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**RULE ADOPTIONS**

**OTHER AGENCIES**  
**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

*41 N.J.R. 2338(a)*

**Adopted Concurrent New Rules: N.J.A.C. 19:31-5 and 6**

**Authority Assistance Programs**

**InvestNJ Business Grant Program; Main Street Business Assistance Program**

Proposed: March 2, 2009 at *41 N.J.R. 1103(a)*.

Adopted: May 4, 2009 by New Jersey Economic Development Authority, Caren S. Franzini, Chief Executive Officer.

Filed: May 4, 2009 as R.2009 d.181, **with substantive changes** not requiring additional public notice and opportunity for comment (see *N.J.A.C. 1:30-6.3*).

Authority: *N.J.S.A. 34:1B-1* et seq., P.L. 2008, c. 112 and P.L. 2008, c. 117.

Effective Date: May 4, 2009, Concurrent Adopted New Rules;

June 1, 2009, Changes Upon Adoption.

Expiration Date: July 22, 2010.

**Summary of Public Comment and Agency Response:**

No comments were received.

**Summary of Agency-Initiated Changes:**

In accordance with P.L. 2008, c. 112 and P.L. 2008, c. 117, the New Jersey Economic Development Authority ("EDA" or "Authority") adopted special new rules at *41 N.J.R. 1103(a)* to implement the requirements of the InvestNJ Business Grant Program Act and Main Street Business Assistance Program Act to provide financial assistance, on an expedited basis, to businesses facing severe fiscal challenges as a result of the current national economic crisis.

Concurrently, the special new rules, which were adopted for a period of 12 months, were proposed for reoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq.

The EDA is adopting the concurrent new rules for the Main Street Business Assistance Program, at N.J.A.C. 19:31-6, without change; and is adopting the concurrent new rules for the InvestNJ Business Grant Program, N.J.A.C. 19:31-5, with substantive changes not requiring additional public notice. The revised new rules are intended to ensure the delivery of immediate economic stimulus by minimizing unnecessary administrative process steps from being imposed on businesses receiving one-time, short-term financial assistance under the InvestNJ Program, while continuing to require compliance with the EDA's affirmative action rules, *N.J.A.C. 19:30-3.1* to *3.7*.

Specifically, in all instances where the acquisition of eligible capital investments or hiring of new employees involves entering into a construction contract, the grantee/applicant shall not be required to submit monthly project workforce reports, as set forth at *N.J.A.C. 19:30-3.4*. However, the grantee/applicant shall be responsible for the efforts of its contractors and subcontractors to ensure equal employment opportunity for minority and women workers. Under the revised new rules, such contractors and subcontractors shall preserve all project workforce records for two years from the completion date of the project for audit purposes. The EDA (or its designated agent), upon request, shall be granted complete access to all such records; and the grantee/applicant shall certify, upon request for disbursement of grant funds, that all project workforce records are up to date and on file.

If a construction contract has already been executed between the grantee/applicant and its contractor before the grantee/applicant has applied to EDA for assistance under the InvestNJ Program, the EDA will allow the grantee/applicant to execute a side-letter agreement stating that the contractor(s) agree(s), and will cause its subcontractor(s) to comply with the EDA's affirmative action regulations and payroll and project workforce records requirements contained herein.

Finally, the revised new rules waive the EDA's existing requirement that a construction contract entered into as a result of receiving benefits under the InvestNJ Program shall contain a 10 percent retainage requirement specific to affirmative action in the Addendum to Construction Contract or side-letter agreement.

### **Federal Standards Statement**

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

**Full text** of the adoption follows (additions to special adopted new rules indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

## **SUBCHAPTER 5. INVESTNJ BUSINESS GRANT PROGRAM**

### **19:31-5.1 Applicability and scope**

The New Jersey Economic Development Authority is promulgating these rules to implement the InvestNJ Business Grant Program Act, P.L. 2008, c. 112 (the "Act"). The Act established the InvestNJ Business Grant Program to provide capital investment and job creation grants to qualifying businesses during the current national economic crisis.

### **19:31-5.2 Definitions**

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

"Authority" means the New Jersey Economic Development Authority.

"Business" means any entity including, but not limited to, a corporation, an S corporation, limited liability corporation, partnership, limited liability partnership, and sole proprietorship, and shall include all entities related by common ownership or control. For purposes of this definition, common control shall mean possessing or being subject to the power, direct or indirect, to direct or cause the direction of the management and policies of entity, whether through the ownership of voting stock, by contract or otherwise. A beneficial ownership of 50 percent or more of the voting power of an entity shall create a presumption of control of that entity. For purposes of this definition, common ownership shall mean ownership of at least 50 percent of the voting power of an entity.

