



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: August 11, 2021

SUBJECT: Special Adopted New Rules and Concurrent Proposed New Rules
Main Street Recovery Finance Program (N.J.A.C. 19:31-5)

Request:

The Members are asked to approve:

- 1) The attached special adopted new rules and concurrent proposed new rules for the new Main Street Recovery Finance Program and to authorize staff to (a) submit the special adopted new rules and concurrent proposed program rules for promulgation in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for promulgation in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law; and
- 2) The creation of the Main Street Recovery Finance Program, as initially authorized by the New Jersey Economic Recovery Act of 2020 (Sections 82 through 88 of P.L. 2020, c. 156) and later amended by Sections 40 through 43 of P.L. 2021 c.160, to fund individual financial assistance products that share the common purpose of supporting the growth and success of small businesses in New Jersey.
- 3) The utilization of \$10 million of Main Street Recovery Finance Program funding to capitalize and enhance the Small Business Lease Assistance Grant – a grant product that will offset a portion of annual lease payments for small businesses leasing between 250-10,000 sq. ft. of new or additional space, with delegation to the Chief Executive Officer to increase funding to \$20 million in the event that demand exceeds the \$10 million in available funding.

- 4) The utilization of \$15 million of Main Street Recovery Finance Program funding to capitalize and enhance the Small Business Improvement Grant – a grant product that will reimburse a small business for 50 percent of eligible project costs, with a maximum grant award not to exceed \$50,000, associated with making building improvements or the purchase and/or installation of new furniture, fixtures and equipment, with delegation to the Chief Executive Officer to increase funding to \$30 million in the event that demand exceeds the \$15 million in available funding.
- 5) The utilization of \$500,000 of Main Street Recovery Finance Program funding to be used by the Authority to cover administrative costs that are needed to administer both grant products, and approval to issue one or more purchase orders to 22nd Century Technologies Inc. to hire temporary employees to administer both grant products.
- 6) Delegation to Authority staff (Chief Community Development Officer, Managing Director – Community Development, or Director of Small Business Services) to approve individual applications to either the Small Business Lease Assistance Grant Program or Small Business Improvement Grant Program in accordance with the terms set forth in this memo and rule proposal, and as further detailed in the attached program specifications. Because the specifications are streamlined and will result in non-discretionary decisions, the delegated authority requested includes the authority to decline applications that do not meet eligibility requirements;
- 7) Delegation to Authority staff (Chief Legal & Strategic Affairs Officer, any Vice President, Director of Legal Affairs, Director of Business Operations) to issue final administrative decisions for appeals of non-discretionary declinations.
- 8) Delegation to the Chief Executive Officer to reallocate funding from the Small Business Lease Assistance Grant to the Small Business Improvement Grant, and vice versa, based on application demand.

New Jersey Economic Recovery Act:

On January 7, 2021, Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020 (ERA) into law. The ERA presents a strong recovery and reform package that will address the ongoing economic impacts of the COVID-19 pandemic and position New Jersey to build a stronger and fairer economy that invests in innovation, in our communities, and in our small businesses the right way, with the protections and oversight taxpayers deserve. Tax incentives and other investment tools are critical to economic development, and when used correctly they can drive transformative change that uplifts communities and creates new opportunities for everyone.

The ERA includes 15+ economic development programs, including:

- 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.

On Friday July 7, 2021, Governor Murphy signed P.L. 2021 c.160 further improving the programs established under the New Jersey Economic Recovery Act of 2020.

The program being presented for the Members' approval in this memorandum is the Main Street Recovery Finance Program – one of the 15+ programs under the ERA. The Main Street Recovery Finance Program is a \$100 million small business support program under which individual financial assistance products will be created, all of which will share a common purpose of supporting the growth and success of small businesses in New Jersey. This memorandum requests the Members' approval to create two initial products to be funded by the Main Street Recovery Finance Program – the Small Business Lease Assistance Grant and the Small Business Improvement Grant.

Both grant programs established in this memorandum are enhancements to existing pilot grant programs that the Authority has administered for some time. The Small Business Lease Assistance Grant is an expansion of the former Small Business Lease Assistance Program, which provided small businesses grant funding to help make annual lease payments in certain targeted cities. Under that program, the Authority has provided \$125,000 in grant funding to small businesses in the cities of: Trenton, Camden, Paterson, Passaic, Atlantic City, Bridgeton, Jersey City, Millville, Mt. Holly, Phillipsburg, Plainfield, Salem, and Vineland. The Small Business Lease Assistance Grant presented for the Members' consideration today has expanded not only the program eligibility, but has also removed restrictions around eligible locations and will now support small businesses statewide.

