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Draft Main Street Recovery Finance Program Rules Proposal for Informal Public Comment

PURPOSE OF DOCUMENT

These draft rules include recommendations related to program design and administration for Main Street Recovery Finance Program authorized by the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156 and further amended through P.L. 2021, c. 160. In accordance with Executive Order 63, these draft rules are being provided to enable the public to provide input as the New Jersey Economic Development Authority (Authority or NJEDA) begins to launch the programs contained in the new law.

BACKGROUND

The New Jersey Economic Development Authority serves as the State's principal agency for driving economic growth. The Authority is committed to making New Jersey a national model for inclusive and sustainable economic development by focusing on key strategies to build strong and dynamic communities, create good jobs for New Jersey residents, and provide pathways to a stronger and fairer economy. Through partnerships with a diverse range of stakeholders, the Authority creates and implements initiatives to enhance the economic vitality and quality of life in the State and strengthen New Jersey's long-term economic competitiveness.

Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020 into law on January 7, 2021. A courtesy copy of this act can be found by clicking [here](#). The law creates a package of tax incentive, financing, and grant programs that will address the ongoing economic impacts of the COVID-19 pandemic and build a stronger, fairer New Jersey economy.

Programs created in the law include:

- Tax credits to incentivize job creation and capital investment;
- Investment tools to support and strengthen New Jersey's innovation economy;
- Tax credits to strengthen New Jersey's communities including revitalization of brownfields and preservation of historic properties;
- Financial resources for small businesses, including those impacted by the COVID-19 pandemic;
- Support for new supermarkets and healthy food retailers in food desert communities;
- Additional tax credits for film and digital media.

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Additional legislation was enacted (P.L. 2021, c. 160) on July 2, 2021, improving the programs established under the ERA.

The New Jersey Economic Development Authority is soliciting input from the public on the following draft rules pertaining to implementation of the Main Street Recovery Finance Program.

PROGRAM OVERVIEW

The Main Street Recovery Finance Program, established by sections 82 through 88 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, is an overarching program that will fund several individual grant, loan and loan guarantee products to be administered by the Authority. Collectively, the products developed under the Main Street Recovery Finance Program all share the common purpose of supporting the growth and success of small businesses in New Jersey.

The Main Street Recovery Finance Program, as outlined in the proposed new rules, establishes two grant products to assist eligible small businesses with making business facility improvements and lease payments:

- **The Small Business Improvement Grant** provides reimbursement for costs associated with making building improvements or purchasing new furniture, fixtures and equipment. Eligible entities may receive grant funding to reimburse 50 percent of project costs associated with interior or exterior building improvements or the purchase of new furniture fixtures, or equipment. In addition to meeting all other product eligibility as outlined in the proposed new rules, entities receiving grant funding of less than \$25,000 must commit to remaining in the facility for at least two years after the date of grant closing, and entities receiving grant funding of \$25,000 or greater must commit to remaining in the facility for at least four years after the date of grant closing.
- **The Small Business Lease Grant** provides grant funding to small businesses to offset a portion of the cost of lease payments. Eligible entities may receive grant funding for twenty percent of 20% of the annual lease payment, for two years of a minimum five-year lease term. In addition to meeting all other product eligibility as outlined in the proposed new rules, entities receiving grant funding must commit to remaining in the facility for at least five years after the date of grant closing.

These grants will support small business growth by making resources available helping to improve existing business facilities, fill space that is currently vacant, or keep existing space operational, helping to prevent future vacancies. This will catalyze more vibrant and active main street areas throughout New Jersey. Furthermore, with the support of products under the Main Street Recovery Finance Program, small businesses will have more growth capital available and will create new jobs and maintain existing jobs necessary to support that business growth.

In addition to the grant products established in the proposed new rules, the Authority intends to pilot additional products under the Program, which will include additional loans and loan

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guarantees to be provided both directly to small businesses, as well as to eligible community development finance institutions and other eligible lenders to expand the small business lending capacity of these entities.

ANTICIPATED PROGRAM MILESTONES

The Authority currently anticipates bringing proposed rule amendments for the Main Street Recovery Finance Program to its Board for consideration on August 11, 2021. If the Board approves the rule amendments, they will be published in the New Jersey Register for a 60-day public comment period.

The Authority may, at its discretion, accept applications based upon any draft rules approved for publication by its Board prior to the completion of the full Administrative Procedures Act process. However, all applicants will be subject to the requirements of the final adopted rules upon the conclusion of the formal comment process.

ECONOMIC RECOVERY ACT TRANSPARENCY WEBSITE

The NJEDA's Economic Recovery Act website (www.njeda.com/economicrecoveryact) allows members of the public to learn more about the programs included in the ERA and provide input on how the Authority will operationalize various aspects of its new incentive programs. The site also allows members of the public to share their thoughts on how NJEDA can make the programs more transparent.

This general feedback process precedes and is separate from the NJEDA's formal procedure to publish and adopt the rule amendments.

