

Chapter 314: REGIONAL ECONOMIC DEVELOPMENT REVOLVING LOAN PROGRAM

Summary: This rule establishes the procedures and standards applicable to eligible local, regional or statewide nonprofit or governmental economic development organizations which may receive disbursements from the Regional Economic Development Revolving Loan Program Fund administered by the Authority for purposes of making loans to eligible borrowers in order to create or retain jobs, as well as revitalize downtowns and build strong communities and a sustainable economy, or for quality child care projects. The Authority may make disbursements of up to \$3,500,000 to applicants, pursuant to a contract, and the applicants may make loans of up to \$350,000 to eligible borrowers within the parameters established by this rule. The Authority may also make direct loans to eligible borrowers for quality childcare projects.

SECTION 1. Definitions

Defined Terms. The following terms, some of which are defined in the *Finance Authority of Maine Act*, 10 MRSA §961 *et seq.* (the “Act”), shall have the following meanings in this rule:

- A. “Applicant” means a local, regional or statewide nonprofit or governmental economic development corporation or entity that may have submitted an application for program funds to the Authority.
- B. “Authority” means the Finance Authority of Maine.
- C. “Borrower” means a sole proprietorship, a limited liability company, partnership or corporation which has applied to receive financial assistance pursuant to this program from an applicant pursuant to this program, or, in the case of an applicant seeking a loan for a quality child care project, has applied to receive financial assistance from the Authority.
- D. “Chief Executive Officer” means the Authority's Chief Executive Officer or any person acting under the delegated authority and supervision of the Chief Executive Officer.
- E. “Commitment” means a letter from the Authority signed by the Chief Executive Officer to make a disbursement from the fund to an applicant, or with regard to a quality child care project, to a borrower, on the terms and conditions and subject to the requirements therein.
- F. “Community facilities” means buildings having available at least fifty-one percent (51%) of square footage to be used at least part of the time for public meetings and activities. Such meetings and activities may include services that foster job creation and provide access for individuals in the community to such services as long-term care, respite care, health care, education, and cultural activities.
- G. “Contract” means a contract between the Authority and any applicant for provision of a disbursement from the fund.

- H. “Eligible Project” means a project meeting the criteria set forth in this rule.
- I. “Fund” means the Regional Economic Development Revolving Loan Program Fund, established pursuant to 10 MRSA §1026-M and administered by the Authority.
- J. “Members” means the members of the Board of Directors of the Finance Authority of Maine.
- K. “Mixed-use real estate” means projects involving both housing and commercial activities wherein at least fifty-one percent (51%) of the square-footage is used for commercial purposes.
- L. “Prime Rate” means the lowest bank prime rate of interest as published in the Wall Street Journal.
- M. “Program” means the Regional Economic Development Revolving Loan Program as described in and governed by the Act and this rule.
- N. “Quality child care project” means physical improvements to be made to a site used or to be used for providing, for compensation, regular service of care and protection for any part of a day less than 24 hours to a child or children under 16 years of age whose parents work outside the home, attend an educational program or are otherwise unable to care for their children which (1) meets all required licensing standards; and (2) utilizes recognized quality indicators for child care services approved by the Department of Health and Human Services.
- O. “State” means the State of Maine.
- P. “Value-added natural resource enterprises” means business or commercial activity that adds some additional value to products derived from at least one of Maine’s natural resources such as forests, land and plants, fish, water, wind, and sun.

SECTION 2. Program Implementation and Assistance Provided

The program shall be administered by and is delegated to the Chief Executive Officer. The Authority may provide financial assistance in the form of a disbursement from the fund in an amount up to \$3,500,000 to an eligible applicant, which may in turn, provide financial assistance to eligible borrowers in an amount up to \$350,000 in the form of a loan, in accordance with the Act and this rule. The Authority may also provide financial assistance in the form of direct loans to borrowers for quality childcare projects.

SECTION 3. Advisory Committees/Boards

The Chief Executive Officer may establish advisory committees or boards to assist applicants in developing loan or equity-like debt underwriting and administrative capacity and portfolio monitoring and servicing capabilities.

