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RULE PROPOSALS

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

45 N.J.R. 457(a)

Proposed Amendments: *N.J.A.C. 19:30-6.3* and *19:31-3.1*

Administrative Rules; Closing Fees

Authority Assistance Programs; Direct Loan Program

Authorized By: New Jersey Economic Development Authority, Michele Brown, Chief Executive Officer.

Authority: *N.J.S.A. 34:1B-1* et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2013-043.

Submit written comments by May 3, 2013 to:

Maureen Hassett, Senior Vice President
New Jersey Economic Development Authority
PO Box 990
Trenton, NJ 08625-0990

The agency proposal follows:

Summary

The New Jersey Economic Development Authority ("EDA" or "Authority") is proposing an amendment to *N.J.A.C. 19:30-6.3(b)* to establish a fee for certain guaranteed financing where the Authority's interest is subordinated of the existing fee plus 25 basis points. The fee to be paid at closing shall be the current fee established under *N.J.A.C. 19:30-6.3(b)*, which corresponds to the percentage guarantee required (for example, a 25 percent guarantee would incur a guarantee fee of 25 basis points) multiplied by the number of years the guarantee is to be in effect - plus 25 basis points, as proposed.

In addition, language is added to clarify that the existing guaranteed financing fee at *N.J.A.C. 19:30-6.3(b)* pertains to "pari passu" guaranteed financing, where the Authority takes an equal position with other lenders, as distinguished by the proposed new fee for subordinated guarantees, which is intended to assist private lenders through mitigated collateral risk; and, that the calculation of the fee shall be derived by multiplying the dollar amount of the guarantee, as well as the number of years the guarantee is to be in effect, as is current EDA practice.

The new fee structure for guaranteed financing derives from a new EDA pilot program, established in partnership with TD Bank, which will make capital available to New Jersey businesses at reduced rates. Under the program, TD Bank has committed to provide up to \$ 20 million in financing to businesses in year one, which will be backed by up to \$ 10 million in partial, subordinate EDA guarantees. Historically, EDA guarantees have been structured as *pari passu* and this will be the first time that EDA offers subordinate guarantees on term loans and lines of credit.

In addition, the EDA is proposing an amendment to *N.J.A.C. 19:31-3.1(b)6*, which would allow investments other than from institutional venture backed investments for meeting certain matching fund requirements under the Edison Innovation VC Growth Fund.

Currently, the Edison Innovation VC Growth Fund offers a subordinated convertible note of up to \$ 500,000 to support the growth of venture capital supported technology businesses. The program leverages institutional venture backed investments, under a one to one matching fund requirement, in support of early stage, emerging technology and life science businesses that have generated a minimum of \$ 500,000 in prior 12-month commercial revenues for key hires, product iteration/roll out, product enhancement, or marketing/sales.

The proposed amendment would provide that investments from "strategic investors," including, but not limited to, commercial or institutional entities, not-for-profit organizations, or universities, may be used to meet the one to one matching fund requirement under the fund. In recent years, the EDA has observed an increase in investments in emerging technology and life sciences businesses from "strategic investors," that is, investors that take an active involvement in a business's operations and/or provide assistance in raising additional capital, marketing, and sales, etc.

Accordingly, investments from strategic investors have become more attractive to emerging technology and life sciences businesses and the proposed amendment is intended to recognize the option as part of the matching fund requirement under the Edison Innovation VC Growth Fund.

As the Authority has provided a 60-day comment period in this notice proposal, this notice is excepted from the rulemaking calendar requirement pursuant to *N.J.A.C. 1:30-3.3(a)5*.

Social Impact

The proposed amendment at *N.J.A.C. 19:30-6.3* will have a positive social impact by enabling the EDA to advance a new partnership with one of the State's premier banks to leverage the EDA's resources and increase its support to New Jersey businesses. The proposed amendment at *N.J.A.C. 19:31-3.1* will have a positive social impact by enabling emerging technology and life sciences businesses utilizing qualifying investments from strategic investors, to be eligible for EDA assistance provided under the Edison Innovation VC Growth Fund.

