

3 AAC 99.110(b) is amended to read:

**3 AAC 99.110. Application.** (a) To request the authority's assistance under the conduit revenue bond program, a person must submit an application to the authority. The person may apply on a form provided by the authority.

(b) The application must contain information sufficient to allow the authority to determine whether the proposed project and the applicant appear to be eligible to participate in the conduit revenue bond program and whether interest on the authority's bonds issued for the proposed project would be excluded from gross income for federal income tax purposes under the code. The applicant must submit a nonrefundable **\$1,100** [\$1000] fee to the authority with the application. If the application is for a refunding of a bond previously issued by the authority for the project, the authority may waive all or part of the fee set out in this subsection. (Eff. \_\_/\_\_/\_\_, Register\_\_\_\_)

**History: In effect before 1988; am 1/11/88, Register 106; am 11/30/90, Register 118; am 2/11/99, Register 150; am 11/1/99, Register 153; am 8/8/2003, Register 168; am 12/3/2010, Register 197; am 4/25/2013, Register 207; am 11/6/2014, Register 213**

**Authority:** AS 44.88.080 AS 44.88.085 AS 44.88.090 AS 44.88.095

3 AAC 99.140(a)(1)(2), (b) is amended to read:

**3 AAC 99.140. Costs and issuance fees.** (a) At the time the authority issues bonds to provide financing for a project under 3 AAC 99.100 - 3 AAC 99.160, the applicant shall pay an issuance fee determined as follows:

(1) if the bonds are subject to the volume cap provisions of 26 U.S.C. 147, the issuance fee is equal to **50 basis points applied to** [ONE HALF OF ONE PERCENT

OF] the first \$10,000,000 of the principal amount of those bonds, **20 basis points applied to** [TWO-TENTHS OF ONE PERCENT OF] the next \$40,000,000 of the principal amount of those bonds, and **15 basis points applied to** [ONE AND ONE HALF TENTH OF ONE PERCENT OF] the principal amount of those bonds issued in excess of \$50,000,000;]

(2) if the bonds are not subject to the volume cap provision of 26 U.S.C. 147, the issuance fee is equal to **40 basis points applied to** [FOUR-TENTHS OF ONE PERCENT OF] the first \$10,000,000 of the principal amount of those bonds, **10 basis points applied to** [ONE-TENTH OF ONE PERCENT OF] the next \$40,000,000 of the principal amount of those bonds, and **9 basis points applied to** [NINE ONE-HUNDREDTHS OF ONE PERCENT OF] the principal amount of those bonds issued in excess of \$50,000,000;

(3) if a portion of the bonds is subject to the volume cap of 26 U.S.C. 147 and a portion is not, the issuance fee is equal to the sum of the issuance fee determined under (1) of this subsection for the portion of the bonds that is subject to the volume cap provisions of 26 U.S.C. 147 and the issuance fee determined under (2) of this subsection for the remaining portion of the bonds.

(b) A person may apply to the authority to modify the terms of its pending application with the authority or to take an action relating to a bond previously issued by the authority. If the request is to modify the terms of a pending application and if the modification, in the sole determination of the authority, requires action by the board, the applicant shall pay to the authority a **nonrefundable \$550** fee [\$500]. If the request is for the authority to take an action relating to outstanding bonds and the authority, in its discretion, elects to take such action or,

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under the applicable documentation, is required to take such action, the applicant shall pay the reasonable costs of the authority, including costs for authority personnel, bond counsel costs, and other costs. (Eff. \_\_/\_\_/\_\_, Register\_\_\_\_)

**History: In effect before 1988; am 1/11/88, Register 106; am 9/25/92, Register 124; am 11/1/99, Register 153; am 12/3/2010, Register 197; am 11/6/2014, Register 213**

**Authority: AS 44.88.080 AS 44.88.085 AS 44.88.090 AS 44.88.212**

3 AAC 99.160(c) is amended to read:

**3 AAC 99.160. Composite bond issue.** (a) If the authority intends to issue bonds for a project under the tax-exempt loan participation program (3 AAC 99.200 - 3 AAC 99.290) or the taxable loan participation program (3 AAC 99.300 - 3 AAC 99.390) , the project is eligible for a composite bond issue subject to approval by the authority, the originator, and the borrower.

(b) In a composite bond issue, the authority will issue bonds to finance all or part of the amount of the total loan to the borrower from the originator not financed under the tax-exempt loan participation program or the taxable loan participation program as described in (a) of this section. The originator shall purchase bonds issued under this subsection and must agree to retain those bonds as long as the total loan is outstanding.

(c) The issuance of bonds under (b) of this section is subject to the provisions of 3 AAC 99.100 - 3 AAC 99.140, except with regard to the **nonrefundable** financing fee. The financing fee for bonds issued under (b) of this section is **50 basis points applied to** [ONE-HALF OF ONE PERCENT FOR] the first \$1,000,000 of the principal amount of the bonds issued and **25 basis points applied to** [ONE-QUARTER PERCENT OF] the principal amount of the revenue bonds issued in excess of the first \$1,000,000. (Eff. \_\_/\_\_/\_\_, Register\_\_\_\_)

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**History: In effect before 1988; am 1/11/88, Register 106; am 11/30/90, Register 118; am 12/3/2010, Register 197**

**Authority:** AS 44.88.080 AS 44.88.085 AS 44.88.090 AS 44.88.155

3 AAC 99.210(b) is amended to read:

**3 AAC 99.210. Preliminary application.** (a) A business enterprise may apply for a loan under the umbrella loan program by submitting a loan application to an originator. The originator shall review the proposed use of the money and the applicant's eligibility.

(b) The originator shall submit a preliminary application to the authority on a form provided by the authority. The preliminary application must contain sufficient information to allow the authority to determine that the proposed project or qualified energy development and the applicant appear to be eligible to receive a loan under AS 44.88 and that interest on the authority's bonds issued or that could be issued to provide money for the loan would be excluded from gross income for federal income tax purposes under the code. The originator shall submit a **\$250** nonrefundable [\$200] fee to the authority with the preliminary application. (Eff. \_\_/\_\_/\_\_, Register\_\_\_\_)

**History: In effect before 1988; am 1/11/88, Register 106; am 11/30/90, Register 118; am 2/11/99, Register 150; am 11/1/99, Register 153; am 4/25/2013, Register 207**

**Authority:** AS 44.88.080 AS 44.88.085 AS 44.88.095 AS 44.88.150

**Editor's note:** Even though the amendment of 3 AAC 99.210 was effective 4/25/2013, it was not published until Register 207, October 2013.

3 AAC 99.220(b) is amended to read:

**3 AAC 99.220. Application for authority participation.** (a) After adoption by the authority of an eligibility resolution under 3 AAC 99.210(c) , or a determination of eligibility by the authority under 3 AAC 99.210(d) , the originator and the applicant may prepare an application for authority participation in the loan.

(b) An application for authority participation must be submitted by the originator to the authority along with a nonrefundable **\$1,100** [\$1000] fee. If the authority issues a commitment to purchase a participation in the originator's loan, and the loan commitment issued by the authority is accepted and signed by the originator and borrower and returned to the authority, the nonrefundable **\$1,100** [\$1000] application fee will be credited against the authority's commitment fee as required by 3 AAC 99.260(b). **The financial institution must reimburse all third-party expenses of the authority related to the issuance of the authority's loan participation.** The authority may require the originator to include with the application any of the following:

(Eff. \_\_/\_\_/\_\_, Register \_\_\_\_)

**History:** In effect before 1988; am 1/11/88, Register 106; am 11/30/90, Register 118; am 7/19/91, Register 119; am 9/25/92, Register 124; am 2/11/99, Register 150; am 11/1/99, Register 153; am 2/8/2001, Register 158; am 12/3/2010, Register 197; am 4/25/2013, Register 207

**Authority:** AS 44.88.080 AS 44.88.085 AS 44.88.095 AS 44.88.150 AS 44.88.155

**Editor's note:** Even though the amendment of 3 AAC 99.220 was effective 4/25/2013, it was not published until Register 207, October 2013.

