



53 N.J.R. 2247(b)

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RULE ADOPTIONS

Reporter

53 N.J.R. 2247(b)

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Agency

OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Administrative Code Citation

Adopted New Rules: N.J.A.C. 19:31-5

Adopted Repeals: N.J.A.C. 19:31-6

Text

Authority Assistance Programs

Main Street Recovery Finance Program

Proposed: September 20, 2021, at 53 N.J.R. 1631(a).

Adopted: November 23, 2021, by the New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Filed: November 23, 2021, as R.2021 d.149, **without change**.

Authority: P.L. 2020, c. 156 and P.L. 2021, c. 160.

Effective Date: November 23, 2021.

Expiration Date: May 8, 2025.

Summary of Public Comment and Agency Response:

No public comments were received.

Federal Standards Statement

A Federal standards analysis is not required because the adopted new rules and repeals are not subject to any Federal requirements or standards.

Full text of the adopted new rules follows:

SUBCHAPTER 5. MAIN STREET RECOVERY FINANCE PROGRAM

19:31-5.1 Applicability and scope

The New Jersey Economic Development Authority is promulgating this subchapter to establish criteria for products that provide grants to small businesses, loans and grants to microbusinesses, and loans and grants to eligible lending entities as part of the Main Street Recovery Finance Program, which utilizes the Main Street Recovery Fund, in accordance with the Main Street Recovery Finance Program Act, sections 82 through 88 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156 (N.J.S.A. 34:1B-349 et seq.), as amended by P.L. 2021, c. 160.

19:31-5.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Main Street Recovery Finance Program Act, sections 68 through 81 of P.L. 2020, c. 156.

"Authority" means the New Jersey Economic Development Authority established by section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Board" means the Board of the New Jersey Economic Development Authority, established by section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Capital improvements" means:

1. 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.

2. Expenses that a business incurs for obtaining, and installing furnishings and machinery, apparatus, or equipment, including, but not limited to, material goods subject to bonus depreciation under sections 168 and 179 of the Federal Internal Revenue Code (26 U.S.C. §§ 168 and 179), for the operation of a business on real property or in a building, structure, facility, or improvement to real property.

3. "Capital improvements" shall not include site acquisition; vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement; any capital improvement for which the business received any grant financial assistance from any State source; costs of a lease, including any capital lease; or any soft costs.

"Community development financial institution" means a financial institution certified by the U.S. Department of the Treasury as a community development financial institution. (12 CFR 1805.201).

"Eligible microbusiness" means any microbusiness that satisfies the relevant eligibility criteria set forth at N.J.A.C. 19:31-5.3 for direct financial assistance from the Authority.

"Eligible small business" means any small business that satisfies the relevant eligibility criteria set forth at subsection (b) of section 85 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-352) and N.J.A.C. 19:31-5.3.

"Full-time employee" means:

1. A person:

i. Who is employed by a business for consideration for at least 35 hours a week and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.; or

ii. Who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization for at least 35 hours a week and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.; or

iii. Who is a partner of a business who works for the partnership for at least 35 hours a week and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.; or

iv. Who is a resident of another state and would be eligible under subsections i, ii, or iii above, but whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., due to a reciprocity agreement with the other state.

2. The Authority may determine a different number of hours a week or other standard of service generally accepted by custom or practice as full-time employment for paragraph 1 above.

3. "Full-time employee" shall not include any person who works for the business as an independent contractor or on a consulting basis.

"Fund" means the Main Street Recovery Finance Fund established under the Main Street Recovery Finance Program pursuant to section 84 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-351).

"Home-based business" means 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.

"Microbusiness" means a business, including non-profit entities, that produces goods or provides services and has fewer than 10 full-time employees and annual gross revenue of less than \$ 1,500,000 at the time of application for a loan or grant under the program. The business shall have a physical location in the State, provided the location cannot be residential, unless the location is a home-based business.

"Microbusiness lenders" means community development financial institutions, minority depository institutions, or other eligible lenders.