PUBLIC FEEDBACK: WRITTEN COMMENTS

Members of the public will also be able to submit feedback on Main Street Recovery Finance Program through the NJEDA's Economic Recovery Act website (<https://www.njeda.com/economicrecoveryact/>) between the following dates:

- **PUBLIC FEEDBACK OPEN: July 7, 2021**
- **PUBLIC FEEDBACK CLOSED: July 21, 2021**

We welcome constructive input on how to ensure new programs created through the Economic Recovery Act or programs amended by the Economic Recovery Act are structured and administered in a manner that drives opportunities for all residents and communities. Members of the public can do that by sending an email to mainstreet@njeda.com or through the online portal on the NJEDA's website.

All feedback received through this process will be assessed and considered when preparing the final version of the rule amendments that is proposed by the Authority for Board approval. Following potential Board approval, there will be a 60-day period for formal public comment.

Please observe the following guidelines when submitting your feedback:

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PLEASE DO:

- Reference a specific part of the rules by section and subsection when providing comments
- Share your feedback, relevant observations, and additional information.
- Keep comments brief and to the point.
- Use attachments to share more detailed or formal feedback.

PLEASE DO NOT:

- Include information that you do not want to be made public.
- Submit any information or other material protected by copyright without the permission of the copyright owner.
- Submit comments about topics unrelated to the Main Street Recovery Finance Program.

We may, at NJEDA's sole discretion, publish any, all, or a representative sample of comments in full or in part.

Do not include any information in your comment that you do not want to become public. Do not include any personally identifying or contact information if you do not want to be identified. (Providing optional contact information, however, will allow us to follow up with you if clarification is needed.) We will not accept or agree to a request to keep information confidential.

By submitting material, you grant to the NJEDA the non-exclusive, worldwide, transferable right and license to display, copy, publish, distribute, transmit, print, and use such information or other material in any way and in any medium, including but not limited to print or electronic form.

PUBLIC FEEDBACK: LISTENING SESSIONS

The New Jersey Economic Development Authority (NJEDA) will host three virtual Public Listening Sessions in June to solicit input from the public on the draft regulations.

Public Listening Sessions are scheduled for:

- Monday, July 12th, 2021 at 5:00 p.m.
- Tuesday, July 13th, 2021 at 2:00 p.m.
- Thursday, July 15th, 2021 at 10:00 a.m.

Sessions are expected to last approximately two hours and will be convened via Zoom.

Members of the public interested in attending the sessions can access them as follows:

<https://us02web.zoom.us/j/84867922487?pwd=cDJyRXF0MWJZbk9WU1N1c252bEttZz09>

Passcode: MAIN

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SUMMARY OF DRAFT RULES SECTIONS

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

Main Street Recovery Finance Program

Specially Adopted and Concurrently Proposed New Rules: N.J.A.C. 19:31-5

Specially Adopted and Concurrently Proposed New Rules Authorized: _____, 2021, by Tim Sullivan, Chief Executive Officer, New Jersey Economic Development Authority.

Filed: _____, 2021, as R.2021 d._____.

Authority: P.L. 2020, c. 156.

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

Concurrent Proposal Number: PRN 2021-_____.

Effective Date: August __, 2021 [Date Filed].

Expiration Date: February __, 2021 [180 Days from Effective Date].

Submit written comments by _____, 2021, to:

Jacob Genovay, Senior Legislative and Regulatory Officer
New Jersey Economic Development Authority
PO Box 990
Trenton, NJ 08625-0990
jgenovay@njeda.com

In accordance with P.L. 2020, c. 156, the New Jersey Economic Development Authority (“NJEDA” or “Authority”) has adopted the following new rules to implement the provisions of the New Jersey Economic Recovery Act of 2020, establishing the Main Street Recovery Finance Program Act, sections 82 through 88 of P.L. 2020, c. 156.

The new rules became effective on _____, 2021, upon acceptance for filing by the Office of Administrative Law. The specially adopted new rules shall be effective for a period not to exceed 180 days from the date of filing, that is, until _____, 2021.

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Concurrently, the provisions of the new rules are being proposed for readoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The adopted amendments will become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-6.4(f)) if filed on or before the 180-day expiration date from the date of filing.

The specially adopted and concurrently proposed new rules follows:

Summary

The Main Street Recovery Finance Program, established by sections 82 through 88 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, is an overarching program that will fund several individual grant, loan and loan guarantee products to be administered by the Authority. Collectively, the products developed under the Main Street Recovery Finance Program all share the common purpose of supporting the growth and success of small businesses in New Jersey.

The Main Street Recovery Finance Program, as outlined in the proposed new rules, establishes two grant products to assist eligible small businesses with making business facility improvements and lease payments.

The Small Business Improvement Grant provides reimbursement for costs associated with making building improvements or purchasing new furniture, fixtures and equipment. Eligible entities may receive grant funding to reimburse 50 percent of project costs associated with interior or exterior building improvements or the purchase of new furniture fixtures, or equipment. In addition to meeting all other product eligibility as outlined in the proposed new rules, entities receiving grant funding of less than \$25,000 must commit to remaining in the facility for at least two years after the date of grant closing, and entities receiving grant funding of \$25,000 or greater must commit to remaining in the facility for at least four years after the date of grant closing.

