# **99‑626 MAINE RURAL DEVELOPMENT AUTHORITY**

**Chapter 1: COMMUNITY INDUSTRIAL BUILDINGS PROGRAM**

**Summary:** The Maine Rural Development Authority was created by the 120th Legislature in 2002 and funded through a bond issue. The Authority will administer the Community Industrial Buildings Program. The Community Industrial Buildings Program was created in 1973 to provide Maine communities with financial assistance for the development of speculative industrial properties. This rule defines the application process for the Program.

**Basis Statement:** The overall goal of the Program is to foster job creation and encourage business development in Maine with a primary focus on rural communities. In particular, the program provides loans to Local Development Corporations for construction and/or associated costs of a speculative building. The program is a non‑lapsing revolving fund. The rule defines the application process for the program, the responsibilities of Local Development Corporations that receive a loan through the Program, and the terms and conditions of financial assistance the Authority may provide to Local Development Corporations, pursuant to 5 M.R.S.A., Chapter 383, Subchapter IX.

**Section 1. Definitions.**

1. Act: "Act" means 5 M.R.S.A. Chapter 383, Subchapter IX

2. Applicant: "Applicant" means a Local Development Corporation, applying for a loan under the Community Industrial Building Program.

3. Authority: "Authority" means the Maine Rural Development Authority, or as the context requires, the agents and employees of the Authority.

4. Borrower: "Borrower" means a qualified Local Development Corporation, as defined in 5 M.R.S.A., § 13120‑ B(9) that meets the threshold criteria set forth Section 2 of this rule.

5. Carrying Costs: "Carrying Costs" means reasonable costs incurred for the maintenance, protection and security of a community industrial building prior to occupancy, including, but not limited to, insurance, taxes and interest.

6. Commercial Facility: "Commercial Facility" shall mean real estate and improvements used principally for commercial purposes or suitable for commercial use as defined in 5 M.R.S.A. § 13120‑B(4). The term commercial facilities includes, but is not limited to:

a. Offices and office buildings;

b. Manufacturing, processing, assembly and other industrial buildings and related improvements;

c. Property used in connection with commercial fishing and other marine‑related industries;

d. Property used in conjunction with agricultural production, storage, processing, packing and transportation;

e. Warehouses, transportation and distribution facilities;

f. Service and repair facilities;

g. Retail establishments; and

h. Lodging, restaurant and entertainment facilities.

 7. Community Industrial Building: "Community Industrial Building", as defined at 5 M.R.S.A. § 13120‑B(5), means a building of flexible design where the construction costs are financed through the Authority for the purpose of creating new jobs in a region resulting from the sale or lease of the building.

8. Comprehensive Plan: "Comprehensive Plan" shall mean a plan that is determined by the Executive Department, State Planning Office to be consistent with 30‑A M.R.S.A. § 4326, subsections 1 to 4 and has been adopted by the community.

9. Construction Costs: "Construction Costs" means any cost or expenditure involving the community industrial building which is properly chargeable under the Internal Revenue Code of 1986, as amended, to the capital account of any person or state or local government. In no event shall "Construction Costs" include either "Carrying Costs" or the cost of purchasing or otherwise acquiring the site or providing and maintaining and plowing an adequate access road from a public highway to the site or providing and maintaining water, sewer and power facilities.

10. Eligible Costs: "Eligible Costs" means Construction Costs.

11. Lease: "Lease", as defined at 5 M.R.S.A. § 13120‑B(7), means a contract providing for the use of a Project or portions of a Project for a term of years for a designated or determinable rent. A lease may include an installment sales contract.

12. Local Growth Management Program: "Local Growth Management Program" shall mean the town has adopted a growth management program that certified by the Executive Department, State Planning Office, under 30‑A M.R.S.A. § 4347‑A.

13. Loan Commitment: "Loan Commitment" means the agreement executed prior to Phase II as hereinafter defined, between the Authority and an applicant pursuant to which the Authority has agreed to make a loan to the applicant in accordance with the terms thereof.

