# 94-457 FINANCE AUTHORITY OF MAINE

CHAPTER 303 NATURAL DISASTER BUSINESS ASSISTANCE PROGRAM

Summary: This rule establishes the procedures and standards applicable to borrowers and lenders participating in the Authority's statewide program for making or securing loans of up to $50,000 to victims of natural disasters, including the 1987 flood.

1. DEFINITIONS

A. Reference to Act Definitions. Certain terms used in this rule, which are defined in the Finance Authority of Maine Act, 10 MRSA §961 and following (the Act), shall have the meanings set forth in the Act, unless clearly specified otherwise or unless the context clearly indicates otherwise.

B. Defined Terms.

1. "Borrower" means a person or entity which meets the eligibility requirements set forth in Section 2 of this rule, and includes a prospective borrower where the context requires.

2. "Chief executive officer" means the Authority's chief executive officer or a person acting under the supervisory control of the chief executive officer.

3. "Lender" means any bank, trust company, national banking 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 this State, or any state or Federal agency which customarily provides financing assistance.

4. "Program" means the Maine Natural Disaster Business Assistance Program governed by the Act and this rule.

2. ELIGIBILITY

To be eligible for financial assistance under the program, borrowers must demonstrate each of the following:

A. The borrower has suffered serious financial hardship as a direct result of a natural disaster which has caused any part of the State to be declared a disaster area by the President of the United States or his authorized representative.

B. The borrower's business which suffered the hardship must be located in the State.

C. The borrower's business is organized as a for-profit business.

D. The proceeds of the financial assistance will be used for a business purpose and not to discharge an existing indebtedness, unless the chief executive officer specifically approves refinancing based on a demonstration of compelling need.

E. The borrower must apply to the United States Small Business Administration ("SBA") for disaster loan assistance if the borrower is eligible to do so. Failure to apply to SBA before any applicable deadline will cause the borrower to be ineligible under this program.

3. APPLICATION CONTENTS

Each borrower or its lender shall submit an application to the chief executive officer on such forms and with such attachments as the chief executive officer may require consistent with the purposes of the program and the requirements of other Authority small business programs (e.g., Chapter 103, 301, 302). The application shall be accompanied by or supplemented with evidence of the submission of an application to SBA where applicable, and a copy of the SBA application where available.

4. APPLICATION PROCEDURES

Applications shall be reviewed and considered for assistance in the order in which they are received. Applications shall be marked with the date and time received or with some other marking indicating the order in which applications were received. Applications received at the same time, such as in the same delivery of mail, shall receive equal consideration. The chief executive officer shall determine when an application is received, which determination shall be final. Applications which are not substantially complete may be deemed not received until completed. For applications to be submitted through lenders, the chief executive officer may determine that the application is received upon receipt of a telephone call from the lender stating that the application is being submitted, provided that the application must be received in the Authority's offices within seven (7) calendar days from the date of the telephone call. In order to confirm the reservation, the lender must be given a reservation number at the time of the telephone call.

5. ASSISTANCE PROVIDED

The Authority may provide assistance from the Natural Disaster Business Assistance Fund either in the form of a direct loan to a borrower or in the form of a deposit with a lender, which lender has agreed to loan the amount of the deposit to the borrower on such terms and conditions as the chief executive officer may require or approve. Assistance under this program shall be combined, to the extent feasible, with assistance under other Authority programs. Financial assistance may not be provided through a lender unless that lender certifies that it would not be able to provide a loan to the borrower without financial assistance under this program even if the Authority provided loan insurance under the Small Business Mortgage Insurance Program (Chapter 103).

6. CRITERIA AND CONSIDERATION

A. No application will be approved unless the chief executive officer determines that the borrower has insufficient access to any other funds from any source on a timely basis other than pursuant to this program, and that the borrower needs financial assistance in order to recover from the effects of the natural disaster and ensure the continued viability of the business.

B. No application will be approved unless the chief executive officer determines that there is a reasonable likelihood that the borrower will be able to repay any assistance under this program according to its terms.

C. No application will be approved to the extent that it seeks more financial assistance than the borrower actually needs in calendar year 1987. Financial assistance may not be used to expand or otherwise materially change a business from what it was prior to the natural disaster, provided that mitigation of future natural disaster damage shall be an eligible use of financial assistance.

D. No application submitted by a lender will be approved unless the chief executive officer determines that the secured loan will be documented and serviced as required by the Authority.

E. No application will be approved unless the chief executive officer determines that the borrower is eligible and the loan proceeds will be used in connection with an eligible project.

F. No application will be approved unless the chief executive officer determines that the application is complete and that information sufficient to make an informed decision on the application has been received.

G. In reviewing each application, the chief executive officer will consider the following, as applicable:

1. The extent to which the borrower demonstrates immediate need for the loan.

2. The economic feasibility of the business endeavor as evidenced by the borrower's present and past financial situation and business experience and the general reasonableness of the business proposal and financial projections for the future.

3. Whether the borrower and any guarantors have satisfactory credit histories.

4. Whether the borrower has sufficient capital and other resources to conduct the business as planned, and the amount and source of equity contributed.

5. The adequacy of the security offered for the loan.

6. The extent to which the risk of financial loss is shared by others.

7. The viability of the industry of which the enterprise is a part and the contribution of the enterprise to that industry.

8. The impact of the business on the borrower and the community, including the extent to which the business contributes to local economic development, market development and employment opportunities.

