

EMERGENCY REGULATIONS

3 AAC is amended to add a new chapter to read:

Chapter 104. Emergency Loan and Guaranty Program

3 AAC 104.010. Purpose and description. (a) The purpose of the emergency loan and guaranty program is to provide emergency loans to qualified businesses and nonprofit organizations. The emergency loan and guaranty program is intended to complement, through the offer of similar loan terms, certain federal emergency loan programs, including but not limited to the Paycheck Protection Program (CARES Act, sec. 1102, P.L. 116-136) and the Small Business Administration Economic Injury Disaster Loan Program (13 CFR 123.300 – 123.303).

(b) The authority or its subsidiary may guarantee emergency loans issued under this program by participating financial institutions, or the authority or its subsidiary may directly issue emergency loans to eligible borrowers.

(c) An emergency loan issued by a participating financial institution and guaranteed by the authority or its subsidiary will be backed with a 100 percent guaranty for principal and interest for a maximum period as allowed under the applicable federal emergency loan program. Funding for the loans made by and guarantees issued by the authority or its subsidiary will be from the emergency loan and guaranty account.

(d) The authority or its subsidiary will provide emergency loans and guarantees on a first come, first served basis. The authority or its subsidiary will close the program to new loans and guarantees in its discretion. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.020. Eligibility. (a) An Alaska business with 500 or fewer employees is eligible for an emergency loan under the program.

(b) A private Alaska nonprofit organization is eligible for an emergency loan under the program if it is a non-governmental agency or entity that currently has:

(1) an effective ruling letter from the United States Internal Revenue Service, granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or

(2) satisfactory evidence from the state that the non-revenue producing organization is a nonprofit organized or doing business under state law.

(c) If eligible an Alaska business or Alaska nonprofit organization must also apply for a loan under the Paycheck Protection Program (CARES Act, sec. 1102, P.L. 116-136), the Small Business Administration Economic Injury Disaster Loan Program (13 CFR 123.300 – 123.303), or other similar federal loan program. The applicant must identify the amount borrowed under the program as an obligation that can be paid with the federal loan funds.

(d) Emergency loans are available only if the applicant was an eligible business or a private nonprofit organization when the public health disaster emergency declaration was issued by the governor on March 11, 2020.

(e) To be eligible, the applicant must be unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses. (Eff. ____/____/____, Register ____)

(Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.030. Loan application. (a) An eligible business or nonprofit organization may apply for an emergency loan by submitting an application to a participating financial institution or directly to the authority or its subsidiary through a designated loan service provider.

(b) If an applicant is eligible for an applicable federal loan, the applicant shall complete the required federal application information and submit it for review to the participating financial institution, or to the authority or its subsidiary through a designated loan service provider.

(c) If an applicant is not eligible for an applicable federal loan, the authority or its subsidiary may request the applicant provide supporting information, including any of the following:

- (1) completed SBA loan application (SBA Form 5);
- (2) completed and signed tax information authorization (IRS Form 4506-T) for the applicant, principals, and affiliates, or in the case of a nonprofit organization, an authorization to release the most current Form 990;
- (3) schedule of liabilities (SBA Form 2202) listing all fixed debts;
- (4) personal financial statements (SBA Form 413) completed, signed, and dated by the applicant, each principal owning 20 percent or more of the applicant or its business, and each general partner or managing member;
- (5) income, balance sheet, and cash flow documents;

(6) if the most recent federal income tax return has not been filed, a year-end profit-and-loss statement and balance sheet for that tax year;

(7) a current year-to-date profit-and-loss statement;

(8) additional filing requirements (SBA Form 1368) providing monthly sales figures. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.040. Loan terms. (a) Participating financial institutions and the authority or its subsidiary are authorized to offer the same loan terms as are available under the Paycheck Protection Program (CARES Act, sec. 1102, P.L. 116-136), and the Small Business Administration Economic Injury Disaster Loan Program (13 CFR 123.300 – 123.303), or other applicable federal loan program. In the loan agreement, a borrower must represent and warrant that it has recalled the majority of its employees laid off due to the emergency, or if unable to provide this representation and warranty, the borrower must promise to recall the majority of employees within 24 hours of receiving the first disbursement of loan proceeds. The authority or its subsidiary, in its discretion and with board approval, may offer forgiveness terms comparable to federal loan programs.