3 AAC 99.260(b)(c) is amended to read:

**3 AAC 99.260. Application review and fees.** (a) The authority will determine whether to approve an application for the authority to participate in a real property or tangible personal property loan by evaluating

- (1) whether the requirements of AS 44.88.155 and 3 AAC 99.200 - 3 AAC 99.290 have been met;
- (2) the applicant's credit standing;
- (3) the economic and financial viability of the proposed project or qualified energy development;
- (4) the impact the proposed loan would have on the loan participation portfolio of the authority on the concentration by industry area and geographic region, and on the concentration of loans to a single borrower and related obligors;
- (5) whether and the extent to which the loan is consistent with the fulfillment of the authority's purposes established in AS 44.88.070 ; and
- (6) any other commercially reasonable underwriting criteria the authority, in its discretion, determines to be pertinent to the application, given the terms of the financing or the nature of the applicant or the proposed project or qualified energy development.

(b) If a loan application is approved, the authority will provide a loan commitment which is effective upon payment of a commitment fee by the applicant. The commitment fee is one percent of the principal amount of the authority's participation in the loan. A loan commitment is an agreement by the authority that it will participate in a loan to the applicant in an amount specified in the loan commitment under terms and conditions prescribed by the authority. The commitment fee is nonrefundable.

(c) The authority may issue a loan commitment as described in (b) of this section for a term determined by the authority. Before expiration of the loan commitment term, the originator may request an extension of the loan commitment term for a subsequent period of 30 days if the authority does not fund the authority's participation in the loan. The authority will grant a loan commitment term extension effective upon receipt by the authority of **12.5 basis points applied to the committed loan amount as a** [a ONE-EIGHTH PERCENT (0.125%)] nonrefundable fee. The authority may grant subsequent loan commitment term extensions for additional 30-day periods effective upon receipt by the authority of an additional **12.5 basis points applied to the committed loan amount as a** [A ONE-EIGHTH PERCENT (0.125%)] nonrefundable fee. (Eff. \_\_/\_\_/\_\_, Register\_\_\_\_)

**History: In effect before 1988; am 1/11/88, Register 106; am 7/19/91, Register 119; am 11/1/99, Register 153; am 2/8/2001, Register 158; am 10/12/2004, Register 173; am 4/25/2013, Register 207**

3 AAC 99.290(c) is amended to read:

**3 AAC 99.290. Servicing of loans.** (a) The authority will enter into a servicing agreement with each originator that

- (1) provides that all servicing will be by the originator;
- (2) provides methods for the collection of delinquent payments of principal and interest and foreclosure or exercise of security rights undertaken by the originator;
- (3) provides for periodic reports to the authority by the originator; and

(4) requires the originator to service the loan in accordance with accepted business practices, including, but not limited to, prompt collection of amounts due under the loan.

(b) The originator must provide a bond and/or insurance policy considered sufficient by the authority which protects the authority against errors, omissions, fraud, or dishonesty committed by the originator, including any of the originator's officers, directors, employees, and agents.

(c) The authority may enter into a loan modification agreement with the originator and the borrower if the authority determines that the loan modification will assist in the economic survival of the borrower during a period of economic hardship while maximizing the ultimate return to the authority. The authority must receive a nonrefundable **\$500** [\$100] modification fee before entering a loan modification agreement.

(d) The authority may include in a loan commitment provisions relating to the differential amortization provisions as between the authority's portion of the loan and the originator's portion as permitted in 3 AAC 99.230(f) and 3 AAC 99.240(f) . Such provisions may include, but are not limited to, provisions relating to servicing fees, prepayments, security, and remedies.

3 AAC 99.290 is amended to add a new subsection (e) to read:

**3 AAC 99.290. Servicing of loans.**

**(e) The authority may approve the assumption of an outstanding loan in which the authority participates after evaluating the collateral securing the loan and the financial and credit history and ability to repay of the entity proposing to assume the loan. The authority**



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**must receive a nonrefundable assumption fee of one percent of the outstanding balance before entering a loan assumption agreement.** (Eff. \_\_/\_\_/\_\_, Register\_\_\_\_)

**History: In effect before 1988; am 1/11/88, Register 106; am 11/22/88, Register 109; am 11/30/90, Register 118; am 7/19/91, Register 119; am 2/11/99, Register 150; am 2/8/2001, Register 158**

**Authority:** AS 44.88.080 AS 44.88.085

3 AAC 99.320 (b) is amended to read:

**3 AAC 99.320. Application for authority participation.** (a) A business enterprise may apply for a loan under the taxable umbrella loan program by contacting an originator. The originator shall review the proposed use of the loan, the applicant's eligibility, and any other matters the originator may determine necessary. When the originator, with the concurrence of the business enterprise, decides it is appropriate to do so, the originator and the applicant shall prepare an application for authority participation in the loan.

(b) An application for authority participation must be submitted by the originator to the authority along with a nonrefundable **\$1,100** [\$1,000] fee. If the authority issues a commitment to purchase a participation in the originator's loan, and the loan commitment issued by the authority is accepted and signed by the originator and borrower and returned to the authority, the nonrefundable **\$1,100** [\$1,000] application fee will be credited against the authority's commitment fee as required by 3 AAC 99.360(b) . The authority may require the originator to include with the application any of the following:

(1) a letter of transmittal;

(2) a loan summary, including originator approval at the appropriate level of authority;

(3) a list of other unpaid loans to the applicant or, if the applicant is not a sole proprietorship, to any member of the applicant's business enterprise, from the state or other public corporation of the state along with applicant certification that each unpaid loan is current and no other loans exist;

(4) a current credit report of the applicant and the guarantor, if any;

(5) a signed current balance sheet and year-to-date profit and loss statement on the applicant, not more than 90 days old from the date of application, fiscal yearend balance sheet and profit and loss statement for the prior three years on the applicant; current balance sheet and federal income tax return for the prior two years on all guarantors and co-borrowers;

(6) copies of the applicant's federal income tax returns for the prior three years, if the balance sheet and profit and loss statement required from the applicant in (5) of this subsection are not audited by a certified public accountant;

(7) copies of the earnest money receipt and agreement, option to purchase, contract to purchase, or invoice for purchase of land, land and improvements, or tangible personal property related to the project or qualified energy development;

(8) a copy of a lease or easement for land and improvements related to the project or qualified energy development and, in the case of a hydropower project licensed or to be licensed by the Federal Energy Regulatory Commission, a copy of the documents designating the project boundary with a lease or easement to be completed before closing giving the applicant control of the area within the project boundary;

(9) a detailed description of the project or qualified energy development and a detailed description of real or tangible property to be acquired for the project or qualified energy development;

(10) a detailed estimate of the cost of construction;

(11) an estimate of the number of jobs to be created or retained by this project or qualified energy development;

(12) if the loan is to be secured by real property, a written appraisal report acceptable to the authority estimating the value of the real property:

(A) if the total loan amount is equal to or less than \$1,000,000, the appraisal may be a summary appraisal report;

(B) if the total loan amount is greater than \$1,000,000, the appraisal must be a self-contained appraisal report.

(13) if the loan is for the purchase of tangible personal property, an appraisal in a format acceptable to the authority prepared by an appraiser who is acceptable to the authority;

(14) copies of leases or agreements to lease or renew a lease between the applicant and tenants of the project or qualified energy development, including a list of tenants, lease rates, terms, and options;

(15) a financial feasibility analysis satisfactory to the authority;

(16) an environmental risk assessment satisfactory to the authority, followed by an environmental audit if required by the authority;

(17) if the loan is to finance improvements in energy efficiency, an analysis of the energy efficiencies that are expected to be achieved, including the units of energy

expected to be saved over the life of the improvements and the dollar savings expected to be realized; and

(18) any other information considered necessary by the authority to evaluate the application.

(c) If the authority issues bonds in respect of a loan, the authority may charge a loan participation bond issuance fee for the costs of issuance of the bonds.

(d) If the application concerns a loan for a qualified energy development, the authority, in addition to the requirements of (b) of this section, may require the originator to provide any of the following:

(1) a description of the technology to be used in the qualified energy development;

(2) the purpose of the qualified energy development;

(3) a description of the type of qualified energy development as being one for:

(A) the transmission, generation, conservation, or storage or distribution of electricity;

(B) the transmission, generation, conservation or distribution of heat;

(C) liquefaction, regasification, distribution, storage, or use of natural gas, excluding a natural gas pipeline project for transporting natural gas from the North Slope or Cook Inlet to market;

(D) distribution of refined petroleum products;

(E) storage of refined petroleum products.

