

19:31-1.4 Eligibility standards

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

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

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

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

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

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

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

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

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

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

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

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

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

19:31-1.5 Application procedures

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

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

(c) The Application includes requests for information about:

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

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

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

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

19:31-1.6 Bond counsel review and fees

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

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

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

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

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

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

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

19:31-1.7 Approval process

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

(b) The following approvals are required:

1. A preliminary resolution prepared by bond counsel making certain affirmative findings and determinations concerning the eligibility for assistance.
 - i. Such official action permits an applicant to begin making expenditures on the project without jeopardizing the tax-free eligibility.
 - ii. If an applicant makes substantial expenditures on a project prior to such official action, the expenditures may not be eligible for tax-free financing. The applicant should consult with bond counsel for advice as to how the IRC applies to expenditures.
 - iii. A preliminary approval is not by itself sufficient authorization to permit the issuance of bonds;
2. A final bond resolution prepared by bond counsel authorizing bonds to be issued, subject to the following:
 - i. Receipt of a written commitment acceptable to the Authority from a bond purchaser;

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

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

3. Approval of the Governor.

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

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

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

19:31-1.8 Attorney General review

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

19:31-1.9 Post-closing review

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

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

SUBCHAPTER 2. LOAN GUARANTEE PROGRAM

19:31-2.1 Program description

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

(b) The Authority is empowered to own and lease equipment and/or real estate to eligible applicants. An applicant for a structured finance shall demonstrate that it meets the criteria for a special guarantee at (b)3ii(4) or (b)3iii below.

(c) There are three types of guarantees available: Fixed Asset Guarantees, Working Capital Guarantees and Special Guarantees.

1. Under the Fixed Asset 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 either be:

(1) A taxable or tax-exempt Authority-issued bond financing (see N.J.A.C. 19:31-1); or

(2) Any other form of financing other than as stated in (b)1ii(1) above, including, but not limited to, bank loans, lease financing, seller take-back financing, Federal take-back financing and financings described in (b)3ii(1) and (2) below ("conventional financing");

iii. Proceeds of guaranteed conventional financing can be used for the acquisition of land, buildings, machinery and equipment, the expansion of an existing building or the renovation of machinery, equipment, and buildings; and

iv. Use of the proceeds of tax-exempt bond financing is governed by the Internal Revenue Code.

2. Under the Working Capital Guarantee program:

i. The Authority may guarantee the lesser of \$1 million or 90 percent of the principal amount of the financing;

ii. The financing can be either a conventional financing or an Authority-issued tax-exempt or taxable bond (see N.J.A.C. 19:31-1), subject to the terms and conditions of the Internal Revenue Code; and

iii. The financing proceeds can be used for refinancing of existing debt, purchase of inventory, or operating expenses.

3. Under the Special Guarantee program:

i. The Authority may guarantee any amount;

ii. The Authority guarantee shall be of:

(1) A loan or guarantee from a governmental entity which may be the Federal or State government, a department of the Federal or State government, an agency of the Federal or State government or a political subdivision of the State of New Jersey;

(2) A loan made under the Community Lending Program of the Federal Home Loan Bank of New York;

(3) Bonds issued by the Authority as a part of a bond issue for the benefit of multiple borrowers (whether or not such bond issue consists of multiple series of bonds issued for the benefit of individual borrowers); or

(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;

iii. Notwithstanding (b)3ii(4) above, a company that is not targeted by the Authority as set forth in N.J.A.C. 19:30-5, but can meet the criteria set forth in (b)3ii(4)(B) above shall be eligible for a special guarantee if it can demonstrate that at least 400 permanent full-time jobs will be maintained in New Jersey and the Authority's exposure shall not exceed \$50,000 per job maintained.

(d) Both the Fixed Asset Guarantee and the Working Capital Guarantee have a maximum term of 10 years for the guarantee, although the financing can be for a longer term. A Special Guarantee term shall not exceed the term of the financing.

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

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

In (b), substituted "three types" for "two types" and added "and Special Guarantees"; in (b)1ii(1), inserted "Authority issued"; added (b)1ii(2); substantially amended (b)2ii; in (b)iii, substituted "financing proceeds" for "loan proceeds"; inserted (b)3; and in (c), added last sentence.

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Inserted a new (b); recodified former (b) and (c) as (c) and (d); and in the new (c)3, inserted "or locate to another state" following "State" in ii(4)(B), and substituted a reference to companies for a reference to existing New Jersey companies in iii.

19:31-2.2 Eligibility standards

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

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

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

19:31-2.3 Application procedures

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

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

(c) A completed Application includes:

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

(d) The Authority may also require:

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

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

19:31-2.4 Evaluation process

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

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

(b) After completing (a) above, a determination is made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financing.

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

19:31-2.5 Approval process

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

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

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

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

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

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

3. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) When the commitment letter has been accepted by the applicant and the bank, and returned to the Authority, a list of closing instructions is mailed to the attorneys for the applicant and bank.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the guarantee is delivered to the lender.

