

Chapter 80. Commercial Fishing Loans.

Article 4. Mariculture Revolving Loan Fund.

3 AAC 80.410 is repealed and readopted to read:

3 AAC 80.410. Application process. (a) To apply for a loan for a mariculture business under AS 16.10.910(a)(1), an applicant shall file with the department

(1) a completed mariculture revolving loan application, on a form provided by the department;

(2) a completed residency questionnaire, on a form provided by the department;

(3) a letter of intent that states the amount requested and the intended use of the proposed loan money consistent with AS 16.10.900 - 16.10.945, on a form provided by the department;

(4) a schedule of acceptable collateral that includes collateral now owned and other collateral to be acquired with the loan proceeds, on a form provided by the department;

(5) an individual financial statement that includes a current balance sheet and a profit and loss statement, on a form provided by the department;

(6) a statement of projected income and expenses for the following year's operating plan, on a form provided by the department;

(7) a copy of the Department of Natural Resources aquatic farm application and all attachments;

(8) a copy of the aquatic farm lease;

(9) a copy of the aquatic farm operation permit;

(10) a copy of the special area permit, if applicable;

(11) a copy of the applicant's federal income tax returns for the preceding three

years, and for additional years if necessary to establish eligibility;

(12) a signed credit authorization, on a form provided by the department;

(13) a resume that identifies any permit, certificate, or license held by the applicant and summarizes the applicant's experience and education in the mariculture industry, on a form provided by the department;

(14) consent to release information, on a form provided by the department;

(15) a copy of any purchase agreement, estimate, invoice, or other documentation regarding the intended use of loan proceeds;

(16) if a vessel is used for collateral, a marine survey of the vessel that is acceptable to the department; the survey must be less than 90 days old and include pictures of the vessel;

(17) the application fee required by 3 AAC 80.455(b); and

(18) any other information requested by the department needed to process the application.

(b) To apply for a loan for the operation of a hatchery for the purpose of propagation of marine aquatic plants or shellfish, or a shellfish enhancement project under AS 16.10.910 (a)(2) an applicant shall file with the department

(1) a completed mariculture hatchery revolving loan application, on a form provided by the department;

(2) a completed residency questionnaire, on a form provided by the department;

(3) a letter of intent stating the amount requested and the intended use of the proposed loan money consistent with AS 16.10.900 - 16.10.945, on a form provided by the department;

(4) a copy of any permit necessary to operate the hatchery, including any permit necessary for construction of the hatchery facility;

(5) a schedule of acceptable collateral that includes collateral now owned and other collateral to be acquired with the loan proceeds, on a form provided by the department;

(6) a financial statement that includes the most recent annual statement, current month end statement, on a form provided by the department;

(7) a statement of projected income and expenses for the following year's operating plan that includes actual figures currently available and forecasted future funding requirements, using the sample format provided by the department or a similar format acceptable to the department;

(8) a consent to release information, on a form provided by the department;

(9) the application fee required by 3 AAC 80.455(b);

(10) a signed copy of the applicant's federal income tax return for the most recent year; and

(11) any other information requested by the department needed to process the application.

(c) In addition to the requirements under (b) of this section, if the applicant for the operation of a hatchery for the purpose of propagation of marine aquatic plants or shellfish, or a shellfish enhancement project under AS 16.10.910 (a)(2) is an entity organized under the law of this state, the applicant shall file with the department

(1) a copy of the statements or articles issued by the state to organize the applicant entity;

(2) the name and resume of each officer and principal employee of the corporation that includes each officer or employee's professional background and experience; and

(3) a corporate resolution signed by the corporate president and secretary that authorizes the corporation to apply for a loan and authorizes an officer or agent to provide information and documentation necessary for loan approval.

(d) The department may process a loan request without the information described in (a) through (c) of this section if the department determines that the information is not necessary for making the lending decision. (Eff. 10/16/2012, Register 204 am ____ / ____ / _____, Register _____)

Authority: AS 16.10.905

3 AAC 80.415 is amended to read:

3 AAC 80.415. Examination. (a) **A loan officer will process and evaluate the material** [THE MATERIALS] described in 3 AAC 80.410 [WILL BE PROCESSED AND EVALUATED BY A LOAN OFFICER]. The loan officer will evaluate the applicant's eligibility, **corporate management**, financial and credit history, **operating plan**, experience, ability to repay, and proposed collateral.