"Minority depository institution" means any Federally insured depository institution that is listed on the Federal Deposit Insurance Corporation's Minority Depository Institutions List, which is available on the Federal Deposit Insurance Corporation's website.

"Other eligible lender" means a zone development corporation as defined in section 3 of P.L. 1983, c. 303 (N.J.S.A. 52:27H-62), that is located in a municipality with a population greater than 100,000. It also means other nonprofit lenders, such as an economic development corporation or community development corporation. To be an other eligible lender, the lender shall have a minimum of 10 years of experience in lending to microbusinesses.

"Product" means a sub-program established by the Authority under the Program to provide a particular type of financial assistance to one or more categories of eligible entities.

"Program" means the Main Street Recovery Finance Program established pursuant to section 84 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-351).

"Qualified opportunity zone" means a Federal population census tract in this State that was eligible to be designated as a qualified opportunity zone pursuant to 26 U.S.C. § 1400Z-1.

"Small business" means a business, including non-profit entities, engaged in the conduct of a trade or business in this State that qualifies as a "small business concern" within the meaning of the Federal Small Business Act, Pub. L. 85-536 (15 U.S.C. § 631 et seq.) for the purpose of the small business's eligibility assistance from the United States Small Business Administration. The Authority shall determine whether a business is a "small business" based solely on the applicant and shall not consider any affiliates or other businesses related to the applicant. The business shall have a physical location in the State, provided the location cannot be residential unless the location is a home-based business.

"Soft costs" means all costs associated with financing, design, engineering, legal, or real estate commissions, including, but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, freight and shipping delivery, early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing, temporary signage, incentive consultant fees, Authority fees, loan interest payments, escrows, or other similar costs.

19:31-5.3 Product description and eligibility criteria

(a) The Board may establish grant products that shall make available grants to eligible small businesses, subject to availability of funds in the Fund. Eligibility criteria shall be the following:

1. Eligible grant uses shall be capital improvements or operating expenses. The eligible capital improvement may be made by an entity that is wholly owned by the applicant;

2. Eligible capital improvements by a home-based business shall be the purchase and installation of new furniture and equipment but shall not include building renovations and improvements. For purposes of home-based businesses, allowable furniture and equipment must be used exclusively for the business and must not be attached to the building;

3. A small business shall be eligible to receive a grant if the small business demonstrates to the Authority at the time of application that:

i. The small business has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting a tax clearance certificate, as described at section 1 of P.L. 2007, c. 101 (N.J.S.A. 54:50-39); and

ii. After execution of the grant agreement, the small business shall pay each full-time and part-time employee during the term of the grant not less than \$ 15.00 per hour or 120 percent of the minimum wage fixed under subsection (a) of section 5 of P.L. 1966, c. 113 (N.J.S.A. 34:11-56a4), whichever is higher, except that the small business shall pay not less than 120 percent of the minimum wage to an employee who customarily and regularly receives gratuities or tips; and

4. In addition to the requirements at (a)2 above, a small business shall be eligible to receive a grant for capital improvements only if the small business demonstrates to the Authority, at the time of application, that:

i. Any capital improvement in excess of \$ 50,000 and undertaken with grant funds shall comply with standards established by the Authority, and published on the Authority's website, in accordance with the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction;

ii. Each worker employed to perform construction work in connection with a capital improvement undertaken with grant funds in excess of \$ 50,000 shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of the Department of Labor and Workforce Development pursuant to P.L. 1963, c. 150 (N.J.S.A. 34:11-56.25 et seq.). This requirement shall extend through the term of the grant. For purposes of this provision, "worker" shall mean any person working on a capital improvement, whether employed by the small business or the small business's contractor or subcontractor; and

iii. The applicant leases or owns the facility at which capital improvement is made. If the applicant leases the facility, the applicant must have the right to make the capital improvements.

(b) The Board may establish grant and loan products that shall make available grant and loans to eligible microbusiness lenders, subject to availability of funds in the Fund. Eligibility criteria shall be the following:

1. Eligible grant and loan uses shall be strengthening capital structures, leveraging additional debt capital, and increasing lending and investing in economically disadvantaged communities in New Jersey. Any lending and investing by the microbusiness lender using grant and loans from the Authority shall be limited to microbusinesses.