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These grants will support small business growth by making resources available helping to improve existing business facilities, fill space that is currently vacant, or keep existing space operational, helping to prevent future vacancies. This will catalyze more vibrant and active main street areas throughout New Jersey. Furthermore, with the support of products under the Main Street Recovery Finance Program, small businesses will have more growth capital available and will create new jobs and maintain existing jobs necessary to support that business growth.

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In addition to the grant products established in the proposed new rules, the Authority intends to pilot additional products under the Program, which will include additional loans and loan guarantees to be provided both directly to small businesses, as well as to eligible community development finance institutions and other eligible lenders to expand the small business lending capacity of these entities.

The following summarizes the contents of each section of the proposed new rules implementing the Main Street Recovery Finance Program:

N.J.A.C. 19:31-5.1 Applicability and scope – Addresses the statutory authority for the Main Street Recovery Finance and summarizes the scope and purpose of the Fund in providing grants and loans to eligible small businesses and eligible lending entities in accordance with the Main Street Recovery Finance Program Act, sections 82 through 88 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156 (N.J.S.A. 34:1B-349 et al.).

N.J.A.C. 19:31-5.2 Definitions – Defines certain terms used in this subchapter and incorporates terms defined in P.L. 2020, c. 156 pertaining to the program.

N.J.A.C. 19:31-5.3 Fund description and eligibility criteria – Outlines the parameters of the grant and loan products to be available and the criteria for eligibility under the Fund.

N.J.A.C. 19:31-5.4 Application and Review – Establishes the information and procedures required for submitting an application to the Authority under the program, and outlines the Authority's review of applications, including confirmation with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the applicant is in compliance by being in substantial good standing with the respective department, or, if compliance issues exist, the eligible business has entered into an agreement with the respective department that includes a practical corrective action plan. In addition, the section describes the process by which applications are reviewed and notification is made of the determination to the applicant, including for a loan program where the Authority will issue a commitment letter which specifies terms and conditions for the award of financial assistance.

N.J.A.C. 19:31-5.5 Grant and Loan Agreements – Requires that applicants, as discussed below, execute a grant or loan agreement with the Authority to establish the terms and conditions and requirements for the award. For small business programs established pursuant to N.J.A.C. 19:31-5.3, the eligible small business shall enter into a grant agreement with the Authority; for the issuance of a grant to microbusiness lenders, the eligible lender shall enter into an agreement with the Authority and the award of the financial assistance will be subject to conditions subsequent set forth in the agreement that must be met in order to retain the financial assistance; for the issuance of a loan to microbusiness lenders, the eligible lender shall execute a loan agreement, consistent with the applicable eligibility requirements of sections 85 and 86 of P.L. 2020, c. 156. In any submission required by the Authority pursuant to this section, the applicant, or an authorized agent of the applicant, shall certify under the penalty of perjury that the information provided in the application is true.

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N.J.A.C. 19:31-5.6 Fees – Notices that in administering the Fund, the Authority may apply fees to applicants as set forth in N.J.A.C. 19:30-6, except that no fees will be required for applications from small businesses for any grant products available under the Fund.

N.J.A.C. 19:31-5.7 Affirmative action and prevailing wage – Provides that the Authority's affirmative action requirements, P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and the prevailing wage requirements in paragraph (8) of subsection a. of section 71 of P.L. 2020, c. 156 will apply to projects undertaken in connection with financial assistance received under this program.

N.J.A.C. 19:31-5.8 Appeals – Outlines the requirements for an applicant to appeal an action of the Authority and the process by which the Authority shall consider each appeal in a timely manner.

N.J.A.C. 19:31-5.9 Severability – States that if any portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of the subchapter are severable and shall not be affected by that determination.

Social Impact

The Main Street Recovery Finance Program encompasses several products that will support the growth of small and micro businesses in New Jersey. The proposed rules will have a positive social impact by providing financial support for small businesses to lease new or additional space and make business improvements to those spaces, enhancing the vibrancy of commercial corridors and supporting business attraction and retention in targeted areas. The proposed rules also reserve a portion of funding to support small and micro businesses located in New Jersey Opportunity Zones.

Economic Impact

The Main Street Recovery Finance Program encompasses several products that will support the growth of small and micro businesses in New Jersey. Small businesses are critical to New Jersey's overall economic health, as businesses under 500 employees comprise approximately 98 percent of New Jersey businesses and are responsible for more than 50 percent of employment. The proposed rules will support small businesses by providing financial support for these businesses to lease new or additional space, resulting in the establishment of new businesses in space that was previously vacant or underutilized, as well as the growth of existing businesses. Additionally, the Main Street Recovery Fund will provide funding for small and micro businesses to make business improvements, which will enhance the vibrancy of commercial corridors and generate more commercial activity in these areas.