The Small Business Improvement Grant is an expansion of the former Business Improvement Incentive, which provided grant funding to reimburse small businesses for costs associated with facility renovations and improvements. Under that program, the Authority provided \$678,000 in grant funding to small businesses in the following cities: Trenton, Camden, Paterson, Passaic, and Atlantic City, before the program was discontinued in 2019. The Small Business Improvement Grant presented for the Members' consideration today has expanded not only the program eligibility but has also removed restrictions around eligible locations and will now support small businesses statewide.

This memorandum provides a summary about the Main Street Finance Recovery Program, Small Business Lease Assistance and Small Business Improvement Grant including, funding limits and general details about each product, eligibility criteria, specific requirements around the individual products and overarching program fund, and the application and review process. The specific details – and what will be promulgated and will govern the program – are included in the attached rules proposed for Board approval.

Program Purpose and General Description

The Main Street Recovery Finance Program will establish individual products – each with slightly different requirements and forms of financial assistance, but all products established under the Program share the common purpose of supporting small business growth in New Jersey.

Each individual product established under the Main Street Program will utilize slightly different eligibility criteria based on the form of financial assistance, the eligible uses of that assistance, and what types of businesses or entities are permitted to use the funding. However, to be eligible for most products under the Main Street Program, there are several overarching statutory requirements that businesses must meet, as further clarified in the proposed new rules:

- Businesses must comply with wage requirements following execution of a grant agreement with the Authority. Specifically, a business must commit to pay its employees (full-time and part-time) the greater of \$15/hour or 120% of minimum wage. For tipped employees, the business must commit to paying 120% of minimum wage. The Authority will monitor grant recipients for compliance annually against this requirement.
- Businesses that receive grant funding under either the Small Business Lease Assistance Grant or the Small Business Improvement Grant must commit to remaining in the facility and meeting the wage requirements for a period of time following the execution of the grant agreement, subject to repayment of the grant to the Authority for non-compliance. For the Lease Grant, this means businesses must meet the wage requirements and remain in the facility for five years after the grant agreement. For the Improvement Grant, a business must meet the wage requirements and commit to remaining in the facility for up to four years after execution of the grant agreement.
- For the Small Business Improvement Grant, projects with total project cost of over \$50,000 must adhere to green building standards. For the purposes of the Improvement Grant, this is applicable to mechanical and lighting improvements only. Additionally, when a business utilizes contractors with 4 or more employees (in total, not specific to the project), those contractors will be subject to affirmative action requirements.

Key Definitions

The following highlights certain key eligibility requirements for the Main Street Business Recovery Assistance Program. Full eligibility details are contained in the draft proposed rules in section 5 and the ERA in section 85.

Small Business – Eligibility for the Main Street Recovery Finance Program products are limited to businesses that meet the definition of a small business as defined in the proposed new rules, which utilizes the United States Small Business Administration’s (SBA) definition of a small business, and is based solely on the applicant and with no consideration of any affiliates or other businesses related to the applicant. The business must also have a physical location in the State, which cannot be a residential location unless the location is a home-based business.

Home-based business - 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. Home-based businesses are eligible only for the Small Business Improvement Grant, which can only be used by home-based businesses for the purchase and installation of furniture, fixtures and/or equipment.

Capital Improvements – The Small Business Improvement Grant can be utilized by businesses to pay for up to 50% of costs associated with capital improvements, which the proposed new rules define as 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. Capital improvements may also include expenses that a business incurs for obtaining and installing furnishings and machinery, apparatus, or equipment.

Small Business Lease Assistance Grant

The Small Business Lease Grant provides grant funding to small businesses to offset a portion of the cost of annual lease payments, thereby enabling more small businesses to lease new or additional space and providing these businesses with liquidity. A total of \$10 million of Main Street Recovery Finance Program funding will be utilized to capitalize the Small Business Lease Assistance Grant. Of this \$10 million, 40 percent (\$4 million) will be reserved for businesses located in a census tract that was eligible to be selected as New Jersey Opportunity Zone (i.e. a New Market Tax Credit census tract). There are 715 census tracts that were eligible to be Opportunity Zones in New Jersey. Setting aside a portion of available funding under the Small Business Lease Assistance Grant to support entities in these census tracts further reinforces the State's commitment to helping to ensure all Opportunity Zone eligible tracts in New Jersey receive opportunities for investment that are equitable and inclusive.

To be eligible for the Lease Grant, both the small business and the lease under which the business is operating or intends to operate from must meet the product eligibility parameters.