2. A microbusiness lender shall be eligible to receive a grant or loan, if the microbusiness lender demonstrates to the Authority at the time of application that the microbusiness lender has a minimum of 10 years of experience in lending to microbusinesses.

3. Grants available to microbusiness lenders may include a grant for the purpose of providing technical assistance to microbusinesses applying for financial assistance to the microbusiness lender. The technical assistance grant may be awarded in conjunction with a loan to the microbusiness lender. To be eligible for loans that include such grants, the microbusiness lender must demonstrate to the Authority at the time of application that the microbusiness lender has the capacity to provide technical assistance.

(c) The Board may establish loan products that shall make available to eligible microbusinesses, subject to availability of funds in the Fund. Eligibility criteria shall be the following:

1. Eligible loan uses shall include, but are not limited to, capital improvements, employee training, salaries for new positions, and day-to-day operating expenditures, including payroll, rent, utilities, insurance, and purchases of goods and services.

2. The Board may establish conditions where the loans provided to eligible microbusinesses may be forgiven at the Authority's discretion; and

3. Any other eligibility criteria consistent with the Act that the Authority determines accomplishes the purpose of the microbusiness loan product, which other eligibility shall be posted by the Authority on its website.

(d) The following apply to all products established under the Main Street Recovery Finance Program:

1. The following apply to the extent that the number of employees or full-time employees is a criteria for a business to qualify as a microbusiness or small business:

i. If the business employs employees through a professional employer organization, the professional employer organization must be registered with the Department of Labor and Workforce Development pursuant to P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.); and

ii. The business must satisfy the minimum number of employees or full-time employees on the date of application and the date three months before the application.

2. Businesses that are engaged in the following are not eligible for funding directly from the Authority or through grants and loans to eligible microbusiness lenders: the conduct or purveyance of "adult" (that is, pornographic, lewd, prurient, obscene, or otherwise similarly disreputable) activities, services, products, or materials (including nude or semi-nude performances or the sale of sexual aids or devices); any auction, bankruptcy, fire, "lost-our-lease," "going-out-of-business," or similar sale; sales by transient merchants, Christmas tree sales, or other outdoor storage; or any activity constituting a nuisance.

3. In its allocation of financial assistance, directly to businesses or through grants and loans to eligible microbusiness lenders, the Authority may consider the business's benefit to the community in which it is situated and the degree to which the business enhances economic development in communities that have been severely

impacted by the COVID-19 pandemic when making awards under the Program. The Authority may prioritize or make available a percentage of the funds under grant products to businesses in qualified opportunity zones.

4. To the extent permitted by law and based on the recommendations of a disparity study to be conducted by the Authority evaluating the relative availability of capital and related banking resources for small businesses and microbusinesses that are women- and minority-owned, the Authority shall establish policies, practices, protocols and, if appropriate, minimum percentages of the Fund to be set aside for eligible small businesses and microbusinesses that are minority- or women-owned.

5. For all loan products, the Authority shall establish the term and interest rate based on economic conditions prevailing in the market. The Authority shall post the term and interest rate on its website.

(e) Pursuant to (a) above, a small business improvement grant product is established that shall provide reimbursement grants of up to \$ 50,000 to eligible small businesses in an amount equaling 50 percent of the eligible capital improvement.

1. Only one grant shall be awarded per applicant. An applicant shall apply for the grant in a single application for all capital improvement costs or for separate locations. No landlords shall be eligible under the Program.

2. The eligible capital improvements must be at least \$ 5,000.

3. No grant shall be approved for a capital improvement that commenced, or was purchased, prior to two years before the date of the application, but in no event prior to March 9, 2020.

4. After the date of closing of the grant, the applicant shall remain at the location two years for grant awards not exceeding \$ 25,000 or four years for all other grant awards.