(b) On the basis of the evaluation, the loan officer will [EITHER]

(1) inactivate **an** [THE] application **if** [DUE TO]

(A) **the application does not contain** [LACK OF] information required under 3 AAC 80.410; or

(B) the **applicant is ineligible for the loan for which the applicant applied** [INELIGIBILITY OF THE APPLICANT]; or

(2) recommend proposed action on the **applicant's** loan **application** [REQUEST] to the appropriate loan committee; [HOWEVER,] **a loan officer's** [THE] recommendation [OF A LOAN OFFICER] is not binding on a loan committee. (Eff. 10/16/2012, Register 204 am ___ / ___ / ____, Register _____)

Authority: AS 16.10.905

3 AAC 80.420 is amended to read:

3 AAC 80.420. Loan committee. (a) **The director shall appoint a** [A] loan committee [CONSISTS] of one or more persons [APPOINTED BY THE DIRECTOR] to act on a loan **application** [REQUEST].

(b) A loan committee may approve, deny, or modify a loan request. **If the loan committee requires additional information regarding a loan application, the loan committee** [, OR] may table **the** [A] loan **application until the applicant submits the** [REQUEST SUBJECT TO OBTAINING] additional information.

(c) A loan committee may impose reasonable conditions on the approval of a loan, including

- (1) additional collateral to secure the loan;
- (2) additional guarantors; and
- (3) subordination of prior lien holders' rights to the interests of the state.

(d) A loan committee shall consider the applicant's eligibility for a loan, **corporate management**, financial and credit record, ability to repay, **operating plan**, experience, and the

adequacy of collateral offered to secure the loan. A loan committee may also consider the **recommendation** [RECOMMENDATIONS] of the loan officer assigned to process the application and any other relevant information.

(e) A loan committee may fix [, WITHIN THE LIMITATIONS SET BY AS 16.10.915,] the term of a loan and repayment schedule **within the limitations set by AS 16.10.915.**

(f) If a loan request is denied or significantly modified by a loan committee, the loan committee shall provide the applicant with a statement of the reasons for the action and the information relied on.

(g) A material misstatement or omission of fact made by an applicant constitutes grounds for denial of a loan request. (Eff. 10/16/2012, Register 204 am ____/____/_____, Register _____)

Authority: AS 16.10.905 AS 16.10.915

3 AAC 80.425 is amended to read:

3 AAC 80.425. Residency requirements. (a) **To determine** [IN DETERMINING] if an applicant fulfills the 24 consecutive month residency **requirement** [requirements] under AS 16.10.910, the loan committee may consider any information that would indicate the applicant's residency, including **whether** [WHERE] the applicant

(1) is registered to vote **in the state**;

(2) maintains a permanent place of abode **in the state**;

(3) files tax returns **with a return address located in the state** [, AND THE ADDRESS THAT IS LISTED ON THE RETURNS];

(4) **has registered or licensed** [REGISTERS OR LICENSES] personal property **in the state**, including **a car, boat, truck, or trailer** [CARS, BOATS, TRUCKS, AND TRAILERS];

(5) **has a valid driver's license issued by the state** [IS LICENSED TO DRIVE];

(6) maintains **a** bank **account** [ACCOUNTS], savings **account** [ACCOUNTS], **a** **line** [LINES] of credit, **or** [AND] other financial **relationship with an institution located in the state** [RELATIONSHIPS];

(7) has claimed or received **any state benefit** [BENEFITS] as a resident;

(8) has received **a** permanent fund **dividend** [DIVIDENDS; [AND]

(9) owns real property **in the state; or** [.]

(10) is a registered entity organized under the laws of the state.

(b) If two or more individuals apply jointly or as **an entity** [A PARTNERSHIP OR CORPORATION], all parties [TO THE APPLICATION] must establish residency. (Eff. 10/16/2012, Register 204 am ____ / ____ / _____, Register _____)

Authority: AS 16.10.905 AS 16.10.910

3 AAC 80.430 is amended to read:

3 AAC 80.430. Financial and credit record. (a) **To evaluate an applicant's financial and credit record, the** [THE] department may consider the **applicant's** [FOLLOWING FACTORS IN EVALUATING AN APPLICANT'S FINANCIAL AND CREDIT RECORD:]

(1) existing and prior debts;

(2) credit reports obtained from creditors and private credit reporting services;

(3) prior loan history with the department;

- (4) timeliness in making payments on loans and other debts;
- (5) existence of tax liens;
- (6) judgments and foreclosures; **and**
- (7) financial and credit reputation.

