

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 assistance. For purposes of this sub-subparagraph and the transaction documents, the following words and terms shall have the

following meanings, unless the context clearly indicates otherwise:

"Base years" means the first two complete calendar years following the approval by the members provided, however, that, at its discretion, an approved applicant may notify the Authority that the base years have terminated prior to such date, and further provided that in those instances where significant construction/renovation of the project requires a certificate of occupancy to be awarded prior to occupancy of the project site, the base years will commence upon the issuance of a certificate of occupancy by the municipality.

"Designated industries" means a business engaged in the field of biotechnology, pharmaceuticals, financial services, transportation and logistics, advanced computing, advanced materials, electronic device technology, environmental technology or medical device technology as these terms are more particularly defined in N.J.A.C. 19:31-10.2.

"Disaster recovery center" means a redundant facility used to house back-up systems to be used in the event of a business interruption at the primary facility of the business.

"Employment compliance period" means with respect to net new full-time permanent jobs to be created, the five consecutive years immediately following the base years. Compliance with other covenants required by the transaction documents may be longer than the employment compliance period.

"Full-time permanent job" means a job filled by a full-time employee as that term is defined at N.J.A.C. 19:31-10.2.

"Manufacturing business" means a business in which more than 50 percent of the business conducted is the transformation of raw materials into finished goods for sale.

"Net new full-time permanent job" means the full-time permanent jobs created. "Net new full-time permanent job" shall not include any person who was previously employed in New Jersey by the business or by a related person as defined in N.J.S.A. 54:10A-5.5 if the employee is transferred to the business which is the subject of the application unless the employee's position at his or her previous employer is filled by a new employee.

"Structured finance assistance" means the program set forth in this sub-subparagraph, whereby the Authority purchases machinery, equipment, furniture, leasehold improvements or construction materials using the sales tax exemption granted to the Authority pursuant to N.J.S.A. 54:32B-9 and leases such items to an approved applicant.

(A) Eligibility. In order to be eligible for structured finance assistance, an applicant shall:

I. Demonstrate that the project is a designated industry as that term is defined in N.J.A.C. 19:31-10.2; and is located either in a Metropolitan Planning Area (PA 1), Suburban

Planning Area (PA 2), designated center or an area designated for growth in a plan that has been endorsed by the New Jersey State Planning Commission at N.J.S.A. 52:18A-196 et seq.;

II. Demonstrate to the Authority that it has viable options to locate the project out of the State, has been offered economic incentives by a competing state and that, without the structured finance assistance, the applicant will not relocate or expand the project in the State;

III. Create a minimum 10 net new full-time permanent jobs for manufacturing businesses and designated industries. For disaster recovery centers which will increase the tax base of the State or any political subdivision of the State, the Authority may waive the requirement for the creation of net new full-time permanent jobs.

IV. For manufacturing businesses and designated industries, demonstrate that the business is making a minimum capital investment in the facility of \$10,000,000. For disaster recovery centers, demonstrate that the business is making a minimum capital investment in the facility of \$15,000,000.

V. The business is not eligible for assistance under structured finance if the business is eligible for assistance under the Sales Tax Exemption component of the Business Retention and Relocation Assistance Act, P.L. 2004, c. 65, as amended. The business is not eligible for assistance under structured finance if the business has entered into an agreement for a Business Employment Incentive Program Grant at the project site (P.L. 1996, c. 26 as amended).

(B) Program requirements. Eligible applicants for structured finance assistance must comply with the following requirements:

I. The Authority's exposure (if any) shall not exceed \$50,000 per full-time permanent job;

II. The maximum time allowed for acquisition of machinery, equipment, furniture and fixtures, leasehold improvements or construction materials shall be five years from the approval by the members of the project although the actual lease term may be for a longer period; and

III. Structured finance assistance shall have a rolling cap of \$40 million of sales tax benefit per two-year period based on the State's fiscal year. In the event that the rolling cap is met, the EDA may seek the approval of the State Treasurer to exceed the cap and shall only proceed with the administration of the sales tax

benefit with the State Treasurer's written approval. By example, if the sales tax benefit approved in fiscal year 1 was \$18 million, the amount available for approval in fiscal year 2 would be \$22 million.

(C) If a firm does not meet their projections for net new full-time permanent jobs, it shall return to the State a proportionate percentage of the sales tax benefit.

(D) Fees are as follows:

I. A non-refundable application fee of \$1,000 shall accompany every application for assistance.

II. A closing fee of \$25,000 shall be paid to the Authority by the business at the time of closing.

III. A lease origination fee equal to 10 percent of the sales tax benefit shall be paid to the Authority by the business at the lease tranche closing(s), as they occur.

IV. A sales and use tax exemption letter fee of \$500.00 per year for each year a letter is issued by the Authority shall be paid to the Authority by the business.

V. An asset re-acquisition fee equal to 10 percent of the residual value of the machinery, equipment, furniture and fixtures shall be paid to the Authority by the business. The residual value will have a floor of one percent of the original purchase price and sales tax allocable to the residual value.

4. Under the Film Production Assistance Program:

i. The Authority may provide guarantees of private loan(s) in eligible film projects. The maximum amount of Authority assistance shall be the lesser of \$1.5 million or 30 percent of the private loan(s);

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.

5. Under the Smart Growth Pre-development Guarantee Program:

i. The amount of the Authority guarantee shall not exceed \$1.0 million;

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;

iii. The financing proceeds 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; and

iv. Applicants for Smart Growth Pre-development Guarantee shall have projects which must be located either in Planning Areas 1 or 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.

6. Under the Angel Investor Program, the Authority may guarantee a portion of a loan or equity investment by an individual or business to an early stage company for a period not to exceed five years. The amount of the guarantee shall not exceed \$500,000.

(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. Smart Growth Pre-development guarantees have a maximum term of three years. 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.

Amended by R.2004 d.346 and d.347, effective September 20, 2004.

See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a), 36 N.J.R. 2616(a), 36 N.J.R. 4322(a).

Rewrote (c); in (d), added the second sentence.

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

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

Rewrote (c).

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

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

In (c), added definitions "Designated industries", "Disaster recovery center", and "Manufacturing business", rewrote definitions "Employment compliance period" and "Net new full-time permanent job", rewrote (A), deleted former (C), recodified and rewrote former (D) as (C), added (D).

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 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 \$750,000 for fixed asset financing and \$500,000 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.

(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) 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 (g)1 below or a variable interest rate as provided in (g)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).

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 (g)1 above.

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

(h) 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. 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.

(i) 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.

(j) Notwithstanding (i) 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 (i)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.

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

(l) 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 Markets 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 (l)4i through iii below and must have at least one of the characteristics described in (l)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).

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 “,” 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;
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, 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.

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

2. With the exception of the New Jersey Growth Fund, 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 a collateral assignee.

3. With the exception of the New Jersey Growth Fund, 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).

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)2 and 3.

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 closing, 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".