(f) Pursuant to (a) above, a small business lease grant product is established that shall provide grants to eligible small businesses that make lease decisions through new leases, lease amendments, and lease extensions. Grants shall be disbursed in two payments. The first disbursement shall be up to 20 percent of the annualized lease payment as of the date of closing of the grant, and the second disbursement shall be up to 20 percent of the annualized lease payment as of the first anniversary of the date of closing of the grant.

1. Only one grant shall be awarded per applicant for the same location. Only one location shall be included in one application. An applicant seeking a grant for more than one location shall submit an application for each location.

2. The applicant's landlord cannot have any ownership interest in the applicant.

3. The leased premises shall be used as office, commercial, or retail space.

4. Applicants who have or are seeking to expand, renew, or newly lease commercial space are eligible. No grant shall be approved for an expansion, renewal, or new lease with an effective date prior to one year before the date of the application, but in no event prior to March 9, 2020.

5. The new or additional space or the space that is being renewed must measure more than 250 square feet and be fully or partially located on the first floor.

6. Applicants shall remain at the leased premises for five years after the date of closing of the grant. Tenants may have a right to purchase after the five-year period.

7. Applicants that are terminating an existing lease and obtaining a new lease must demonstrate that the new lease is at least 250 square feet larger than the prior space.

8. 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.

9. The amount of the grant shall be based on the lower of the lease payments or market-rate pricing, as determined by the Authority, based upon comparable market rates. The Authority may obtain comparable market rates through a third-party. In considering comparable market rates, the Authority shall consider the base rent and all other payments due from the tenant to the landlord.

10. A small business leasing more than 10,000 square feet shall receive a grant based on the lease for the first 10,000 square feet.

19:31-5.4 Application and review

(a) A small business, microbusiness, or microbusiness lender seeking financing through a product established in the program shall submit an application that shall be available on the Authority's website at www.njeda.com or by contacting the Authority.

(b) A completed application includes:

1. The name of the applicant;
2. The contact information of the applicant;
3. Except for loans to microbusiness lenders, the prospective future address of the applicant (if different);
4. The organizational type of the applicant;
5. The principal products and services and three-digit North American Industry Classification System number;
6. The New Jersey tax identification number;
7. The Federal tax identification number;
8. The most recent three Federal tax returns filed;
9. Except for loans to microbusiness lenders, the total number of full-time and part-time employees of the applicant, in New Jersey at the time of application, and three months prior to the submission of the application;
10. Except for loans to microbusiness lenders, the comprehensive list of the applicant's locations in New Jersey and the function performed at each location;
11. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
12. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;
13. For any grant product pursuant to N.J.A.C. 19:31-5.3(a), including, but not limited to, the small business improvement grant product and the small business lease grant product, WR 30, payroll reports, or equivalent documentation for the quarter preceding submission of application;
14. For the small business improvement grant product, an application shall include:
 - i. Executed lease or recorded deed evidencing site control of the relevant property;
 - ii. Documentation evidencing proof of past or proposed eligible capital improvements; and
 - iii. If the property is leased, evidence that the landlord has granted the applicant the right to make the capital improvements;
15. For the small business lease grant product, an application shall include:

- i. A copy of the lease for the relevant property, which must include square footage and rent; and
- ii. For applicants who have already expanded or renewed their lease, or who are seeking to expand or renew their presently leased space, documentation that the applicant is current on rent payments;

16. For microbusiness lenders, an application shall include:

- i. A comprehensive description of the applicant's lending portfolio that demonstrates the applicant's lending experience with microbusinesses and capacity to lend to microbusinesses;
- ii. A description of the applicant's experience working in communities and business segments underserved by the banking sector; and
- iii. For products that include a grant to provide technical assistance to microbusinesses, a description of the applicant's capacity to provide the technical assistance;

17. A certification under the penalty of perjury from the applicant, or an authorized agent of the applicant, that the information provided in the application is true; and

18. Any other necessary and relevant information as determined by the Authority for any product or for a specific application.