The business must first meet the definition of a small business as outlined in the proposed new rules. Furthermore, the small business must be in substantial good standing with the NJ Department of Labor and Workforce Development, the NJ Department of Environmental Protection, and the Department of Treasury (as determined by each Department). If a compliance issue exists, the eligible business may have an agreement with the respective Department that includes a practical corrective action plan, as applicable. The eligible business must have no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective Department. Furthermore, the small business will be required to provide, prior to execution of a grant agreement, a valid tax clearance certificate from the NJ Division of Taxation within the NJ Department of Treasury. Small businesses must also certify, at the time of application, that they are not in default of any other program administered by the Authority or the State of New Jersey. Businesses applying for this product cannot be owned by the landlord from which they are leasing or intend to lease the facility. Applicants who have already expanded or renewed their lease, or who are seeking to expand or renew their presently leased space, must demonstrate that they are current on rent payments. This will be demonstrated by a standard certification form signed by the landlord that the Authority will require applicants to provide stating that rent payments are current.

For the small business to be eligible for the grant assistance, the lease must also meet the eligibility requirements of the product. The lease must a minimum of 250 sq. ft. of office, commercial space, or retail space. While there is no maximum square footage for eligible leases under this product, the Authority will only provide grant funding for 10,000 sq. ft. of office, commercial space, or retail space,

meaning that leases with greater than 10,000 sq. ft. will only receive grant funding for 10,000 sq. ft. of the space.

The lease must be a new lease, lease amendment, or lease extension - new or amended space must be at least 250 sq. ft. larger than prior space. Because the purpose of the program is to help revitalize commercial corridors, the lease must include first-floor (street-level) space. A lease may include more than one floor, but one of the floors must be first-floor (street-level) space to be eligible.

The lease must also be a minimum of a five-year lease term, and cannot have been executed more than 12 months prior to the date of the product application. Finally, the lease must be a market-rate lease, which the Authority will review based on available commercial real estate information.

As stated before, the business must also commit to meeting the wage requirements and remaining in the facility for five years, which is the minimum term of any eligible lease. Businesses that do not comply with the wage or residency requirements, or default on their lease payments, must repay any grant funding received under this product to the Authority.

For businesses that are approved for a grant, the Authority would make two disbursements to the grantee. The first disbursement will be made after execution of the grant agreement, for an amount equal to 20% of the annual lease payment. The second disbursement will be made after 12 months of lease payments have been paid by the applicant, for an amount equal to 20% of the annual lease payment.

Applicants with multiple locations will be limited to one grant application per location. An applicant may apply for both a Small Business Lease Assistance Grant and a Small Business Improvement Grant.

Small Business Improvement Grant

The Small Business Improvement Grant provides reimbursement for costs associated with making building improvements or purchasing new furniture, fixtures and equipment. A total of \$15 million of Main Street Recovery Finance Program funding will be utilized to capitalize the Small Business Improvement Grant. Of this \$15 million, 40 percent (\$6 million) will be reserved for businesses located in a census tract that was eligible to be selected as New Jersey Opportunity Zone (i.e. a New Market Tax Credit census tract). There are 715 census tracts that were eligible to be Opportunity Zones in New Jersey. Setting aside a portion of available funding under the Small Business Lease Assistance Grant to support entities in these census tracts further reinforces the State's commitment to helping to ensure all Opportunity Zone eligible tracts in New Jersey receive opportunities for investment that are equitable and inclusive.

To be eligible for the Improvement Grant, the small business must meet many of the same requirements as the Lease Grant. This includes meeting the definition of a small business, being in good standing with sister agencies, and providing a valid tax clearance certificate prior to the execution of a grant agreement. Small businesses must also certify, at the time of application, that they are not in default of any other program administered by the Authority or the State of New Jersey. Landlords are not eligible for the Small Business Improvement Grant, as the product is intended to directly support businesses operating from these facilities.

As stated before, the business must also commit to meeting the wage requirements and remaining in the facility. For grants of less than \$25,000 the small business must commit to meeting these requirements for two years after the execution of a grant agreement. For grants of \$25,000 or more, the small business must comply with these requirements for 4 years after the execution of a grant agreement. Businesses that do not comply with the wage or residency requirements, or default on their lease payments, must repay any grant funding received under this product to the Authority.

Grant funding under the Small Business Improvement Grant will reimburse the small businesses for 50 percent of costs associated with capital improvements as defined in the proposed new rules, with a maximum grant amount not to exceed \$50,000. Home-based businesses are eligible for the Improvement Grant, but can only use the grant funding for the purchase and installation of furniture, fixtures and equipment. The grant can only be used to reimburse for capital improvements completed on or after March 9, 2020, but no more than 24 months prior to the date of application. Because this is a reimbursement, the applicant will be required to provide all documentation at the time of application demonstrating that the capital improvement costs have been completed. Acceptable documentation is expected to include invoices, statements, payments, or canceled checks. To be eligible, the capital improvement costs must be a minimum of \$5,000, and the applicant is responsible for obtaining all applicable local approvals (i.e. zoning and building permits) as needed for the capital improvements. For applicants that are making capital improvements to leased space, the landlord's permission is required in order to make the capital improvements. As stated before in this memorandum, affirmative action requirements may apply to the contractor and green building standards may apply to the project, based on the specific details of the contractor and project.

