# **94-457 FINANCE AUTHORITY OF MAINE**

**Chapter 312: INTERMEDIARY RELENDING PROGRAM**

**Summary**: This rule establishes the procedures, standards and fees applicable to Borrowers applying for loans from the Authority's program of direct loans for the finance of business facilities and community development projects in rural areas as set forth in the Farmer's Home Administration ("FmHA") Instruction 1948-C (the "FmHA Instruction").

**1. DEFINITIONS**

 A. **Reference to Act Definitions**. Certain terms used in this rule, which are defined in the Finance Authority of Maine Act, 10 M.R.S.A. Section 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) "Agricultural production" means the cultivation, production (growing), harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds and marine life, either for fiber or food for human consumption, and disposal or marketing thereof, the raising, housing, feeding, breeding, hatching, control and/or management of farm and domestic animals).

 (2) "Authorized fees" means loan packaging fees, environmental data collection fees, and other professional fees rendered by professionals generally licensed by the State or accreditation associations, such as engineers, architects, lawyers,, accountants, and appraisers. Such fees must be fully documented and reasonable and customary in the opinion of the chief executive officer.

 (3) "Aquaculture" means the culture or husbandry of aquatic animals or plants by private industry for commercial purposes including the culture and growing of fish by private industry for the purpose of granting or augmenting publicly-owned or regulated stocks of fish.

 (4) "Borrower" means a person or entity which meets the eligibility requirements set forth in section 3 of this rule, and includes a prospective Borrower where the context requires and is referred to as the ultimate recipient in FmHA Instruction 1948-C. For the purposes of determining eligibility, any affiliate, parent, subsidiary, entity, trust or individual with 20% or greater common ownership with the borrower shall be considered the borrower.

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

 (6) "Loan commitment" means a letter from the chief executive officer to a Borrower agreeing to make a loan to a Borrower on the terms and conditions and subject to the requirements stated therein.

 (7) "Low-income" means the level of income of a person or family which is at or below the Poverty Guidelines as defined in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. §9902(2).

 (8) "Market value" means the most probable price which property should bring, as of a specific date in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

 (9) "Members means the members of the Authority appointed pursuant to the Act.

 (10) "Principals of intermediary" means the members, officers and directors directly involved in the operation and management of the Authority.

 (11) "Program" means the Intermediary Relending Program governed by 7 U.S.C. §2007a, the rules and regulations promulgated thereunder and this rule.

 (12) "Rural area" means all areas of the State not within the outer boundary of any city having a population of twenty-five thousand or more.

 (13) "State" means the State of Maine.

 (14) "Working capital" means the excess of current assets over current liabilities. It identifies the liquid portion of total enterprise capital which constitutes a margin or buffer for meeting obligations within the ordinary operating cycle of the business.

**2. Program Implementation and Assistance Provided**

 The program shall be administered by and is delegated to the chief executive officer. The Authority may provide financial assistance in the form of a direct loan in the amount of up to 75% of the total project cost as set forth in the application, up to $250,000, to an eligible Borrower on such terms and conditions as the chief executive officer may require or approve. Assistance under this program may be combined, to the extent possible, with assistance under other Authority programs.

**3. Applicant Eligibility**

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

 A. The project to be financed must to the maximum extent possible use labor of low-income persons, farm families, and displaced farm families needing additional income to supplement their farming operations. The Borrower must provide a certification with the application of the percentage of its workforce which satisfies this criterion.

 B. The project must be located within a rural area of the State.

 C. The proposal is innovative in providing services and or products to the public.

 D. The Borrower is creditworthy and reasonably likely to repay the loan.

 E. The Borrower is a for-profit or nonprofit commercial entity (including sole proprietorships), other than a charitable or educational institution, church, organization affiliated with or sponsored by a church, or a fraternal organization.

 F. The Borrower has obtained funds from other sources of capital, including equity and debt, for at least 25% of the project contemplated.

 G. That the funds will not be used to purchase goods or services or render assistance in excess of what is needed to accomplish the Borrower's purpose, as determined by the Authority.

 H. That the funds will not be used for distribution or payment to the owner, partners, shareholders, or beneficiaries of the Borrower or members of their families when such persons will retain any portion of their equity in the Borrower.

 I. That the funds will not be used to provide assistance to government employees or military personnel.

 J. That the funds will not be used to provide assistance to principals or employees of the Authority who are directors, officers or have major ownership (20 percent or more) in the Borrower or an entity related to the Borrower.

 K. The Borrower, if an individual, is a citizen of the United States or one or more citizens of the United States own at least 51 % of the Borrower.

**4. Project Eligibility**

 A. Program funds may be used only for the following purposes:

 (1) Business acquisitions, construction, conversion, enlargement, repair, modernization or development cost.

 (2) The purchase and development of land, easements, rights-of-way, building, facilities, leases or materials.

 (3) The purchase of equipment, leasehold improvements, machinery or supplies.

 (4) Pollution control and abatement.

 (5) Transportation services.

 (6) Startup operating costs and working capital.

 (7) Interest (including interest in interim financing) during the period before the facility becomes income producing, but not to exceed three (3) years.

 (8) Feasibility studies.

 (9) Authorized fees.

 (10) Aquaculture, including conservation, development and utilization of water for aquaculture.

