

1652.0040 OPERATION OF PROGRAM.**Subpart 1. Loan transactions and security.**

A. The authority shall make loans to eligible borrowers for eligible purposes pursuant to a loan agreement between the authority as lender and the eligible borrower as borrower. The loans must be evidenced by promissory notes payable to the authority or its assigns, and except as provided in item E must be unsecured.

B. A loan may not be made if it violates any of the restrictions in subitems (1) to (6).

(1) The amount of a loan, together with the amount of any similar loan made to the same borrower or a related person or entity, may not exceed \$250,000.

(2) Ninety-five percent of the loan proceeds must be expended for an eligible purpose, and not more than two percent of the loan proceeds may be used to pay loan transaction costs.

(3) The maturity of a loan or portion of a loan made to finance improvements or depreciable property to be used in an agricultural business enterprise may not exceed 120 percent of the useful life of the improvements or property under the code.

(4) Not more than five percent of the loan proceeds may be used to refinance existing indebtedness, or to finance the purchase or improvement of a residence or working capital or inventory. Use of loan proceeds for reimbursement of costs incurred before adoption by the authority of a preliminary resolution approving a loan and the issuance of a bond to fund it as described in part 1652.0060 or money borrowed to pay such costs constitutes use of loan proceeds for working capital or refinancing.

(5) All loan proceeds must be expended within six months of the loan closing or the first date on which loan proceeds are disbursed, whichever is later, or all proceeds must be expended within 18 months of the loan closing or the first date on which loan proceeds are disbursed, whichever is later, in which event the borrower must furnish to the authority all information as to the investment of loan proceeds and any money required to be rebated to the United States under section 148 of the code.

(6) Loan proceeds may not be used to finance the purchase of land, improvements, or depreciable property from a related person or entity.

C. The authority shall issue a bond to provide money to fund each loan. The authority has no other money available for this purpose. The bond must be issued to the eligible lender who has agreed with the eligible borrower to finance the eligible borrower's loan by jointly submitting a loan application in accordance with part 1652.0050. The bond must be issued in fully registered form pursuant to a loan agreement between the lender and the authority.

D. The bond must be a special, limited obligation of the authority payable solely from loan payments payable by the eligible borrower under the borrower's loan agreement and the promissory note evidencing the loan, which will be assigned to the lender and pledged to the payment of the principal of and interest on the bond, without recourse to the authority. The bond must not be a general obligation of the authority, the state of Minnesota, or any department, agency, or political subdivision of the state, and the full faith and credit of the authority, the state, or any department, agency, or political subdivision of the state must not be pledged for its payment.

E. A bond may be additionally secured by a mortgage on or security interest in the property financed or other property provided by the borrower, or by personal guaranties made by the borrower or another individual. All agreements and documents providing or evidencing such additional security must be entered into between the borrower or another individual and the lender. The authority may not be a party to the agreement or document and may not be responsible in any way with respect to the authorization, execution, effectiveness, or adequacy of the additional security.

Subp. 2. **Loan evaluation.** The lender must determine and evaluate the eligible borrower's financial condition, net worth, and ability to repay the loan of the bond proceeds to be made by the authority, and the lender is solely responsible for that determination. The authority may not make any independent evaluation of any of these matters, but must rely upon certifications provided to it by the applicant and the lender as part of an application.

Subp. 3. **Loan terms.** The payment terms of each loan and the bond that will be issued to fund the loan must be identical and, subject to the applicable provisions of state and federal law or the code, must be established by the eligible borrower and the lender.

Subp. 4. **Loan documents.** Except as provided in subpart 1 with respect to certain loan security agreements, all loan and bond transactions must be evidenced by use of the authority's standard loan documents. The documentation must include loan agreements, a promissory note, a bond, various closing certificates, legal opinions, and other documents the authority requires.

Subp. 5. **Tax exemption.**

A. The authority shall try to issue each bond as a "qualified small issue bond" within the meaning of section 144(a) of the code. Interest payable on a qualified small issue bond is not includable in gross income of the recipient for federal income tax purposes, or in net income of individuals, estates, or trusts for Minnesota income tax purposes. At the loan closing, the authority shall furnish to the lender an opinion of an attorney or firm of attorneys nationally recognized as bond counsel as to the validity of the bond and the tax-exempt nature of the interest payable on the bond, addressed to the lender. The form of that opinion is available upon request to the authority by any eligible lender joining in a loan application.

B. The lender may not rely upon information provided by the authority as to state and federal tax warranties or covenants made by the authority in the loan documents, but may rely on the legal opinion.

C. The lender is responsible to determine the applicability and effect of other state and federal laws on the lender's income, deductions, or tax status for state and federal tax purposes as a result of the purchase of a bond.

Subp. 6. **Use of bond proceeds; certification.** Bond proceeds may not be used for a purpose other than an eligible purpose or by a person other than an eligible borrower. Following disbursement of the bond proceeds, the lender and borrower may be required to certify to the authority that the proceeds were used for an eligible purpose by an eligible borrower, and evidencing compliance with subpart 1, item B.

Subp. 7. **Assignment of bond.** A lender may assign a bond in whole or in part to any person, but the lender is responsible for compliance with all state and federal laws applicable to the assignment. Servicing of the loan may also be assigned, but must at all times be with an eligible lender. The authority must be notified in writing prior to assignment of servicing of a loan.

Subp. 8. **Assumption of loans, substitution of collateral, and transfer of property.** Loans may not be assumed without the prior approval of the authority, and then only if the purchaser of the property is an eligible borrower. The benefits of the loan made at the tax-exempt rate from the proceeds of an authority bond must remain with an eligible borrower, and no other person or entity to whom property is traded or otherwise transferred may obtain the benefits of the authority loan.

Statutory Authority: *MS s 41C.13*

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