(b) The authority or its subsidiary will consider a request for an increase in the loan or guaranty amount if the increase is essential for the business or nonprofit organization to continue and the need for the increase results from events occurring after the original loan or guaranty was approved and those events were beyond the applicant's control. For example, delays may have

occurred beyond the applicant's control that prevent resumption of normal business activity in a reasonable time frame. A request for an increase in the loan or guaranty amount must be related to the public health disaster emergency declared by the governor on March 11, 2020, as extended by the legislature, and the increase must be in compliance with the applicable federal loan program.

(c) There is no penalty for prepayment of a loan the authority or its subsidiary make to an eligible borrower under the program.

(d) A borrower who is unable to pay loan installments in a timely manner for reasons substantially beyond its control and related by the public health disaster emergency declared by the governor on March 11, 2020, as extended by the legislature, may request that the lending financial institution, or if applicable, the authority or its subsidiary, suspend loan payments, extend maturity, or both. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.050. Underwriting. (a) A participating financial institution and the authority or its subsidiary will apply the same underwriting criteria as required for the Paycheck Protection Program (CARES Act, sec. 1102, P.L. 116-136), and the Small Business Administration Economic Injury Disaster Loan Program (13 CFR 123.300 – 123.303), or other applicable federal loan program.

(b) The applicant must demonstrate that it is a going business concern, but for the public health disaster emergency declared by the governor on March 11, 2020, as extended by the

legislature. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.060. Use of loan proceeds. (a) Subject to the limitations of (b) of this section, emergency loan proceeds may be used for uses permitted under the applicable federal loan program, which may include payroll and other working capital purposes necessary to carry the business or nonprofit organization until resumption of normal operations or for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the business could have provided had the injury not occurred and not to exceed the borrower's ordinary regular expenditures in time periods prior to March 11, 2020. Loan proceeds may also be used to pay fees and costs due a participating financial institution.

(b) Notwithstanding (a), emergency loan proceeds may not be used to:

(1) refinance indebtedness the borrower incurred prior to the disaster event as determined under the applicable federal loan program, or where a federal loan program is not applicable, prior to the public health disaster emergency declared by the governor on March 11, 2020, as extended by the legislature;

(2) make payments on disaster or emergency loans related to the coronavirus pandemic that are owned by a federal agency, including the Small Business Administration;

(3) pay, directly or indirectly, any obligation resulting from a federal, state or local tax penalty as a result of negligence or fraud, or any non-tax criminal fine, civil fine, or

penalty for non-compliance with a law, regulation, or order of a federal, state, regional, or local agency, or a similar matter;

(4) repair physical damage, or purchase new equipment, or make other capital improvements;

(5) pay dividends, distributions or such other payments to owners, partners, officers or stockholders, except for reasonable remuneration directly related to the performance of services for the business, and except for a distribution from an entity taxed as a partnership made to cover a partner's, shareholder's, or member's respective income tax liability for income attributable to the entity;

(6) replace lost sales or lost profit from intended expansion; and

(7) accelerate payment of long-term debt. (Eff. ____/____/____, Register ____)

(Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.070. Participating financial institutions. (a) A financial institution doing business in the state with an eligible business or nonprofit organization may participate in program by submitting a guaranty application to the authority or its subsidiary. The authority or its subsidiary will approve a guaranty applications in its discretion and in the best interests of the state.

(b) A participating financial institution may underwrite emergency loans on a case by case basis, subject to the underwriting terms specified in this article.

(c) A participating financial institution shall

(1) provide the authority or its subsidiary with monthly reports on loans made under the program, including outstanding principal balances and any delinquencies;

(2) notify the authority or its subsidiary within 15 days of a payment default.