SECTION 4. Application Procedure and Content (for other than direct loans to borrowers)

- A. From time to time, the Authority shall solicit applications for disbursements from the fund. The Authority shall specify a time within which applicants seeking consideration must have submitted a complete application. Any applications received after such time may be held for future consideration.
- B. Each applicant shall submit an application to the Chief Executive Officer on such forms and with such attachments as the Chief Executive Officer may require consistent with the purposes of the program and this rule.
- C. The Chief Executive Officer will review each application for completeness and eligibility. Applications that are not substantially complete may be deemed not received until completed. The Chief Executive Officer shall determine when an application is received, which determination shall be final.
- D. The application shall contain the following:
 - (1) a description of the applicant, including its funding sources, the region or regions it serves and a summary of all of its direct lending programs, including account balances, lending criteria and default rates;
 - (2) the methods and criteria the applicant employs for qualifying borrowers, including any lending and economic development strategies that target the types of eligible borrowers set forth in Section 9 of this rule;
 - (3) the fees that an applicant intends to charge to a borrower for technical or administrative assistance and for loan commitments;
 - (4) for disbursements not to be used for quality child care projects, the methods by which the applicant will leverage funds from other sources in an amount equal to at least two times the amount requested;
 - (5) the applicant's investment policy;
 - (6) for disbursements not to be used for quality child care projects, the applicant's strategy for creation and retention of jobs (written comprehensive plan for economic development in its area), and its strategy, if applicable, for real estate development including commercial, mixed-use real estate, and community facilities. Such a strategy must be submitted and demonstrated as part of the application process in order to make loans pursuant to Section 9(A)(1)(i);
 - (7) for disbursements not to be used for quality childcare projects, the applicant's existing or proposed small business marketing , and technical assistance plan;
 - (8) a description of the applicant's staff by organizational chart and résumé;
 - (9) the applicant's organizational audits and program audits shall be provided for each year the applicant has administered programs in the three most recent years;

- (10) the applicant's proposed performance measurements and goals including default rates and a process for monitoring compliance therewith;
- (11) the applicant's collateralization plan;
- (12) the amount requested; and
- (13) such other information as the Authority may require.

SECTION 5. Applicant Eligibility (for other than direct loans to borrowers)

In order to approve an application, the Chief Executive Officer must determine that the applicant, either independently or with the assistance of an advisory board or committee or by contract with appropriate agencies, organizations or individuals:

- A. for disbursements not to be used for quality child care projects, is capable of providing financial assistance to businesses in order to create and protect jobs;
- B. is able to prudently and effectively administer a direct loan fund;
- C. is able to coordinate with other business assistance, employment training and social assistance programs;
- D. for disbursements not to be used for quality child care projects, has a strategy for the creation and retention of jobs and, if applicable, a strategy for real estate development including commercial, mixed-use real estate and community facilities;
- E. for disbursements not to be used for quality child care projects, has an effective small business marketing and technical assistance plan;
- F. has enough expert assistance available to it to underwrite, document and service and collect loans and assist its clients; and
- G. can provide funds from other sources in the amounts required pursuant to Section 8(B).

SECTION 6. Disbursements From the Fund (other than direct loans to borrowers)

- A. Upon a determination of eligibility to receive a disbursement from the fund, the Chief Executive Officer shall determine an amount to be disbursed to an applicant that achieves the widest possible geographic range of distribution of funds, as well as the least possible duplication of disbursement of funds in any one region. The Chief Executive Officer shall take into account the following criteria:
 - (1) The size of the region or regions served by the applicant and the demand for loan funds within such region or regions;
 - (2) The relative demand for funds from other eligible applicants;