Federal Standards Statement

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

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Jobs Impact

The EDA anticipates that the proposed rules will spur an indeterminate amount of increased job creation through growth in New Jersey's small and micro businesses. The Main Street Recovery Finance Program encompasses several products that will support the growth of small and micro businesses in New Jersey. The Main Street Recovery Finance Program will make funding available to small and micro businesses to acquire new or additional space to establish or expand operations, which will result in the need for these businesses to hire employees to support this business establishment or growth. The Main Street Recovery Finance Program also makes funding available to small and micro businesses to make business improvements which may not only result in business growth that will need to be supported by job creation, but also job opportunities for contractors and other construction professionals to make the necessary business improvements.

Agriculture Industry Impact

The proposed rules, through access to funds that support building renovation and improvements and the purchase and installation of new equipment, may have a positive impact on the agriculture industry of the State of New Jersey.

Regulatory Flexibility Statement

The proposed rules will impose 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. should the business look to apply for the products under the Main Street Recovery Finance Program. Generally, a small business would be required to comply with the EDA's standard, on-line application process. In addition, the proposed new rules include a fee which may be non-refundable and collected at the time of application; some programs, however, may waive the fee, or collect the fee at the time of approval, or upon execution of a grant agreement, to ease the financial burden on small businesses. Finally, the small business applying for any of the products under the Main Street Recovery Finance Program will be required to provide general information relating to its organization, employees, and proposed activity for which the funding will be used, which may include acquisition or leasing of new or additional space, or business improvement activity.

Housing Affordability Impact Analysis

The proposed rules will not impact affordable housing in New Jersey or evoke a change in the average costs associated with housing units, including multi-family rental housing and for sale housing in the State.

Smart Growth Development Impact Analysis

The proposed rules will not impact smart growth or evoke a change in the number of housing units or result in any increase or decrease in the average cost of housing or in housing

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production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed rules will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State.

FULL TEXT OF DRAFT RULES

Full text of the specially adopted and concurrently proposed new rules follows:

SUBCHAPTER 5. MAIN STREET RECOVERY FINANCE PROGRAM

19:31-5.1 Applicability and scope

(a) The New Jersey Economic Development Authority is promulgating these rules to establish criteria for products that provide grants to small businesses, loans to microbusinesses, and loans and grants to eligible lending entities as part of the Main Street Recovery Finance Program, which utilizes the Main Street Recovery Fund, in accordance with the Main Street Recovery Finance Program Act, sections 82 through 88 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156 (N.J.S.A. 34:1B-349 et al).

19:31-5.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Act” means the Main Street Recovery Finance Program Act, sections 68 through 81 of P.L. 2020, c. 156.

“Authority” means the New Jersey Economic Development Authority established by section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

“Board” means the Board of the New Jersey Economic Development Authority, established by section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

“Capital improvements” means:

1. Expenses that a business incurs for preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property, site-related utility, including but not limited to, water, electric, sewer, and stormwater, and transportation infrastructure improvements, plantings, solar panels and components, energy storage components, installation costs of solar energy systems or other environmental components.

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2. Expenses that a business incurs for obtaining, and installing furnishings and machinery, apparatus, or equipment, including but not limited to material goods subject to bonus depreciation under sections 168 and 179 of the federal Internal Revenue Code (26 U.S.C. ss.168 and 179), for the operation of a business on real property or in a building, structure, facility, or improvement to real property.

3. "Capital improvements" shall not include site acquisition; vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement; any capital improvement for which the business received any grant financial assistance from any State source; costs of a lease, including any capital lease; or any soft costs.

"Community Development Financial Institution" means a financial institution certified by the U.S. Department of Treasury as a Community Development Financial Institution. (12 CFR 1805.201).

"Eligible microbusiness" means any microbusiness that satisfies the relevant eligibility criteria set forth in N.J.A.C. 19:31-5.3 for direct financial assistance from the Authority.

"Eligible small business" means any small business that satisfies the relevant eligibility criteria set forth in subsection b. of section 85 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-352) and N.J.A.C. 19:31-5.3.

"Full time equivalent employee" means:

1. A person:

i. Who is employed by a business for consideration for at least 35 hours a week and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act" (N.J.S.A. 54A:1-1 et seq.); or

ii. who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization for at least 35 hours a week and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act" (N.J.S.A. 54A:1-1 et seq.); or

iii. who is a partner of a business who works for the partnership for at least 35 hours a week and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," (N.J.S.A. 54A:1-1 et seq.); or

iv. who is a resident of another State, and would be eligible under subsections i through iii above but whose income is not subject to the "New Jersey Gross Income Tax Act" (N.J.S.A. 54A:1-1 et seq.) due to a reciprocity agreement with the other State.

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2. Employees that in the aggregate provide 35 hours of employment per week at a business shall constitute one "full time employee," regardless of whether or not the hours of work were performed by more than one person.

3. The Authority may determine a different number of hours a week or other standard of service generally accepted by custom or practice as full-time employment for (1) through (2) above.

4. "Full-time equivalent employee" shall not include any person who works for the business as an independent contractor or on a consulting basis.

"Fund" means the Main Street Recovery Finance Fund established under the Main Street Recovery Finance Program pursuant to section 84 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-351).

"Home-based business" means a business that does not have a separate entrance for commercial customers and that requires customers to enter the residential portion of the property in order to conduct business, provided that bed and breakfast establishments are not considered home-based businesses.