(c) The Authority shall conduct a review of the applications commencing with the completed application bearing the earliest submission date. If interest in a product so warrants, at the Authority's discretion and upon notice, the Authority may institute a competitive application process whereby all completed applications submitted by a date certain will be evaluated as if submitted on that date. The review of a submitted application will determine whether the applicant:

- 1. Complies with the eligibility criteria;
- 2. Satisfies the submission requirements; and
- 3. Provides adequate information for the subject application.

(d) Before the Authority may approve an eligible business's application:

1. The Authority will confirm with the New Jersey Department of Labor and Workforce Development, Department of Environmental Protection, and the Department of the Treasury that the applicant is in compliance by being in substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the eligible business has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable.

i. Substantial good standing shall be determined by each department and mean, at a minimum, that the eligible business:

(1) As to the Department of Labor and Workforce Development and the Department of Environmental Protection:

(A) Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective department that apply to the eligible business; and

(B) Has no material violations of those statutes, rules, or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto; and

(2) As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department.

ii. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgates or issues its own more stringent rule or standard defining the term "substantial good standing," the respective department shall use such rule or standard to determine whether a business is in substantial good standing.

2. The Authority shall confirm that the applicant is in good standing on all financial assistance received from the Authority.

3. The Authority may contract with an independent third party to perform a background check on the eligible business.

(e) Upon completion of the review of an application pursuant to this section, the Authority shall determine whether or not to approve the application and the amount of assistance to be granted. The Authority shall notify the applicant of the determination. For a loan product, the Authority shall issue a commitment letter, and the award of the financial assistance will be subject to terms and conditions in the commitment letter.

19:31-5.5 Grant and loan agreements

(a) For loans, upon satisfaction of conditions in the commitment letter, as determined by the Authority, but before the disbursement of loan funds, the entity shall execute a loan agreement. For grants, following approval by the Authority, but before the disbursement of grant funds, the entity shall enter into a grant agreement with the Authority, provided that the terms of the grant approved to a microbusiness lender in conjunction with a loan shall be included in the loan agreement. All grant agreements and loan agreements shall include, but not be limited to, the following provisions:

1. The amount of the financial assistance and the frequency and dates of disbursements;
2. The term of the agreement;
3. A detailed description of the specific use for which the financial assistance was approved;
4. Representations that the entity is in substantial good standing or meets the agreement requirements described at N.J.A.C. 19:31-5.4(d)1;
5. A provision requiring the entity to return to the Authority all the financial assistance disbursed if the Authority determines that the entity made a material misrepresentation on its application, which shall be in addition to any other remedies in the agreement and any criminal or civil penalties to which the entity and any corresponding officer may be subject;
6. A provision permitting an audit from time-to-time, as the Authority deems necessary, of all evidence, records, or any other evidence of the entity supporting the representations and certifications made as part of the application, the agreements, and any annual reports;
7. A requirement for the entity to indemnify the Authority in relation to the loan or grant agreement and the uses of the loan or grant funds and a requirement for insurance from the entity, as determined by the Authority, based on the product and the amount and permitted use of the financial assistance;
8. Reporting requirements determined by the Authority to be necessary to verify that the financial assistance is used only for the approved use; and
9. Defaults and remedies.

(b) For small business grant products established pursuant to N.J.A.C. 19:31-5.3(a), including, but not limited to, the small business improvement grant product and the small business lease grant product, the grant agreement shall additionally include the following:

1. The location(s) of the applicant;
2. For the small business lease grant product, a requirement for the small business to remain at the same location for five years after the date of closing of the grant;
3. For the small business improvement grant product, a requirement for the small business to remain at the same location(s) after the date of closing of the grant for two years, if the grant amount does not exceed \$ 25,000, or four years for all other grant amounts;
4. A requirement that the small business pay each full-time or part-time employee employed by the small business not less than \$ 15.00 per hour or 120 percent of the minimum wage fixed under subsection (a) of section 5 of P.L. 1966, c. 113 (N.J.S.A. 34:11-56a4), whichever is higher, except that the small business shall pay not less than 120 percent of the minimum wage to an employee who customarily and regularly receives gratuities or tips;
5. A requirement to submit annually for the term of the grant agreement, starting with the first anniversary of the closing of the grant agreement, the following:
 - i. WR 30, payroll reports, or equivalent documentation for the preceding year;
 - ii. Certification and evidence documenting that the eligible small business is in the same location; and
 - iii. Any other items that the Authority shall determine as necessary;
6. A provision requiring the entity to return to the Authority all the financial assistance disbursed if the Authority determines that the entity failed to comply with the prevailing wage requirements at N.J.A.C. 19:31-5.3(a)4ii, the green building standards at N.J.A.C. 19:31-5.3(a)4i, the payment of employees at N.J.A.C. 19:31-5.3(a)3ii, and the provision of a tax clearance certificate at N.J.A.C. 19:31-5.3(a)3i; and
7. A provision that the Authority shall recognize the amount of time the entity was in compliance with the agreement in calculating any repayment if the business ceases operations or moves to another location in the State.