Applicants under the Small Business Improvement Grant are limited to one application per Employer Identification Number (EIN). Applicants operating from multiple locations under a single EIN would be limited to one application under the sole EIN, but may pool project costs from multiple locations into a single product application. An applicant may apply for both a Small Business Lease Assistance Grant and a Small Business Improvement Grant.

Approval Process

In recognition of the volume of applications the Authority anticipates receiving under these products, and the limited discretion staff has in reviewing applications under the product parameters, the Members are requested to approve Delegation to Authority staff (Chief Community Development Officer, Managing Director – Community Development, or Director of Small Business Services) to approve individual applications to both the Small Business Lease Assistance Grant and the Small Business Improvement Grant, in accordance with the terms set forth in the attached program specifications.

The delegated authority requested for approval also includes the delegated authority to decline for any declinations based solely on non-discretionary reasons. For final administrative decisions based solely on non-discretionary reasons, delegated authority is requested for approval by a Senior Vice President, Vice President, Managing Director, or the Director Legal Affairs.

Additional Pilot Products

In addition to the Small Business Lease Assistance and Small Business Improvement grants, the Authority intends to pilot additional products to be funded by the Main Street Recovery Finance Program. While the proposed new rules provide some clarity around these anticipated pilot programs, staff will bring specific proposals for those pilot programs to the Members for consideration at a later date.

These products are anticipated to include financing to support microbusiness lenders, who will use that funding to increase capacity under their existing loan products or establish new micro business lending products with attractive terms. Statute defines a “microbusiness” as a business with less than \$1.5 million in annual gross revenue and 10 or less employees. Eligible microbusiness lenders would include Community Development Financial Institutions (CDFIs), Minority Depository Institutions (MDIs), Zone Development Corporations in cities with a population of 100,000 or more, Community Development Corporations (CDCs), Economic Development Corporations (EDCs), and non-profit lenders with at least 10 years of lending experience to microbusinesses. Lenders will also receive a portion of the funding as technical assistance grants, to provide services to better position micro businesses to qualify for these loans. Technical support services are expected to include, but are not limited to credit repair services, assistance with writing business plans, assistance with preparing financial statements and projections, and other services.

Another product is anticipated to be an expansion of the Authority’s existing Micro Business Loan Program to provided directly to micro businesses from NJEDA. Financing will be low-cost, with attractive terms and rates.

Rulemaking Process

The ERA authorizes the Authority to promulgate special adoption rules for the Main Street Recovery Finance Program, which will be effective immediately upon filing with the Office of Administrative Law and continue for 180 days. In addition, Staff proposes pursuing concurrently the proposal of long-term rules, which will include a 60-day public comment process pursuant to the Administrative Procedures Act rulemaking procedures.

Compliance with Executive Order 63

In accordance with the Executive Order 63 directive to ensure outreach efforts are made to the public and affected stakeholders for agency rulemaking, the Authority issued a news release advising the public that the draft Main Street Recovery Finance Program rules were available for review and of the opportunity to provide informal input.

The Authority staff convened three virtual public “Listening Sessions”, which provided an overview of the Main Street Recovery Finance Program draft rules and the opportunity for the public feedback, on:

- 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.

Additionally, the public were able to submit written feedback through the NJEDA's Economic Recovery Act transparency website (www.njeda.com/economicrecoveryact) or through the newly established email account (mainstreet@njeda.com) from July 7th through July 21st, 2021.

Chief Compliance Officer Certification of Draft Rule Proposal

Pursuant to Section 101(a) of the ERA, the Chief Executive Officer is required to appoint a Chief Compliance Officer (CCO) to, among other things, "review and certify that the provisions of program rules or regulations provide the authority with adequate procedures to pursue the recapture of the value of an economic development incentive in the case of substantial noncompliance, fraud, or abuse by the economic development incentive recipient, and that program rules and regulations are sufficient to ensure against economic development incentive fraud, waste, and abuse".

Bruce Ciallella has been designated the CCO. In that capacity, Mr. Ciallella has reviewed the proposed rules and regulations for the Main Street Recovery Finance Program and is prepared to sign the certification, subject to the Board taking action to approve the same for submission to the New Jersey Office of Administrative Law for publication in an upcoming issue of the New Jersey Register.