"Qualified opportunity zone" means a federal population census tract in this State that was eligible to be designated as a qualified opportunity zone pursuant to 26 U.S.C. s.1400Z-1.

"Microbusiness" means a business, including non-profit entities, that produces goods or provides services and has fewer than 10 full-time equivalent employees and annual gross revenue of less than \$1,000,000 at the time of application for a loan or grant under the program. The business shall have a physical location in the State, provided the location cannot be residential unless the location is a home-based business.

"Microbusiness lenders" means the Community Development Financial Institution or other eligible lenders.

"Other Eligible Lender" means a zone development corporation as defined in section 3 of P.L. 1983, c. 303 (N.J.S.A. 52:27H-62) that is located in a municipality with a population greater than 100,000 or another nonprofit lender, such as economic development corporation or community development corporation. An other eligible lender shall have a minimum of 10 years of experience in lending to microbusinesses.

"Product" means a sub-program established by the Authority under this program to provide a particular type of financial assistance to one or more categories of eligible entities.

"Program" means the Main Street Recovery Finance Program established pursuant to section 84 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-351).

"Small business" means a business, including non-profit entities, engaged in the conduct of a trade or business in this State that qualifies as a "small business concern" within the meaning of the federal "Small Business Act," Pub. L. 85-536 (15 U.S.C. § 631 et seq.) for the purpose of the

small business's eligibility assistance from the United States Small Business Administration. The Authority shall determine whether a business is a "small business" based solely on the applicant and shall not consider any affiliates or other businesses related to the applicant. The business shall have a physical location in the State, provided the location cannot be residential unless the location is a home-based business.

"Soft costs" means all costs associated with financing, design, engineering, legal, or real estate commissions, including but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, freight and shipping delivery, early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing, temporary signage, incentive consultant fees, Authority fees, loan interest payments, escrows, or other similar costs.

19:31-5.3 Product description and eligibility criteria

(a) The Board may establish grant products that shall make available grants to eligible small businesses, subject to availability of funds in the Fund. Eligibility shall be the following:

1. Eligible grant uses shall be capital improvements or operating expenses. The eligible capital improvement may be spent by an entity that is wholly owned by the applicant;
2. Eligible capital improvements by a home-based businesses shall be the purchase and installation of new furniture and equipment but shall not include building renovations and improvements. For purposes of home-based businesses, allowable furniture and equipment must be used exclusively for the business and must not be attached to the building;
3. A small business shall be eligible to receive a grant if the small business demonstrates to the Authority at the time of application that:
 - i. The small business has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting a tax clearance certificate, as described in section 1 of P.L. 2007, c. 101 (N.J.S.A. 54:50-39); and
 - ii. After execution of the grant agreement, the small business shall pay each full-time and part-time employee during the term of the grant not less than \$15 per hour or 120 percent of the minimum wage fixed under subsection a. of section 5 of P.L. 1966, c. 113 (N.J.S.A. 34:11-56a4), whichever is higher, except that the small business shall pay not less than 120 percent of the minimum wage to an employee who customarily and regularly receives gratuities or tips;
4. In addition to the requirements of (a)2 above, a small business shall be eligible to receive a grant for capital improvements only if the small business demonstrates to the Authority, at the time of application, that:
 - i. Subject to any minimum threshold specified in applicable law, any capital improvement undertaken with grant funds shall comply with standards established by the Authority, and published on the Authority's website, in accordance with the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to section 1 of P.L. 2007,

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c. 132 (N.J.S.A. 52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction;

ii. Each worker employed to perform construction work in connection with a capital improvement undertaken with grant funds in excess of \$50,000 shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of the Department of Labor and Workforce Development pursuant to P.L. 1963, c. 150 (N.J.S.A. 34:11-56.25 et seq.). This requirement shall extend through the term of the grant. For purposes of this provision, "worker" shall mean any person working on a capital improvement, whether employed by the small business or the small business's contractor or subcontractor; and

iii. The applicant leases or owns the facility at which capital improvement is made. If the applicant leases the facility, the applicant must have the right to make the capital improvements; and

5. Any other eligibility criteria consistent with the Act that the Authority determines accomplishes the purpose of the small business grant product, which other eligibility shall be posted by the Authority on its website.

(b) The Board may establish grant and loan products that shall make available grant and loans to eligible microbusiness lenders, subject to availability of funds in the Fund. Eligibility criteria shall be the following:

1. Eligible grant and loan uses shall be strengthening capital structures, leveraging additional debt capital, and increasing lending and investing in economically disadvantaged communities in New Jersey. Any lending and investing by the microbusiness lender using grant and loans from the Authority shall be limited to microbusinesses.

2. A microbusiness lender shall be eligible to receive a grant or loan if the microbusiness lender demonstrates to the Authority at the time of application that the microbusiness lender has a minimum of 10 years of experience in lending to microbusinesses.

