



MEMORANDUM

TO: Board Members
Alaska Industrial Development and Export Authority

FROM: John Springsteen
Executive Director

DATE: June 28, 2018

SUBJECT: Resolution No. G18-07 Adoption of Amendments to AIDEA Regulations (3 AAC 99, 3 AAC 101, 3 AAC 102, and 3 AAC 103 dealing with fees and rates in its bond, loan, Sustainable Energy Transmission and Supply (SETS) fund, new markets tax credit assistance guarantee and loan (NMTC), and Arctic Infrastructure Development fund (AIDF) programs)

The Alaska Industrial Development and Export Authority proposes to adopt regulation changes in Title 3 of the Alaska Administrative Code.

Every two years AIDEA staff reviews its regulations to determine if the rates and fees it charges are reasonable.

After review by staff, changes were made to application fees, loan guarantees, loan modifications, and reimbursement of third-party expenses paid by AIDEA; a new definition of “basis points” was added; certain items expressed as percentages were changed to basis points; and similar text in regulations was formatted to improve clarity and uniformity.

1. 3 AAC 99.110(b) increase nonrefundable application fee from [\$1,000] to \$1,100
2. 3 AAC 99.140(a)(1) change non-whole numbers: (one half of one percent) to 50 basis points; (two-tenths of one percent) to 20 basis points; (one and one half tenth of one percent) to 15 basis points
3. 3 AAC 99.140(a)(2) change non-whole numbers: (four-tenths of one percent) to 40 basis points; (one-tenth of one percent) to 10 basis points; (nine one-hundredths of one percent) to 15 basis points
4. 3 AAC 99.140(b) add text (nonrefundable) before amount of fee; increase modification fee from [\$500] to \$550; move \$550 to before the word fee
5. 3 AAC 99.160(c) add word (nonrefundable); change non-whole numbers (one-half of one percent) to 50 basis points; (one-quarter percent) to 25 basis points
6. 3 AAC 99.210(b) increase nonrefundable preliminary application fee from [\$200] to \$250

7. 3 AAC 99.220(b) increase nonrefundable application fee from [\$1,000] to \$1,100 and to add a sentence “the financial institution must reimburse all third-party expenses of the authority related to the issuance of the authority’s loan participation”
8. 3 AAC 99.260(c) loan commitment term extension, change non-whole number [from one-eighth (0.125%) percent] to 12.5 basis points and subsequent loan commitment term extensions for additional 30-day periods, change non-whole number [from one-eighth (0.125%) percent] to 12.5 basis points
9. 3 AAC 99.290(c) nonrefundable modification fee increase from [\$100] to \$500
10. 3 AAC 99.290 add new subsection (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 assumption fee of one percent of the outstanding balance before entering a loan assumption agreement.
11. 3 AAC 99.320(b) increase nonrefundable application fee from [\$1,000] to \$1,100
12. 3 AAC 99.350(e)(1) language changed to read, rate during any fiscal year will not be lower than 375 basis points [from 475] and language changed to read, rate during any fiscal year will not be lower than 100 basis points [from 200]
13. 3 AAC 99.360(c) loan commitment term change non-whole number [from one-eighth (0.125%) percent] to 12.5 basis points; subsequent loan commitment term extensions change non-whole number [from one-eighth (0.125%) percent] to 12.5 basis points;
14. 3 AAC 99.390(c) increase loan modification fee from [\$100] to \$500
15. 3 AAC 99.390(e) loan assumption nonrefundable fee increased from [\$200] to one percent of the outstanding loan balance
16. 3 AAC 99.520(b) to add language “or the regional resource advisory council”
17. 3 AAC 99.575(a) language changed [from 250 to 450] to (will be no less than 250 basis points)
18. 3 AAC 99.590(a) add word nonrefundable before application fee; fee increased from [\$5,000] to \$5,500 for financing of less than \$10,000,000; fee increased from [\$10,000] to \$11,000 fee for financing from \$10,000,000 to \$20,000,000; fee increased from [\$20,000] to \$22,000 for financing in excess of \$20,000,000/
19. 3 AAC 99.710(g) delete sentence “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”
20. 3 AAC 99.750(a) increase nonrefundable application fee from [\$200] to \$250 and increase nonrefundable modification fee from [\$100] to \$500
21. 3 AAC 99.810(b) increase nonrefundable application fee from [\$200] to \$250
22. 3 AAC 99.810(c) non-whole number changed from [one and one-half percent of] to 15 basis points
23. 3 AAC 99.810(d) language changed, from [5%] to five-percent