(b) **The department will weigh activity that establishes** [INFORMATION ESTABLISHING] unacceptable credit [WILL BE] more heavily **if the activity occurred within ten** [WEIGHED BY THE DEPARTMENT IF IT HAS OCCURRED NOT LATER THAN THE PAST 10] years **of** [FROM] the **application** date [OF APPLICATION]. (Eff. 10/16/2012, Register 204; am ___ / ___ / _____, Register _____)

Authority: AS 16.10.905

3 AAC 80.435 is amended to read:

3 AAC 80.435. Ability to repay. (a) **To evaluate an applicant's ability to repay a loan, the** [THE] department may consider the **applicant's** [FOLLOWING FACTORS IN EVALUATING AN APPLICANT'S ABILITY TO REPAY:]

- (1) income history, including present income;
- (2) prospects for future income;
- (3) assets;
- (4) liabilities;
- (5) reasonableness of the projected profit and loss statement; **and**
- (6) other relevant information or experience.

(b) **To determine the reasonableness of an applicant's revenue projection, the** [THE] department may compare **the** revenue projections [CONTAINED] in **the** [AN] applicant's profit

and loss statement with

(1) information **the department** [IT] acquires **independently**; [THROUGH ITS OWN EFFORTS] or

(2) [FROM] the **actual revenue** [SUCCESS] of other mariculture operators in similar circumstances [TO DETERMINE THE REASONABLENESS OF THE APPLICANT'S PROJECTIONS]. (Eff. 10/16/2012, Register 204)

Authority: AS 16.10.905

3 AAC 80.440 is amended to read:

3 AAC 80.440. Collateral. (a) A vessel that can be documented must be documented to be acceptable collateral. If a vessel is offered as collateral for a loan, the department or **the department's** [ITS] designee shall be permitted to inspect the vessel before making the loan.

(b) A loan will **only** be made [ONLY] if the **items purchased with loan proceeds are placed on the loan as collateral and are** placed in the name of the applicant. (Eff. 10/16/2012, Register 204 am ____/____/_____, Register _____)

Authority: AS 16.10.905 AS 16.10.915

3 AAC 80.445 is amended to read:

3 AAC 80.445. Lending practices. (a) **The department will not approve a** [A] loan **to refinance** [WILL NOT BE APPROVED FOR REFINANCING] long-term debt. Interim financing is not considered long-term debt if the term is 24 months or less and the promissory note or the original agreement was executed less than 12 months before the department **received** [RECEIVES] the application.

(b) **An applicant may not use loan** [LOAN] proceeds **for the reimbursement of** [MAY NOT BE USED TO REIMBURSE AN APPLICANT FOR THE] purchases **made** more than 12 months before **the department received** [RECEIPT OF] the application [BY THE DEPARTMENT].

(c) The department will set the interest rate for loans under 3 AAC 80.410 - 3 AAC 80.480 on the first day of each calendar quarter. The interest rate set for a quarter **will remain** [REMAINS] in effect until the department changes the rate, will not exceed the maximum or minimum interest allowed under AS 16.10.915(a)(3), and will be established at the nearest one-quarter point. The interest rate set will be based on the bank prime rate **during the previous quarter** [,] as defined in AS 44.88.599 [, DURING THE PREVIOUS QUARTER].

(d) **A loan's** [THE] interest rate [FOR A LOAN] is the interest rate in effect at the time the loan commitment is made **and** [. THE INTEREST RATE FOR A LOAN] will be at a fixed rate for the **loan's** term [OF THE LOAN].

3 AAC 80.445 is amended by adding new subsections to read:

(e) At the time the loan is made, the department may consider the following factors in setting repayment terms of the loan as allowed under AS 16.10.920:

- (1) the time needed to build stock;
- (2) the financial need and viability of the permit holder;
- (3) public or economic benefit;
- (4) any other factor the department considers appropriate to preserve the security

of the state and its investment.

