



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