24. 3 AAC 99.810(e) increase extension fee from [\$25] to \$50
25. 3 AAC 99.830(a)(2) add the word and at the end of the sentence
26. 3 AAC 99.830(a)(3) repealed.
27. 3 AAC 99.865 delete language “but not less than six percent per annum”
28. 3 AAC 99.880(b) increase nonrefundable application fee from [\$100] to \$150
29. 3 AAC 99.880(f) increase nonrefundable modification fee from[\$100] to \$150
30. 3 AAC 99.930 repeal and readopt entire section, added new definitions
31. 3 AAC 101.140(a) language changed from (an application fee) to a nonrefundable application fee
32. 3 AAC 101.140(b) fee increased from [\$5,000] to \$5,500 for financing of less than \$10,000,000; fee increased from [\$10,000] to \$11,000 for financing from \$10,000,000 to \$20,000,000; fee increase from [\$20,000] to \$22,000 for financing in excess of \$20,000,000
33. 3 AAC 101.180(b) change language from [AN application fee] to a nonrefundable application fee; increase fee from [\$5,000] to \$5,500 for any financing arrangement up to \$10,000,000; increase fee from [\$10,000] to \$11,000 for financing from \$10,000,000 to \$20,000,000; increase fee from [\$20,000] to \$22,000 for any financing arrangement over \$20,000,000
34. 3 AAC 102.070(a) increase nonrefundable application fee from [\$1,000] to \$1,250
35. 3 AAC 102.080(g) change non-whole number from [one and one-half percent of] to 150 basis points
36. 3 AAC 102.110(c) change non-whole number from [one and one-half percent of] to 150 basis points
37. 3 AAC 102.120(b)(1) change [475] basis points to 375; and change [200] basis points to 100
38. 3 AAC 102.900 repeal and readopt entire section (added new definitions)
39. 3 AAC 103.140(b) is amended to increase fee from [\$5,000] to \$5,500 for a loan or guarantee of less than \$10,000,000; increase fee from [\$10,000] to \$11,000 for a loan or guarantee from \$10,000,000 to \$20,000,000; increase fee from [\$20,000] to \$22,000 for a loan or guarantee in excess of \$20,000,000

Alaska Statute 44.88.085 authorizes the Authority to adopt regulations. The Authority has complied with requirements set forth in AS 44.88.085 by providing appropriate public notice of the proposed action requesting public comments. No public comments were received.

Staff recommends approval of Resolution No. G18-07.

ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY

RESOLUTION NO. G18-07

**RESOLUTION OF THE ALASKA INDUSTRIAL
DEVELOPMENT AND EXPORT AUTHORITY ADOPTING
AMENDMENTS TO THE AUTHORITY'S REGULATIONS**

WHEREAS, the Staff of the Alaska Industrial Development and Export Authority (“the Authority”) reviews its regulations every two years;

WHEREAS, the Authority’s regulations need to be brought up to date to reflect increases in costs to administer programs, and to clarify percentages used in calculations;

WHEREAS, the Staff of the Authority prepared proposed amendments to the Authority’s regulations, published notice of the changes and solicited public comment, and conducted a public hearing on the proposed amendments on June 11, 2018, at which hearing no public comments were made;

WHEREAS, the time period for public comment has passed with no comments have been received by the Authority from the public regarding the proposed amendments to the procurement regulations, either orally or in writing; and

WHEREAS, it is in the best interests of the Authority that the proposed amendments to the Authority’s regulations be adopted.

NOW, THEREFORE, BE IT RESOLVED BY THE ALASKA INDUSTRIAL DEVELOPMENT AND EXPORT AUTHORITY AS FOLLOWS:

Section 1. In accordance with AS 44.88.085, the Authority’s regulations are hereby amended as shown in the proposed amendments provided to the Board for its June 28, 2018 meeting.

The specific regulations being amended are: 3° AAC°99.110(b); 3° AAC°99.140(a)(1);
3° AAC°99.140(a)(2); 3° AAC°99.140(b); 3° AAC°99.160(c); 3° AAC°99.210(b);
3° AAC°99.220(b); 3° AAC°99.260(c); 3° AAC°99.290(c); 3° AAC°99.290(e); 3° AAC°99.320(b);
3° AAC°99.350(e)(1); 3° AAC°99.360(c); 3° AAC°99.390(c); 3° AAC°99.390(e);
3° AAC°99.520(b); 3° AAC°99.575(a); 3° AAC°99.590(a); 3° AAC°99.710(g); 3° AAC°99.750(a);
3° AAC°99.810(b); 3° AAC°99.810(c); 3° AAC°99.810(d); 3° AAC°99.810(e);
3° AAC°99.830(a)(2); 3° AAC°99.830(a)(3); 3° AAC°99.865; 3° AAC°99.880(b);
3° AAC°99.880(f); 3° AAC°99.930; 3° AAC°101.140(a); 3° AAC°101.140(b);
3° AAC°101.180(b); 3° AAC°102.070(a); 3° AAC°102.080(g); 3° AAC°102.110(c);
3° AAC°102.120(b)(1); 3° AAC°102.900; 3° AAC°103.140(b).