(4) if the applicant is a regulated or tariffed utility under AS 42.05, documents establishing that status; and

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(5) a copy of any contract for the sale of power, electricity, or heat from the qualified energy. (Eff. \_\_/\_\_/\_\_, Register \_\_\_\_)

**History:** In effect before 1988; am 1/11/88, Register 106; am 11/30/90, Register 118; am 7/19/91, Register 119; am 9/25/92, Register 124; am 2/11/99, Register 150; am 11/1/99, Register 153; am 2/8/2001, Register 158; am 12/3/2010, Register 197; am 4/25/2013, Register 207

**Authority:** AS 44.88.080 AS 44.88.085 AS 44.88.155

**Editor's note:** Effective Register 197, the regulations attorney relettered 3 AAC 99.320(e) to 3 AAC 99.320(c) to conform to technical printing standards.

Even though the amendment of 3 AAC 99.320 was effective 4/25/2013, it was not published until Register 207, October 2013.

3 AAC 99.350 (e)(1)(B)(i)(ii) is amended to read:

**3 AAC 99.350. Participation requirements.** (a) The originator of a loan shall initially retain at least a 10 percent share of the principal amount of the loan and may not sell, transfer, or permit prepayment or other early retirement of any portion of its participation interest without the permission of the authority. However, the originator of a loan to finance improvements in energy efficiency may request that the authority permit the originator to retain an interest of less than 10 percent of the principal amount of the loan, which request the authority may approve or disapprove depending on its evaluation of the factors stated in 3 AAC 99.360(a) .

(b) The initial rate of interest on the authority's participation in a real property or tangible personal property loan will be set at the time the authority issues a loan commitment at a rate equal to the sum of the "true interest cost rate" and the "authority cost amount". The rate of

interest on the originator's portion of a loan is set by the originator, but may not exceed a market rate.

(c) The authority will, in its discretion, require prepayment fees on its participation share in a real property or tangible personal property loan in amounts and for a period of time it determines appropriate, except that the authority will not charge a prepayment fee later than five years from the date the authority funds its participation.

(d) The authority will, in its discretion, approve a modification of the interest rate and loan term on the authority's portion of a loan under 3 AAC 99.300 - 3 AAC 99.390 as follows:

(1) effective upon the authority's approval of a written request from the borrower and originator for an interest rate modification or extension of loan term, or both, the authority will

(A) change the interest rate to either a current variable interest rate published by the authority, or the current fixed interest rate published by the authority for a loan with a term equal to the original term of the authority's portion of the loan, plus extensions of the original term, if any, as allowed in (B) of this paragraph; and

(B) extend the loan term up to the maximum term permitted under 3 AAC 99.330(e) and 3 AAC 99.340(e) , except that in no case will the total aggregate loan term exceed the maximum term as permitted under 3 AAC 99.330(e) and 3 AAC 99.340(e) ;

(2) the authority will, in its discretion, adjust the scheduled payment on the loan to reflect a change in interest rate or loan term, or both, in order to maintain the proper loan amortization;

(3) upon authority approval of a modification described in either (1)(A) or (1)(B) of this subsection, the originator must remit to the authority a one percent fee, calculated on the outstanding principal balance of the authority's portion of the loan;

(4) the borrow and originator may request modification of the interest rate and loan term more than once during the term of the loan, subject to the maximum loan term permitted in 3 AAC 99.330(e) and 3 AAC 99.340(e) , and remittance to the authority of a one percent fee calculated as described in (3) of this subsection for each such modification.

(e) In this section

(1) "true interest cost rate" means

(A) if the authority issues bonds to fund a participation in a loan, the rate on the bonds of the authority; or

(B) if the authority uses authority assets to fund a participation in a loan, the rate identified on the daily Federal Home Loan Bank of Seattle's Fixed-Rate Advances Index which most closely matches the term of the loan, and whether the type of loan has a fixed or variable interest rate, as determined by the authority, with the following adjustments:

(i) for a fixed rate loan, the rate during any fiscal year may not be lower than the five year return on the investment funds of the authority, expressed as an annual interest rate, as determined in the authority's review of its investments at the end of the third quarter of the prior fiscal year and for a variable rate loan, the rate during any fiscal year will not be lower than 375 [475] basis points;

(ii) for a variable rate loan, **100** [200] basis points will be added to the rate;

(2) "authority cost amount" means an amount, determined by the authority and expressed as an annual rate of interest, that is necessary to pay for the allocable expenses of operation, costs of issuance not subject to a loan participation bond issuance fee under 3 AAC 99.320(c) , and loan servicing with respect to loans for which interest rates are determined under this section. (Eff. \_\_/\_\_/\_\_, Register\_\_\_\_)

**History:** In effect before 1988; am 1/11/88, Register 106; am 11/30/90, Register 118; am 7/19/91, Register 119; am 9/25/92, Register 124; am 2/11/99, Register 150; am 11/1/99, Register 153; am 8/8/2003, Register 168; am 9/9/2010, Register 197 [not printed]; am 12/3/2010, Register 197; am 12/15/2010, Register 197; am 1/13/2011, Register 198; am 1/31/2011, Register 198; am 3/8/2011, Register 198; am 4/25/2013, Register 207

**Authority:** AS 44.88.080 AS 44.88.085 AS 44.88.150 AS 44.88.155 AS 44.88.159

**Editor's note:** Even though 3 AAC 99.350 was amended effective as an emergency regulation on 9/9/2010 and amended effective as a permanent regulation on 12/3/2010, it was not published until Register 197, April 2011.

Even though the amendment of 3 AAC 99.350 was effective 4/25/2013, it was not published until Register 207, October 2013.

3 AAC 99.360(c) is amended to read:

**3 AAC 99.360. Application review and fees.** (a) The authority will determine whether to approve an application for the authority to participate in a real property or tangible personal property loan by evaluating



(1) whether the application requirements of AS 44.88.155 and 3 AAC 99.300 - 3 AAC 99.390 have been met;

(2) the applicant's credit standing;

(3) the economic and financial viability of the proposed project or qualified energy development;

(4) the impact the proposed loan would have on the loan participation portfolio of the authority on the concentration by industry area and geographic region, and on the concentration of loans to a single borrower and related obligors;

(5) whether and the extent to which the loan is consistent with the fulfillment of the authority's purposes established in AS 44.88.070 ; and

(6) any other commercially reasonable underwriting criteria the authority, in its discretion, determines to be pertinent to the application, given the terms of the financing or the nature of the applicant or the proposed project or qualified energy development.

(b) If a loan application is approved, the authority will provide a loan commitment that is effective upon payment, by the applicant, of a commitment fee. The commitment fee is one percent of the principal amount of the authority's participation in the loan. A loan commitment is an agreement by the authority that it will participate in a loan to the applicant in an amount specified in the loan commitment under terms and conditions prescribed by the authority. The commitment fee is nonrefundable.

(c) The authority will, in its discretion, issue a loan commitment as described in (b) of this section for a term determined by the authority. Before expiration of the loan commitment term, the originator may request an extension of the loan commitment term for a subsequent period of 30 days if the authority has not funded the authority's participation in the loan. The

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authority will grant a loan commitment term extension effective upon receipt by the authority of **12.5 basis points of the loan commitment as a** [ONE-EIGHTH (.125%) PERCENT]

nonrefundable fee. The authority will grant subsequent loan commitment term extensions for one or more additional 30-day periods effective upon receipt by the authority of an additional **12.5 basis points of the loan commitment as a** [ONE-EIGHTH (.125%) PERCENT] nonrefundable fee. (Eff. \_\_/\_\_/\_\_, Register \_\_\_\_\_)

**History: In effect before 1988; am 1/11/88, Register 106; am 11/30/90, Register 118; am 11/1/99, Register 153; am 10/12/2004, Register 173; am 4/25/2013, Register 207**

**Authority: AS 44.88.070 AS 44.88.080 AS 44.88.085 AS 44.88.212**

**Editor's note:** Even though the amendment of 3 AAC 99.360 was effective 4/25/2013, it was not published until Register 207, October 2013.

3 AAC 99.390(c) and (e) is amended to read:

**3 AAC 99.390. Servicing of loans.** (a) The authority will enter into a servicing agreement with each originator that

(1) provides that all servicing be by the originator;

(2) provides methods for the collection of delinquent payments of principal and interest, and foreclosure or exercise of security rights undertaken by the originator;

(3) provides for periodic reports to the authority by the originator; and

(4) requires the originator to service the loan in accordance with accepted business practices, including, but not limited to, prompt collection of amounts due under the loan.