(d) A participating financial institution that issues an emergency loan is responsible for closing and servicing the loan. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.080. Emergency loan and guaranty account. (a) The emergency loan and guaranty account is established as segregated accounts, into which funds may be deposited to provide the guaranty of emergency loans made by participating financial institutions or loans made by the authority or its subsidiary under the program. The accounts are not accounts in the authority's revolving fund established under AS 44.88.060. Funds in the accounts may be used to make loans and pay on a guaranty issued under the program and, when appropriate, to pay fees and costs owed a participating financial institution.

(b) All funds on deposit in the accounts may invested in one to five year US Treasury backed investments.

(c) Payment of a guaranty issued under the program will come exclusively from reserves set aside by the authority or its subsidiary for this purpose. The holder of a guaranty issued under the program can look only to the reserves set aside for payment of the guaranty and not to the general assets of the authority or, if applicable, its subsidiary. The authority or its subsidiary

will set aside adequate reserves to cover outstanding guarantees. Upon request, the authority or its subsidiary will provide information as to the amount of the reserves set aside for the payment of guarantees issued under the program.

(d) The authority or its subsidiary shall provide notice to participating financial institutions when the aggregate emergency loan and guaranty reserve value equals the balance of the emergency loan and guaranty account. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.090. Decision on loan guaranty. Once the emergency loan and guaranty account is funded, the authority will inform participating financial institutions that it is able to receive applications. Upon receipt of a complete emergency loan underwriting package from a participating financial institution, the authority or its subsidiary will reasonably and promptly issue a loan guaranty decision. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.100. Fees. (a) The authority or its subsidiary will not charge points, closing, or servicing fees, or a guaranty fee, on any loan authorized under the program. A borrower will be responsible for payment of any closing costs owed to third parties on a program loan, such as underwriting fees, recording fees, and title insurance premiums.

(b) The authority or its subsidiary will establish a fee that a participating financial institution will receive in making a loan under the program. The fee a participating financial institution receives may be up to the same amount that is authorized under the Paycheck Protection Program (CARES Act, sec. 1102, P.L. 116-136), or the Small Business Administration Economic Injury Disaster Loan Program (13 CFR 123.300 – 123.303), or other federal program, whichever is most applicable. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.110. Misuse of loan proceeds. (a) The wrongful misapplication of the proceeds of a loan made under the program by a borrower shall obligate the borrower to the authority or its subsidiary for one and one-half times the loan proceeds disbursed prior to the date wrongful misapplication is disclosed to the authority or its subsidiary.

(b) If the authority or its subsidiary learns that a borrower may have misapplied loan proceeds from a loan made under the program, the authority or its subsidiary will notify the borrower at the last known address, by certified mail, return receipt requested. A borrower will be given at least 30 days to submit to the authority or its subsidiary evidence that no wrongful misapplication of loan proceeds occurred or that any wrongful misapplication has been corrected. A borrower's failure to respond in time constitutes an admission of wrongful misapplication of loan proceeds. If the authority or its subsidiary finds a wrongful

misapplication occurred, it may cancel any undisbursed loan proceeds, call the loan, and begin collection measures to collect the outstanding loan balance and the civil penalty.

(c) Wrongful misapplication of emergency loan proceeds may result in criminal prosecution or civil or administrative action. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.120. Collateral. For an emergency loan under the program, a participating financial institution and the authority or its subsidiary will apply the collateral requirements set out under the Paycheck Protection Program (CARES Act, sec. 1102, P.L. 116-136), or the Small Business Administration Economic Injury Disaster Loan Program (13 CFR 123.300 – 123.303), whichever is most applicable. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.130. Books and records; asset appraisal. (a) A borrower receiving an emergency loan under the program must retain complete records of all transactions financed with the emergency loan proceeds, including copies of all contracts and receipts, for a period of three years after receipt of the final disbursement of loan proceeds. A borrower must also maintain current and accurate books of account, including financial and operating statements, insurance policies, and tax returns. A borrower must retain applicable books and records for three years

after loan maturity, including any extensions, or from the date when the loan is paid in full, whichever occurs first.