"Capital investment" means expenses of at least \$ 5,000 incurred for the direct use and operation of a business for:

1. The site preparation and construction, renovation, improvement, equipping of, or obtaining and installing fixtures and machinery, apparatus or equipment in, a newly constructed, renovated or improved building, structure, facility, or improvement to real property; and
2. Obtaining and installing fixtures and machinery, apparatus or equipment in a building, structure, or facility.

Provided, however, that "capital investment" shall not include soft costs such as financing and design, furniture or decorative items such as artwork or plants, or office equipment if the office equipment is property with a recovery period of less than five years. The recovery period of any property, for purposes of this section, shall be determined as of the date such property is first placed in service or use in this State by the business, determined in accordance with *section 168 of the Federal Internal Revenue Code of 1986 (26 U.S.C. §168)*. "Capital investment" shall also include remediation of a business facility site, but only to the extent the remediation has not received financial assistance from another Federal, State, or local government funding source. If a construction permit was received prior to December 9, 2008 relating to the phase of a project that will include a capital investment, such capital investment shall not be included in this definition. A capital investment that was ordered prior to December 9, 2008 also shall not be included in this definition.

"Chief Executive Officer" means the Chief Executive Officer of the New Jersey Economic Development Authority.

"Eligible position" means a full-time position filled by an individual whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1 et seq.*, or a person who is co-employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L. 2001, c. 260 (*N.J.S.A. 34:8-67 et seq.*) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment. An eligible position shall include only a position for which a business provides, directly or pursuant to an employee leasing agreement, employee health benefits under a group health plan as defined under section 14 of P.L. 1997, c. 146 (*N.J.S.A. 17B:27-54*), a health benefits plan as defined under section 1 of P.L. 1992, c. 162 (*N.J.S.A. 17B:27A-17*), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes. An eligible position shall not include an independent contractor or a consultant.

#### 19:31-5.3 Grant components and amounts

(a) The investment grant component shall provide an incentive to businesses to encourage capital investments by the award of grants of up to seven percent of the qualifying capital investment made by a business in New Jersey, as follows:

1. The value of the grant shall be seven percent of the capital investment provided that no grantee shall receive more than \$ 1 million; and
2. The sum of investment grants awarded shall not exceed \$ 70 million, which not more than \$ 20 million shall be allocated for capital investment grants described under paragraph 2 of "capital investment" as defined in *N.J.A.C. 19:31-5.2*.

(b) The employment grant component shall provide an incentive to businesses to create full-time eligible positions that are retained for at least one year by the grantee, as follows:

1. The value of the grant shall be \$ 3,000 to qualified businesses for each eligible position created, provided that no grantee shall receive more than \$ 500,000; and
2. The sum of employment grants awarded shall not exceed \$ 50 million.

#### 19:31-5.4 Eligibility criteria

(a) A business shall be eligible for the issuance of an investment grant if it:

1. Has operated continuously for at least the two years preceding the filing of an application for a grant;
2. Employs at least five full-time employees; and
3. Makes a capital investment in New Jersey after December 9, 2008 but prior to January 1, 2011.

(b) A business shall be eligible for the issuance of an employment grant if it:

1. Has operated continuously in this State for at least the two years preceding the filing of an application for a grant;
2. Employs at least five full-time employees;
3. Adds an eligible position created in New Jersey after December 1, 2008 and before January 1, 2011, for a period of at least 12 consecutive months in this State; and
4. Has experienced a net increase in employment of eligible positions in this State during the same 12 consecutive months.

#### 19:31.5.5 Application requirements

(a) A business seeking to participate in the investment grant component or in the employment grant component shall submit an application prior to January 1, 2011. Applications shall be posted on the EDA's website at [www.njeda.com](http://www.njeda.com).

(b) The Chief Executive Officer shall review and may approve an application for the investment grant and issue payment of the grant amount pursuant to a series of scheduled payments as determined by the Chief Executive Officer and subject to the submission of proof by an approved applicant of the expenditures contributing to the capital investment. Grants will be made in the order in which completed disbursement requests are received and approved; and approvals will be subject to the limits set forth at *N.J.A.C. 19:31-5.3(a)2* and subject to appropriation and the availability of funds.

(c) The Chief Executive Officer shall review and may approve an application for the employment grant and issue payment of the grant upon the submission of proof by an approved applicant of the employment of an individual in the eligible position during a period of at least 12 consecutive months in this State and proof of the other requirements set forth in *N.J.A.C. 19:31-5.4(b)*. Such submission shall be subject to review and audit by the Department of Labor and Workforce Development. Grants will be made in the order in which completed disbursement requests are received and approved; and approvals will be subject to the limits set forth at *N.J.A.C. 19:31-5.3(b)2* and subject to appropriation and the availability of funds.

#### 19:31-5.6 Application procedures and disbursement process

(a) To apply, the applicant should complete the InvestNJ application and submit it to the Authority for review.

