

(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 PROGRAMS

19:31-2.1 Program description

(a) The Authority is empowered to guarantee a portion of the principal amount of a financing which would increase or maintain employment and/or tax ratables in New Jersey, and which would not be made without the guarantee.

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

(c) There are four types of guarantees available: Fixed Asset Guarantees, Working Capital Guarantees, Special Guarantees, and Smart Growth Pre-development 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 \$1.5 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 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.

(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).

Amended by R.2008 d.89, effective April 7, 2008.
See: 39 N.J.R. 5071(a), 40 N.J.R. 1927(b).

In (c)2i, substituted "\$1.5 million" for "\$1 million".
Amended by R.2009 d.38, effective January 20, 2009.
See: 40 N.J.R. 5954(a), 41 N.J.R. 638(a).

Deleted (c)6.
Amended by R.2010 d.285, effective December 6, 2010.
See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In the introductory paragraph of (c), substituted "four" for "five", and deleted "Film Production Program Assistance Guarantees" following "Special Guarantees,"; deleted (c)4; and recodified (c)5 as (c)4.

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.

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).

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Deleted (e); and recodified (f) as (e).

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.

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.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In (a)7, inserted "and" at the end; in (a)8, substituted a period for "and" at the end; and deleted (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 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 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).

Amended by R.2009 d.38, effective January 20, 2009.

See: 40 N.J.R. 5954(a), 41 N.J.R. 638(a).

In (d)2 and (d)3, deleted "Angel Investor Program guarantee and the preceding "Structured".

19:31-2.6 Attorney General review

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

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

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

SUBCHAPTER 3. DIRECT LOAN PROGRAM

19:31-3.1 Program description

(a) The Authority is empowered to make direct loans to applicants which are unable to obtain funding from conventional sources even with the help of an Authority guarantee.

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

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

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

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

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

5. For the urban loan product, the maximum loan amount will be \$3 million, not to exceed 50 percent of the total project costs, for those projects wherein the tenant or owner will provide from non-Authority sources a capital investment of under \$70 million; and \$5 million for those projects wherein the tenant or owner will provide from non-Authority sources a capital investment of over \$70 million.

6. For the Edison Innovation Angel Growth Fund, the Authority may award up to \$250,000 in convertible debt financing to leverage private angel investments, on a two to one angel matching fund requirement, to a business that has generated a minimum of \$500,000 in prior 12-month commercial revenues; for the Edison Innovation VC Growth Fund, the Authority may award up to \$1 million in convertible debt financing to leverage institutional venture backed investments or strategic investments that may be made by a variety of sources, including, but not limited to, commercial or institutional entities, nonprofit organizations with a similar focus, or universities, all of whom are interested in providing funding to advance the business in which they invest, on a one to one matching fund requirement, to a business that has generated a minimum of \$500,000 in prior 12-month commercial revenues; and, for the Edison Innovation Growth Stars Fund, the Authority may award up to \$500,000 in convertible debt financing, on a one to one matching fund requirement, to a business that has generated a minimum of \$2 million in prior 12-month commercial revenues. Except as otherwise provided, the total amount of assistance that a business may receive under the various programs funded by the Edison Innovation Fund, or any similar assistance provided by any other State agency, shall not exceed \$1 million dollars. Notwithstanding the foregoing, any amount received by a

business under the Edison Innovation Growth Stars Fund, Edison Innovation Clean Energy Manufacturing Fund, and Edison Innovation Green Growth Fund, shall not be considered in the \$1 million dollar limit.

7. For the Loans to Lenders component of the Fund for Community Economic Development, the maximum loan amount will not exceed \$750,000, except that Loans to Lenders may be used to develop grocery stores and supermarkets with a maximum loan amount of \$3 million, provided that no more than \$4 million will be used for this purpose. For the pre-development assistance component of the Fund for Community Economic Development, the maximum loan amount will not exceed \$50,000 per project.

(c) Proceeds of fixed asset loans can be used for the acquisition of land, buildings, machinery and equipment, the expansion of an existing building or the renovation of machinery, equipment, and buildings.