Economic Impact

Since 1992, the EDA has successfully partnered with the State's banking community to provide creative and affordable financing solutions to support New Jersey businesses. The proposed amendment at *N.J.A.C. 19:30-6.3* will have a positive economic impact through support of the EDA's new financing program, through which TD Bank will provide term loans and lines of credit of up to \$ 5 million to credit-worthy businesses based in New Jersey, and the Authority would provide subordinate guarantees on individual transactions of up to 50 percent of the TD Bank financing, not to exceed \$ 2 million for fixed asset loans and \$ 1.5 million for permanent working capital loans and \$ 500,000 for lines of credit.

The Edison Innovation VC Growth Fund leverages institutional venture backed investments in support of early stage technology and life sciences businesses through a matching fund requirement, to provide growth capital for key hires, product iteration/rollout, product enhancement, or marketing/sales. The proposed amendment at *N.J.A.C. 19:31-3.1* will have a positive economic impact as more businesses, eligible to participate in the Edison Innovation VC Growth Fund through qualifying investments from strategic investors, commence and/or expand operations in New Jersey.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are not subject to any Federal requirements or standards.

Jobs Impact

The EDA anticipates the proposed amendments will produce greater job creation and retention through increased access to capital by New Jersey businesses under the new financing program; and as a result of expanded opportunities, to meet eligibility requirements under the Edison Innovation VC Growth Fund.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry of the State of New Jersey.

Regulatory Flexibility Analysis

The proposed amendments do not impose any additional reporting, recordkeeping, or other compliance requirements on small business, as defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. The proposed amendment at *N.J.A.C. 19:30-6.3* which establishes a new fee for subordinated guaranteed financing, is required to enable the EDA to ensure that its guarantee fees are reflective of the increased costs and risks associated with such financings. The EDA's existing guarantee fees are structured based on the percentage of the amount of the approved guarantee requested multiplied by the number of years of the guarantee capped at 50 basis points to provide a lower fee for reduced transactions benefiting small businesses requesting less financing, therefore, no differentiation of the new fee for subordinated guaranteed financing has been provided. The proposed amendment at *N.J.A.C. 19:31-3.1* is intended to allow investments from certain strategic investors to be used to meet the one to one matching funds requirement under the Edison Innovation VC Growth Fund and, as no reporting, recordkeeping, or compliance requirements are imposed, there is no impact on businesses of any size.

Housing Affordability Impact Analysis

The proposed amendments will not impact the amount or cost of housing units, including multi-family rental housing and for sale housing in the State. The proposed amendments establish a fee for EDA subordinated guaranteed financing; and allow investments other than from institutional venture backed investments for meeting certain matching fund requirements under the Edison Innovation VC Growth Fund.

Smart Growth Development Impact Analysis

The proposed amendments will not impact the number of housing units or result in any increase or decrease in the average cost of housing in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments establish a fee for EDA subordinated guaranteed financing; and allow investments other than from institutional venture backed investments for meeting certain matching fund requirements under the Edison Innovation VC Growth Fund.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 30 ADMINISTRATIVE RULES

SUBCHAPTER 6. FEES

19:30-6.3 Closing fees

(a) (No change.)

(b) For guaranteed Authority-issued bonds or **pari passu** guaranteed financing under the Premier Lenders Program, the guarantee fee, to be paid at closing, shall not exceed 50 basis points as determined by the initial amount of the guaranteed portion of the financing in order that the fee percentage will correspond to the percentage guarantee required (for example, a 25 percent guarantee would incur a guarantee fee of 25 basis points, a 50 percent guarantee would incur a guarantee fee of 50 basis points) multiplied by the **dollar amount of the guarantee and by the** number of years the guarantee is to be in effect. **For a guarantee where the Authority's interest is subordinated, the fee to be paid at closing shall be as set forth in this subsection plus 25 basis points.** This fee is in addition to the fee described in (a) above if the Authority's guarantee relates to repayment of a bond issued by the Authority.

(c)-(i) (No change.)

CHAPTER 31
AUTHORITY ASSISTANCE PROGRAMS

SUBCHAPTER 3. DIRECT LOAN PROGRAM

19:31-3.1 Program description

(a) (No change.)

(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.-5. (No change.)

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 \$ 500,000 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.

7. (No change.)

(c)-(m) (No change.)