(b) A completed application includes:

1. The company's name, address and year established;
2. The number of existing full time employees;
3. The estimated number of eligible positions to be created (for job creation grant request);
4. A brief description of capital investment (for capital investment grant request) and a proposed line item budget for improvements to be made at site as well as a certification that business has not received a construction permit or ordered equipment after December 9, 2008; and
5. At the request of the Authority, any additional information deemed necessary to evaluate the application.

(c) Upon receipt of a completed application, the business will receive notification that the application has been received.

(d) For disbursement of job creation grants, funds may be provided after eligible positions have been sustained for a 12-month period. Companies will be required to:

1. Evidence that the position(s) has been maintained for a 12-month period;
2. Provide a copy of the original application;
3. Evidence that the positions were covered under a group health plan;
4. Complete a tax clearance certificate application and questionnaire to identify any pending legal matters; and
5. Evidence fulfillment of prevailing wage or affirmative action requirements, if applicable.

(e) For disbursement of capital investment grants, companies will be required to:

1. Provide those items at (d)2 through 5 above; and
2. Provide invoices for the capital investment expenses incurred.

(f) Once the items required in (d) and (e) above are received and reviewed by staff for completeness and eligibility, staff may make a recommendation to the Chief Executive Officer for approval. Upon approval, a grant agreement detailing the terms of the grant and any compliance requirements will be sent to the company. Upon execution of the grant agreement, the company may request disbursement and a check will be mailed to the company for the approved amount of the grant.

#### 19:31-5.7 Restrictions

(a) For the purpose of determining eligibility for an investment grant pursuant to *N.J.A.C. 19:31-5.3(a)*, the authority shall exclude any expenses incurred at a site for which the business is receiving a Business Employment Incentive Program grant pursuant to the provisions of P.L. 1996, c. 26 (*N.J.S.A. 34:1B-124 et seq.*), a Business Retention and Relocation Assistance Grant pursuant to P.L. 1996, c. 25 (*N.J.S.A. 34:1B-112 et seq.*) or an Urban Transit Hub Tax Credit pursuant to P.L. 2007, c. 346 (*N.J.S.A. 34:1B-207 et seq.*), and shall exclude any expenses covered by a retail sales purchase exemption pursuant to section 20 of P.L. 1983, c. 303 (*N.J.S.A. 52:27H-79*), section 25 of P.L. 1980, c. 105 (*N.J.S.A. 54:32B-8.13*), section 26 of P.L. 1980, c. 105 (*N.J.S.A. 54:32B-8.14*), section 28 of P.L. 1980, c. 105 (*N.J.S.A. 54:32B-8.16*), section 41 of P.L. 1980, c. 105 (*N.J.S.A. 54:32B-8.29*), section 45 of P.L. 1980, c. 105 (*N.J.S.A. 54:32B-8.33*), or section 11 of P.L. 1981, c. 546 (*N.J.S.A. 54:32B-8.36*).

(b) For the purpose of determining eligibility for an employment grant pursuant to *N.J.A.C. 19:31-5.3(b)*, the authority shall not include any position that is included in the calculation of a Business Employment Incentive Program grant pursuant to the provisions of P.L. 1996, c. 26 (*N.J.S.A. 34:1B-124 et seq.*), a Business Retention and Relocation Assistance Grant pursuant to P.L. 1996, c. 25 (*N.J.S.A. 34:1B-112 et seq.*) or an Urban Transit Hub Tax Credit pursuant to P.L. 2007, c. 346 (*N.J.S.A. 34:1B-207 et seq.*).

#### 19:31-5.8 Affirmative action and prevailing wage

**\*(a)\*** The Authority's \*[affirmative action requirements P.L. 1979, c. 303 (*N.J.S.A. 34:1B-5.4*) and]\* prevailing wage requirements P.L. 2007, c. 245 (*N.J.S.A. 34:1B-5.1*) will apply to both components of the InvestNJ Business Grant Program.

**\*(b) The Authority's affirmative action requirements, P.L. 1979, c. 303 (*N.J.S.A. 34:1B-5.4*), will apply to both components of the InvestNJ Business Grant Program as follows:**

**1. In all instances where an eligible investment or employment grant results in a grantee/applicant entering into a construction contract, the grantee/applicant shall be required to track employment of minority and women workers and shall be responsible for the performance of their contractors and subcontractors under this section. Notwithstanding the provisions set forth at *N.J.A.C. 19:30-3.4*, applicable grantee/applicants shall not be required to submit monthly project workforce reports to the Authority; however, the grantee/applicant's contractors and subcontractors shall preserve all project workforce records for two years from the completion date of**

the project and must permit the Authority (or its designated agent) and the grantee/applicant complete access to all such records. Grantee/applicants must certify with each Authority disbursement request that all required project workforce records are up to date and on file.