(b) The originator must provide a bond and/or insurance policy considered sufficient by the authority which protects the authority against errors, omissions, fraud, or dishonesty committed by the originator, including any of the originator's officers, directors, employees, and agents.

(c) The authority may enter into a loan modification agreement with the originator and the borrower if the authority determines that such a modification will assist in the economic survival of the borrower during a period of economic hardship while maximizing the ultimate return to the authority. The authority must receive a nonrefundable **\$500** [\$100] modification fee before entering a loan modification agreement.

(d) The authority may include in a loan commitment provisions relating to the differential amortization provisions as between the authority's portion of the loan and the originator's portion as permitted in 3 AAC 99.330(f) and 3 AAC 99.340(f) . Such provisions may include, but are not limited to, provisions relating to servicing fees, prepayments, security, and remedies.

(e) The authority may approve the assumption of an outstanding loan in which the authority participates after evaluating the collateral securing the loan and the financial and credit history and ability to repay of the entity proposing to assume the loan. The authority must receive a nonrefundable [\$200] assumption fee of **one percent of the outstanding loan balance** before entering a loan assumption agreement. (Eff. \_\_/\_\_/\_\_, Register\_\_\_\_)

**History: In effect before 1988; am 1/11/88, Register 106; am 11/22/88, Register 109; am 11/30/90, Register 118; am 7/19/91, Register 119; am 2/11/99, Register 150; am 2/8/2001, Register 158**

**Authority: AS 44.88.080 AS 44.88.085**

3 AAC 99.520 (b) is amended to read:

**3 AAC 99.520. Local participation and approval.** (a) Before entering into an agreement to finance or develop a development project for which the authority expects to issue bonds, the authority will obtain the approval of the municipality in which the proposed project is to be located. If the development project for which the authority expects to issue bonds is located within the unorganized borough, the authority will comply with AS 44.88.174 . The authority will not enter into the agreement unless the municipality in which the proposed development project is to be located conducts a public hearing on the proposed project. If the development project is located within the unorganized borough, the authority will not enter into the agreement unless the regional resource advisory council under AS 44.88.174 conducts a public hearing within the region.

(b) The authority will solicit the review and advice of either local government **or the regional resource advisory council** in the area within which a development project is located before

(1) entering into an agreement to finance or develop a development project for which the authority does not expect to issue bonds; or

(2) executing other contracts, agreements, resolutions, or other matters that directly concern the development, maintenance, and operation of a development project.

(c) The authority may enter into joint financing arrangements with interested public and private participants with respect to development projects. (Eff. \_\_/\_\_/\_\_, Register\_\_\_\_)

**History:** Eff. 1/11/88, Register 106; am 11/30/90, Register 118; am 12/5/2013, Register 209

**Authority:** AS 44.88.080 AS 44.88.085 AS 44.88.095 AS 44.88.174 AS 44.88.177

3 AAC 99.575(a) is amended to read:

**3 AAC 99.575. Interest rates and prepayment fees.** (a) If the authority provides development project financing for a development project that the authority will not own and operate, the initial interest rate on the financing will be set at the time the authority issues a development project financing commitment letter. The initial interest rate will be **no less than 250**[FROM 250 TO 450] basis points above the interest rate paid on the securities of the United States Treasury that have a maturity date comparable to the term of the authority's financing. In the event that no United States Treasury security is directly comparable in maturity to the authority's development project financing, the authority may use the United States Treasury security the authority in its discretion determines to be most directly comparable as possible. The authority will establish the initial interest rate for the financing within this range based on the authority's evaluation of the relative risk of the transaction. In evaluating the risk of the transaction, the authority may consider the nature of the project applicant and its creditworthiness; the nature of the development project and its financial strengths or weaknesses; the size, length, and other terms of the financing; the collateral for the financing; and any other factors the authority reasonably determines to bear on the risk in the transaction.

(b) If the authority provides development project financing for a development project that the authority will not own and operate, the authority may charge a fixed interest rate for the entire term of the financing or the authority may require that the rate of interest on the financing be adjusted from time to time at intervals the authority decides are appropriate. The authority will select a fixed or adjustable interest rate for the financing, establish the intervals for adjusting the interest rate, and determine the method by which the interest rate is adjusted based on the authority's evaluation of the risk of the transaction and based on the practices of private

commercial lenders with respect to comparable financing. In the commitment letter for the development project financing the authority provides to the project applicant, the authority will state whether the rate of interest is fixed or adjustable, the intervals for adjusting the interest rate, and the method by which the interest rate is to be adjusted.

(c) The authority may require a prepayment fee on a development project financing. The prepayment fee will be in the amount the authority determines is appropriate and will be stated in the commitment letter for the development project financing. The authority will not charge a prepayment fee on any prepayment that occurs later than five years after the date of the finance closing or as specified in the covenants of bonds issued for the project financing. (Eff. \_\_/\_\_/\_\_, Register\_\_\_\_)

**History: Eff. 12/5/2013, Register 209**

**Authority: AS 44.88.080 AS 44.88.085 AS 44.88.172 AS 44.88.212**

3 AAC 99.590(a) is amended to read:

**3 AAC 99.590. Fees and other charges.** (a) The **nonrefundable** application fee for development project financing is

(1) **\$5,500** [\$5,000] for financing of less than \$10,000,000;

(2) **\$11,000** [\$10,000] for financing **from** [OF BETWEEN] \$10,000,000 **to** [AND] \$20,000,000;

(3) **\$22,000** [\$20,000] for financing in excess of \$20,000,000()[;]

(b) If the authority is to provide development project financing in combination with financing under another financing program of the authority, the application fee due under (a) of

this section may be waived by the authority if the application fee due under the other program is paid.

(c) A commitment fee is due upon acceptance of the authority's commitment letter to provide development project financing for a development project the authority does not intend to own or operate. The commitment fee is one percent of the principal amount of the financing the authority is providing. The commitment fee is nonrefundable. The authority will credit the nonrefundable application fee paid under (a) of this section against the commitment fee due for the development project.

(d) At the closing of any type of financing, the project applicant must pay for all transaction costs of the closing and must reimburse the authority for its costs of underwriting and closing the financing. After a commitment letter is issued and before closing, the authority will provide the project applicant with an estimate of the closing costs. The estimate will not be binding on the authority. Actual costs will be charged to the project applicant.

(e) The project applicant may elect to have the closing costs required by (d) of this section paid from the proceeds of the development project financing, and the project applicant may have the commitment fee reimbursed from the proceeds of the financing.

(f) The authority may require the project applicant to reimburse the authority for other costs, including those described in 3 AAC 99.560(b). (Eff. \_\_/\_\_/\_\_, Register \_\_\_\_)

**History: Eff. 12/5/2013, Register 209**

**Authority: AS 44.88.080 AS 44.88.085 AS 44.88.172 AS 44.88.212**

3 AAC 99.710(g) is amended to read:

**3 AAC 99.710. Eligibility.** (a) The authority may guarantee a new loan or a loan to refinance existing debt if the loan is made to an Alaska business enterprise whose majority interest is held by individual state residents.

(b) The borrower must have the financial and business ability, as determined by the authority, to successfully repay the loan.

(c) Guarantees for loans may be issued only if the loans

(1) are for commercially reasonable purposes;

(2) will help to stabilize the economic base of the area and create or maintain employment; and

(3) allow the borrower to create additional economic opportunity, improve the economic viability of the borrower's domestic/or export business, and/or facilitate business expansion.

(d) The authority will ensure that all loan guarantees are distributed statewide in an equitable manner.

(1) One-half of the total available guarantee dollars is allocated on the basis of geographic distribution and one-half of the total available guarantee dollars is allocated on the basis of population distribution. The authority will annually determine and report to the board the allocations of total available guarantee dollars between the following seven economic regions used by the State of Alaska, Department of Labor and Workforce Development in reporting population information:

(A) The Municipality of Anchorage.

(B) The Matanuska-Susitna Borough.



(C) The Gulf Coast Region which includes the Kenai Peninsula Borough, the Kodiak Island Borough, and the Valdez-Cordova Census Area.

(D) The Interior Region which includes the Denali Borough, The Fairbanks North Star Borough, the Southeast Fairbanks Census Area, and the Yukon-Koyukuk Census Area.