3. Grants available to microbusiness lenders may include a grant awarded in conjunction with a loan for the purpose of providing technical assistance to microbusinesses applying for financial assistance to the microbusiness lender. To be eligible for loans that include such grants, the microbusiness lender must demonstrate to the Authority at the time of application that the microbusiness lender has the capacity to provide technical assistance; and

4. Any other eligibility criteria consistent with the Act that the Authority determines accomplishes the purpose of the microbusiness lender product, which other eligibility shall be posted by the Authority on its website.

(c) The Board may establish loan products that shall make available to eligible microbusinesses, subject to availability of funds in the Fund. Eligibility criteria shall be the following:

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1. Eligible loan uses shall include, but are not limited to, capital improvements, employee training, salaries for new positions, and day-to-day operating expenditures, including payroll, rent, utilities, insurance, and purchases of goods and services.

2. The Board may establish conditions where the loans provided to eligible microbusinesses may be forgiven at the Authority's discretion; and

3. Any other eligibility criteria consistent with the Act that the Authority determines accomplishes the purpose of the microbusiness loan product, which other eligibility shall be posted by the Authority on its website.

(d) The following apply to all products established under this program:

1. The following apply to the extent that the number of employees or full-time equivalent employees is a criteria for a business to qualify as a microbusiness or small business:

i. If the business employs employees through a professional employer organization, the professional employer organization must be registered with the Department of Labor and Workforce Development pursuant to P.L. 2001, c.260 (N.J.S.A. 34:8-67 et seq.).

ii. The business must satisfy the minimum number of employees or full-time equivalent employees on the date of application and the date three months before the application.

2. Businesses that are engaged in the following are not eligible for funding directly from the Authority or through grants and loans to eligible microbusiness lenders: the conduct or purveyance of "adult" (i.e., pornographic, lewd, prurient, obscene or otherwise similarly disreputable) activities, services, products or materials (including nude or semi-nude performances or the sale of sexual aids or devices); any auction or bankruptcy or fire or "lost-our-lease" or "going-out-of-business" or similar sale; sales by transient merchants, Christmas tree sales or other outdoor storage; or any activity constituting a nuisance.

3. In its allocation of financial assistance, directly to businesses or through grants and loans to eligible microbusiness lenders, the Authority may consider the business's benefit to the community in which it is situated and the degree to which the business enhances and promotes job creation and economic development in communities that have been severely impacted by the COVID-19 pandemic when making awards under the program. The Authority may prioritize or make available a percentage of the funds under grant products to businesses in qualified opportunity zones.

4. To the extent permitted by law, not less than 40 percent of funds for all products pursuant shall be made available to eligible microbusinesses certified by the State as a "minority business" or a "women's business" pursuant to P.L.1986, c.195 (C.52:27H-21.17 et seq.).

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5. For all loan products, the Authority shall establish the term and interest rate based on economic conditions prevailing in the market. The Authority shall post the term and interest rate on its website.

(e) Pursuant to (a) above, a small business improvement grant product is established that shall provide reimbursement grants of up to \$50,000 to eligible small businesses in an amount equaling 50 percent of the eligible capital improvement.

1. Only one grant shall be awarded per applicant. An applicant shall apply for the grant in a single application for all capital improvement costs or for separate locations.

2. The eligible capital improvements must be at least \$5,000.

3. No grant shall be approved for capital improvement that commenced or was purchased prior to two years before the date of the application, but in no event prior to March 9, 2020.

4. After the date of closing of the grant, the applicant shall remain at the location two years for grant awards not exceeding \$25,000 or four years for all other grant awards.

(f) Pursuant to (a) above, a small business lease grant product is established that shall provide grants to eligible small businesses that make lease decisions through new leases, lease amendments, and lease extensions. Grants shall be disbursed in two payments. The first disbursement shall be up to 20 percent of the annualized lease payment as of the date of closing of the grant, and the second disbursement shall be up to 20 percent of the annualized lease payment as of the first anniversary of the date of closing of the grant.

1. Only one grant shall be awarded per applicant for the same location. Only one location shall be included in one application. An applicant seeking a grant for more than one location shall submit an application for each location.

2. The applicant's landlord cannot have any ownership interest in the applicant.

3. The leased premises shall be used as office, commercial, or retail space.

4. Applicants who have or are seeking to expand, renew, or newly lease commercial space are eligible. No grant shall be approved for an expansion, renewal, or new lease with an effective date prior to one year before the date of the application, but in no event prior to March 9, 2020.

5. The new or additional space or the space that is being renewed must measure more than 500 square feet and be fully- or partially-located on the first floor.

6. Applicants shall remain at the leased premises for five years after the date of closing of the grant. Tenants may have a right to purchase after the five year period.

7. Applicants that are terminating an existing lease and obtaining a new lease must demonstrate that the new lease is at least 500 square feet larger than the prior space.

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8. The amount of the grant shall be based on the lower of the lease payments or market-rate pricing, as determined by the Authority, based upon comparable market rates. The Authority may obtain comparable market rates through a third party. In considering comparable market rates, the Authority shall consider the base rent and all other payments due from the tenant to the landlord.

9. A small business leasing more than 10,000 square feet shall receive a grant based on the lease for the first 10,000 square feet.