Section 2. The Chair of the Authority is hereby authorized, in accordance with AS 44.88.085, to provide notice of the adoption of the amendments to the Authority's regulations to the Chairman of the Administrative Review Committee.

Section 3. The Executive Director is authorized and directed to file the amendments to the Authority's procurement regulations with the lieutenant governor, and to take other steps necessary or desirable to make the amendments to the procurement regulations effective.

Section 4. This Resolution shall become effective immediately upon its adoption.

DATED at Anchorage, Alaska, this 28th day of June, 2018.

Chair

(SEAL)
ATTEST

Secretary

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3 AAC 99.110(b) is amended to read:

(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.

(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; am __/__/__, Register____)

Authority: AS 44.88.080 AS 44.88.090 AS 44.88.095
AS 44.88.085

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

(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;]

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

(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 AAC 99.140(b) is amended to read:

(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, 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.

(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; am __/__/__, Register ____)

Authority: AS 44.88.080 AS 44.88.090 AS 44.88.212

AS 44.88.085

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3 AAC 99.160(c) is amended to read:

(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. (In effect before 1988; am 1/11/88, Register 106; am 11/30/90, Register 118; am 12/3/2010, Register 197; am __/__/__, Register____)

Authority: AS 44.88.080 AS 44.88.090 AS 44.88.155
AS 44.88.085

3 AAC 99.210(b) is amended to read:

(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.

(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; am __/__/__, Register____)

Authority: AS 44.88.080 AS 44.88.095 AS 44.88.150
AS 44.88.085

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:

(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 shall 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:

- (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 guarantors, 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 year-end 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 a project boundary with a lease and or easement to be completed before closing giving the applicant control of the area within the project boundary;

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

(10) a detailed construction cost estimate;

(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 to 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 for 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.

(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; am __/__/__, Register____)

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

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(c) is amended to read:

(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

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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 [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 [ONE-EIGHTH PERCENT (0.125%)] nonrefundable fee. (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;

am° __/__/__, Register____)

Authority: AS 44.88.070 AS 44.88.085 AS 44.88.212

AS 44.88.080

3 AAC 99.290(c) is amended to read:

(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.

(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;

am __/__/__, Register____)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 99.290 is amended by adding a new subsection to read:

(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 assumption fee of one percent of the outstanding balance before entering a loan assumption agreement. (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; am __/__/__, Register____)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 99.320(b) is amended to read:

(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.

(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

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2/8/2001, Register 158; am 12/3/2010, Register 197; am 4/25/2013, Register 207; am __/__/__,
Register____)

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) is amended to read:

(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;

(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; am __/__/__, Register____)

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

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:

(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 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

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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. (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; am __/__/__, Register____)

Authority: AS 44.88.070 AS 44.88.085 AS 44.88.212
AS 44.88.080

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) is amended to read:

(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.

3 AAC 99.390(e) is amended to read:

(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. (In effect before 1988; am 1/11/88, Register 106; am

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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; am __/__/__, Register____)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 99.520(b) is amended to read:

(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.

(In effect 1/11/88, Register 106; am 11/30/90, Register 118; am 12/5/2013, Register 209; am° __/__/__, Register____)

Authority: AS 44.88.080 AS 44.88.095 AS 44.88.177

AS 44.88.085 AS 44.88.174

3 AAC 99.575(a) is amended to read:

(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.

(Eff. 12/5/2013, Register 209; am __/__/__, Register____)

Authority: AS 44.88.080 AS 44.88.172 AS 44.88.212
AS 44.88.085

3 AAC 99.590(a) is amended to read:

(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;

(Eff. 12/5/2013, Register 209; am __/__/__, Register____)

Authority: AS 44.88.080 AS 44.88.172 AS 44.88.212
AS 44.88.085

3 AAC 99.710(g) is amended to read:

(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].