(E) The Northern Region which includes the Nome Census Area, the North Slope Borough, and the Northwest Arctic Borough.

(F) The Southeast Region which includes the Haines Borough, the Juneau Borough, the Ketchikan Gateway Borough, the Prince of Wales-Outer Ketchikan Census Area, the Sitka Borough, the Skagway-Hoonah-Angoon Census Area, the Wrangell-Petersburg Census Area, and the Yakutat Borough.

(G) The Southwest Region which includes the Aleutians East Borough, the Aleutians West Census Area, the Bethel Census Area, the Bristol Bay Borough, the Dillingham Census Area, the Lake and Peninsula Borough, and the Wade Hampton Census Area.

(2) The authority may, in its discretion, reallocate among the seven economic regions described in subsection (1) the amounts of available guarantee dollars, taking into consideration economic and other pertinent factors.

(3) The seven economic regions described in subsection (1) are further depicted on the map set out in this subsection. <http://www.legis.state.ak.us/aacpdf/ak399710.pdf>

(e) Within each region, when the total cumulative dollar amount of guarantees reaches the total amount of available guarantee dollars allocated to the region pursuant to (d) of this section, no further loan guarantees will be issued for loans allocated to that region. The authority

will allocate a loan guarantee to a region based on the location of the project financed or refinanced by the guaranteed loan.

(f) The authority will allocate 10 percent of the regional allocation to loan guarantees of \$100,000 or less with respect to new loans.

(g) The authority will monitor the size of its guarantees to ensure compliance with AS 44.88.540 . [ISSUANCE OF LOAN GUARANTEES IN AMOUNTS EXCEEDING \$500,000 PER LOAN WILL BE SUSPENDED WHEN THE TOTAL INITIAL PRINCIPAL AMOUNT OF ALL LOANS HAVING AN INITIAL GUARANTEE EXCEEDING \$500,000 REACHES \$25,000,000.]

(h) The authority will not guarantee a loan to refinance a loan that was originally financed by outstanding bonds issued under the authority's loan participation programs described in 3 AAC 99.200 - 3 AAC 99.390, unless the bonds are subject to optional redemption at par by the authority at the time the guarantee is issued.

(i) The authority will not guarantee a loan made before issuance of a guarantee authorization under 3 AAC 99.740(b) . (Eff. \_\_/\_\_/\_\_, Register\_\_\_\_)

**History:** Eff. 8/1/88, Register 107; am 11/30/90, Register 118; am 7/19/91, Register 119; am 9/25/92, Register 124; am 10/23/96, Register 141; am 2/11/99, Register 150; am 11/1/99, Register 153; am 2/8/2001, Register 158

**Authority:** AS 44.88.080 AS 44.88.085 AS 44.88.505 AS 44.88.515 AS 44.88.560 AS 44.88.570

**Editor's note:** As of Register 151 (October 1999), the regulations attorney made technical revisions under AS 44.62.125 (b)(6) to reflect the name change of the Department of Labor to

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the Department of Labor and Workforce Development made by ch. 58, SLA 1999 and the corresponding title change of the commissioner of labor.

3 AAC 99.750 (a) is amended to read:

**3 AAC 99.750. Costs and fees.** (a) The financial institution that submits an application under 3 AAC 99.720 must also submit a nonrefundable **\$250** fee [OF \$200] with the application. In addition, the financial institution, or any substitute financial institution, or the borrower must pay a **nonrefundable \$500** [\$100] fee for any modification of the terms of the guarantee.

(b) The financial institution originating a loan or the borrower must pay a guarantee fee equal to two percent of the guaranteed amount of the loan as provided in the guarantee authorization. The board shall review the fee structure periodically and may establish other fees it determines commercially appropriate.

(c) The financial institution renewing a loan secured solely by inventory or accounts receivable or renewing a loan for working capital, or the borrower, must pay a fee of one-half percent of the guaranteed amount of the loan for each renewal as provided in the loan guarantee agreement. The board shall review the fee structure periodically and may establish other fees it determines commercially appropriate.

(d) The financial institution or the borrower must also pay all third-party expenses of the authority related to the issuance of the authority's guarantee of a loan. (Eff. \_\_\_/\_\_\_/\_\_\_,

Register\_\_\_\_)

**History: Eff. 8/1/88, Register 107; am 11/22/88, Register 109; am 11/30/90, Register 118; am 7/19/91, Register 119; am 9/25/92, Register 124; am 12/2/94, Register 134; am 10/23/96, Register 141; am 2/11/99, Register 150; am 11/1/99, Register 153; am 2/8/2001, Register 158**

**Authority:** AS 44.88.080 AS 44.88.085 AS 44.88.535

3 AAC 99.810(b) (d) and (e) are amended to read:

**3 AAC 99.810. Costs.** (a) All expenses incurred by the department in closing a loan, including processing the application, must be paid by the applicant. These expenses include the cost of credit reports, title reports and insurance, recording fees, appraisals, surveys, travel, and other direct costs.

(b) A **nonrefundable \$250** [\$200] application fee is due from the applicant at the time that an application is filed with the department. This fee will be credited toward the origination fee if the loan is made.

(c) An origination fee not to exceed **15 basis points applied to** [ONE AND ONE-HALF PERCENT OF] the loan balance is due from the borrower at the time that the loan is made.

(d) A late fee not to exceed **five percent** [5%] of the payment amount may be charged to a borrower for each loan payment that is more than 15 days past due.

(e) An extension fee not to exceed **\$50** [\$25] may be charged to a borrower to process a loan extension. (Eff. \_\_/\_\_/\_\_, Register \_\_\_\_)

**History:** Eff. 1/12/89, Register 109; am 3/30/89, Register 110; am 7/19/91, Register 119

**Authority:** AS 44.88.420

3 AAC 99.830(a)(2) and (3) is amended to read (2) add and; delete (3), renumber (4):

**3 AAC 99.830. Application process.** (a) To apply for a rural development initiative fund loan, an applicant shall file with the department

(1) a completed loan application for a rural development initiative fund loan, on a form provided by the department, which includes:

(A) a letter of intent stating the amount requested and intended use of the proposed loan money;

(B) a schedule of acceptable collateral;

(C) an individual financial statement;

(D) a statement of projected income and expenses for the following year's operating plan;

(E) a signed credit authorization; and

(F) a consent to release information;

(2) copies of the applicants' federal income tax returns for the preceding three years, and for additional years if requested by the department; **and**

[(3) A \$100 NONREFUNDABLE APPLICATION FEE; AND;]

**(3)** [(4)] any other information that might be helpful to demonstrate the eligibility of the applicant for a loan, as requested by the department.

(b) The department may process loan requests without the information described in (a) of this section if the department determines that the information is not necessary for making the lending decision. (Eff. \_\_/\_\_/\_\_, Register \_\_\_\_)

**History: Eff. 2/8/2001, Register 158**

**Authority: AS 44.88.600 AS 44.88.610 AS 44.88.620**

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3 AAC 99.865 is amended to read:

**3 AAC 99.865. Interest rate.** The department shall set the interest rate on a quarterly basis for loans under this article. The interest rate set for a quarter remains in effect until the department changes the rate. The interest rate set by the department is based on the prime rate listed in the

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Wall Street Journal during the previous quarter minus one percentage point [, BUT NOT LESS THAN SIX PERCENT PER ANNUM.]. The interest rate will be established at the nearest one-half point. The interest rate on an individual loan will be set at the time the loan is approved by the loan committee. (Eff. \_\_/\_\_/\_\_, Register\_\_\_\_)

**History: Eff. 2/8/2001, Register 158**

**Authority:** AS 44.88.600 AS 44.88.610 AS 44.88.620

3 AAC 99.880(b) and (f) is amended to read:

**3 AAC 99.880. Costs and fees.** (a) All expenses incurred by the department in processing an application must be paid by the applicant before loan money may be disbursed. These expenses include the cost of title reports and title insurance, recording fees, appraisals, travel, and other direct costs.

(b) A nonrefundable **\$150** application fee [OF \$100] is due **to** the department at the time an application for a loan under this article is submitted to the department.

(c) An origination fee of one percent of the total loan amount is due from the borrower before loan money may be disbursed.

(d) A loan assumption fee of one percent of the outstanding loan balance is due upon approval by the loan committee and must be paid to the department before the loan assumption is effective.

