

## CHAPTER 4308

### DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT

### TOURISM LOAN PROGRAM

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#### 4308.0010 PURPOSE OF TOURISM LOAN PROGRAM.

The purpose of the tourism loan program of the department is to provide loans or to participate in loans to tourism-related businesses in Minnesota for upgrading and improvement of facilities. The program will provide direct loans, participation loans, or loan guarantees in cooperation with local financial institutions. The state will share credit risks with the financial institutions and provide for lower interest rates than are otherwise available.

**Statutory Authority:** *MS s 116J.035; 116J.617; 116J.980*

**History:** *14 SR 1419; 19 SR 887*

#### 4308.0020 DEFINITIONS.

Subpart 1. **Scope.** The following terms used in parts 4308.0010 to 4308.0110 have the meanings given them.

Subp. 2. **Commissioner.** "Commissioner" means the commissioner of the Department of Employment and Economic Development or persons delegated to act in the commissioner's behalf.

Subp. 3. **Community development application.** "Community development application" means the official consolidated development application form as developed by the department to be used to apply for funding assistance from various community assistance programs administered by the Community Development Division.

Subp. 4. **Community Development Division.** "Community Development Division" means the Community Development Division of the Department of Employment and Economic Development. The Community Development Division has been designated by the commissioner to receive applications, administer the program, review applications, and approve loans.

Subp. 5. **Department.** "Department" means the Department of Employment and Economic Development.

Subp. 6. **Eligible borrower.** "Eligible borrower" means a sole proprietorship, partnership, corporation, or other person engaged in, and determined by the Community Development Division to constitute, a tourism-related business or other entity that is defined by the standard industrial classification codes of 7011 and 7033 in Code of Federal Regulations, title 13, section 121.2. A person to whom a loan has been made under parts 4308.0010 to 4308.0110 must maintain the standard industrial classification code through the term of the loan. A borrower is not eligible to receive another loan under the tourism loan program for three years from approval of the earlier loan to approval of the next loan, except that if the loan is a septic system loan, the three-year waiting period shall be waived.

Subp. 7. **Eligible project.** "Eligible project" means a project proposed by an eligible borrower that meets the requirements of parts 4308.0010 to 4308.0110.

Subp. 8. **Financial institution.** "Financial institution" means a bank, trust company, mortgage company, credit union, mortgage banker, national banking association, savings

bank, savings association, building and loan association, insurance company, financial organization dealing in commercial credit or venture capital, or a lender certified by the secretary of Housing and Urban Development or by the secretary of Veterans Affairs, or approved or certified by the administrator of the Farmers Home Administration or any other financial lending institution, whether organized under federal law or the laws of any state of the United States, and whether located within or without this state.

Subp. 8a. **Guaranteed loan.** "Guaranteed loan" means a loan made by a financial institution to an eligible borrower for which payment is guaranteed by the full faith and credit of the state.

Subp. 9. **Local unit of government.** "Local unit of government" means a county, city, township, or Indian tribe or band recognized by the federal government.

Subp. 10. **Real property.** "Real property" means property consisting of land and all appurtenances, such as buildings and other immovable articles, including improvements made to or upon land and buildings.

Subp. 11. **Participation loan.** "Participation loan" means a loan made under a contract with a financial institution in which the department purchases a share of a financial institution's loan to an eligible borrower.

Subp. 11a. **Septic system loan.** "Septic system loan" means a loan in which the proceeds of the loan will be used only for the replacement or upgrading of a failing or non-conforming septic system or systems with a new sewage treatment system or connection to a sewer system. Septic system loan disbursements must be debited to the state clean water revolving fund created in Minnesota Statutes, section 446A.07, not the tourism loan account, in order to be considered a septic system loan.

Subp. 12. **Tourism loan.** "Tourism loan" means a loan for which the disbursements are made out of the tourism loan account created in Minnesota Statutes, section 116J.617.

**Statutory Authority:** *MS s 116J.035; 116J.617; 116J.980*

**History:** *14 SR 1419; 19 SR 887; L 1995 c 202 art 1 s 25; L 2003 1Sp4 s 1; L 2008 c 277 art 3 s 4*

#### **4308.0030 ELIGIBILITY OF PROJECT FOR LOANS.**

A loan must be to an eligible borrower for an eligible cost in an eligible project. The maximum state contribution for a loan may not be for more than 50 percent of the total cost of the project loan, with a maximum state loan of \$65,000 for any one project.