19:31-5.4 Application and Review

(a) A small business, microbusiness, or microbusiness lender seeking financing through a product established in the program shall submit an application, which shall be available on the Authority's website at www.njeda.com or by contacting the Authority.

(b) A completed application includes:

1. The name of the applicant;
2. The contact information of the applicant;
3. Except for loans to microbusiness lenders, the prospective future address of the applicant (if different);
4. The organizational type of the applicant;
5. The principal products and services and three-digit North American Industry Classification System number;
6. The New Jersey tax identification number;
7. The Federal tax identification number;
8. The most recent three Federal tax returns filed;
9. Except for loans to microbusiness lenders, the total number of full-time, part-time, and full-time equivalent employees of the applicant in New Jersey at the time of application and three months prior to the submission of the application;
10. Except for loans to microbusiness lenders, the comprehensive list of the applicant's locations in New Jersey and the function performed at each location;
11. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
12. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;

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13. For any grant product pursuant to N.J.A.C. 19:31-5.3(a), including, but not limited to, the small business improvement grant product and the small business lease grant product, WR 30, payroll reports or equivalent documentation for the quarter preceding submission of application;

14. For the small business improvement grant product, an application shall include:

- i. Executed lease or recorded deed evidencing site control of the relevant property;
- ii. Documentation evidencing proof of past or proposed eligible capital improvements; and
- iii. If the property is leased, evidence that the landlord has granted the applicant the right to make the capital improvements;

15. For the small business lease grant product, a copy of the lease for the relevant property, which must include square footage and rent;

16. For microbusiness lenders, an application shall include:

- i. A comprehensive description of the applicant's lending portfolio that demonstrates the applicant's lending experience with microbusinesses and capacity to lend to microbusinesses;
- ii. A description of the applicant's experience working in communities and business segments underserved by the banking sector; and
- iii. For products that include a grant to provide technical assistance to microbusinesses, a description of the applicant's capacity to provide the technical assistance;

17. A certification under the penalty of perjury from the applicant, or an authorized agent of the applicant, that the information provided in the application is true; and

18. Any other necessary and relevant information as determined by the Authority for any product or for a specific application.

(c) The Authority shall conduct a review of the applications commencing with the completed application bearing the earliest submission date. If interest in a product so warrants, at the Authority's discretion and upon notice, the Authority may institute a competitive application process whereby all completed applications submitted by a date certain will be evaluated as if submitted on that date. The review of a submitted application will determine whether the applicant:

1. Complies with the eligibility criteria;
2. Satisfies the submission requirements; and
3. Provides adequate information for the subject application.

(d) Before the Authority may approve an eligible business's application:

1. The Authority will confirm with the New Jersey Department of Labor and Workforce Development, Department of Environmental Protection, and the Department of the Treasury that the applicant is in compliance by being in substantial good standing with the statutes, rules and other enforceable standards of the respective department, or, if a compliance issue exists, the eligible business has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable.

i. Substantial good standing shall be determined by each department and mean, at a minimum, that the eligible business:

(1) As to the Department of Labor and Workforce Development and the Department of Environmental Protection:

(A) Is in substantial compliance with all material statutes, rules and other enforceable standards of the respective department that apply to the eligible business; and

(B) Has no material violations of those statutes, rules or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto; and

(2) As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department.

ii. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgates or issues its own more stringent rule or standard defining the term "substantial good standing," the respective department shall use such rule or standard to determine whether a business is in substantial good standing.

2. The Authority shall confirm that the applicant is in good standing on all financial assistance received from the Authority.

3. The Authority may contract with an independent third party to perform a background check on the eligible business.

(e) Upon completion of the review of an application pursuant to this subsection, the Authority shall determine whether or not to approve the application and the amount of assistance to be granted. The Authority shall notify the applicant of the determination. For a loan product, the Authority shall issue a commitment letter, and the award of the financial assistance will be subject to terms and conditions in the commitment letter.

19:31-5.5 Grant and Loan Agreements

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(a) For loans, upon satisfaction of conditions in the commitment letter, as determined by the Authority, but before the disbursement of loan funds, the entity shall execute a loan agreement. For grants, following approval by the Authority, but before the disbursement of grant funds, the entity shall enter into a grant agreement with the Authority, provided that the terms of the grant approved to a microbusiness lender in conjunction with a loan shall be included in the loan agreement. All grant agreements and loan agreements shall include, but not be limited to, the following provisions:

1. The amount of the financial assistance and the frequency and dates of disbursements;
2. The term of the agreement;
3. A detailed description of the specific use for which the financial assistance was approved;
4. Representations that the entity is in substantial good standing or meets the agreement requirements described in N.J.A.C. 19:31-5.4(d)1;
5. A provision requiring the entity to return to the Authority all the financial assistance disbursed if the Authority determines that the entity made a material misrepresentation on its application, which shall be in addition to any other remedies in the agreement and any criminal or civil penalties to which the entity and any corresponding officer may be subject;
6. A provision permitting an audit from time to time, as the Authority deems necessary, of all evidence, records, or any other evidence of the entity supporting the representations and certifications made as part of the application, the agreements, and any annual reports;
7. A requirement for the entity to indemnify the Authority and a requirement for insurance from the entity, as determined by the Authority based on the product and the amount and permitted use of the financial assistance;
8. Reporting requirements determined by the Authority to be necessary to verify that the financial assistance is used only for the approved use; and
9. Defaults and remedies.