(f) The department may modify the loan deferral period at any time during the first six years of the loan as allowed under AS 16.10.920. (Eff. 10/16/2012, Register 204 am

____/____/____, Register _____)

Authority: AS 16.10.905 AS 16.10.915 AS 16.10.920

3 AAC 80.450 is amended to read:

3 AAC 80.450. Disbursement of loan money. Loan money will be disbursed when

(1) the state has perfected a security interest in the collateral, except that, in the case of a mortgage on a documented vessel, **an applicant may satisfy** this requirement **by establishing** [MAY BE SATISFIED BY THE ESTABLISHMENT OF] the mortgage as a preferred mortgage under the provisions of 46 U.S.C. 911 - 984 (Ship Mortgage Act of 1920);

(2) **the department's** requirements, [OF THE DEPARTMENT] as specified by the loan committee, have been met; and

(3) the borrower is in compliance with **all** provisions of the loan documents **and this chapter** [, AS 16.10.900 - 16.10.999, and 3 AAC 80.410 - 3 AAC 80.480]. (Eff. 10/16/2012, Register 204; am ____/____/____, Register _____)

Authority: AS 16.10.905 AS 16.10.915

3 AAC 80.455 is amended to read:

3 AAC 80.455. Costs and fees. (a) **An applicant shall pay for the department's application processing expenses, including** [ALL EXPENSES INCURRED BY THE DEPARTMENT IN PROCESSING AN APPLICATION MUST BE PAID BY THE

APPLICANT.. THESE EXPENSES INCLUDE] the cost of title reports and insurance, recording fees, appraisals, surveys, travel, and other direct costs.

(b) **An applicant shall submit a \$100 nonrefundable loan application fee to the department with a loan application submitted under either AS 16.10.910(a)(1) or 16.10.910(a)(2)** [A NONREFUNDABLE LOAN APPLICATION FEE OF \$100 IS DUE TO THE DEPARTMENT AT THE TIME AN APPLICATION IS SUBMITTED UNDER 3 AAC 80.410 - 3 AAC 80.480].

(c) **A borrower shall pay an** [AN] origination fee of one percent of the total loan amount or an assumption fee of one percent of the loan balance [IS DUE FROM THE BORROWER] when **the borrower meets the** provisions of 3 AAC 80.410 — 3 AAC 80.480 [HAVE BEEN MET].

(d) A late fee not to exceed five percent of the payment amount will be charged to a borrower for each loan payment that is received more than 15 days after the due date for the payment.

(e) **The department will charge a loan extension application processing** [A] fee **of up to** [NOT TO EXCEED] \$100 [WILL BE CHARGED] to a borrower **who applies for** [TO PROCESS] a loan extension [APPLICATION].

(f) The department will not charge the late fee [DESCRIBED] in (d) of this section if

(1) the **borrower submits** [department receives from the borrower] a loan extension application or a payment plan **to the department** not more than 15 days after the **payment is due** [due date of the payment];

(2) the department approves the **borrower's** loan extension application or payment plan; and

(3) **if the borrower** [ONE OR MORE OF THE FOLLOWING OCCURS:]

(A) [THE BORROWER] meets all conditions for the loan extension or the payment plan; **or**

(B) **submits a** [THE DEPARTMENT RECEIVES] payment during **the department's** [its] review of the **borrower's** loan extension application or payment plan.

(Eff. 10/16/2012, Register 204; am ___ / ___ / _____, Register _____)

Authority: AS 16.10.905

3 AAC 80.460 is amended to read:

3 AAC 80.460. Assumptions. (a) **The department will process a** [A] request for permission to assume the obligations and benefits of a loan made under **AS 16.10.890 - 16.10.945** [AS 16.10.900 - 16.10.945] [AS 16.10.900 - 16.10.945] and 3 AAC 80.410 - 3 AAC 80.480 [WILL BE PROCESSED] in the same manner as an application for a loan.

(b) A loan committee may permit an assumption if the applicant

(1) meets eligibility requirements under AS 16.10.910 and 3 AAC 80.410 - 3 AAC 80.480; [,]

(2) is a good financial risk; [,] and

(3) the security of the state's investment is preserved.