(d) Proceeds of working capital loans can be used for refinancing of existing debt, purchase of inventory, or operating expenses.

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

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

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

(h) The Authority shall determine the term, and fixed and/or variable rates of interest, including interest rate floors, to be charged for each loan product through consideration and official action of the Members at a public hearing. The applicant shall elect in writing, at or prior to the time of closing, a fixed interest rate or at a variable interest rate.

1. Fixed Rate Interest: Interest on fixed asset or working capital loans will be fixed at the time of closing, with a floor that shall be indexed to a nationally recognized financial index, such as the five-year United States Treasury Bond of like term, plus or minus any additional basis points to be determined by the Authority. During the term

of any loan, a scheduled rate reset shall not result in an increase of more than five percentage points greater than the original calculated interest rate.

2. Variable Rate Interest: Interest on fixed asset and working capital loans will be set with a floor that shall be indexed to a nationally recognized rate, such as the Prime Rate as published in the Wall Street Journal at the time of closing, plus or minus any basis points to be determined by the Authority. 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. The maximum increase in the variable interest rate during the term of the loan will be no more than five percentage points greater than the original calculated interest rate.

3. For fixed and variable rate loans, factors to be considered in establishing additional interest rate basis points above the floor previously established by the Board may include, among others:

- i. An applicant's creditworthiness;
- ii. Amortization schedules;
- iii. The quality of collateral;
- iv. The number of jobs maintained or expanded in New Jersey;
- v. The location/municipality of project;
- vi. The industry type;
- vii. The increase in tax ratable values;
- viii. Leveraging of total project costs to public dollars;
- ix. Whether the business is new to the State or expanding operation in the State; and
- x. Whether the applicant is locating to a former brownfield site.

4. For loans offered under the Edison Innovation Fund, the criteria for determining the rate of interest and additional basis points above the floor previously established by the Board may include the eligibility standards contained in N.J.A.C. 19:31-3.2(f).

5. In addition to any interest charged on an Edison Innovation Angel Growth Fund loan, an Edison Innovation VC Growth Fund loan, and an Edison Innovation Growth Stars Fund loan, the Authority may also require the payment of additional fees and charges, including, but not limited to, warrants, stock, stock options, a percentage of royalties, and a percentage of sales proceeds.

6. The Authority shall provide public notice of the loan terms and interest rates, including interest rate floors, to be charged for all loan products as authorized by the Members

through, among other methods, listing on the agency's website at www.njeda.com.

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

1. Be in an industry or municipality that is targeted by the Authority as set forth in N.J.A.C. 19:30-5 or located in the Port District;
2. Demonstrate to the Authority that it has viable options to vacate the State, has been offered economic incentives by the competing state and, without the special guarantee, the applicant shall not undertake the relocation or expansion in the State; and
3. Create or maintain a minimum of 200 permanent full-time jobs in the State. The Authority's assistance shall not exceed \$50,000 per job created and/or maintained.

(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 \$1,250,000 if it can demonstrate that at least 400 permanent full-time jobs shall be maintained in New Jersey and the Authority's exposure shall 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. For New Market Loans, the projects must be located within areas designated for smart growth land use development and designated by the New Jersey Development and Redevelopment Plan as in Planning Areas One or Two or in 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)2i through iii below and must have at least one of the characteristics described in (l)3 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.

3. 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.

4. 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.

(m) For Small Businesses, Minorities' and Women's Enterprises loans:

1. 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 N.J.S.A. 5:12-181;

2. Of the financial assistance allocated by the Authority from sources other than those funds made available pursuant to 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;

3. For the purposes of financial assistance provided by the Authority pursuant to this subsection:

i. A small business is 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 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;

ii. A minority business is a business in which at least 51 percent of the beneficial ownership of the business is held by minorities and the majority of the management are minorities; and

iii. A women's business is a business in which at least 51 percent of the beneficial ownership of the business is held by women, and the majority of the management are women; and

4. Each application for a loan shall be accompanied by 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.

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 (I).

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

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

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

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

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

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

Amended by R.2008 d.271, effective September 15, 2008.