(e) A late fee not to exceed five percent of the payment amount may be charged to a borrower for each loan payment that is more than 15 days past due.

(f) A **nonrefundable \$150** modification fee [OF \$100] may be charged to a borrower to process a loan modification of an outstanding loan under this article. (Eff. \_\_/\_\_/\_\_,

Register \_\_\_\_)

**History: Eff. 2/8/2001, Register 158**

**Authority: AS 44.88.600 AS 44.88.610 AS 44.88.620**

3 AAC 99.930 is amended to add a new section and renumber all following sections, to read:

**3 AAC 99.930. Definitions.**

In this chapter

(1) "authority" means the Alaska Industrial Development and Export Authority;

(2) **“basis points” means the common unit of measure for interest rates and other percentages in finance; one hundred basis points equals one percent;**

**(3)** [(2)] "board" means the board of the Alaska Industrial Development and Export Authority;

**(4)** [(3)] repealed 1/11/88;

**(5)** [(4)] "code" means the Internal Revenue Code of 1986, as amended;

**(6)** [(5)] "department" means the Department of Commerce, Community, and Economic Development;

**(7)** [(6)] "executive director" means the executive director of the Alaska Industrial Development and Export Authority;

**(8)** [(7)] repealed 11/1/99;

**(9)** [(8)] repealed 1/11/88;

**(10)** [(9)] repealed 1/11/88;

**(11)** [(10)] "financial institution" means, for purposes of 3 AAC 99.700 - 3 AAC 99.785, a federally or state chartered institution authorized to perform banking functions within the state of Alaska;

**(12)** [(11)] "guarantee authorization" means the document which authorizes the issuance of a loan guarantee by the authority to a financial institution on behalf of a borrower;

**(13)** [(12)] "liquidation" means the exercise of all remedies commercially reasonable, in the opinion of the authority, to collect all amounts available to pay the debt;

**(14)** [(13)] "liquidation expenses" means, for purposes of 3 AAC 99.700 - 3 AAC 99.785, normal costs of the foreclosure action, including legal fees, title fees, and advertising costs, the costs and expenses of maintaining the collateral, and costs of sale;

**(15)** [(14)] "loan(s)" means, for purposes of 3 AAC 99.700 - 3 AAC 99.785, a new loan or a loan to refinance existing debt;

**(16)** [(15)] "loan guarantee agreement" means the document that sets out terms and conditions governing the guarantee of a loan;

**(17)** [(16)] "mortgage" means a mortgage deed, deed of trust, or other security instrument;

**(18)** [(17)] "originator" means the Commercial Fishing and Agricultural Bank, and a commercial bank, savings and loan association, mutual savings bank, credit union, or other financial institution that

(A) is either insured by the Federal Deposit Insurance Corporation or the National Credit Union Association, or regulated by the Office of Thrift Supervision, The Office of the Comptroller of the Currency, The Federal Reserve, or state banking regulators under AS 6 or substantially similar banking regulations or statutes of another state;

(B) is approved by the authority;



(C) has entered into an agreement with the authority to act as a seller and servicer of loans under the loan participation program;

**(19)** [(18)] "outstanding bonds" means, for purposes of 3 AAC 99.700 - 3 AAC 99.785, bonds that have not been paid in full or defeased;

**(20)** [(19)] "project," for purposes of 3 AAC 99.700 - 3 AAC 99.785, has the meaning provided in AS 44.88.900 (13) and, with respect to a loan made to provide working capital to a business; means that business;

**(21)** [(20)] "public offering" means a sale or proposed sale of bonds to a purchaser who intends to re-sell the bonds to members of the general public;

**(22)** [(21)] "region" means one of the regions set out in 3 AAC 99.710(d) ;

**(23)** [(22)] "related persons" means persons who are considered to be related for purposes of sections 144 - 150 of the code;

**(24)** [(23)] "retained" means the holding of a note evidencing indebtedness, together with the right to receive payments under the note;

**(25)** [(24)] repealed 2/8/2001;

**(26)** [(25)] "state resident" means an individual who has resided in the state for a minimum of 30 days and who intends to make the state a permanent place of abode; the determination of intent will include consideration of the individual's mailing address, where the individual owns property, where the individual's vehicles are registered, and location of the individual's immediate family;

**(27)** [(26)] repealed 2/11/99;

**(28)** [(27)] "tangible personal property" means, for the purposes of 3 AAC 99.700 - 3 AAC 99.785, equipment, chattels, mortgages, contracts, inventory, and accounts receivable;

**(29)** [(28)] "total available guarantee dollars" means the maximum dollar amount of guarantees the authority will issue, which is the amount shown in 3 AAC 99.710(d);

**(30)** [(29)] "real property loan" means a loan described in 3 AAC 99.230(a);

**(31)** [(30)] "effective term" means the number of years the loan is outstanding when the originator amortizes its portion of the loan in accordance with 3 AAC 99.240(f) or 3 AAC 99.340(f) ;

**(32)** [(31)] "loan portfolio of the authority" means all loans, loan participations, and loan guarantees approved and pending closing, owned or issued by the authority under the tax-exempt loan participation program (3 AAC 99.200 - 3 AAC 99.290) , the taxable loan participation program (3 AAC 99.300 - 3 AAC 99.390) , or the business and export assistance program (3 AAC 99.700 - 3 AAC 99.785) , and all other loans appropriated to or purchased by the authority;

**(33)** [(32)] "improvements in energy efficiency" means any technology, process, equipment, facility, building, structure, or improvement that is intended to and is reasonably likely to reduce energy consumption or the cost of energy, based on current engineering and technological standards;

**(34)** [(33)] "qualified energy development" has the meaning provided in AS

44.88.900 . (Eff. \_\_/\_\_/\_\_, Register\_\_\_\_)

**History:** In effect before 1988; am 1/11/88, Register 106; am 8/1/88, Register 107; am 1/12/89, Register 109; am 11/30/90, Register 118; am 9/25/92, Register 124; am 12/2/94, Register 134; am 2/11/99, Register 150; am 11/1/99, Register 153; am 2/8/2001, Register 158; am 10/12/2004, Register 173; am 4/25/2013, Register 207

**Authority:** AS 44.88.080 AS 44.88.085 AS 44.88.900

**Editor's note:** As of Register 171 (October 2004), the regulations attorney made technical revisions under AS 44.62.125 (b)(6) to reflect the name change of the Department of Community and Economic Development to the Department of Commerce, Community, and Economic Development made by ch. 47, SLA 2004 and the corresponding title change of the commissioner of community and economic development.

In 2012 the revisor of statutes, acting under AS 01.05.031 and codifying changes that appear in sec. 13, ch. 60, SLA 2012, realphabetized definitions in AS 44.88.900 , and renumbered former AS 44.88.900 (9) as AS 44.88.900 (10). As of Register 204 (January 2013), the regulations attorney made a conforming technical revision under AS 44.62.125 (b)(6), to 3 AAC 99.930, so that a cross-reference to former AS 44.88.900 (9) now refers to the renumbered paragraph, AS 44.88.900 (10).

Even though the amendment of 3 AAC 99.930 was effective 4/25/2013, it was not published until Register 207, October 2013.

In 2013 the revisor of statutes, acting under AS 01.05.031 and codifying changes that appear in sec. 10, ch. 26, SLA 2013, realphabetized definitions in AS 44.88.900 , and renumbered former AS 44.88.900 (10) as AS 44.88.900 (11). As of Register 209 (April 2014), the regulations attorney made a conforming technical revision under AS 44.62.125 (b)(6), to 3 AAC 99.930, so that a cross-reference to former AS 44.88.900 (10) now refers to the renumbered paragraph, AS 44.88.900 (11).

In 2014 the revisor of statutes, acting under AS 01.05.031 and codifying changes that appear in sec. 11, ch. 93, SLA 2014, realphabetized definitions in AS 44.88.900 , and renumbered former AS 44.88.900 (11) as AS 44.88.900 (13). As of Register 212 (January 2015), the regulations attorney made a conforming technical revision under AS 44.62.125 (b)(6), to 3

AAC 99.930, so that a cross-reference to former AS 44.88.900 (11) now refers to the renumbered paragraph, AS 44.88.900 (13).