9. The vulnerability of the business to future natural disasters.

H. All applications must be received in substantially complete form on or before June 30, 1987.

7. COMMITMENT

A. Upon approval of an application by the chief executive officer, a loan commitment will be issued setting forth the terms and conditions upon which the loan will be extended directly or through the lender, as applicable.

B. In the event the chief executive officer rejects the application, the chief executive officer will promptly send the borrower (and lender if applicable) notice containing reasons for the rejection. The notice shall include a statement of the applicant's right to appeal the chief executive officer's decision to the members of the Authority's Board of Directors.

8. APPEAL TO THE MEMBERS

In the event that an application is rejected by the chief executive officer, the borrower shall have the right to appeal the decision of the chief executive officer to the members of the Authority's Board of Directors, provided that such appeal shall not affect processing of other applications received prior to the notice of appeal. Notice of the appeal, together with a statement of the reasons why the chief executive officer's decision should be reversed or modified, shall be given to the chief executive officer in writing within twenty days after the date the chief executive officer mailed the notice of rejection to the lender. The appeal shall be heard at a meeting of the members, and the borrower must be present to support the appeal. The appeal shall be based on the record before the chief executive officer on the date of the rejection. The decision of the chief executive officer shall be final unless the members determine that the rejection by the chief executive officer was arbitrary, capricious or an abuse of discretion, in which event the members may overturn or modify the decision of the chief executive officer and may direct the chief executive officer to take further action with respect to the application. Priority of any application with respect to which the chief executive officer's rejection has been overturned or modified shall be determined as of the date and time of receipt of the notice of appeal.

9. COLLATERAL

Repayment of any loan pursuant to the program shall be secured by the following:

A. A mortgage or security interest in real estate, buildings or personal property of the business endeavor, subject only to such other encumbrances, including priority, junior or coordinate liens, as the chief executive officer may approve.

B. Such other collateral as the chief executive officer may require, including without limitation, liens on real or personal property, assignments or pledges of leases, and personal or corporate guarantees.

C. Loans may, at the discretion of the chief executive officer, be secured by collateral valued for collateral purposes at less than the amount of the loan, provided that the borrower, its principals and any guarantors, are of good character and have good credit histories.

D. Real estate or stationary machinery or equipment constituting a significant portion of collateral for repayment of loan shall be located within the State. Mobile machinery or equipment, including vessels, constituting a significant portion of collateral for repayment of a loan shall be registered with and taxed by the State or municipal authorities, if the State or municipal authorities register or tax machinery or equipment of a type similar to the collateral, and shall be stored or berthed in the State when not in use.

10. LOAN TERMS AND CONDITIONS

A. All loans under the program, including loans made by lenders with deposits from the Authority, shall be for initial terms of six months at an interest rate of the lesser of 8% or the Prime Rate listed under "Money Rates" in the Wall Street Journal on the date the Authority issues its loan commitment. Monthly payments shall be established in accordance with the borrower's individual needs. Loans to any borrower may not exceed $50,000 in the aggregate.

B. Loans or portion of loans intended to provide short term financing pending receipt of funds from other sources must be paid out when such other funds are received to the extent of such proceeds, unless otherwise approved by the chief executive officer.

C. Loans which are not paid out within six months may be termed out for term of up to twenty (20) years on terms and conditions established by the chief executive officer based on the repayment ability of each borrower. In the case of loans made through lenders, the Authority may allow the lender to continue to maintain and service the loan if the lender is willing to do so, or the Authority may request an assignment of the loan and the collateral. If the lender retains the loan, the lender shall pay to the Authority an amount equal to two percent per year of the outstanding principal balance of the loan. Upon the occurrence of any default, the lender may assign the loan and collateral to the Authority and retain the amount deposited by the Authority with the lender up to the amount outstanding on the loan.

D. Additional requirements and covenants of each loan may be established for each loan, provided that each borrower shall at minimum be required to maintain and repair collateral, maintain adequate insurance covering public liability and hazards, including flood insurance for borrowers located in flood plains, and comply with all applicable federal, State and local laws, regulations, ordinances and orders.

E. Borrowers which willfully fail to apply loan proceeds to the purposes for which the loan was approved or which willfully fail to apply funds from other sources to reduce the financial assistance provided under this program where the financial assistance is contingent on such funds being used to reduce program loans, shall be subject to acceleration of the loan and to an additional penalty of fifty percent (50%) of the outstanding balance of the loan. After any default, the Authority may provide that the interest rate on the loan is increased to a rate not to exceed five percent (5%) over the Prime Rate listed under "Money Rates" in the Wall Street Journal on the date of the default.

F. The borrower shall be responsible for the Authority's out-of-pocket costs and expenses of closing, administering and collecting loans held by the Authority.

G. In the case of financial assistance provided through lenders, the lender may charge its reasonable and customary closing costs and expenses but may not charge any points or other fees without express approval of the chief executive officer. The amount of the Authority deposit shall initially equal the amount of the loan and shall be repaid to the Authority as the principal balance of the loan is reduced.

11. WAIVER OF RULE

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

AUTHORITY: 10 MRSA §§969-A(14), 1011, 1012

This rule is based on the following:

1. The Finance Authority of Maine Act, 10 MRSA §961 and following, and particularly §969-A(14) and Chapter 110, subchapter 1-C;

2. The expertise and experience of the members and employees of the Authority.

EFFECTIVE DATE: June 9, 1987, emergency rule.

August 18, 1987 (Permanent Rule)

EFFECTIVE DATE (ELECTRONIC CONVERSION): May 4, 1996

NON-SUBSTANTIVE CORRECTIONS: October 7, 1996 - minor spelling.

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 17, 2025