**2. In the event a construction contract has been executed between the grantee/applicant and its contractor before the grantee/applicant has applied to the Authority for assistance under this program, the Authority will not require the construction contract to be amended to include the InvestNJ Addendum to Construction Contract available on the EDA's website at [www.njeda.com/affirmativeaction/investnj](http://www.njeda.com/affirmativeaction/investnj), provided the grantee/applicant and the contractor execute a side-letter agreement stating that the contractor agrees, and will cause its subcontractors to agree to the following:**

**i. That it will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;**

**ii. That it will pay prevailing wage;**

**iii. That it will prepare and preserve accurate payroll and project workforce records; and**

**iv. That it will adhere to the Authority's affirmative action regulations contained in N.J.A.C. 19:30-4, except as amended in this subsection.**

**3. The 10 percent retainage requirement, as required in *N.J.A.C. 19:30-3.5*, shall not be required for any InvestNJ Addendum to Construction Contract or side-letter agreement. Final approval and disbursement of grant funds will be made upon the issuance of a written notice by the Authority's Office of Affirmative Action that it has received all documentation required hereunder and under the Authority affirmative action regulations except as modified in this subsection, and has determined that based on such documentation, the grantee/applicant is in compliance with the requirements of the program.**

**4. A summary of the compliance requirements concerning affirmative action under this program can be found on the Authority's Internet webpage at: [www.njeda.com/affirmativeaction/investnj](http://www.njeda.com/affirmativeaction/investnj).\***

#### 19:31-5.9 Forfeiture and repayment of grants

A grantee of the investment grant that fails to comply with a grant agreement, which shall include a requirement that the capital investment be maintained in New Jersey for not less than a year, shall repay any grant amount received and, if so determined by the Chief Executive Officer, shall pay a penalty not in excess of 10 percent of the grant amount.

### SUBCHAPTER 6. MAIN STREET BUSINESS ASSISTANCE PROGRAM

#### 19:31-6.1 Applicability and scope

The New Jersey Economic Development Authority is promulgating these rules to implement the Main Street Business Assistance Program Act, P.L. 2008, c. 117 (the "Act"). The Act established the Main Street Business Assistance Program to provide guarantees and loans to small and mid-size businesses and not-for-profit organizations on an expedited basis for a period not to exceed two years from the date of enactment to stimulate the economy.

#### 19:31-6.2 Terms of financial assistance

(a) Under the Main Street Business Assistance Program, the Authority may provide direct loan, loan participation and/or guarantee products and line of credit guarantee products.

1. For the direct loan and loan participation product, the maximum amount will be \$ 1 million per total transaction for fixed assets and \$ 750,000 per transaction for working capital, not to exceed 25 percent of total transaction;

2. For the loan guarantee product, the maximum guarantee will be \$ 2 million per transaction for fixed assets and \$ 1.5 million per transaction for working capital, not to exceed 50 percent of total transaction; and

3. For the line of credit product, the maximum amount will be \$ 250,000, not to exceed 50 percent of the total transaction.

(b) The combination of direct loan, loan participation, loan guarantee and line of credit guarantee shall not exceed the lesser of \$ 2 million or 50 percent of total bank commitment.

(c) The Authority shall provide public notice of the rate of interest to be charged for the Main Street Business Assistance Program as authorized by the Members through, among other methods, listing on the agency's website at [www.njeda.com](http://www.njeda.com).

(d) For purposes of (a)1 and 2 above, the term shall not exceed five years; and for (a)3 above, the term shall be up to two years based on the term of bank line of credit.

#### 19:31-6.3 Eligibility criteria

(a) Under the Main Street Business Assistance Program, preference for assistance will be given to:

1. A business which has operated continuously for at least the two years preceding the filing of an application; and

2. A project which may:

i. Maintain employment;

ii. Create or maintain tax ratables;

iii. Be located in an economically distressed area; or

iv. Represent an important economic sector of the State.

#### 19:31-6.4 Application requirements

(a) A business seeking to participate in the direct loan, loan participation and guarantee and line of credit products shall comply with the Authority's application procedures as set forth in *N.J.A.C. 19:31-2.3*.

(b) Authority staff will undertake the evaluation process set forth at *N.J.A.C. 19:31-2.4*. The Chief Executive Officer shall review and may approve applications, which will be processed in the order in which completed applications are received.

#### 19:31-6.5 Affirmative action and prevailing wage

The Authority's affirmative action requirements P.L. 1979, c. 203 (*N.J.S.A. 34:1B-5.4*) and prevailing wage requirements P.L. 2007, c. 245 (*N.J.S.A. 34:1B-5.1*) will apply to projects undertaken in connection with financial assistance received under the Main Street Business Assistance Program.