

August 1, 2017

**Credit Enhancement, Direct Lending and Finance Programs
Request for Information**

Finance Authority of Maine

I. Introduction

This Request for Information (“RFI”) is issued by the Finance Authority of Maine (“FAME”) for the purpose of soliciting feedback as to how Private Debt Capital Funds and Firms (“Private Capital”) could partner with the Maine lending community and FAME to increase the availability of higher risk senior and subordinated debt capital for the businesses, people and economy of Maine.

FAME’s vision is to lead the creation of good paying jobs for Maine citizens by working at the nexus between economic and workforce development.

FAME was established as Maine’s business finance agency in 1983 and charged with supporting the start-up, expansion and growth plans of Maine’s business community. The agency began working closely with Maine’s lending community to improve access to capital as well as to help fill gaps that exist in the State’s capital delivery system.

To meet the financing needs of Maine’s business community, FAME offers a wide array of business assistance programs, ranging from traditional loan insurance programs for both small and larger businesses, to investment tax credits. FAME has also established taxable and tax-exempt bond financing programs that allow strong, creditworthy firms in Maine to access capital at favorable rates and terms.

The FAME Business Division staff, the Business Committee of the Board, and the Board of Directors provide management and oversight of the commercial loan insurance, direct lending, and other economic development finance programs. During the fiscal year ended June 30, 2016, FAME supported the issuance of \$74 million in debt capital; impacting 275 Maine businesses; and creating and/or retaining nearly 3,500 jobs.

Maine has a robust and competitive lending community. The Maine Bureau of Financial Institutions recently reported that 105 supervised/insured commercial, savings and limited purpose banks, and credit unions are authorized to do business in Maine. These institutions have assets, loans and deposits, each in excess of \$30 billion. Further, per the FDIC, the 26 commercial and savings banks headquartered in the State have commercial and commercial real estate loans outstanding in excess of \$7 billion. FAME partners with many of these insured financial institutions in providing debt capital for Maine’s business community.

However, Maine's recovery from the Great Recession has lagged the rest of New England and the nation. According to the latest "Measures of Growth" 2017 report by the Maine Development Foundation (MDF), the state's gross domestic product (GDP) was essentially even (0.3% growth) from 2010 to 2015. New England grew by almost 4.1% and the national economy grew 10% during the same period.

For further information regarding FAME's credit enhancement, direct lending and other economic development finance programs, as well as the requested content of RFI responses, please see the following discussion.

II. Commercial Credit Enhancement Program

FAME expands financial institutions' ability to make business loans by providing commercial loan insurance of up to 90% (up to 100% for loans to veterans) of a loan to an eligible business. Insurance is provided by FAME to financial institutions that have signed a master Loan Insurance Agreement with FAME.

Eligibility

Any business or business project for any such business that is located in the state of Maine is eligible, except for businesses or uses as follows:

- Religious or fraternal organizations;
- Gambling or adult entertainment facilities;
- Residential housing;
- Investment real estate (50% or more non-owner occupied);
- Personal, family or household expenses.

Insurance Types

- **Pro rata:** Covers a percentage of lender's loss after a default and liquidation, up to 90%*.
- **Leveraged:** Covers 100% of lender's loss, up to 25% of the loan balance at the time of default.

*Note: Up to 100% available for loans to veterans.

Loan Amount/FAME Insurance Exposure

- **Term Loans:** up to 90% insurance of a lender's loan on a pro-rata basis or up to 25% insurance on a leveraged basis (up to \$2,500,000); 100% pro-rata insurance may be available for loans to veterans. FAME exposure to any one relationship may not exceed \$5,000,000. (This amount is reviewed and set annually.)
- **Refinance of Existing Lender Debt:** up to 40% insurance of a currently uninsured lender's loan on a pro-rata basis.
- **Working Capital Lines:** up to 90% pro-rata insurance limited to \$1,000,000 of FAME exposure, or up to 20% leveraged insurance limited to \$1,000,000 of FAME exposure.

- **Total FAME Insurance Exposure:** may not exceed \$5,000,000 to any one relationship.

For additional Information

- State of Maine – Rules for Independent Agencies – 94-457 FAME – Chapter 101: Loan Insurance Program (Appendix 1)
- FAME – Loan Insurance Agreement (Appendix 2)
- FAME – Commercial Loan Insurance webpage – <http://www.famemaine.com/business/programs/commercial-loan-insurance/>

III. Direct Loan Program

The FAME Direct Loan (also known as the Economic Recovery Loan Program or ERLP) assists new or existing business with flexible gap financing directly from FAME.

Eligibility

Businesses must:

- Be Maine-based
- May be for-profit or non-profit commercial entity
- Exhibit reasonable ability to repay the loan
- Demonstrate insufficient access to other funds

Loan Amount

- Loans up to \$1,000,000

Interest Rate

- Fixed rate – Wall Street Journal Prime plus 2%, at time of loan commitment.