3 AAC 101.140 (a), (b) is amended to read:

**3 AAC 101.140. Other fees and charges.** (a) Upon the issuance of written notification by the authority to the applicant that the application is complete, **a** [AN] **nonrefundable** application fee in the amount described in (b) of this section is due. No application will be given further consideration without payment of this fee. The application fee shall be nonrefundable but may be credited against the commitment fee if the requested financing is approved.

(b) The application fee shall be

(1) **\$5,500** for a loan or guarantee of less than \$10,000,000[- \$5,000 fee];

(2) **\$11,000** for a loan or guarantee **from** [BETWEEN] \$10,000,000 **to** [AND] \$20,000,000[- \$10,000 FEE];

(3) **\$22,000** for a loan or guarantee in excess of \$20,000,000[ - \$20,000 FEE].

(c) A commitment fee is due upon the applicant accepting a commitment letter the authority has provided. The commitment fee is one percent of the principal amount of the financing the authority is providing. The commitment fee is nonrefundable. Upon the applicant's acceptance of the authority's commitment letter in writing, the authority will credit the nonrefundable application fee against the commitment fee.

**History: Eff. 4/25/2013, Register 207**

**Authority:** AS 44.88.085 AS 44.88.670 AS 44.88.680

**Editor's note:** Even though 3 AAC 101.140 was adopted and effective 4/25/2013, it was not published until Register 207, October 2013.

3 AAC 101.180 is amended to read

**3 AAC 101.180. Lease-purchase and other financing agreements.** (a) The authority may finance a qualified energy development through the SETS fund by entering into a lease-purchase, sale-leaseback, build-operate-transfer, operate-transfer, or similar financing arrangement with an applicant. However, the authority will not make any financing arrangement for which legislative approval under AS 36.30.085 is required unless the financing arrangement has been approved by the legislature. The authority will not make any financing arrangement that exceeds the capital costs limitation of AS 44.88.690 (a)(1) without legislative approval.

(b) An applicant seeking to enter into a lease-purchase, sale-leaseback, build-operate-transfer, operate-transfer, or similar financing arrangement shall submit a preliminary application under 3 AAC 101.060 and a full application under 3 AAC 101.070. The preliminary application and the final application should include a statement setting out the financing arrangement being sought with the authority. The authority will consider the application as provided for in 3 AAC 101.090, 3 AAC 101.100, 3 AAC 101.110, and 3 AAC 101.150. The applicant shall pay the authority a [AN] **nonrefundable** application fee of

**(1) \$5,500** [\$5,000] for any financing arrangement up to \$10,000,000(**;**) [, AN

APPLICATION FEE OF]

**(2) \$11,000** [\$11,000] for any financing arrangement **from** [BETWEEN] \$10,000,000 **to**

[AND] \$20,000,000(**;**) [, AND AN APPLICATION FEE OF]

**(3) \$22,000** [\$20,000] for any financing arrangement over \$20,000,000. The application

fee is non[-]refundable but the applicant may apply it against the commitment fee if the authority approves the financing.

(c) The terms of any lease-purchase, sale-leaseback, build-operate-transfer, operate-transfer, or similar financing arrangement shall be determined by the authority in its discretion, considering the financing arrangement, the nature and credit standing of the applicant, the nature and economic and financial viability of the qualified energy development, the security provided to the authority, the risk to the authority, and any other commercially reasonable factors the authority may determine to be applicable. The authority will set out the terms of its financing in the commitment letter provided to the applicant. A nonrefundable commitment fee is due upon the applicant accepting a commitment letter the authority has provided. The commitment fee is one percent of the principal amount of the financing the authority is providing.

(d) At the closing of any financing the authority provides under this section the provisions of 3 AAC 101.140(d) and (e) will apply.

**History: Eff. 4/25/2013, Register 207**

**Authority:** AS 36.30.095 AS 44.88.085 AS 44.88.670 AS 44.88.680 AS 44.88.690

**Editor's note:** Even though 3 AAC 101.180 was adopted and effective 4/25/2013, it was not published until Register 207, October 2013.

3 AAC 101.190(a)(1)(2)(3) is amended to read:

**3 AAC 101.190. Payment of municipal bonds.** (a) A municipality that, pursuant to AS 44.88.680 (a)(8), seeks to have the authority pay off the principal of and interest on bonds the municipality has issued for a public utility must submit a preliminary application under 3 AAC 101.060 and a full application under 3 AAC 101.070. The authority will consider the preliminary application and full application as provided for in 3 AAC 101.090, 3

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AAC 101.100, 3 AAC 101.110, and 3 AAC 101.150. The municipality shall pay the authority a[AN] **nonrefundable** application fee of

**(1) \$5,500** [\$5,000] for any financing up to \$10,000,000[, AN APPLICATION FEE OF]

**(;)**

**(2) \$11,000** [\$11,000] for any financing **from** [BETWEEN] \$10,000,000 **to** [AND] \$20,000,000, [AND AN APPLICATION FEE OF] **(;)**

**(3) \$22,000** [\$20,000] for any financing over \$20,000,000. The application fee is nonrefundable but the municipality may apply it against the commitment fee if the authority approves the financing.

(b) The authority will pay off the bonds of a municipality under AS 44.88.680 (a)(8) by calling the bonds, if they are callable, or by defeasance. The authority will not acquire or negotiate to acquire a municipality's bonds on the secondary market.

**History: Eff. 4/25/2013, Register 207**

**Authority:** AS 44.88.085 AS 44.88.660 AS 44.88.670 AS 44.88.680

**Editor's note:** Even though 3 AAC 101.190 was adopted and effective 4/25/2013, it was not published until Register 207, October 2013.

3 AAC 102.070 is amended to read:

**3 AAC 102.070. Costs.** (a) A nonrefundable **\$1,250** [\$1,000] application fee is due from the applicant at the time that an application is filed with the authority. This fee will be credited toward the guarantee fee if a guarantee is issued or toward the origination fee if a loan is made.

(b) All expenses the authority incurs in providing a guarantee or loan, including processing the application, must be paid by the applicant. These expenses include the cost of credit reports, travel, and other direct costs.

(c) For loan assumptions, a loan assumption fee of one percent of the outstanding loan balance is due upon approval by the loan committee and must be paid to the authority before the loan assumption is effective.

**History: Eff. 3/29/2013, Register 207**

**Authority:** AS 44.88.085 AS 44.88.770

**Editor's note:** Even though 3 AAC 102.070 was adopted and effective 3/29/2013, it was not published until Register 207, October 2013.

3 AAC 102.080 (g) is amended to read:

**3 AAC 102.080. Conditions of guarantees.** (a) In addition to the requirements of 3 AAC 102.020, the following conditions must be met in order for the authority to issue a guarantee:

- (1) the loan must meet the requirements of AS 44.88.730 (a)(1);
- (2) the borrower must demonstrate the ability to repay the loan as required in AS 44.88.730 (a)(3);
- (3) the term of the loan may not exceed 10 years;
- (4) the portion of the loan not guaranteed by the authority must be held by the originating financial institution or another institution approved by the authority; and
- (5) loan guarantee must provide a benefit to the project, business, or nonprofit activity.



(b) The authority may provide a guarantee of up to 100 percent of a loan that qualifies under AS 44.88.700 - 44.88.799 and this chapter. The authority, in its discretion, shall determine the final percentage of the guarantee by evaluating the following:

- (1) whether the application requirements of this chapter have been met;
- (2) the applicant's credit rating;
- (3) the economic and financial viability of the proposed project;
- (4) the impact of the proposed guarantee on the \$40,000,000 limit of AS

44.88.760 ;

(5) any other commercially reasonable underwriting criteria the authority determines to be pertinent to the application, the nature of the applicant or of the proposed project.

(c) The ratio of the guarantee to the outstanding principal of the loan may not increase over the term of the loan.

(d) The authority may guarantee the payment of interest on the guaranteed portion of a loan in the manner established by the authority in the loan guarantee authorization and loan guarantee agreement.

(e) The authority may not provide a guarantee of more than \$20,000,000.

(f) The authority may not guarantee loans to refinance existing debt unless the refinancing

(1) is necessary to extend substantial debt payments over a longer period of time, thereby improving the project's or activity's net cash flow and working capital position consistent with the useful life of the assets being refinanced;

(2) assists with short-term debt or cash expenditures when lenders will not extend reasonable longer terms to the applicant; and

(3) creates additional economic opportunity or improves the viability of the project, business, or nonprofit activity other than just reducing the liability of the lender; or

(4) is necessary to place a permanent loan subsequent to an interim loan for financing of the project.

