# 28-248 TREASURER OF STATE

Chapter 102: LINKED INVESTMENT PROGRAM FOR COMMERCIAL ENTERPRISES

Summary: The purpose of this rule is to inform financial institutions and commercial enterprises of the standards and procedures applicable to the Linked Investment Program for Commercial Enterprises. Pursuant to 5 M.R.S.A. Section 135, as enacted by P.L. 1988, c. 806, the Treasurer of State may invest up to $4,000,000 of State funds in financial institutions for up to one year, at a rate of return not more than 2% per year below the rate obtainable had the funds been otherwise invested with such financial institutions. The Treasurer may make such investments in support of a loan or loans made by such financial institutions to eligible commercial enterprises, provided such loans are made at interest rates which reflect the interest savings to the financial institutions resulting from the reduced rate paid on the State funds invested.

I. Definitions.

A. Authority. "Authority" means the Finance Authority of Maine.

B. Commercial enterprise. "Commercial enterprise" means any business enterprise but does not include an agricultural enterprise or business which has as its principal source of revenue cultivation of soil, producing of crops or raising of livestock, or their by-products.

C. Financial institution. "Financial institution" means any bank, trust company, national banking association, savings bank, savings and loan association, federal savings and loan association, industrial bank, mortgage company, insurance company, credit union, local development corporation, or any other institution or entity authorized to do business in the State or any State or federal agency which customarily provides financing assistance to commercial enterprises.

D. Manufacturer. "Manufacturer" means a commercial enterprise predominantly engaged in the application of knowledge, skill or labor to giving of new shapes, new qualities or new combinations to matter as material products and includes assembling, fabricating, making, creating, working, preparing, milling, processing, manufacturing, finishing, fashioning, producing, storing, warehousing, preserving, distributing, handling and transporting in any manner goods, wares, merchandise, metals, fabrics, materials, substances, product or matter of any kind or nature.

E. Participation amount. "Participation amount" means that portion of the principal of a loan made under this rule which is supported by a related investment of State funds, where the loan principal is greater than the supporting investment.

F. Qualified loan. "Qualified loan" means a loan 1) originated during a period commencing not more than 90 days prior to the Authority's receipt of a an application for investment of State funds to support a loan and ending 90 days after the financial institution submitting the application is sent written notification that State funds are available for investment to support the loan; and 2) is made by a financial institution which meets the criteria applicable to commercial enterprises established by 5 M.R.S.A. Section 135 and this rule, for which the Treasurer may make a supporting investment equal to the loan principal or to the participation amount; or 3) is a renewal application. A loan refinancing an existing loan with the same financial institution, which is not a renewal application, is not a qualified loan.

G. State. "State" means the State of Maine.

H. State funds. "State funds" means only the $4,000,000 authorized for investment at a reduced rate of return under the Linked Investment Program for Commercial Enterprises.

I. Renewal application. "Renewal application" means an application for a second 12 month investment period and includes the renewal of an investment made on a line of credit. A renewal application must be for an investment period immediately following the original investment period.

II. Eligibility.

An investment under this rule may be made only to support a loan to a commercial enterprise which meets the following criteria:

A. Is a for-profit business located in the State;

B. Has 20 or fewer employees or annual sales of less than $2,500,000;

C. 1) Makes at least 70% of its sales of services or products out of State; provided that a business predominantly involved in bringing products into the State and then selling the same products outside the State, such as distributors, are not eligible; or

2) is a manufacturer as defined by this rule;

D. Is at least 50% owned and operated by Maine residents or by one or more corporations which are at least 50% owned and operated by Maine residents;

E. Will create or retain at least one job for each $20,000 of deposited funds; and

F. Will use the loan proceeds only for acquisition of or improvements to real property or fixed assets, research and development or working capital. Other uses may be approved by the Treasurer on a case by case basis provided that the use will strengthen or expand the business and will be consistent with the purposes of the program.

G. The State funds attributable to a particular loan may be invested for a period which commences after the origination date of the qualified loan, but may not be invested for a period longer than the lesser of 1) one year or 2) the term of the qualified loan.

Participation in this program by a commercial enterprise is limited to two investment periods of 12 months each or an aggregate of 24 months.

III. Application for Investment.

A financial institution may submit an application to the Treasurer to receive an investment or investments of State funds under 5 M.R.S.A. Section 135 to support a qualified loan or loans to a commercial enterprise. Applications will be submitted to the Authority for processing. The application shall be on forms provided or approved by the Treasurer and shall identify the financial institution and, for each loan, shall also:

A. Identify the commercial enterprise and its owner(s);

B. Describe the purpose or purposes for which the loan proceeds will be used;

C. Specify the amount of the loan principal or, where the loan principal is greater than the supporting investment, the participation amount;

D. State the interest rate which would be charged if a supporting investment of State funds were not made and the rate if the supporting investment is made (interest rates to borrowers must fully reflect the interest rate savings to the financial institution on the State investment);

E. Provide satisfactory evidence in support of the eligibility criteria set forth in Section II hereof;

F. Contain a certification by the financial institution and by the loan applicant as to the accuracy of the information provided;

G. Contain such other information or certifications the Treasurer may deem necessary to comply with the requirements of this rule; and

H. Include a non-refundable $50.00 administrative fee, provided however that the applicant may pay the fee within 15 days after the Authority sends the applicant notification that State funds will be invested with respect to a particular qualified loan. If the Authority does not receive the administrative fee within 15 days of sending the applicant a notification of approval, the application will be deemed to have been withdrawn.