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

19:31-2.6 Attorney General review

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

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

SUBCHAPTER 3. DIRECT LOAN PROGRAM

19:31-3.1 Program description

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

(b) Direct loans are available in a maximum amount of \$500,000 for fixed asset financing and \$250,000 for working capital.

(c) Proceeds of fixed asset loans can be used for the acquisition of land, buildings, machinery and equipment, the

expansion of an existing building or the renovation of machinery, equipment, and buildings.

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

(e) Interest on fixed asset and working capital loans is fixed at a rate no less than five 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. Factors to be considered when establishing an interest rate may include the project's location-municipality, the industry type, the leveraging of total project cost to public dollars, the employment impact to public dollars, whether the business is new to the State or expanding operations in the State and the increase in the tax ratable value.

(f) The term of a fixed asset or working capital loan is a maximum of 10 years, although the repayment schedule is usually for a shorter time based on the applicant's ability to repay.

(g) The Authority may make direct loans in excess of \$500,000 and up to \$2 million for fixed assets. An applicant for a direct loan in excess of \$500,000 shall:

1. Be in an industry or municipality that is targeted by the Authority as set forth in N.J.A.C. 19:30-5 or located in the Port District;

2. Demonstrate to the Authority that it has viable options to vacate the State, has been offered economic incentives by the competing state and, without the special guarantee, the applicant shall not undertake the relocation or expansion in the State; and

3. Create or maintain a minimum of 200 permanent full-time jobs in the State. The Authority's assistance shall not exceed \$50,000 per job created and/or maintained.

(h) Notwithstanding (g) above, an existing New Jersey company that is not targeted by the Authority as set forth in N.J.A.C. 19:30-5, but can meet the criteria set forth in (g)2 above shall be eligible for a direct loan in excess of \$500,000 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.

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

Amended by R.1992 d.126, effective March 16, 1992.
See: 24 N.J.R. 177(b), 24 N.J.R. 970(b).

Revised (e):

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

Amended by R.1997 d.270, effective July 7, 1997.
See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

Added (g) through (i).

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (g)1, substituted "or" for "and" following "industry".

19:31-3.2 Eligibility standards

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

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

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

(c) The applicant must demonstrate to the Authority that it is unable to obtain conventional, affordable financing on its own or with the availability of an Authority guarantee.

19:31-3.3 Application procedures

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

(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;

(c) Upon transfer of ownership of any real estate for which a loan was made from the Fund or a loan was guaranteed by the Fund, the unpaid balance of the loan shall become immediately due and payable.

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.2000 d.297, effective July 17, 2000.
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).
Rewrote (b).

19:31-8.5 Amount of financial assistance and grants

(a) Financial assistance and grants may be for up to 100 percent of the estimated applicable Remediation costs, except that the cumulative maximum amount of financial assistance to a person other than a municipal governmental entity in any calendar year, for one or more properties, shall be \$1,000,000.

(b) Financial assistance and grants to any one municipal governmental entity or NJRA shall not exceed \$2,000,000 in any calendar year.

(c) Grants to an innocent party may be for up to 50 percent of the remediation costs except that no grant may exceed \$1,000,000.

(d) The amount of financial assistance or grant shall be based upon a scope of work for remediation which is in compliance with N.J.A.C. 7:26D, 7:26E, 7:26B and 7:14B as applicable.

Amended by R.2000 d.297, effective July 17, 2000.
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (a), deleted "and grants" following "assistance"; and in (b), inserted "or NJRA" following "entity".

19:31-8.6 Priority system for financial assistance and grants

(a) An eligible proposal, as determined by the Department, for financial assistance or a grant from the Fund shall be given priority for financial assistance or a grant by the Authority based on the date of receipt by the Authority of a completed application and the availability of sufficient moneys in the Fund for the purpose of the financial assistance or grant, subject to credit approval by the Authority and other criteria as established by this rule.

1. Availability of sufficient moneys in the Fund will be determined in accordance with the allocation method required by section 28(a) of the Act.

2. The Executive Director of the Authority and the Commissioner of the Department, or their designees, shall, from time to time, review the allocation of moneys in the Fund and the requirements of applicants for money from the fund and reallocate the moneys to the extent permissible under section 28(a) of the Act.

(b) Notwithstanding (a) above, top priority for financial assistance or grants will be given to persons, municipal

governmental entities or the NJRA for remediation activities at sites which involve an imminent and significant threat of a discharge of a hazardous substance or hazardous waste and the discharge or threatened discharge poses an imminent and significant threat to a public water source, to human health or to a sensitive and significant ecological area as determined by the Department in accordance with section 28(a)3 of the Act.

Amended by R.2000 d.297, effective July 17, 2000.
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).
In (b), inserted a reference to the NJRA.

19:31-8.7 Application for financial assistance and grants

(a) Upon determination of eligibility by the Department, the Department will notify the Authority of the eligibility of the applicant, and the total amount of remediation costs and the amount of remediation costs for which the applicant is unable to establish a remediation funding source.