(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; am __/__/__, Register____)

Authority: AS 44.88.080 AS 44.88.505 AS 44.88.560

AS 44.88.085 AS 44.88.515 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 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:

(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.

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(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; am __/__/__, Register____)

Authority: AS 44.88.080 AS 44.88.085 AS 44.88.535

3 AAC 99.810(b) is amended to read:

(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.

3 AAC 99.810(c) is amended to read:

(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.

3 AAC 99.810(d) is amended to read:

(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.

3 AAC 99.810(e) is amended to read:

(e) An extension fee not to exceed **\$50** [\$25] may be charged to a borrower to process a loan extension. (Eff. 1/12/89, Register 109; am 3/30/89, Register 110; am 7/19/91, Register 119; am __/__/__, Register____)

Authority: AS 44.88.420

3 AAC 99.830(a)(2) is amended to read:

(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 AAC 99.830(a)(3) is repealed.

(3) repealed ___/___/___;

(Eff. 2/8/2001, Register 158; am ___/___/___, Register____)

Authority: AS 44.88.600 AS 44.88.610 AS 44.88.620

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 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. (In effect 2/8/2001, Register 158; am ___/___/___, Register____)

Authority: AS 44.88.600 AS 44.88.610 AS 44.88.620

3 AAC 99.880(b) is amended to read:

(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.

3 AAC 99.880(f) is amended to read:

(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. 2/8/2001, Register 158; am __/__/__, Register____)

Authority: AS 44.88.600 AS 44.88.610 AS 44.88.620

3 AAC 99.930 is repealed and readopted to read:

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) "board" means the board of the Alaska Industrial Development and Export Authority;
- (4) "code" means the Internal Revenue Code of 1986, as amended;
- (5) "department" means the Department of Commerce, Community, and Economic Development;
- (6) "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) ;
- (7) "executive director" means the executive director of the Alaska Industrial Development and Export Authority;
- (8) "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;

(9) "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;

(10) "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;

(11) "liquidation" means the exercise of all remedies commercially reasonable, in the opinion of the authority, to collect all amounts available to pay the debt;

(12) "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;

(13) "loan(s)" means, for purposes of 3 AAC 99.700 - 3 AAC 99.785, a new loan or a loan to refinance existing debt;

(14) "loan guarantee agreement" means the document that sets out terms and conditions governing the guarantee of a loan;

(15) "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;

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

(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;

(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;

(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;

(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;

(21) "qualified energy development" has the meaning provided in AS 44.88.900;

(22) "real property loan" means a loan described in 3 AAC 99.230(a);

(23) "region" means one of the regions set out in 3 AAC 99.710(d) ;

(24) "related persons" means persons who are considered to be related for purposes of sections 144 - 150 of the code;

(25) "retained" means the holding of a note evidencing indebtedness, together with the right to receive payments under the note;

(26) "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

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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) "tangible personal property" means, for the purposes of 3 AAC 99.700 -

3 AAC 99.785, equipment, chattels, mortgages, contracts, inventory, and accounts receivable;

(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). (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; am __/__/__, Register____)

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) is amended to read:

(a) Upon the issuance of written notification by the authority to the applicant that the application is complete, **a nonrefundable** [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.

3 AAC 101.140(b) is amended to read:

(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].

(Eff. 4/25/2013, Register 207; am __/__/__, Register____)

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(b) is amended to read

(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 3Type equation here. AAC 101.090, 3 AAC 101.100, 3 AAC101.110, 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]

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

(Eff. 4/25/2013, Register 207; am __/__/__, Register____)

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

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 102.070(a) is amended to read:

(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.

(Eff. 3/29/2013, Register 207; am __/__/__, Register____)

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:

(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.

(Eff. 3/29/2013, Register 207; am __/__/__, Register____)

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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:

(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.
(Eff. 3/29/2013, Register 207; am __/__/__, Register____)

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) is amended to read:

(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;

(Eff. 3/29/2013, Register 207; am __/__/__, Register____)

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 repealed and readopted 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) "board" means the board of the authority;
- (4) "executive director" means the executive director of the authority;
- (5) "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) "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) "leverage loan product" means either a guarantee or a loan;

(8) "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) "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) "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) "working day" does not include a Saturday, Sunday, or a state holiday. (Eff. 3/29/2013, Register 207; am __/__/__, Register____)

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) is amended to read:

(b) The application fee shall be

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

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(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].

(Eff. 12/3/2015, Register 218; am __/__/__, Register____)

Authority: AS 44.88.085 AS 44.88.820 AS 44.88.830

AS 44.88.800

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.

