

Amended by R.1991 d.393, effective August 5, 1991.

See: 23 N.J.R. 828(a), 23 N.J.R. 2313(a).

In (a), added phrase: "commitment prior to closing" to text.

Stylistic revisions in rule text.

Amended by R.1992 d.82, effective February 18, 1992.

See: 23 N.J.R. 2626(a), 24 N.J.R. 624(a).

Revised section.

12A:31-1.9 Information confidentiality

(a) All records of the Authority such as minutes, annual reports, program guidelines, regulations, applications for financial assistance and other information not classified as nonpublic information shall be deemed public information available for examination and copying upon request. If the above information is requested by the public and is not readily available and must be photocopied or otherwise reproduced by the Authority, the Authority shall charge a fee of \$.75 each page for pages 1 to 10, \$.50 each page for pages 11 to 20 and \$.25 each page for pages 21 and above. The public may obtain general information concerning Authority programs by contacting the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, PO Box 990, Trenton, New Jersey 08625-0990.

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

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

4. All records concerning financial or proprietary information submitted by applicants for Authority assistance;

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

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

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

Repeal and New Rule, R.1991 d.393, effective August 5, 1991.

See: 23 N.J.R. 828(a), 23 N.J.R. 2313(a).

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

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

Revised (a).

Amended by R.2000 d.268, effective July 3, 2000.

See: 32 N.J.R. 1490(a), 32 N.J.R. 2444(a).

In (a), increased fees.

SUBCHAPTER 2. LOAN GUARANTEE PROGRAM

12A:31-2.1 Applicability and scope

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

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

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

New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises

PO Box 990

Trenton, New Jersey 08625-0990

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

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

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

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

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

Revised (c).

Amended by R.2000 d.268, effective July 3, 2000.

See: 32 N.J.R. 1490(a), 32 N.J.R. 2444(a).

In (c), amended address.

12A:31-2.2 Definitions

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

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

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

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

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

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

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

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

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

"Minority" means a person who is:

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

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

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

“Women” means females, regardless of race.

“Women’s business” means a business in which at least 51 percent of the beneficial ownership of the management are women.

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

Revised text to definition of “Loan guarantee” and added new “Loan Review Committee” definition.

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

Revised “authority”.

Amended by R.2000 d.268, effective July 3, 2000.
See: 32 N.J.R. 1490(a), 32 N.J.R. 2444(a).

In “Loan guarantee”, substituted a reference to commercial loans for a reference to commercial private source loans.

12A:31-2.3 Application for loan guarantee

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

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

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

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

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

Administrative Correction to (d)6:
Beneficiary changed to beneficially.
See: 22 N.J.R. 2330(a).
Amended by R.1991 d.394, effective August 5, 1991.
See: 23 N.J.R. 830(a), 23 N.J.R. 2314(a).

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

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

Revised (d)4.

Amended by R.2000 d.268, effective July 3, 2000.

See: 32 N.J.R. 1490(a), 32 N.J.R. 2444(a).

In (c), substituted “if available, and” for “including” following “business plan”.

12A:31-2.4 Allocation of loan guarantee assistance

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

(b) Of the financial assistance allocated by the Authority from sources other than those funds made available pursuant to the provision of N.J.S.A. 5:12–181, 50 percent shall be made available to small businesses, 25 percent shall be made available to minorities, and 25 percent shall be made available to women.

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

1. For the purpose of fixed asset acquisition for an eligible business, the term of the loan guarantee shall not exceed a period of 10 years. The maximum amount of the guarantee shall not exceed \$1,000,000 or 90 percent of the loan balance, whichever is less.
2. For the purpose of acquiring working capital for an eligible business, the term of the loan guarantee shall not exceed a period of 10 years. The maximum amount of the guarantee shall not exceed \$600,000 or 90 percent of the loan balance, whichever is less.

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

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

Stylistic revisions throughout text.

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

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

Revised (c)1 and 2.

Amended by R.2000 d.268, effective July 3, 2000.

See: 32 N.J.R. 1490(a), 32 N.J.R. 2444(a).

In (a) and (b), deleted P.L. references.

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

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

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

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

1. The debt to equity ratio of the applicant;

2. The general financial condition of the applicant;
3. The likelihood that the applicant will not default on the loan for which it seeks the guarantee; and
4. The credit history of the applicant, length of time the applicant has been in existence as well as the success and growth potential of the applicant;
5. The relevant business experience of the applicant and the character of the individuals who are principals of the applicant;
6. The viability of the proposed project and its contribution to the community and creation of jobs; and
7. The quality of the collateral to be offered to secure the loan.

(b) After evaluation of the application by the Authority staff, the application is considered by the Loan Review Committee for review. Final determination of a loan request can only be made by the members of the Authority.

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

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

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

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

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

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

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

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

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

Revised (a) and (b).

Amended by R.2000 d.268, effective July 3, 2000.

See: 32 N.J.R. 1490(a), 32 N.J.R. 2444(a).

Rewrote (a) and (b).

12A:31-2.7 Reporting and compliance

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

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

(b) Upon receipt of a loan guarantee from the Authority, the loan guarantee recipient shall be required to submit an annual financial statement prepared on a reviewed basis by a certified public accountant or a public accountant. Recipients of a loan guarantee of less than \$50,000 shall be required to submit tax returns. The Authority will accept financial statements prepared at standards higher than required herein.

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

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

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

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

In (a)4: added Executive Director provision.

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

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

Revised (b).

Amended by R.2000 d.268, effective July 3, 2000.

See: 32 N.J.R. 1490(a), 32 N.J.R. 2444(a).

Rewrote (b).

12A:31-2.8 Rescission of a loan guarantee

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

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

(b) Upon determination by the Authority that a loan guarantee shall be rescinded, the Authority shall send a

certified letter, return receipt requested, to the loan recipient informing it of the rescission.

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

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

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

12A:31-2.9 Information confidentiality

(a) All records of the Authority such as minutes, annual reports, program guidelines, regulations, applications for financial assistance and other information not classified as nonpublic information shall be deemed public information available for examination and copying upon request. If the above information is requested by the public and is not readily available and must be photocopied or otherwise reproduced by the Authority, the Authority shall charge a fee of \$.75 each page for pages 1 to 10, \$.50 each page for pages 11 to 20 and \$.25 each page for pages 21 and above. The public may obtain general information concerning Authority programs by contacting the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, PO Box 990, Trenton, New Jersey 08625.

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

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

4. All records concerning financial or proprietary information submitted by applicants for Authority assistance;

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

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

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

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

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

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

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

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

Revised (a).

Amended by R.2000 d.268, effective July 3, 2000.

See: 32 N.J.R. 1490(a), 32 N.J.R. 2444(a).

In (a), increased fees.

SUBCHAPTER 3. (RESERVED)