Fees

In recognition of the fact that the products under the Main Street Recovery Finance Program are intended to support small businesses, many of which are already financially struggling and emerging from difficult economic conditions resulting from the COVID-19 pandemic, the Authority is requesting the Members' approval to utilize 3 percent of the Main Street Recovery Finance Program funding to cover the administrative costs the Authority will incur in administering this program. The Authority typically supports its administrative costs in the form of fees that are charged to the applicant at various stages of a grant review, approval and disbursement. With this approval, the Authority will be able to operate the program without having to charge the applicant many of the fees that would otherwise be charged. Under the proposed new rules, the only fee that an applicant will be responsible for under either the Small Business Lease Grant or the Small Business Improvement Grant is a flat \$100 approval fee, that is only paid if the applicant meets all product eligibility, and would be due at the time of approval and prior to execution of a grant agreement.

Program Evaluation Plan

Staff plans to establish a framework of key performance indicators (KPIs) to quantifiably measure over time how well the Main Street Recovery Finance Program will meet the NJEDA's operational and strategic goals. Along with assessing the goals and outcome of the program, the Authority will also track demographic information related to the businesses applying for the Main Street Recovery Finance Program, including demographic information with respect to the company's leadership. This is part of the Authority's ongoing efforts to measure to what extent its programs and services are serving New Jersey's diverse residents, communities, and businesses. Other metrics are anticipated to focus on the Main Street Recovery Finance Program's outreach efforts and volume of applicants, process and operational effectiveness, and economic development outcomes. The KPIs will provide valuable insight for staff and the Board to assess the effectiveness of the Main Street Recovery Finance Program. These KPIs are still under development.

Recommendation

The Members are requested to approve: (1) The attached special adopted new rules and concurrent proposed new rules for the new Main Street Recovery Finance Program and to authorize staff to (a) submit the special adopted new rules and concurrent proposed program rules for promulgation in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for promulgation in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law; (2) The creation of the Main Street Recovery Finance Program, as initially authorized by the New Jersey Economic Recovery Act of 2020 (Sections 82 through 88 of P.L. 2020, c. 156) and later amended by Sections 40 through 43 of P.L. 2021 c.160, to fund individual financial assistance products that share the common purpose of supporting the growth and success of small businesses in New Jersey (3) The utilization of \$10 million of Main Street Recovery Finance Program funding to capitalize and enhance the Small Business Lease Assistance Grant – a grant product that will offset a portion of annual lease payments for small businesses leasing between 250-10,000 sq. ft. of new or additional space, with delegation to the Chief Executive Officer to increase funding to \$20 million in the event that demand exceeds the \$10 million in available funding; (4) The utilization of \$15 million of Main Street Recovery Finance Program funding to capitalize and enhance the Small Business Improvement Grant – a grant product that will reimburse a small business for 50 percent of eligible project costs, with a maximum grant award not to exceed \$50,000, associated with making building improvements or the purchase and/or installation of new furniture, fixtures and equipment, with delegation to the Chief Executive Officer to increase funding to \$30 million in the event that demand exceeds the \$15 million in available funding.(5) The utilization of up to \$500,000 of Main Street Recovery Finance Program funding to be used by the Authority to cover administrative costs associated with administering both grant products, and approval to issue one or more purchase orders to 22nd Century Technologies Inc. to hire temporary employees to administer both grant products if needed; (6) Delegation to Authority staff (Chief Community Development Officer, Managing Director – Community Development, or Director of Small Business Services) to approve individual applications to either the Small Business Lease Assistance Grant Program or Small Business Improvement Grant Program in accordance with the terms set forth in this memo and rule proposal, and as further detailed in the attached program specifications. Because the specifications are streamlined and will result in non-discretionary decisions, the delegated authority requested includes the authority to decline applications that do not meet eligibility requirements; (7) Delegation to Authority staff (Chief Legal & Strategic Affairs Officer, any Vice President, Director of Legal Affairs, Director of Business Operations) to issue final administrative decisions for appeals of non-discretionary declinations; and (8) Delegation to the Chief Executive Officer to reallocate funding from the Small Business Lease Assistance Grant to the Small Business Improvement Grant, and vice versa, based on application demand.



Tim Sullivan
Chief Executive Officer

Prepared by: Christina Fuentes

Attachments:

Appendix A – Proposed New Rules – Main Street Recovery Finance Program

Appendix B – Small Business Lease Assistance Grant – Proposed Program Specifications

Appendix C – Small Business Improvement Grant – Proposed Program Specifications

DRAFT

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 __, 2022 [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, as amended by P.L. 2021, c. 160.