Loan Term

- Maximum of five years. Amortization may be based on the useful life of the assets being financed or additional collateral pledged. Balloon payments are typically required.

For additional Information

- State of Maine – Rules for Independent Agencies – 94-457 FAME – Chapter 311: Economic Recovery Program (Appendix 3)
- FAME – Direct Loan webpage <http://www.famemaine.com/business/programs/business-loans/fame-direct-loan-economic-recovery-loan-program/>

IV. Other Economic Development Finance Programs

As a key player in Maine’s economic development, FAME provides a host of services to help expand business opportunities through our willingness to invest at a greater risk based on public benefit. We help Maine businesses get to yes!

For additional information on FAME's business loans, commercial bonds and other sources of capital, see: <http://www.famemaine.com/business/>

V. Request for Information

FAME is seeking information and feedback from Private Capital as to:

- 1) How does your firm or fund(s) utilize other state and federal economic development finance programs to support its private debt activities?
- 2) How would your firm or fund(s) complement/compete with insured financial institutions currently doing business in the State?
 - a. Please provide examples of how your firm or fund(s) has partnered with insured financial institutions in other states/jurisdictions.
 - b. Does your firm utilize insured institutions as a source of potential transaction flow?
 - c. Are insured financial institutions investors in your firm or fund(s)?
- 3) How would your firm or fund(s) utilize FAME's existing credit enhancement, direct lending and other economic development finance programs to increase the private debt capital, including higher risk capital, available to Maine businesses?
- 4) What enhancements or modifications to its existing credit enhancement, direct lending and other economic development finance programs should FAME consider implementing?
- 5) What other economic development finance programs, currently not offered by FAME, should FAME consider providing?

V. Format for Responses

Please include in your response to this RFI the following information, as well as your responses to the above questions:

1. Describe the firm or fund, date founded and ownership and any subsidiaries and affiliates relevant to your response.
2. Provide the scope, size and breadth of the firm or fund(s)' private debt financing activities in total and in Maine.

3. Identify any potential conflicts of interest that could exist between FAME and a) other financial interests, or b) that may result from Private Capital provided by your firm or affiliated organizations. Describe your firm's policies and procedures designed to prevent conflicts from occurring.
4. Provide the name and contact information for the individual that will be the primary contact for this RFI.

VI. Written Questions and Answers

Questions about this RFI may be directed in writing to:

Carlos R. Mello
Chief Risk Officer
Finance Authority of Maine
5 Community Drive, PO Box 949
Augusta, ME 04332-0949
(207) 620-3514

Or; e-mail: cmello@famemaine.com

The deadline for written questions is August 31, 2017. FAME will respond in writing to these questions on or before September 15, 2017. The questions and answers will be forwarded to all responders who have requested a copy of the RFI.

Deadline for submitting responses

Please email your response to this RFI in electronic format to cmello@famemaine.com. Or, alternatively, please provide four (4) printed copies of your response to this RFI to:

Carlos R. Mello
Chief Risk Officer
Finance Authority of Maine
5 Community Drive
PO Box 949
Augusta, ME 04332-0949

In either case your response to this RFI must be received by 2:00 pm local time on October 2, 2017.

FAME may invite respondents to this RFI to make oral presentations at its office

VII. Schedule of Events Timetable

The schedule of events timetable will be as follows:

RFIs mailed starting	August 1, 2017
Deadline for questions to be received	August 31, 2017
Questions answered in writing by	September 15, 2017
Responses due	October 2, 2017

FAME will not be liable for any costs incurred in the preparation and production of a response to this RFI.

FAME reserves the right to adjust the timetable as necessary.

Revision of Request for Information: FAME alone may elect to amend this RFI prior to the response due date. If it is necessary to revise any part of this RFI, an amendment will be provided to all firms or fund(s) of record. Acknowledgement of the receipt of all issued amendments is required in all responses. In no case will the RFI be amended within seven (7) days of the response due date, unless the amendment includes an extension of time to allow seven days between the amendment and the response due date. FAME will not be responsible for any additional costs incurred as a result of said changes in the RFI.

Disclosure of Data: All material submitted to the Authority shall be the sole property of the Authority, and material and information submitted may be used by the Authority in any manner it chooses. The Authority is required to comply with the Maine Freedom of Access laws, 1 MRSA §401 et seq., and the confidentiality provisions of the Finance Authority of Maine Act, 10 MRSA §975-A. If a firm believes any information submitted to be confidential, such information should be clearly marked as such and accompanied by a request for confidential treatment based on one or more reasons set forth in 10 M.R.S.A. §975-A. The Authority must disclose, upon request, information not deemed confidential and with respect to confidential information, is nevertheless authorized to disclose it to any person or entity when directed to do so by subpoena, request for production of documents, warrant or other order by competent authority, provided the requirements of 10 MRSA §975-A(3)(H) have been met.