See: 40 N.J.R. 2659(a), 40 N.J.R. 5247(a).

Rewrote (h); deleted former (i); recodified former (j) through (m) as (i) through (I); in (j), substituted "(i)" for "(j)" and "(i)2" for "(j)2"; in (k), substituted "(i) and (j)" for "(j) and (k)"; deleted (I)2 and (I)3 and

recodified former (f)4 through (f)6 as (f)2 through (f)4; in the introductory paragraph of (f)2, substituted "Loans" for "loans", "in" for "is" following "Two or", "tracts" for "tracks", "(f)2i" for "(m)4i" and "(f)3" for "(m)5".

Amended by R.2008 d.294, effective October 6, 2008.

See: 40 N.J.R. 3980(a), 40 N.J.R. 5845(c).

Rewrote (b)5.

Amended by R.2009 d.139, effective April 20, 2009.

See: 41 N.J.R. 394(a), 41 N.J.R. 1891(a).

Added (b)7.

Amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Added new (h)3ii; and recodified former (h)3ii through (h)3ix as (h)3iii through (h)3x.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Added (m).

Amended by R.2011 d.195, effective July 18, 2011.

See: 43 N.J.R. 955(a), 43 N.J.R. 1602(b).

Rewrote (b)6 and (h)1; and in (h)5, substituted "Edison Innovation Angel Growth Fund loan, an Edison Innovation VC Growth Fund loan, and an Edison Innovation Growth Stars Fund loan" for "Edison Innovation R&D Fund loan."

Amended by R.2012 d.101, effective May 21, 2012.

See: 44 N.J.R. 433(a), 44 N.J.R. 1644(a).

In (b)7, substituted "\$750,000" for "\$500,000".

Amended by R.2013 d.036, effective February 19, 2013.

See: 44 N.J.R. 2944(a), 45 N.J.R. 359(b).

In (b)6, substituted "\$1 million" for the second occurrence of "\$500,000" and inserted the last two sentences.

Amended by R.2013 d.082, effective June 3, 2013.

See: 45 N.J.R. 457(a), 45 N.J.R. 1413(b).

In (b)6, inserted "or strategic investments that may be made by a variety of sources, including, but not limited to, commercial or institutional entities, nonprofit organizations with a similar focus, or universities, all of whom are interested in providing funding to advance the business in which they invest".

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 Edison Innovation Fund loans, projects will be considered eligible if they have the following characteristics:

1. A commercially available product which meets the Authority's programmatic requirements in revenue thresholds, that is, for the Edison Innovation Angel Growth Fund and the Edison Innovation VC Growth Fund, a minimum \$500,000 in prior 12-month commercial revenues; and, for the Edison Innovation Growth Stars Fund, a minimum of \$2 million in prior 12-month commercial revenues;
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; and
7. A current and complete business plan including a detailed financial model.

(g) For Edison Innovation Fund loans, a business shall not be eligible as follows:

1. A business that has received assistance under the Edison Innovation Fund from the Authority or similar assistance provided by any other State agency, shall not be eligible for the Edison Innovation Angel Growth Fund.
2. A business shall not be eligible for assistance under the Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, or the Edison Innovation Growth Stars Fund, if the business has received assistance under the New Jersey Board of Public Utilities' Edison Clean Energy Manufacturing Fund and/or the Edison Innovation Green Growth Fund.

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).

Amended by R.2008 d.271, effective September 15, 2008.

See: 40 N.J.R. 2659(a), 40 N.J.R. 5247(a).

In the introductory paragraph of (f), substituted "Edison Innovation" for "New Jersey Growth".

Amended by R.2011 d.195, effective July 18, 2011.

See: 43 N.J.R. 955(a), 43 N.J.R. 1602(b).

Rewrote (f)1; in (f)6, inserted "and" at the end; in (f)7, substituted a period for "; and" at the end; deleted (f)8 and (f)9; and added (g).

Amended by R.2013 d.036, effective February 19, 2013.

See: 44 N.J.R. 2944(a), 45 N.J.R. 359(b).

Rewrote (g)2.

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.