(b) A borrower receiving an emergency loan under the program, upon request, must make available to the authority or its subsidiary, and to any other authorized government personnel, the books and records required to be retained under subsection (a). The books and records are to be available for inspection, audit, and reproduction during normal business hours.

(c) A borrower receiving an emergency loan under the program must permit the authority or its subsidiary, or a participating financial institution that provide the emergency loan to the borrower, to inspect and appraise the borrower's assets.

(d) A participating financial institution, upon request, must make available to the authority or its subsidiary, and to any other authorized government personnel, its books and records pertaining to any emergency loan made under the program. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.140. Denial of application. If the authority or its subsidiary denies a loan or guaranty application, it will notify the applicant in writing and set forth the specific reasons for the denial. Any applicant whose request for a loan or guaranty is declined may file an appeal with the office of administrative hearings within 90 days of the denial. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.150. Debt. (a) The authority or its subsidiary may issue commercial paper or incur other short-term debt to obtain funds for the emergency loan and guaranty account, including through debt placed with a federal agency under the CARES Act (sec. 4003, P.L. 116-136). Commercial paper issued or other short-term debt incurred to fund the program do not constitute an indebtedness or other obligation of the state. If commercial paper is issued by, or if short-term debt is incurred by, the authority's subsidiary, the obligation of the subsidiary shall not constitute a debt or liability of the authority, unless the authority otherwise commits itself in writing to the subsidiary's obligation.

(b) Subject to legal limitations on debt issuance, the maximum amount of commercial paper or other short-term debt the authority or its subsidiary may have outstanding at any point in time for purposes of the program is \$1,000,000,000. (Eff. ____/____/____, Register ____)
(Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.160. Delegation; program forms. (a) For a loan or guaranty the authority makes under the program, the executive director is authorized to approve a loan or guaranty in an amount not to exceed \$2,500,000.

(b) The executive director may create standard forms for the authority's use with respect to the program. If the authority utilizes a subsidiary for the program, the subsidiary may create

standard form for its use with respect to the program. The standard forms shall contain provisions consistent with this chapter and any applicable federal regulations and may contain other provisions necessary or convenient for operating or managing the program. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085

3 AAC 104.900. Definitions. In this chapter

- (1) “authority” means the Alaska Industrial Development and Export Authority;
- (2) “board” means the board of the Alaska Industrial Development and Export Authority;
- (3) “days” means calendar days;
- (4) “emergency loan” means a loan made to a borrower by the authority under the program, or a loan made by a participating financial institution that is guaranteed by the authority under the program;
- (5) “executive director” means the executive director of the Alaska Industrial Development and Export Authority;
- (6) “going business concern” means the borrower is financially stable enough to meet its obligations and continue in its business or nonprofit activities for the foreseeable future;
- (7) “guaranty” or “guarantee” means an agreement pledging funds of the emergency loan and guaranty account to pay the principal and interest owed due on an emergency loan made by a participating financial institution, subject to conditions and requirements of the agreement;

(8) “program” means the emergency loan and guaranty program created under this chapter;

(9) “reserves” means amounts set aside to be available to pay guarantees issued under the program;

(10) “short-term debt” means a debt obligation on which the maturity date is less than one year;

(11) “subsidiary” means a legal entity, such as a corporation, nonprofit corporation, or limited liability company, the authority creates for the purpose of operating and managing the emergency loan and guaranty program and account under this chapter;

(12) “working capital” means the capital of a business or nonprofit organization that is used for day-to-day operations and to pay current liabilities as they come due;

(13) “wrongful misapplication” means the willful use of emergency loan proceeds contrary to the loan agreement without the prior approval of the authority or its subsidiary; a borrower’s failure to use emergency loan proceeds for authorized purposes for 60 days or more after receiving a disbursement of loan proceeds is considered a wrongful misapplication. (Eff. ____/____/____, Register ____) (Under AS 44.88.085, a regulation, emergency or otherwise, takes effect on the date adopted by the authority)

Authority: AS 44.88.080 AS 44.88.085