IV. Investment Determination.

Where the Treasurer determines that the application is complete and that the applicable criteria are met, he may designate the loan as a qualified loan and may make the supporting investment of State funds in the financial institution. The investment shall be made for no longer than a one year term (the investment period) and at an interest rate which enables the financial institution to make the loan or loans included in its application and approved by the Treasurer at the interest rate specified in the application. In no event shall the investment be made at a rate less than 0 percent or at a rate more than 2 percent per year below the rate of return otherwise obtainable from that financial institution had the State funds been otherwise invested, as determined by the Treasurer.

Upon designation by the Treasurer as a qualified loan, the Authority shall notify the financial institution of such designation. Thereafter, the financial institution shall notify the Authority that it has made or will make a qualified loan or loans, whereupon the financial institution and the Treasurer shall enter into a written agreement pursuant to which the Treasurer shall make the supporting investment. The agreement shall set forth the rate of interest of the supporting investment which shall, except as limited below, be 2 percent below the current rate of interest offered by the financial institution as of the date of the agreement between the Treasurer and the financial institution, but in any event not less than 0 percent.

V. *[Repealed effective August 23, 1994.]*

VI. Limitations on Amount of Investments Supporting Any Single Loan.

No single qualified loan made under this rule may be supported by a related investment of State funds in an amount greater than $200,000, nor may the total of all qualified loans made under this rule to a single commercial enterprise be supported by an investment or investments in a total amount greater than $200,000.

VII. Limitation on Loan Recipients.

No loan made to an officer or director of the financial institution making the loan and seeking a supporting investment therefor may be a qualified loan.

VIII. State Funds Not Security for Loans.

The State Treasurer is not a lender with respect to any loan made under 5 M.R.S.A. Section 135 and this rule and the investment of State funds in a financial institution under this rule does not represent any kind of guarantee of or security for repayment of a loan in the event of a default. For any loan made under 5 M.R.S.A. Section 135 and this rule, the financial institution is responsible for the review of the loan application and for the determination of the creditworthiness of the borrower, in accordance with its own lending standards. The lender may not set off amounts invested by the Treasurer of State against obligations of the borrower or any other obligations.

IX. Administration.

The Authority shall serve as the Treasurer's representative for purposes of administering the Linked Investment Program for Commercial Enterprises under this rule. The Authority shall develop all information, forms and procedures necessary for the efficient and equitable administration of this program. The Authority shall advise the Treasurer as to the investments and other determinations to be made under this rule. The Authority may charge an administrative fee to the financial institution at the time of application.

X. Priority of Applications.

A. Renewal applications will have first priority for available funds. Priority will only be accorded to those renewal applications received within 30 days of the Authority sending to a financial institution a notice of pending termination from the Authority.

B. 1) Applications other than renewal applications will be accepted starting on the first business day of January, annually.

2) Applications will be processed with priority determined by the order of arrival of applications at the Authority. All applications arriving the same day shall be deemed to have arrived simultaneously. In the event that there are insufficient funds available for investment for all applications arriving on any day, applications will be prioritized with the application for a qualified loan creating or retaining the greatest numbers of jobs per dollar receiving the highest priority. The Authority may in its discretion determine that the number of jobs to be created or retained as stated in the application is not realistic and may reduce or increase the amount stated. Any determination by the Authority of jobs to be created or retained shall be final.

3) Applications will be processed and prioritized based on funds available or projected to be available within the calendar year in which the application is received. Any application received after all funds or projected funds for that calendar year have been allocated shall be recorded in order of priority as set forth in subsection B.2. of this Section X and returned to the applicant. In the event unanticipated funds become available, applicants shall be notified in the order of the arrival of the original application. The applicant must reapply within 15 days of the Authority's sending of a notice of availability of funds.

C. If any loan for which funds have been set aside does not close within 90 days of receipt of notice that State funds are available for the application, the set aside funds will be available for applications with priority determined as established by this Section X.

XI. Transition.

Notwithstanding anything to the contrary in this rule, any application for an otherwise qualified loan received at the Authority on or prior to the effective date of Amendment Two to this Rule may be funded as State funds become available, in the order received. No applications will be accepted between the effective date of this Amendment Two and the first business day of January, 1995 unless the Treasurer issues a notice of availability of State funds during this time period.

STATUTORY AUTHORITY: 5 M.R.S.A. §153, 5 M.R.S.A. §135.

EFFECTIVE DATE:

September 5, 1988

AMENDED:

March 6, 1991

August 28, 1994

EFFECTIVE DATE (ELECTRONIC CONVERSION):

April 29, 1996

NON-SUBSTANTIVE CHANGES:

January 28, 1999 - converted to Microsoft Word.

AMENDED:

March 13, 2002

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 19, 2025