(g) A one-time guarantee fee of **150 basis points** [ONE AND ONE-HALF PERCENT OF] the principal amount guaranteed is due when the authority issues its guarantee to the financial institution.

(h) Payment of guarantees will come exclusively from reserves set aside by the authority for this purpose. The holders of a loan guarantee issued by the authority can look only to the reserves set aside by the authority for this purpose for payment of the guarantee and not to the general assets of the authority. The guarantee authorization shall expressly limit the liability of the authority as provided in this subsection. The authority will set aside reserves that are, in the judgment of the authority, adequate to cover outstanding guarantees. Upon request of an applicant or a financial institution holding a loan guarantee of the authority or proposing to make a loan that may be guaranteed by the authority, the authority

**History:** Eff. 3/29/2013, Register 207

**Authority:** AS 44.88.085 AS 44.88.730 AS 44.88.770

**Editor's note:** Even though 3 AAC 102.080 was adopted and effective 3/29/2013, it was not published until Register 207, October 2013.

3 AAC 102.110 (c) is amended to read:

**3 AAC 102.110. Lending practices.** (a) The proceeds of the loan may be used by the applicant for purposes related to the project, business, or nonprofit activity. These purposes include working capital, equipment, construction, and other development costs. The loan can be used only for the purposes stated in the application.

(b) The authority may make a loan under this chapter for only a portion of a project. The authority, in its discretion, shall determine the final value of the loan by evaluating the following:

- (1) whether the application requirements of this chapter have been met;
- (2) the applicant's credit rating;
- (3) the economic and financial viability of the proposed project;
- (4) the impact of the proposed loan on the \$40,000,000 limit of AS 44.88.760 ;
- (5) any other commercially reasonable underwriting criteria the authority, in its discretion, determines to be pertinent to the application, the nature of the applicant or of the proposed project.

(c) An origination fee not to exceed **150 basis points applied to** [ONE AND ONE-HALF PERCENT OF]the loan balance is due from the borrower at the time that a loan is made.

**History:** Eff. 3/29/2013, Register 207

**Authority:** AS 44.88.085 AS 44.88.750 AS 44.88.770

**Editor's note:** Even though 3 AAC 102.110 was adopted and effective 3/29/2013, it was not published until Register 207, October 2013.

3 AAC 102.120 (b)(1)(B)(i)(ii) is amended to read:

**3 AAC 102.120. Interest rates.** (a) The initial rate of interest on the authority's loan made under this chapter is set at the time the authority issues a loan commitment at a rate equal to the sum of the "true interest cost rate" and the "authority cost amount." If the authority issues bonds in respect of a loan, the authority will set the interim rate of interest, pending sale of the bonds, at the time that the authority issues a loan commitment. The authority will set the final rate of interest after issuance of the bonds. If the authority does not issue bonds in respect of a loan, the authority will set the rate of interest at the time that the authority issues a loan commitment.

(b) In this section,

(1) "true interest cost rate" means

(A) if the authority issues bonds to fund an NMTC leverage loan, the rate on the bonds of the authority; or

(B) if the authority uses authority assets to fund an NMTC leverage loan, 65 percent of the rate identified on the daily Federal Home Loan Bank of Seattle's Fixed-Rate Advances Index which most closely matches the term of the loan, and whether the type of loan has a fixed or variable interest rate, as determined by the authority, with the following adjustments:

(i) for a fixed-rate loan, the rate during any fiscal year may not be lower than the five-year return on the investment funds of the authority, expressed as an annual interest rate, as determined in the authority's review of its investments at the end of the third quarter of the prior fiscal year and, for a variable rate loan, the rate during any fiscal year will not be lower than **375** [475] basis points;

(ii) for a variable rate loan, **100** [200] basis points will be added to the rate;

**History: Eff. 3/29/2013, Register 207**

**Authority:** AS 44.88.085 AS 44.88.770

**Editor's note:** Even though 3 AAC 102.120 was adopted and effective 3/29/2013, it was not published until Register 207, October 2013.

3 AAC 102.900 is amended to add a new section and to renumber all following sections, to read:

**3 AAC 102.900. Definitions.**

In this chapter,

(1) "authority" means the Alaska Industrial Development and Export Authority;

(2) **"basis points" means the common unit of measure for interest rates and other percentages in finance; one hundred basis points equals one percent;**

(3) [(2)] "board" means the board of the authority;

(4) [(3)] "executive director" means the executive director of the authority;

(5) [(4)] "guarantee" means an agreement pledging assets of the authority to pay the regularly scheduled principal and interest due on a loan made for a qualified project, subject to conditions set out in the guarantee;

(6) [(5)] "leveraged loan" mean a loan made into an investment entity, the proceeds of which, together with other funds, including tax credit equity, are invested as a qualified equity investment in a qualified community development entity that will use the funds to finance a project, business, or nonprofit activity for which the entity allocates new markets tax credits;

(7) [(6)] "leverage loan product" means either a guarantee or a loan;

**(8)** [(7)] "loan" means an extension of credit by the authority or a third-party lender to a borrower for an approved and eligible project, business, or nonprofit activity;

**(9)** [(8)] "new markets tax credit" or "NMTC" means tax credits that arise out of 26 U.S.C. 45D (Internal Revenue Code) and related regulations;

**(10)** [(9)] "NMTC financing" means a loan or guarantee provided under this chapter in connection with the federal new markets tax credit program administered by the Community Development Financial Institutions Fund that arises out of 26 U.S.C. 45D (Internal Revenue Code) and related regulations;

**(11)** [(10)] "working day" does not include a Saturday, Sunday, or a state holiday.

**History: Eff. 3/29/2013, Register 207**

**Authority:** AS 44.88.085 AS 44.88.770 AS 44.88.799

**Editor's note:** Even though 3 AAC 102.900 was adopted and effective 3/29/2013, it was not published until Register 207, October 2013.

3 AAC 103.140 (b)(1)(2)(3) is amended to read:

**3 AAC 103.140. Other fees and charges.** (a) Upon the issuance of written notification by the authority to the applicant that the application is complete, an application fee in the amount described in (b) of this section is due. No application will be given further consideration without payment of this fee. The application fee shall be nonrefundable but may be credited against the commitment fee if the requested financing is approved.

(b) The application fee shall be

**(1) \$5,500** for a loan or guarantee of less than \$10,000,000[ - \$5,000 FEE];

**(2) \$11,000** for a loan or guarantee **from** [OF BETWEEN] \$10,000,000 **to** [AND] \$20,000,000[ - \$10,000 FEE];

**(3) \$22,000** for a loan or a guarantee in excess of \$20,000,000[ - \$20,000 FEE].

(c) A commitment fee is due upon the applicant accepting a commitment letter the authority has provided. The commitment fee is one percent of the principal amount of the financing the authority is providing. The commitment fee is nonrefundable. Upon the applicant's acceptance of the authority's commitment letter in writing, the authority will credit the nonrefundable application fee against the commitment fee.

(d) At the closing of any type of financing, the applicant must pay for all transaction costs of the closing and must reimburse the authority for its costs of underwriting and closing the financing. These costs may include the following:

(1) third-party legal costs, including bond counsel;

(2) costs for credit reports, title reports, title insurance and endorsements, appraisals and the authority's travel expenses incurred as part of the underwriting and closing process;

(3) financial advisor costs and professional and consultant fees;

(4) trustee fees, custodial fees, and other financial and administrative expenses;

(5) escrow agent fees, recording fees, and other expenses as may be incurred in the closing process.

(e) The applicant may elect to pay the costs required by (d) of this section from the proceeds of the financing. The applicant may elect to be reimbursed for the commitment fee from the proceeds of the financing. The applicant may elect to pay any guarantee fees due at the time of closing from the proceeds of the financing.

(f) After the commitment letter is issued and prior to the closing, the authority will provide the applicant with an estimate of the closing costs. The estimate will not be binding on the authority. Actual costs shall be charged to the applicant.

**History: Eff. 12/3/2015, Register 218**

**Authority:** AS 44.88.085 AS 44.88.800 AS 44.88.820 AS 44.88.830

**Editor's note:** Even though the adoption of 3 AAC 103.020 was effective 12/3/2015, it was not published until Register 218, July 2016.