(b) The Department shall forward the approved application to the Authority for further processing. The Authority shall have the discretion to request any additional information from the applicant and/or from the Department which it deems necessary in order to complete its evaluation of the application. An application shall be deemed to be complete at such time as the Authority has received all required information in the required form.

(c) The applicant will be given priority for financial assistance and grants based on the date of receipt by the Authority of a completed application.

(d) If the application is determined by the Authority to be incomplete, the applicant will have 30 days from receipt of written notice of incompleteness to file any additional information required by the Authority. Notwithstanding anything in this section to the contrary, in the event the applicant submits the additional information in the required form within the 30 day period, the application shall be deemed complete as of the initial application submission date.

(e) If the applicant fails to file the additional information within the 30 day period, the filing date for the application shall be the date the additional information is received by the Authority.

(f) A completed application shall include, if applicable as determined by the Authority:

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 or grant 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, or, for an individual, copies of tax returns for the three most recent years.

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. In the case of a loan guarantee, a formal commitment letter from the lender providing the loan, including the terms, conditions, collateral and a statement of the requirement for the Authority guarantee.

(g) 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.

(h) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Authority Members at a public meeting. Within 45 days of the receipt of a completed application, a determination will be made to recommend approval to the Members or deny the application. The applicant has no right to have its application presented to the Members.

Administrative Correction.

See: 26 N.J.R. 2462(b).

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote (b); inserted references to grants in (c) and (f)2; and in (d), added a second sentence.

19:31-8.8 Evaluation process for financial assistance and grants

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

1. Visitation to the applicant's place of business;

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 municipal government entities, all Local Finance Board requirements must be satisfied.

(b) After completing (a) above, a determination shall be made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financial assistance.

(c) If a positive determination is made, the requested financial assistance shall be presented to the Members for approval.

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)9.

19:31-8.9 Approval process for financial assistance and grants

(a) Only the Members can approve a financial assistance or a grant.

(b) When the Members approve financial assistance or a grant, 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, award closing package, notice of approval of financial assistance, or grant, is issued to the applicant.

1. The notice of approval will contain all material terms, conditions and collateral required by the Authority and will include 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) Within 90 calendar days for a private entity, or within 180 calendar days for a municipal governmental entity or NJRA, of receipt of the notice of approval of financial assistance or grant application, an applicant shall submit to the Authority an executed contract for the remediation activities for which the financial assistance or grant application was made. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for alteration of the applicant's priority ranking for the awarding of financial assistance or a grant.

(f) When the notice of approval has been accepted by the applicant and returned to the Authority within the requisite time frame, a list of closing instructions shall be mailed to the municipality or attorney for the applicant. The Authority's commitment shall terminate and the Authority shall have no further obligation in connection with an application if the notice of approval is not signed and returned to the Authority, together with the applicable fees, within 120 days of its delivery or month's end, whichever is later. In addition, in the event that the financing is not closed on or before 90 days from the date of acceptance, the Authority's obligation to provide financing shall terminate and the applicant shall be required to submit a new application. Upon receipt of a written request, the Authority, in consultation with the Department of Environmental Protection, may consider an extension of time.

(g) When all required documentation is prepared, in form and content satisfactory to the Authority, a closing shall be scheduled and the funds made available to the applicant subject to approval by the Authority.

Administrative Correction.

See: 26 N.J.R. 2462(b).

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.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote (d) and (f); in (e), inserted a reference to grants; and in (g), substituted a reference to closings for a reference to loan closings, and deleted a reference to sponsors.

19:31-8.10 Disbursement of financial assistance and grants

(a) All requests for disbursements of the financial assistance or grant must be submitted by the applicant with a certification from the contractor or consultant that the requested moneys will be spent in accordance within a Department approved scope of work and a certification from the applicant that it is in full compliance with all of the terms and conditions of the assistance agreement. Disbursements are subject to certain preconditions, including, among other things, approval by the Department of the remediation contracts and all previously performed work.

(b) The recipient of the financial assistance or grant must provide access, by the Authority and the Department, at reasonable times to the subject property to determine compliance with the terms and conditions of the financial assistance or grant.

(c) In the case of a grant, payment will be conditioned upon the subrogation to the Department of all rights of the recipient to recover remediation costs from the discharger or other liable party. All moneys collected in a cost recovery subrogation action shall be deposited into the Fund.

(d) Where financial assistance to a person other than a municipal governmental entity or the NJRA is for a portion of the remediation cost, the applicant will be required to provide evidence that all moneys for which a remediation funding source has been established, have been expended, before the proceeds of the financial assistance will be disbursed.

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote (a); in (c), substituted a reference to liable parties for a reference to responsible parties, and added a second sentence; and in (d) inserted a reference to the NJRA.

19:31-8.11 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).

19:31-8.12 Fees

Fees for financial assistance and grants will be charged in accordance with the Authority's fee rules (see N.J.A.C. 19:30-6).

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote the section.