- (3) Whether the applicant serves statewide or a geographic area or segment of potential borrowers not served by others; and
 - (4) The number of types of eligible projects referred to in Section 9(A) of this rule within the applicant's area.
- B. The maximum total disbursement to any one applicant shall be \$3,500,000.
- C. The Chief Executive Officer may determine that a reasonable and prudent amount shall be retained in the fund despite any application that may be pending in order to have funds available to subsequent applicants. In addition, the Chief Executive Officer may determine that a reasonable and prudent amount shall be specifically designated as available only to those applicants which may be in the process of developing or retaining the necessary expertise, with or without the Authority's assistance, to meet the eligibility requirements of this program. The following criteria shall apply to disbursements from this designated fund:
- (1) The Authority may, in its discretion, determine that an eligible applicant shall receive a disbursement from this designated fund which applicant shall be further subject to the limitations set forth in this subsection. Such a determination will be based primarily on the amount requested, the overall quality of the application and the extent to which receipt of a disbursement from this designated fund will assist in building lending capacity in underserved areas;
 - (2) The Authority may, in its discretion, waive any of the application or eligibility criteria, to the extent not mandated by the Act, in order to achieve wide geographic distribution of program funds and build capacity in underserved areas; and
 - (3) To the extent that an applicant receives a disbursement from this designated fund, such applicant may not make a loan to an eligible borrower in excess of an amount to be set forth in the applicant's contract, without the prior written approval of the Authority.
- D. The Chief Executive Officer shall issue a commitment to an applicant to disburse the determined amount in multiple disbursements upon satisfaction of any terms and conditions set forth therein.
- E. In the event an applicant fails to use the funds allocated to the applicant within two years of the commitment date, the Authority may allocate the funds designated for that applicant to one or more applicants. The Authority will use its best efforts to assure that the funds are reallocated for use in the region or regions for which they were originally designated.
- F. The Chief Executive Officer shall allocate all amounts accrued in the fund from interest earnings on the fund on a "first come, first served" basis to applicants who:
- (1) Have entered into a contract with the Authority;
 - (2) Have disbursed the full amount originally committed to the Applicant;

- (3) Have complied with all terms and conditions of their contract with the Authority;
and
- (4) Identify a specific borrower with an eligible project for use of the new allocation.

SECTION 7. Contracts; Fees and Expenses

An applicant must enter into a contract with the Authority regarding the funds to be disbursed. At a minimum, the contract must specify:

- A. That each applicant shall establish its own revolving loan fund with the monies it receives from the Authority. An applicant may make loans from its own fund within the parameters of this rule.
- B. A loan payment default rate that will be acceptable to the Authority during the term of the contract. To the extent the applicant's actual default rate exceeds that set forth in the contract, the Authority
 - (1) may require that all loans which the applicant proposes to make thereafter be approved by the Authority, until the applicant brings its loan payment default rate into compliance with the contract, and
 - (2) may require that the applicant pay to the Authority an amount equal to the difference between the acceptable default rate set forth in the contract and the actual default rate. A loan payment default shall be defined as any payment that is ninety (90) days or more past due.
- C. That the funds are to be disbursed in periodic installments as the applicant commits to make loans to eligible borrowers, up to the original amount of the total disbursement.
- D. That the applicant will use program funds only for eligible projects, and as otherwise set forth in this rule.
- E. That the applicant will operate its loan program in substantial conformance with its proposal to the Authority.
- F. That except as set forth in Section 6(C), the applicant shall be responsible for review of loan applications from eligible borrowers, determination of eligibility of those borrowers and feasibility of the project and/or approval or denial of those applications. The applicant's determination shall be final in the case of loans under \$150,000 or in the case of denials in any amount. In all cases, the applicant must have the Authority's approval of any loans of \$150,000 or more.
- G. That officers or employees of the applicant or members of any credit committees of the applicant shall be barred from participation in any way and any decision regarding projects which that officer, employee or member has a direct or indirect personal financial interest.