 (11) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, the growing of vegetables from seed to the transplant stage.

 (12) Forestry, which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

 (13) Livestock and poultry processing.

 B. Program funds may not be used for the following purposes:

 (1) For agricultural production except as specifically identified in Section A.

 (2) For the transfer of ownership unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

 (3) For community antenna television services or facilities

 (4) For any legitimate business activity when more than ten percent (10%) of the annual gross revenue is derived from legalized gambling activity.

 (5) For any illegal activity.

 (6) For any otherwise eligible project that is in violation of either a Federal, State or local environmental protection law or regulation or an enforceable land use restriction unless the financial assistance will result in curing or removing the violation.

 (7) For any hotels, motels, tourist homes, or convention centers.

 (8) For any tourist, recreation, or amusement centers.

**5. Application Procedure and Content**

 A. Each Borrower 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 this rule. An application shall contain, at a minimum, such general information identifying and describing the Borrower, the proposed project, and the proposed financing of the project as specified in the application form, Form FmHA 1940 - 20, Request for Environmental Information and such other information as requested by the chief executive officer.

 B. The chief executive officer will review each application for completeness and eligibility. Applications which are not substantially complete may be deemed not received until completed. The chief executive officer shall determine when an application is received, which determination shall be final.

 C. Upon approval, the chief executive officer shall submit the application and all supporting material requested to the FmHA. The Authority may issue a commitment of loan funds to a Borrower conditioned on receipt of an affirmative decision to proceed with the loan by the FmHA. No loan funds may be disbursed without the affirmative decision of the FmHA.

**6. Criteria and Considerations**

 A. No application will be approved unless the chief executive officer determines that the Borrower is eligible, including a determination that the loan proceeds will be put to an appropriate use.

 B. 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.

**7. Terms and Conditions; Premiums, Fees and Other Charges**

 A. Periodic payments of principal and interest shall be established in accordance with a Borrower's needs as determined by the authority. The Authority may defer principal and interest payments as it deems necessary.

 B. Loans shall not exceed terms of twenty (20) years in the case of loans primarily secured by real estate, ten (10) years in the case of loans primarily secured by machinery and equipment and seven (7) years for other loans.

 C. All loans shall accrue interest at the highest prime rate of interest as published in the Wall Street Journal as of the date the Commitment to make the Loan is issued. Exceptions may be made by the Authority in cases where the Borrower demonstrates a need for a lower rate of interest and such lower rate of interest is justified by the magnitude of the public benefit to be derived from the project.

 D. For all loans over $30,000, real property serving as primary security will be appraised by a qualified appraiser. The chief executive officer may require an appraisal on real estate serving as secondary collateral. For all other types of property, a valuation shall be made using any recognized, standard technique for the type of property involved (including standard reference manuals).

 E. Additional requirements and covenants of each loan may be established, provided that each Borrower shall at a minimum be required to maintain and repair collateral, maintain adequate insurance covering public liability, hazard, and flood insurance if the Borrower is located in a flood plain, and comply with all applicable Federal, State and local laws, regulations, ordinances and orders. Each Borrower shall also be required to maintain such environmental liability insurance as may be required by the chief executive officer. Assignment of key person life insurance will ordinarily be required.

 F. The Borrower shall pay a nonrefundable commitment fee of 0.5% upon acceptance of the Commitment. The Borrower shall pay loan origination fee equal to 1.5% of the loan amount at closing and shall be responsible for the Authority's out of pocket costs and expenses of closing, administering and collecting the loan, including but not limited to all fees which may be incurred by the Authority to assure professional oversight and management of construction or rehabilitation work and all reasonable attorney's fees of in-house and/or outside counsel. Commencing on the first anniversary date of the date of the loan and annually on the same date thereafter, the Borrower shall pay to the Authority an annual loan administration fee in an amount equal to ten dollars ($10.00) per month.

 G. Ordinarily, the Authority will obtain the unconditional unlimited guaranty of all individuals or entities with 20% or greater ownership interest in the Borrower, directly or indirectly.

 H. Remaining loan balances may be accelerated in the event the Borrower moves all or substantially all of its operations from the State.

**8. Loan Priority**

 In the event the demand for loans exceeds the funds available in the loan fund, the Authority shall consider the following in determining the distribution of the loan fund.

 A. The percentage of the workforce and number of workers who are members of families with income below the poverty line.

 B. The number of jobs likely to be retained or created in the event the loan is made.

 C. The likelihood of the long-term success of the Borrower if assistance is awarded.

 D. The availability of other sources of assistance to supplement a loan under this program and other sources of assistance from the State.

 The authority may determine in the discretion of the chief executive officer that a reasonable and prudent amount shall be retained in the fund, despite any application which may be pending.

**9. Appeal to the Members**

 In the event that an application is rejected by the chief executive officer, the applicant shall have the right to appeal the decision of the chief executive officer to the members, 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 20 days after the date the chief executive officer mails the notice of rejection to the applicant. The appeal shall be heard at a meeting of the members. The applicant 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.

**10. 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 or the FmHA Instruction, in cases where the deviation from the rule is insubstantial and is not contrary to the purposes of the program.

STATUTORY AUTHORITY: 10 M.R.S.A. Sections 969-A(14)

EFFECTIVE DATE:

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