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.

Concurrently, the provisions of the new rules are being proposed for reoption 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, as amended by P.L. 2021, c. 160, 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, which are the Small Business Improvement Grant and the Small Business Lease Grant, to assist eligible small businesses with making business facility improvements and lease payments. The Authority also intends to pilot additional products under the Program. This rule proposal contains general parameters for those products that will be initially piloted and subsequently will be incorporated into these rules in greater detail.

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 criteria 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 20 percent of the annual lease payment, for two years of a minimum five-year lease term. In addition to meeting all other product eligibility criteria 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.

The two types of grants will support small business growth by making resources available 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.

Within both the Small Business Improvement Grant and the Small Business Lease Grant, the Authority may set aside a portion of all available funding for businesses located in a census tract that was eligible to be selected as a New Jersey Opportunity Zone. This set-aside further reinforces the State's commitment to helping ensure all Opportunity Zone eligible tracts in New Jersey receive opportunities for investment that are equitable and inclusive.

In addition to the grant products established in the proposed new rules, the Authority intends to pilot additional products under the Program prior to incorporating those products in these rules, which will include additional loans and loan guarantees to be provided both directly to small businesses and microbusinesses, as well as to eligible community development finance institutions, minority depository institutions, and other eligible lenders (together the terms eligible community development finance institutions, minority depository institutions, and other eligible lenders will be referred to as "microbusiness 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 Program and summarizes the scope and purpose of the program in providing grants and loans to eligible small businesses, microbusinesses 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.), as amended by P.L. 2021, c. 160.

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, as amended by P.L. 2021, c. 160 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 to an eligible small business, microbusiness, and microbusiness lenders 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 of the determination is made to the applicant. The process and notification provisions also will

apply to 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 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. Where the Authority is issuing a loan to a microbusiness lender, the eligible lender shall execute a loan 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. 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.

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 program.

N.J.A.C. 19:31-5.7 Affirmative action and prevailing wage – Provides that, in addition to the employee minimum wage requirements set forth at N.J.A.C. 19:31-5.5(b)4, 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

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, and they will foster 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.

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.

The Authority recognizes that fees may impact a small business' ability to access these products. Therefore, for the Small Business Improvement Grant and the Small Business Lease Grant products, the Authority will not be collecting an application fee, but only an approval fee that will be collected at the time of approval. For loan products that may be piloted under the Main Street Recovery Finance Program, the proposed new rules allow for a fee which may be

non-refundable and collected at the time of application. For these loan products, however, the Authority may waive the fee, or collect the fee at the time of approval, or upon execution of a loan agreement, to ease the financial burden on small businesses. The Authority will consider factors such as the prevailing economic conditions, the size of the award, and the purpose of the product when considering whether or not to waive fees for these loan products.

Finally, the small business applying for any of the products under the Main Street Recovery Finance Program will be required to provide general information. These products are being designed so that small businesses may provide this 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, without the necessity of hiring of professional services.

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 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 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 and grants 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.) as amended by P.L. 2021, c. 160.

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.

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 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.

2. 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 above.

3. “Full-time 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 employees and annual gross revenue of less than \$1,500,000 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 community development financial institutions, minority depository institutions, or other eligible lenders.

“Minority depository institution” means any federally insured depository institution that is listed on the Federal Deposit Insurance Corporation’s Minority Depository Institutions List, which is available on the Federal Deposit Insurance Corporation’s website.

“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. It also means other nonprofit lenders, such as an economic development corporation or community development corporation. To be an other eligible lender, the 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 made 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. Any capital improvement in excess of \$50,000 and 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, 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.

(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 for the purpose of providing technical assistance to microbusinesses applying for financial assistance to the microbusiness lender. The technical assistance grant may be awarded in conjunction with a loan 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.

(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:

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 the Main Street Recovery Finance Program:

1. The following apply to the extent that the number of employees or full-time 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 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

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, and based on the recommendations of a disparity study to be conducted by the Authority evaluating the relative availability of capital and related banking resources for small businesses and microbusinesses that are women- and minority-owned, the Authority shall establish policies, practices, protocols and, if appropriate, minimum percentages of the Fund to be set aside for eligible small businesses and microbusinesses that are minority or women-owned.

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. No landlords shall be eligible under this product.

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

3. No grant shall be approved for a 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 250 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 250 square feet larger than the prior space.

8. Applicants who have already expanded or renewed their lease, or who are seeking to expand or renew their presently leased space, must demonstrate that they are current on rent payments.

9. 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.