- H. That the Authority may withhold further funding and may require repayment of any undisbursed loan funds and loan repayments including an assignment of all loan documents if the applicant is in breach of its contract.
- I. That the applicant may not use any monies disbursed from the fund (including that portion of loan repayments from borrowers that represent principal repayment) for administrative expenses but may charge a commitment fee of up to two percent (2%) and may use actual interest earnings, not to exceed seven percent (7%) of its outstanding program loans annually, on loans to cover reasonable operating costs, including loan fund management, technical assistance and education. To the extent interest earnings on outstanding program loans accrue, but are not paid by borrowers, these earnings may be used, when and if collected, to offset operating costs which have not been previously paid by other program loan commitment fees and interest earnings, subject to the limitations set forth in this paragraph.
- J. That the applicant shall pay an annual fund administration fee to the Authority equal to one percent (1%) of the amount of the applicant's total disbursement which has been received by the applicant to date. To the extent that fund monies have not been disbursed, the Authority is entitled to a fund administration fee equal to one percent (1%) of those undisbursed amounts, to be derived from interest earned thereon. All such fund administration fees payable by applicants shall be determined and payable beginning on the first anniversary date of the applicant's contract. The Authority may, in its sole discretion, voluntarily reduce the amount of annual fund administration fees for all applicants if the Authority determines that such a fee reduction is warranted. Any such fee reduction may be for a specified period.
- K. That any amounts disbursed to an applicant must be lent to the intended borrower within three (3) months of the applicant's receipt. If not lent within three (3) months, any such monies must be returned to the Authority's fund upon request of the Authority with a written explanation as to why the loan was not made.
- L. Such other terms and conditions as the Authority deems appropriate.

SECTION 8. Loan Terms and Conditions

An applicant, and in the case of eligible quality child care projects, the Authority, may make a loan to an eligible borrower from program funds under the following terms and conditions:

- A. Loans may not exceed \$350,000 to a borrower (including an affiliated entity) for an eligible project, provided, however, for projects other than quality child care projects, approval of the Authority is required for loans of \$150,000 or more, except that those applicants which have received a disbursement from the specially designated fund set forth in Section 6(C) must comply with the limitations set forth therein.
- B. Loans of less than \$50,000 and loans for quality child care projects may be for the total amount of new funds being provided to a borrower. Loans of \$50,000 or more for borrowers other than quality child care projects may not exceed one-half (1/2) of the net new funds being provided to a borrower.
- C. Each applicant shall establish interest rates, amortization schedules and repayment terms

for each borrower except that loans for quality child care projects must bear a rate of interest not greater than 5%, and loans for other eligible projects may not bear a rate of interest greater than the prime rate of interest plus seven percent (7%). Direct loans from the Authority for quality child care projects shall be subject to a 1% commitment fee payable to the Authority at the time the commitment is accepted, and shall bear interest at a rate of 5%. No loan may be for a term longer than twenty (20) years.

- D. When necessary, an applicant may provide for flexible repayment terms and may require additional payments tied to the borrower's financial success.
- E. An applicant shall require collateral for loans but may subordinate to loans from other lenders.
- F. Such other terms and conditions as may be determined by an applicant and approved by the Authority.

SECTION 9. Eligible Projects

- A. In order for a project or borrower to be eligible for financial assistance under the program, the project or borrower must meet the criteria of subsections 2, 3, and 4, below, and must meet the criteria of subsection 1 below, as follows:
 - (1) The borrower has one-hundred (100) or fewer employees or annual sales of \$10,000,000 or less and it consists of or involves at least one of the following:
 - (a) Manufacturing technologies, such as value added wood products, specialty fabricated metal and electronic products, precision manufacturing and use of composites or advanced materials;
 - (b) Technologies, such as advanced information systems, advanced telecommunications, energy and environmental products and services;
 - (c) Value-added natural resource enterprises and biological and natural resources technologies, such as aquaculture, marine technology, agriculture, forestry products and biotechnology;
 - (d) A business converting from defense dependencies;
 - (e) A business significantly engaged in export of goods or services to locations outside the State;
 - (f) A business that dedicates significant resources to research and development activities;
 - (g) Other businesses with fifteen (15) or fewer employees; and
 - (h) A quality child care project.
 - (i) A business significantly engaged in commercial and/or mixed-use real estate and/or community facilities real estate development; and