(c) Wraparound financing that includes a loan made under **AS 16.10.890 - 16.10.945** [AS 16.10.900 - 16.10.945] [AS 16.10.900 - 16.10.945] and 3 AAC 80.410 - 3 AAC 80.480 is prohibited and constitutes a default on the loan. (Eff. 10/16/2012, Register 204; am ___ / ___ / _____, Register _____)

Authority: AS 16.10.905 AS 16.10.910

3 AAC 80.470 is amended to read:

3 AAC 80.470. Modifications. (a) The department will process a [A] request for a modification to a loan made under [AS 16.10.900 - 16.10.945] AS 16.10.890 - 16.10.945 and 3 AAC 80.410 - 3 AAC 80.480 [WILL BE PROCESSED] in the same manner as an application for a loan. The department will require the applicant to file one or more of the items specified in 3 AAC 80.410 if

(1) the information on **the document** [THOSE ITEMS] has changed since **it was** [THEY WERE PREVIOUSLY] filed; [,] or [IF]

(2) the department needs additional information **that is not included** [NOT APPEARING] in the **document on file** [PREVIOUSLY FILED ITEMS IN ORDER] to review the request for modification.

(b) A loan committee may **only** permit a loan modification [ONLY] if the security of the state and the state's investment is preserved. (Eff. 10/16/2012, Register 204; am _____/_____/_____, Register _____)

Authority: AS 16.10.905

3 AAC 80.475 is amended to read:

3 AAC 80.475. Reconsideration of a loan request. (a) If **the department denies, inactivates, or significantly modifies** a loan request [IS DENIED, INACTIVATED, OR SIGNIFICANTLY MODIFIED BY THE DEPARTMENT], an applicant may file a written request for reconsideration not later than 30 days after **receiving notice of the department's decision** [RECEIPT OF NOTICE OF THE DECISION OF THE DEPARTMENT].

(b) The department will reconsider the **applicant's** request **if the applicant** [ON A SHOWING BY THE APPLICANT THAT]

(1) **shows that** there has been a substantial change in the circumstances leading to the **department's** decision [OF THE DEPARTMENT];

(2) **provides** additional relevant information **to the department** that was not initially available [CAN BE PROVIDED TO THE DEPARTMENT]; or

(3) **shows that the department made an** administrative **error** [ERRORS WERE MADE BY THE DEPARTMENT]. (Eff. 10/16/2012, Register 204)

Authority: AS 16.10.905 AS 16.10.910

3 AAC 80.480 is amended to read:

3 AAC 80.480. Confidentiality of loan information. (a) The following information is not confidential and is available for public inspection upon request:

(1) a document that is already a public record, including **a**

(A) [A] deed of trust; [,]

(B) financing statement; [,]

(C) limited entry permit; [,]

(D) quota share; [,]

(E) warranty deed; [,]

(F) bill of sale; [,]

(G) mortgage; [,]

(H) lien; [,]

(I) vehicle title; [,] or

(J) vessel documentation;

(2) general information regarding **a loan** [LOANS], including the original loan amount, loan terms, personal guarantees, and disbursement and repayment schedules;

(3) insurance matters, including title insurance policies and correspondence with insurance companies or borrowers regarding losses, accident reports, and nonpayment of premiums;

(4) foreclosure and default proceedings.

(b) The following information is confidential and is not subject to public disclosure:

(1) personal and financial information, including

(A) income tax returns; [,]

(B) financial statements; [,]

(C) business income statements; [,]

(D) pro forma profit and loss statements; [,]

(E) credit information obtained from banks and other creditors; [,]

(F) reports from consumer reporting agencies; [,]

(G) processor statements; [,] and

(H) commercial fishing pink slips (fish tickets);

(2) loan committee memoranda and minutes containing information relating to **an applicant's** creditworthiness [OF AN APPLICANT];

(3) the payment history on a loan[,], unless the loan is in default.

(c) Information not described in (a) or (b) of this section may be subject to public disclosure. **A person may request disclosure of information under 2 AAC 96.** [REQUESTS FOR DISCLOSURE MUST BE MADE, AND WILL BE DETERMINED, IN ACCORDANCE

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WITH 2 AAC 96]. **After the** [UPON RECEIPT OF A REQUEST FOR DISCLOSURE, THE]
department **receives a request for disclosure, the department** will

(1) notify the loan applicant and **any** other **person** [PERSONS] with a privacy
interest in the request; **and** [TO PERMIT THEM]

(2) allow the applicant or other interested person to present reasons why the
requested information should not be disclosed. (Eff. 10/16/2012, Register 204; am
____/____/____, Register _____)

Authority: Art. I, sec. 22, Ak Const. AS 40.25.110 AS 40.25.120
AS 16.10.905