(c) The following apply to financial assistance to microbusiness lenders:

1. A requirement that any lending and investing by the microbusiness lender using the grant or loan from the Authority shall be limited to microbusinesses;
2. Interest rate and repayment obligations;
3. If the Authority approved the loan for the microbusiness lender to invest or lend to microbusinesses, a requirement to submit annually, no later than 30 days after the end of the microbusiness lender's fiscal year, for the term of the grant agreement, a list of the loans the microbusiness lender has provided to microbusinesses using the loan. The list shall include outstanding loans, loans past due, reserves, loss experience, and non-accrual loans. For each loan, the list shall set forth the loan amount approved and disbursed, the job creation or retention anticipated at the time of approval, the location(s) of business, any additional amount of private funding per project, whether the business is women- or minority-owned, whether the business is certified by the State as a "minority business" or a "women's business," and, to the extent known, whether any owner of the microbusinesses is a woman, minority group member, veteran, or LBGTQA person.

(d) In any submission required by the Authority pursuant to this section, the applicant, or an authorized agent of the applicant, shall certify under the penalty of perjury that the information provided in the submission is true.

19:31-5.6 Fees

(a) In administering the products established under the Program, the Authority shall apply fees to applicants as set forth at N.J.A.C. 19:30-6, except:

1. No fee shall be required for applications from small businesses for any grant products; and
2. The Authority may waive any or all fees from microbusinesses for any product based on factors such as the prevailing economic conditions, the size of the award, and the purpose of the product.

19:31-5.7 Affirmative action and prevailing wage

(a) In addition to the employee minimum wage requirements set forth at N.J.A.C. 19:31-5.5(b)4, for small business grant products, the Authority's prevailing wage requirements at P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), and N.J.A.C. 19:30-3.4, shall apply to the extent required pursuant to N.J.A.C. 19:31-5.3(a)4ii.

(b) In addition to the employee minimum wage requirements set forth at N.J.A.C. 19:31-5.5(b)4, for all other products, the Authority's prevailing wage requirements at P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), and N.J.A.C. 19:30-3.4, shall apply to projects undertaken in connection with financial assistance received from the Fund.

(c) The Authority's affirmative action requirements at P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), and N.J.A.C. 19:30-3 shall apply commencing with August 26, 2021, the effective date of this subchapter, to projects undertaken in connection with financial assistance received under the Fund.

19:31-5.8 Appeals

(a) Any action by the Board shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

(b) An applicant may appeal an action by the Authority by submitting in writing to the Authority, within 10 business days from the effective date of the Authority's action, an explanation as to how the applicant has met the product criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) Appeals that are timely submitted shall be handled by the Authority as follows:

1. The Chief Executive Officer, or other Authority staff designated under delegated authority, shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Authority. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the product criteria.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature.

3. The Board, or the Chief Executive Officer, or other Authority staff under delegated authority, shall issue a final decision on the appeal as follows:

- i. If the Board is issuing the final decision, the Chief Executive Officer may include a recommendation to the written report of the hearing officer.

- ii. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.

- iii. The Authority shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Authority shall issue a final decision on the appeal.

4. Final decisions rendered by the Authority shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

19:31-5.9 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

SUBCHAPTER 6. (RESERVED)

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