(b) For small business grant products established pursuant to N.J.A.C. 19:31-5.3(a), including, but not limited to, the small business improvement grant product and the small business lease grant product, the grant agreement shall additionally include the following:

1. The location(s) of the applicant;
2. For the small business lease grant product, a requirement for the small business to remain at the same location for five years after the date of closing of the grant;

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3. For the small business improvement grant product, a requirement for the small business to remain at the same location(s) after the date of closing of the grant for two years if the grant amount does not exceed \$25,000 or four years for all other grant amounts;

4. A requirement that the small business pay each full-time or part-time employee employed by the small business not less than \$15 per hour or 120 percent of the minimum wage fixed under subsection a. of section 5 of P.L. 1966, c. 113 (N.J.S.A. 34:11-56a4), whichever is higher, except that the small business shall pay not less than 120 percent of the minimum wage to an employee who customarily and regularly receives gratuities or tips;

5. A requirement to submit annually for the term of the grant agreement, starting with the first anniversary of the closing of the grant agreement, the following:

i. WR 30, payroll reports or equivalent documentation for the preceding year;

ii. Certification and evidence documenting that the eligible small business is in the same location; and

iii. Any other items that the Authority shall determine as necessary;

6. A provision requiring the entity to return to the Authority all the financial assistance disbursed if the Authority determines that the entity failed to comply with the prevailing wage requirements in N.J.A.C. 19:31-5.3(a)4ii, the green building standards in N.J.A.C. 19:31-5.3(a)4i, the payment of employees in N.J.A.C. 19:31-5.3(a)3ii, and the provision of a tax clearance certificate in N.J.A.C. 19:31-5.3(a)3i.

7. A provision that the Authority shall recognize the period of compliance in calculating any repayment if the business ceases operations or moves to another location in the State.

(c) The following apply to financial assistance to microbusiness lenders:

1. A requirement that any lending and investing by the microbusiness lender using the grant or loan from the Authority shall be limited to microbusinesses;

2. Interest rate and repayment obligations;

3. If the Authority approved the loan for the microbusiness lender to invest or lend to microbusinesses, a requirement to submit annually, no later than 30 days after the end of the microbusiness lender's fiscal year, for the term of the grant agreement, a list of the loans the microbusiness lender has provided to microbusinesses using the loan. The list shall include outstanding loans, loans past due, reserves, loss experience and non-accrual loans. For each loan, the list shall set forth the loan amount approved and disbursed, the job creation or retention anticipated at the time of approval, the location(s) of business, any additional amount of private funding per project, whether the business is certified by the State as a "minority business" or a "women's business," and, to the extent known, whether any owner of the microbusinesses is a woman, minority group member, veteran, or LBGTQA person.

(d) In any submission required by the Authority pursuant to this section, the applicant, or an authorized agent of the applicant, shall certify under the penalty of perjury that the information provided in the submission is true.

19:31-5.6 Fees

In administering the products established under this program, the Authority shall apply fees to applicants as set forth in N.J.A.C. 19:30-6, except:

1. No fee shall be required for applications from small businesses for any grant products; and
2. The Authority may waive any or all fees from microbusinesses for any product based on factors such as the prevailing economic conditions, the size of the award, and the purpose of the product.

19:31-5.7 Affirmative action and prevailing wage

(a) For small business grant products, the Authority's prevailing wage requirements in P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and N.J.A.C. 19:30-3.4.1 et seq., shall apply to the extent required pursuant to N.J.A.C. 19:31-5.3(a)4ii.

(b) For all other products, the Authority's prevailing wage requirements in P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and N.J.A.C. 19:30-3.4.1 et seq., shall apply to projects undertaken in connection with financial assistance received from the Fund.

(c) The Authority's affirmative action requirements in P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3.1 et seq. shall apply commencing with the effective date of this subchapter to projects undertaken in connection with financial assistance received under the Fund.

19:31-5.8 Appeals

(a) Any action by the Board shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

(b) An applicant may appeal an action by the Authority by submitting in writing to the Authority, within 10 business days from the effective date of the Authority's action, an explanation as to how the applicant has met the product criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) Appeals that are timely submitted shall be handled by the Authority as follows:

1. The Chief Executive Officer, or other Authority staff designated under delegated authority, shall designate an employee of the Authority to serve as a hearing officer for the appeal and to

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make a recommendation on the merits of the appeal to the Authority. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the product criteria.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature.

3. The Board, or the Chief Executive Officer or other Authority staff under delegated authority, shall issue a final decision on the appeal as follows:

i. If the Board is issuing the final decision, the Chief Executive Officer may include a recommendation to the written report of the hearing officer.

ii. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.

iii. The Authority shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Authority shall issue a final decision on the appeal.

4. Final decisions rendered by the Authority shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

19:31-5.9 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.