- (j) A business significantly engaged in serving tourists, such as in the area of outdoor recreation, culture and heritage and hospitality.
 - (2) The borrower is unable to obtain funding needed for the project from other public and private sources including the personal resources of the owners of the business borrowing from the fund.
 - (3) The borrower has committed all reasonably available resources to the project, obtained financial commitment from other sources of financing and demonstrated a reasonable likelihood that the loan can be repaid.
 - (4) The loan is not used to make distributions to or for the benefit of an owner of the business borrowing from the fund or a related entity.
- B. Among eligible borrowers seeking loans for projects other than quality child care projects, an applicant shall give priority to businesses and projects with the potential of meeting one or both of the following objectives:
- (1) The financing will help the borrower pursue a business that adds significant value to raw materials or inventory;
 - (2) The financing is likely to result in a long-term net increase in permanent, quality jobs, which may include ownership or self-employment opportunities that meet a local or regional need or the retention of jobs in jeopardy of being lost.
- C. For loans made by applicants or made directly by the Authority for quality child care projects, not more than \$15,000 of program loan proceeds shall be used for lead abatement.
- D. The Authority shall reserve an amount of no less than \$300,000 from the fund for loans for quality child care projects, whether made by applicants or directly by the Authority.

SECTION 10. Reports

An applicant shall report semiannually to the Authority on the projects being funded and the administration of the program. The report must include a description of each project, the amount, type and terms of assistance the project received, the number of jobs that were created or retained and other information the Authority requires. The report must contain an accounting of the loan portfolio and any loans that are past due, as well as an accounting of the applicant's operating costs incurred and charged to the program.

SECTION 11. Audit

The Authority shall review annually each applicant's participation in the program and may, in its discretion, require an independent audit at the expense of the applicant. If the Authority determines that an applicant has used funds for ineligible purposes, the applicant shall repay those funds to the Authority for deposit into the fund. The Authority may not disburse additional funds to an applicant until it has repaid the misapplied funds and has fully complied with its obligations

under the contract with the Authority. In addition to other fees the Authority is authorized to charge the fund hereunder, the Authority shall be entitled to charge the fund for reasonable costs incurred by the Authority for the performance of the audits described in this Section 11.

SECTION 12. Appeal to the Members

- A. In the event that an applicant's application is rejected by the Chief Executive Officer, the applicant shall have the right to appeal the decision of the Chief Executive Officer to the members. Notice of the appeal, together with a statement of the reasons why the Chief Executive Officer's decision should be reversed or modified, shall be given to the Chief Executive Officer, in writing within 20 days after the date the Chief Executive Officer mails the notice of rejection to the applicant. The appeal shall be heard at a meeting of the members. The applicant must be present to support the appeal. The appeal shall be based on the record before the Chief Executive Officer on the date of the rejection. The decision of the Chief Executive Officer shall be final unless the members determine that the rejection by the Chief Executive Officer was arbitrary, capricious or an abuse of discretion, in which event the members may overturn or modify the decision of the Chief Executive Officer and may direct the Chief Executive Officer to take further action with respect to the application.
- B. In the event that a borrower's application that is reviewed by the Authority in accordance with this rule is rejected by the Chief Executive Officer, the Chief Executive Officer's determination shall be final and there shall be no further right of appeal to the members.

SECTION 13. Waiver of Rule

The Chief Executive Officer may waive any requirement of this rule except to the extent that the requirement is mandated by the Act, in cases where the deviation from the rule is insubstantial and is not contrary to the purposes of the program.

SECTION 14. Effective Date

This rule as amended by Amendment 7 does not take effect unless and until the Authority receives additional funding of at least \$1 million from the State pursuant to bonds issued pursuant to Public Law 2013, Chapter 596, or by state appropriation after January 1, 2015.

STATUTORY AUTHORITY: 10 M.R.S.A. §969-A(14); 10 MRSA §1026-M(11); P.L. 1999, Ch. 401, Part 000; PL 2003, Ch.195; PL 2009, Ch.131; 10 M.R.S. §1026-A

EFFECTIVE DATE:

June 11, 1995 (Original Rule)

AMENDED:

November 2, 1998 (Amendment 1)

January 17, 2000 (Amendment 2)

September 17, 2002 (Amendment 3), changes to sections 2, 6(B) and 7(I)

November 4, 2003 (Amendment 4)

January 3, 2010 (Amendment 5)

June 8, 2011 (Amendment 6)

April 11, 2015 – filing 2015-063 (Amendment 7)

April 24, 2015 – Summary, and Section 9(A) corrected