14. Local Development Corporation: "Local Development Corporation" shall have the meaning set forth in the Act, 5 M.R.S.A. § 13120‑B(9).

15. Municipality: "Municipality", as defined at 5 M.R.S.A. § 13120‑B(10), means any county, city or town in the State.

16. Program: "Program" means the Community Industrial Buildings Program.

17. Project: "Project" means the construction of a Community Industrial Building, as defined in 5 M.R.S.A. § 13120‑B(5) and this rule.

**Section 2. Eligible Projects.**

 1. Projects eligible for loan funding under the program are Community Industrial Buildings which meet all the following criteria, as determined by the Authority:

a. The Applicant must be a Local Development Corporation;

b. Demonstrated market need for new Commercial Facility;

c. Demonstrated economic need for new Commercial Facility;

d. Demonstrated financial commitment from the Local Development Corporation to develop successful Community Industrial Building Project and ability to repay loan;

e. Evidence that Local Development Corporation has the rights to develop a Commercial Facility and control of the subject site;

f. Evidence that there is either a lack of private interest in the Project or it is not financially viable for the private sector to solely develop the Project; and

g. Demonstrated capacity to market and manage the facility;

 2. Eligible Projects within economically distressed areas of the State will be given funding preference by the Authority. Economic distress, as determined by the Authority, may include, but is not limited to:

a. Loss of or major downsizing of major employer(s) in region;

b. Chronic unemployment or underemployment in the region;

c. Lack of economic diversification; and

d. Historical lack of private investment.

 3. Eligible Local Development Corporations must begin paying back loan within three years of the initial draw down at the terms specified in the loan documents.

 4. The Authority will only provide loans to fund the actual construction costs associated with a Community Industrial Building. All other costs such as those associated with land assembly, site preparation, utility extensions, marketing, and administration are not eligible to be funded by the Authority.

 5. No more than one unoccupied Community Industrial Building per community will be funded under this program.

 6. Eligible Community Industrial Building Projects must be located on a developable site in accordance with all State, federal and local regulations. Such site must have adequate utilities and services to support highest intended use of building.

 7. All Projects funded under the Program are considered State Growth Related Capital Investments and may only be undertaken in locations that meet the requirements in 30 M.R.S.A. § 4349‑A(1).

 8. Only Projects that are consistent with a municipality's Local Growth Management Program or Comprehensive Plan, or meet the requirements of 30‑A M.R.S.A. § 4349‑A sub-§ 1 are eligible for monies from the Fund.

 9. Under this program, the Authority will not provide loans to refinance existing facilities or to finance or refinance facilities currently being constructed. Local Development Corporations may not request funds for a Project to supplant loan funds from other state or federal programs (e.g., Rural Development, CDBG, EDA, HUD) or revenue bonds already approved by the municipality.

**Section 3. Application Procedures.**

 **A. Phase I ‑ Application**

 1. An Applicant shall submit an application complying with the requirements of this rule on forms developed by the Authority as may be specified with supporting information as required by this rule and additional information as requested by the Authority.

 2. The Authority shall be responsible for making application forms available.

 3. Applications will be rated on the following criteria: problem, solution, commitment, citizen participation and evidence that Local Development Corporation has the rights to develop a Commercial Facility and control of the subject site.

 a. Problem Statement:

 Scope of Problems ‑ Identification and description of the nature and magnitude of the identified problems to be addressed with Community Industrial Building, including evidence of the loss of or major downsizing of major employer(s), chronic unemployment or underemployment, lack of economic diversification or, historical lack of private investment in the region.

 b. Solution:

 (i) Project Description ‑ Describe how funds will be used. Include a project budget.

 (ii) Comprehensive Nature of Solution ‑ Description of how the activities relate to the community's total economic development effort. Include a description of how the project will address the need for new employment; retaining or improving existing employment opportunities or improving the competitiveness of an occupant business. The application must detail how the project will address the problems identified, and a plan to market and manage the facility.