10. 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 and part-time 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;
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, an application shall include:
 - i. A copy of the lease for the relevant property, which must include square footage and rent; and
 - ii. For applicants who have already expanded or renewed their lease, or who are seeking to expand or renew their presently leased space, documentation that the applicant is current on rent payments.
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

(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 in relation to the loan or grant agreement and the uses of the loan or grant funds 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;

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 amount of time the entity was in compliance with the agreement 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 woman- or minority-owned, 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) In addition to the employee minimum wage requirements set forth at N.J.A.C. 19:31-5.5(b)4, 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) In addition to the employee minimum wage requirements set forth at N.J.A.C. 19:31-5.5(b)4, 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 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.

**Small Business Lease Grant Program Specifications
August 2021**

Funding Source	<ul style="list-style-type: none"> • \$10 million Main Street Recovery Finance Program (NJ Economic Recovery Act), with delegation to CEO to increase funding to \$20 million. • 40% of all funding (\$4 million) will be set-aside for entities located in eligible NJ Opportunity Zone census tracts.
Program Expiration	This program will replace the NJEDA’s existing Small Business Lease Grant Program. Applications will be accepted until funding is exhausted
Program Structure Purpose	The Small Business Lease Grant supports the growth and success of small businesses by providing grant funding to cover a portion of lease payments for businesses to lease new or additional space. These resources will help the establishment and growth of small businesses, while also helping to fill space that is currently vacant or preventing future vacancies. This program will help with creating more vibrant main street corridors throughout New Jersey.
Eligible Applicants	<p>A limit of one Small Business Lease Grant award over the life of the program per business or EIN per location. A location is eligible for both a onetime Business Lease Grant and Business Improvement Grant award. Previous lease incentive recipients are not eligible but have the option to opt out of their existing grant agreement in order to pursue this grant.</p> <p>Requirements for eligibility:</p> <ul style="list-style-type: none"> • Business must meet SBA definition of Small Business based on employee count and NAICS industry classification. • Business must provide a current tax clearance certificate prior to approval • Business must be in good standing with Department of Labor • Business must be in good standing with DEP • Business must certify at time of application that they are not in default of any other EDA or State assistance. • Lease must include: <ul style="list-style-type: none"> ○ 250 s.f. – 10,000 s.f. of market-rate office, commercial space, or retail space. A lease of more than 10,000 s.f. is eligible for a grant, but the program will only provide grant funding for the first 10,000 s.f. of space. ○ First-floor (street-level) space. Businesses leasing two floors - of which one floor is street level - would be eligible. ○ Minimum 5-year term. • Leases would have to be executed 12 months prior to application, and after March 9, 2020 to be eligible. • EDA determines lease is market-rate at time of application. • Applicants cannot terminate existing lease and enter into new lease for same square footage in order to pursue this grant. These applicants would be considered ineligible. • Grantees must occupy and operate in the leased space for the full year under which reimbursement is being requested. If they default on lease payments or leave the space, they are no longer eligible for the incentive and must repay any advanced funding they may have received by EDA. • Applicants who have already expanded or renewed their lease, or who are seeking to expand or renew their presently leased space, must demonstrate that they are current on rent payments.

	<ul style="list-style-type: none"> • Applicants are eligible to receive a Small Business Lease Grant and Small Business Improvement Grant for the same location. • Applicants are limited to one application per location • Non-profits and commercial businesses are eligible
Grant Amount	Two grant awards of 20% of the annual lease payments on a minimum 5-year lease term:
Funding Disbursement	<p>Grants will be disbursed as follows:</p> <ul style="list-style-type: none"> • Upon closing or execution of grant agreement: 20% of annual lease payment is disbursed to the applicant • After 12 months of lease payments have been paid by the applicant: another 20% of annual lease payment is disbursed to the applicant, after confirmation of no monetary or other material lease agreement default, payroll certification, self-certification by the applicant the applicant is still in lease and current on payments, and receipt of a current NJ State Tax Clearance Certificate.
Exclusions and Additional Requirements	<ul style="list-style-type: none"> • Grantee must agree at time of application that going forward after executing grant agreement they are to provide annual filed WR-30, payroll information, or equivalent documentation to EDA for at least the 5-year term of the lease and grant agreement. This documentation must verify that grantee is paying wages to all employees of at least \$15/hour or 120% of the minimum wage rate (whichever is higher) for the minimum of 5 years. Regularly tipped employees are required to be paid 120% of minimum wage. • High Tech and Business Incubator members in Not for Profit facilities would not be eligible for independent lease incentives (operators of incubators are eligible). • All leases will be analyzed for market-rate pricing by EDA based on comparable market rates provided by third party (i.e. CoStar). • Landlord cannot have an ownership interest in the applicant. <ul style="list-style-type: none"> • 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.
Application Process and Board Approval/ Delegated Authority	<ul style="list-style-type: none"> • Applications will be reviewed on a rolling basis if funds are available until all funds are committed. • EDA staff will be responsible for reviewing applications and approving projects for assistance under Delegated Authority. Delegated approvals can come from the Director of Small Business Services, Managing Director of Community Development and Small Business Services, and Chief Community Development Officer.
Fees:	<ul style="list-style-type: none"> • Approval Fee: \$100 payable after EDA approval and prior to execution of grant agreement.

