

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

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

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

Deleted (c), barring bond purchaser from being substantial owner or user of project; and recodified former (d) and (e) as (c) and (d).

**19:31-1.3 Bond financing**

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

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

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

**19:31-1.4 Eligibility standards**

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

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

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

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

(c) There is no minimum size for borrowings under the program, but loan requests of less than \$750,000 should be carefully reviewed by the applicant to assure that participation in the program is cost effective.

(d) Tax-exempt bonds are subject to the terms and conditions of the Internal Revenue Codes (IRC); therefore, it is advisable to consult with financial and legal advisors to determine the eligibility of the project.

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

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

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).

In (d), deleted last sentence, relating to tax exemptions for interest income.

**19:31-1.5 Application procedures**

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

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

(c) The Application includes requests for information about:

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

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

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

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

**19:31-1.6 Bond counsel review and fees**

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

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

- i. The project qualifies for Authority assistance;
- ii. The Authority has taken all necessary steps to accomplish the transaction; and
- iii. The interest income to be earned on the Authority bonds issued for the project is exempt from most Federal and/or State income taxes.

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

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

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

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

#### 19:31-1.7 Approval process

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

(b) The following approvals are required:

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

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

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

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

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

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

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

iii. Availability under the State volume cap or carry-forward bond allocation for bond financing in accordance with the IRC; and

3. Approval of the Governor.

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

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

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

#### 19:31-1.8 Attorney General review

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

#### 19:31-1.9 Post-closing review

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

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

## 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 three types of guarantees available: Fixed Asset Guarantees, Working Capital Guarantees and Special 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.

(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.

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).

### 19:31-2.2 Eligibility standards

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

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

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

### 19:31-2.3 Application procedures

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

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

(c) A completed Application includes:

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

(d) The Authority may also require:

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

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

#### 19:31-2.4 Evaluation process

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

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

(b) After completing (a) above, a determination is made as to the merits of the request, the likelihood of repayment,

and the adequacy of the collateral available to secure the requested financing.

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

#### 19:31-2.5 Approval process

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

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

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

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

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

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