 (iii) Feasibility ‑ Identification of tasks, timetables and the responsible parties to implement the proposed solution. Application must also Identify the market need for a Community Industrial Building.

 (iv) Right to develop ‑ Evidence that Local Development Corporation has the rights to develop a Commercial Facility and control of the subject site.

 c. Citizen Participation ‑ Identification and description of the process, descriptions of public meetings, hearings and other methods to solicit the involvement of residents, developers, local organizations and public officials, and how the involvement contributed to this application.

 d. Commitment/Match ‑ Identify and describe how the community, and other organizations including private developers will contribute financial and/or technical resources to the project, and the status of those commitments.

 4. No application will be considered complete unless all questions are answered, and all supporting information is provided.

 5. Upon approval of an application by the Authority, a loan commitment shall be issued at the successful conclusion of Phase I, setting forth the terms and conditions under which the loan will be included in the program. The commitment shall include a requirement that the Phase II conditions be satisfactorily met and may specify special requirements applicable to the Project and requiring the submission in final form within a time specified of all appropriate documents, drawings, plans, specifications, appraisals, bonds, guarantees, permits, approvals, surveys, title insurance, opinions, financial statements, cost, other certifications and other instruments evidencing full compliance with the Authority's requirements and in form and content satisfactory to the Authority.

 6. No commitment shall become effective until the Borrower has signed it and the Borrower has agreed to pay to the Authority the loan origination fees specified in the program application, and other applicable fees. Loan origination fees will not exceed 2% of the total loan.

 7. If, upon examination of the application and supporting information, the Authority rejects an application, the Borrower shall be informed of the rejection and the reasons. Rejection of a Project may occur at any time during Phase I or prior to Phase II.

 **B. Phase II ‑ Project Planning**

 1. Local Development Corporations whose applications rank the highest after the scoring of the weighted criteria will be invited to participate in Phase II. Emphasis during this second phase will be developing the best Project to meet the community's industrial space needs. The Authority will work with the Local Development Corporation in evaluating the proposed site and building conceptualization and more fully planning the Project. During Phase II the Local Development Corporation will complete the following activities at its own expense:

 a. Develop site plans, including plans for landscaping and lighting the building, surface water runoff control, utilities connections, and all other non‑eligible costs.

 b. Develop a building design, including the foundation, structure and architectural design.

 c. Determine the suitability of the proposed site, including soil analysis and municipal services.

 d. Provide evidence of insurance against loss or damage to the building as well as fire protection for and maintenance of the building until it is sold.

 e. Ensure that an adequate access road exists from public highway to the building lot.

 f. Secure appropriate licenses and permits to construct, operate and occupy the building.

 g. Ensure the site is consistent with all applicable state and local ordinances and requirements.

 h. Ensure that the building lot is either owned by the Local Development Corporation or owned by an instrumentality of state, local or federal government.

 2. Submissions and Review: The Local Development Corporation shall submit plans and specifications for the proposed Project, prepared by a registered Architect and Engineer in Maine, to the Authority for review. The plans and specifications shall clearly outline the scope of work for the Project including the following:

 a. Site plan showing a boundary survey indicating property lines, all utilities including water, sewer and power, building foot print, landscaping, surface water runoff control and associated parking.

 b. Floor plans, elevations wall sections, foundation plan, structural system, mechanical and electrical systems and details indicating the size, height and overall scope of the proposed building.

 c. Specifications indicating the type and quality of the systems and material that will be used in the construction of the building.

 3. Final documents shall be submitted to the Authority for review and approval prior to the closing of a loan. Prior to the start of the construction the Borrower will provide the Authority a set of construction documents for the Project.

 **C. Phase III ‑ Project Construction**

 Local Development Corporations that successfully complete Phase I and Phase II will close a loan with the Authority for all or a portion of the Construction Costs and begin Project Implementation.