Proposed eligible projects of \$10,000 or greater require a participation loan. Proposed eligible projects of under \$10,000 may receive a direct loan. The Community Development Division may require a participation loan in lieu of a direct loan if it determines that such action would further the purposes of the loan program.

**Statutory Authority:** *MS s 116J.035; 116J.617; 116J.980*

**History:** *14 SR 1419; 19 SR 887*

#### **4308.0040 ELIGIBLE COSTS FOR LOANS.**

Subpart 1. **Eligible costs.** Eligible costs for the program include costs not prohibited by subpart 2 for:

- A. building construction and improvement;
- B. site preparation;
- C. equipment;
- D. other construction costs, such as construction of facilities other than buildings, or costs that may be capitalized as part of overall construction costs;
- E. fees that may be required by the department for administration of the loan; and
- F. septic systems.

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Subp. 2. **Ineligible costs.** Project-related costs incurred more than 30 days before submission of a completed application as required by the community development application process are ineligible costs.

Subp. 3. **Determination of eligible or ineligible costs.** The Community Development Division shall make the determination of which proposed project costs are eligible or ineligible.

**Statutory Authority:** *MS s 116J.035; 116J.617; 116J.980*

**History:** *14 SR 1419; 19 SR 887*

**4308.0050 INTEREST RATE FOR LOANS.**

The interest rate on a direct loan or on the department's portion of a participation loan shall be determined at the time of closing by the department and shall be set at, or up to, three percentage points below a full faith and credit obligation of the United States government of comparable maturity, calculated at the time of initial implementation of the program, rounded to the nearest one-half percent, and revised as needed on a semiannual basis. The interest rate for septic system loans shall be fixed at two percent per annum. The interest rate on a participation loan to the borrower shall be a blended rate of the bank's rate and the state's rate in proportion to the respective rate of participation.

**Statutory Authority:** *MS s 116J.035; 116J.617; 116J.980*

**History:** *14 SR 1419; 19 SR 887*

**4308.0060 TERM OF LOANS.**

The maximum term of a loan must not exceed the useful life of the real property, or 80 percent of the useful life of the equipment or machinery, or the following limits, whichever is less:

- A. ten years for land, buildings, septic systems, or other real property;
- B. five years for equipment or machinery; or
- C. a weighted average of the limits under items A and B for loans for a combination of real property and equipment or machinery.

**Statutory Authority:** *MS s 116J.035; 116J.617; 116J.980*

**History:** *14 SR 1419; 19 SR 887*

**4308.0070 SECURITY REQUIREMENTS FOR LOANS.**

All loans must be secured by collateral. The financial institution or the department shall take a security interest in any collateral acceptable to the financial institution and the state. The personal guarantee of principal owners must also be given to the financial institution or department before the loan is approved. For purposes of this part, principal owners are those having 20 percent or more ownership of a tourism project.

**Statutory Authority:** *MS s 116J.035; 116J.617; 116J.980*

**History:** *14 SR 1419; 19 SR 887*

**4308.0080 APPLICATION PROCESS FOR LOANS.**

Subpart 1. **General procedures.** Applications for loans under the program must be made by the borrower and, if applicable, in coordination with a financial institution. Written evidence of support for the proposed project by the local unit of government within which it would be located must accompany the application. Applications may be submitted year round to the Community Development Division using the Community Development Division's community development application.

Subp. 2. **First part of application.** The first part of the community development application must include:

- A. a description of the borrower, including the borrower's standard industrial classification code;

- B. a narrative summarizing the need for the proposed tourism-related project; and
- C. a project summary outlining the construction, site preparation, equipment, or other activities or items to be completed or acquired and the scope of the project.

Subp. 3. **Second part of application.** The second part of the community development application must include:

- A. an activities description and budget detailing the specific estimated costs associated with each proposed activity or acquisition;
- B. a description of the proposed collateral;
- C. supporting materials that are designed to verify or support information presented in subparts 1 and 2 and in items A and B including, if applicable, a copy of the financial institution's file regarding the borrower's loan application and a letter containing the financial institution's assessment of the risks associated with the loan, and the credit-worthiness of the borrower;
- D. a statement by the borrower, in the form provided in Minnesota Statutes, section 13.05, subdivision 4, paragraph (d), or a form similar to it if the borrower is a corporation, consenting to the dissemination of private or nonpublic data applicable to the loan; and
- E. copies of building permits, conditional use permits, resolutions, correspondence, and other documentation that the proposed project has been reviewed and approved by the appropriate local government officials.