**Small Business Improvement Grant Specifications
August 2021**

Funding Source	<ul style="list-style-type: none"> • \$15 million Main Street Recovery Finance Program (NJ Economic Recovery Act), with delegation to CEO to increase funding to \$30 million. • 40% of all funding (\$6 million) will be set-aside for businesses located in eligible NJ Opportunity Zone census tracts.
Program Expiration	Applications will be accepted until funding is exhausted.
Program Structure Purpose	The Small Business Improvement Grant supports the growth and success of New Jersey small businesses by reimbursing business owners for costs associated with making interior or exterior building improvements or purchasing and installing new furniture, fixtures, and equipment. The grant will reimburse a small business, as defined in statute, for 50% of eligible total project costs incurred after March 9, 2020 but no more than 2 years at time of application, with a total grant amount not to exceed \$50,000.
Eligible Applicants / Costs	<ul style="list-style-type: none"> • Businesses may be reimbursed for capital improvements, or purchase and/or installation of new furniture, fixtures, and equipment. • Business must rent or own and operate from facility. • Business must meet SBA definition of Small Business based on NAICS industry classification. • Project cost must be at least \$5,000, and incurred on or after March 9, 2020 and commenced no more 2 years prior to application • Home-based businesses may only receive reimbursement for new equipment purchase and/or installation. Home-based businesses are not eligible for reimbursement for renovation or improvement projects. • Non-profits and for-profit businesses are eligible to apply. • Business must provide a current tax clearance certificate prior to approval • Business must be in good standing with Department of Labor • Business must be in good standing with DEP • Business must certify at time of application that they are not in default of any other EDA or State assistance. • Applicants are eligible to receive a Small Business Lease Grant and Small Business Improvement Grant for the same location. • Applicants are limited to one application per EIN. Applicants operating from multiple locations under a single EIN would be limited to one application under the sole EIN, but may pool project costs from multiple locations into a single application.
Local Approvals	Applicant must obtain and is responsible for all applicable local approvals like zoning and building permits. If renting space, the tenant will need the landlords written approval on improvements to the location.
Grant Amount	<ul style="list-style-type: none"> • Up to 50% of total project costs, which may include interior or exterior renovations, or purchase of new FFE, equipment and installation. Grant can reimburse both renovations and equipment costs as part of a single project. • Grant amount not to exceed \$50,000 per EIN. Only one award is allowed per EIN for the life of the program. Applicants are eligible to receive a Business Improvement and Lease Incentive per EIN. With a cap of 1 award per program for each EIN. • Minimum project cost of \$5,000.
Funding Disbursement	Funding will be fully disbursed upon approval of an application and receipt of

**Small Business Improvement Grant Specifications
August 2021**

	documentation evidencing payment for project costs (i.e. paid invoices and/or canceled checks) associated with the building improvements and/ or equipment purchase and installation. Before any funding is disbursed, the applicant must certify that the project is complete.
Exclusions and Additional Requirements	<ul style="list-style-type: none"> • Green Buildings Standards will apply to projects over \$50,000. • Affirmative action standards – currently applies to contractors with 4 or more employees. • Applicant must agree at time of application to opt into minimum wage requirements and to provide most recently filed WR-30, payroll information, or equivalent documentation to verify business owner is paying wages to all employees of at least \$15/hour or 120% of the minimum wage rate (whichever is higher). Regularly tipped employees are not required to be paid \$15/hour but must be paid at least 120% of the minimum wage rate. This would be required for the term of the grant agreement. • Applicant must remain in the location for at least two years for grants up to \$25,000, or at least four years for all other grant award amounts. • Landlords are not eligible; grant is just for business owners. • 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.
Application Process and Board Approval/ Delegated Authority	<ul style="list-style-type: none"> • Applications will be reviewed on a rolling basis, based on the availability of funding, until all funds are fully committed. • EDA staff will be responsible for reviewing applications and approving projects for assistance under Delegated Authority. Delegated approvals can come from the Director of Small Business Services, Managing Director of Community Development and Small Business Services, and Chief Community Development Officer.
Fees:	<ul style="list-style-type: none"> • Approval Fee: \$100, payable at the time of approval and prior to execution of grant agreement