 1. Loans shall be given in an amount that corresponds with the funds available in the Fund and is reasonable to construct a Community Industrial Building as demonstrated by a contractor's bid package.

 2. Interest on a loan shall be up to 2% over High Wall Street Prime Rate as published in the Wall Street Journal on the date of the loan commitment.

 3. Loans must be secured by collateral having a fair market value sufficient to provide adequate security for the loan, and/or such guarantees and/or other financial support, or incentives from the municipality in which the Community Industrial Building is located. The Authority shall require a first lien on collateral.

 4. The term of each loan shall be based on the Borrower's circumstances and the useful life of the Community Industrial Building but in no event will it exceed five (5) years.

 5. The proceeds of the loan will be used only for Construction Costs.

 6. If not paid sooner, the amount payable is principal and interest on the loan.

 7. Periodic payments of interest shall be established in accordance with the Borrower's individual needs. The Authority may defer up to three (3) years the collection of interest from the Borrower for a loan involving Community Industrial Building which remains unoccupied following completion of the building. The Authority may provide that such deferred interest is not payable until sale of the building or the maturity of the loan, whichever occurs first, and in appropriate circumstances at the discretion of the Authority, interest due may be abated in whole or in part.

 8. The Authority may limit its disbursements so that the undisbursed portion of the loan shall be sufficient at all times to cover the Project construction costs.

 9. In the event of default, the principal of and interest on the loan may be declared immediately due and payable.

 10. The Borrower will agree to the following terms and conditions in the loan documentation, as may be applicable:

 a. The Borrower will comply with all applicable planning, zoning, sanitary, building and environmental laws, ordinances and regulations of the federal, state and local governments.

 b. The Borrower will agree not to convey, lease or transfer any collateral for the loan without the prior written consent of the Authority.

 c. The Borrower will expend no portion of the loan directly or indirectly for purposes other than those approved by the Authority.

 d. The Borrower will keep insured to the satisfaction of the Authority all insurable property securing the loan and will maintain the collateral in good condition and repair.

 e. The Borrower will not materially alter or relocate collateral without the prior written consent of the Authority.

 f. The Borrower will comply with such other covenants as the Authority impose or establish in order to protect the Authority's interests. Any such other covenants shall be expressly set forth in the loan commitment or exhibits or attachments.

 11. Use of Loan Proceeds. The Borrower shall use loan proceeds for the purposes stated in the commitment, and the borrower's rights under the commitment shall not be assignable.

 12. Construction Inspection. The Borrower will allow the Authority or the Authority's representative access to the building site and/or building periodically to inspect all aspects of the work to check and verify that the work is being constructed in accordance with the construction documents.

 13. Certification of Payments. The Borrower shall provide the Authority certificate of payment from the architect or engineer of record based on the architect's or engineer's evaluation of the work and on the data comprising the Contractor's Application for payment, that the work has progressed to the point indicated and, that to the best of the architect's or engineer's knowledge, information and belief, the quality and quantity of the work is in accordance with the Contract Documents.

**Section 4. Community Industrial Buildings Program Administration.**

 1. Operating expenses of the Authority must be charged to the program and all repayments of loans must be credited to the fund. Expenses of the authority that arise out of assistance to municipalities and local development corporations under the Community Industrial Building Program may be charged against the proceeds of the sale or lease of community industrial buildings constructed under this section.

 2. In order to protect the integrity of the program, the Authority may charge borrowers such administration, servicing and document preparation fees as the Authority deems reasonable.

**Section 5. Waiver of Rule.**

 The Authority may waive any requirement of this rule, except to the extent that the requirement is mandated by the Act, in cases where deviation from the rule is insubstantial. Any requests for waiver of the rule shall be made prior to the execution of a loan commitment.

STATUTORY AUTHORITY: 5 M.R.S.A. section 13120‑N(1)(D)

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 Replaces 19-498 CMR ch. 10.

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