Subp. 4. **Additional information.** The Community Development Division may require additional information from the applicant if it is necessary to clarify and evaluate the application.

**Statutory Authority:** *MS s 116J.035; 116J.617; 116J.980*

**History:** *14 SR 1419; 19 SR 887*

#### **4308.0090 PROCEDURE FOR TOURISM LOAN EVALUATION AND APPROVAL.**

Subpart 1. **Evaluation of eligibility.** Upon receipt of the first part of the community development application, the Community Development Division shall make a determination whether the borrower, project, and costs are eligible for consideration. If it is determined that the borrower, project, or costs are ineligible, the Community Development Division shall notify the borrower and, if applicable, the financial institution and suggest any modifications that would make the application eligible for consideration. If it is determined that the borrower, project, and costs are eligible, the Community Development Division shall notify the borrower and, if applicable, the financial institution and advise the borrower and, if applicable, the financial institution of the additional information required to complete the second part of the community development application.

Subp. 2. **Evaluation of the completed application.** Upon receipt of the completed community development application, the Community Development Division shall evaluate the application based on the following criteria:

- A. the ability of the borrower to reasonably repay the loan;
- B. the extent to which the proposed project would contribute to upgrading, expanding, and improving Minnesota's tourism industry;
- C. the degree to which the proposed project would contribute to the economic viability of the tourism-related facility operated by the borrower;
- D. the degree to which the proposed project would contribute to protection or enhancement of the local tax base;
- E. demonstration of an overall positive economic impact on the surrounding community; and

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F. the degree to which the proposed project would help retain lakeshore and other outdoor recreation and tourism amenities for general use.

Subp. 3. **Approval.** The Community Development Division may reject or disapprove an application for a loan that does not provide sufficient documentation or otherwise comply with parts 4308.0010 to 4308.0110. If the Community Development Division approves an application for a loan, it shall address a commitment letter to the financial institution and the borrower. It shall also notify the financial institution and the borrower of the amount of the loan and the amount of interest charged on the department's portion of the loan.

Subp. 4. **Documentation required.** The state shall require an executed promissory note or notes, an executed participation agreement, recorded mortgage, security agreements, personal guarantees, assignments, title opinion or title insurance, fire insurance, recorded UCC documents, and other documentation needed to close the loan. The Community Development Division shall prepare a loan agreement to be signed by the financial institution, the borrower, and the state. The financial institution shall also certify in the participation agreement that the interest rate approved by the Community Development Division will be passed on to the borrower.

**Statutory Authority:** *MS s 116J.035; 116J.617; 116J.980*

**History:** *14 SR 1419; 19 SR 887*

**4308.0100 LOAN SERVICING.**

Subpart 1. **Collection responsibilities.** In cases where a participation loan is approved, the financial institution shall collect payments according to the payment schedule outlined in the promissory note. The financial institution must remit to the department its pro rata share of a payment within 15 days of receipt. The financial institution may retain interest collected as payment for duties performed by it under the contract in the amount of one percent per annum of the department's share of the loan.

Subp. 2. **Loan default.** The financial institution shall notify the Community Development Division within 30 days after a determination by the financial institution of a default. The financial institution must pursue all reasonable means to collect the defaulted loan from the borrower and must apply and exhaust the loan security as necessary to effect payment of the loan. The financial institution must remit to the department its pro rata share of any amounts collected after subtracting costs to collect upon the defaulted loan. In lieu of foreclosure, either before or after declaring a default, the financial institution and the Community Development Division may agree to refinance or renegotiate the loan when doing so will enhance the possibility of recovery of the debt.

**Statutory Authority:** *MS s 116J.035; 116J.617; 116J.980*

**History:** *14 SR 1419*

**4308.0110 AMORTIZATION SCHEDULES.**

Loan payments shall be made according to an amortization schedule established by the Community Development Division for direct loans, or by the financial institution for department participation loans. In the case of participation loans, the Community Development Division shall review and approve the proposed amortization schedule.

The financial institution shall allow loan payments to be made on other than a monthly basis to meet the amortization schedule established by the financial institution. A non-monthly payment schedule shall allow for seasonal payments, where income is generated or primarily generated, because of seasonal business.

**Statutory Authority:** *MS s 116J.035; 116J.617; 116J.980*

**History:** *14 SR 1419*