Attachments:

- **State of Maine – Rules for Independent Agencies – 94-457 FAME – Chapter 101: Loan Insurance Program** (Appendix 1)
- **FAME – Loan Insurance Agreement** (Appendix 2)
- **State of Maine – Rules for Independent Agencies – 94-457 FAME – Chapter 311: Economic Recovery Program** (Appendix 3)

94-457 FINANCE AUTHORITY OF MAINE**Chapter 101: LOAN INSURANCE PROGRAM**

Summary: This rule establishes the procedures, standards and fees applicable to borrowers and lenders, including trustees for bondholders, applying for and benefiting from the Authority's program of business loan insurance.

SECTION 1. Definitions

- A. **Reference to Act Definitions.** Certain terms used in this rule, which are defined in the *Finance Authority of Maine Act*, 10 M.R.S.A. §961 and following (the "Act"), shall have the meanings set forth in the Act, unless clearly specified otherwise or unless the context clearly indicates otherwise.
- B. **Defined Terms**
- (1) "Borrower" means a prospective borrower where the context requires, and includes an individual or entity that is the recipient or beneficiary of an insured loan, and also includes any related entity having 50% or greater common ownership or beneficial interest with the Borrower or any individual or entity having a 50% or greater ownership or beneficial interest in the Borrower.
 - (2) "Chief executive officer" means the Authority's chief executive officer or a person acting under the supervisory control of the chief executive officer.
 - (3) "Clean fuel vehicle project" has the same meaning as in the Act.
 - (4) "Credit Policy" means the then current written Business Division Direct Loan & Loan Insurance Credit Policy of the Authority for review and analysis of Loan insurance applications, as approved by the members no less frequently than annually.
 - (5) "Investment Real Estate" means real estate more than 50% of which is not projected to be occupied by the Borrower.
 - (6) "Lender" means a financial institution authorized to do business in the State that is the applicant for loan insurance, but only to the extent it is not lending funds that are directly or indirectly derived from federal, state, county, municipal or philanthropic sources, as determined by the Authority.
 - (7) "Loan" means the loan proposed to be made by the Lender for which the Lender seeks Loan insurance from the Authority.
 - (8) "Loan insurance authorization" means a letter from the chief executive officer to a lender agreeing to insure a loan to a borrower on the terms and conditions and subject to the requirements stated therein.

- (9) "Members" means the members of the Authority appointed pursuant to the Act.
- (10) "Oil Storage Facility Project" means an Underground Oil Storage Facility Project, an Underground oil storage tank project, or a project associated with an above ground oil storage facility or above ground oil storage tank, all as defined in the Act, or a project which includes the installation of equipment related to the improvement of air quality pursuant to the requirements for gasoline service station vapor control and petroleum liquids transfer vapor recovery.
- (11) "Plymouth waste oil remedial project" means a project that includes financing the costs of the Plymouth Waste Oil Site remedial study, as defined in the Act.
- (12) *[Repealed effective December 9, 2012]*
- (13) *[Repealed effective December 9, 2012]*
- (14) "Program" means the Loan Insurance Program governed by this rule and the Act.
- (15) "Project" means the use to which the Loan proceeds are to be put.
- (16) "Public benefit" means the benefit to the State or any of its political subdivisions, or any of their respective inhabitants, as the same may be evidenced by, without limitation: jobs created or retained; revitalization of a mature industry; redevelopment of an economically depressed area; economic growth or diversification; stimulation of private investment; training opportunities; environmental protection, or the cultivation of new and emerging business enterprises.
- (17) *[Repealed effective December 9, 2012]*
- (18) *[Repealed effective December 9, 2012]*
- (19) "State" means the State of Maine.
- (20) "Veteran" means either a Veteran or a Wartime Veteran, as defined in the Act.
- (21) "Waste Oil disposal site clean up project" means a project which includes financing the costs of environmental clean up of the waste disposal site as defined in the Act.
- (22) "Working capital Loan" means a loan predominately secured by accounts and/or inventory.

SECTION 2. Eligibility

- A. **Borrower Eligibility:** In order to be eligible for Loan Insurance, the Lender's loan must be to an "agricultural enterprise," "fishing enterprise," "industrial enterprise," "manufacturing enterprise," or "recreational enterprise" as defined in the Act, that is located in the State, and that is not a religious or fraternal organization.

- B. **Project Eligibility:** In order to be eligible for Loan Insurance the Lender's loan must be for use by the Borrower solely to finance the acquisition of a business or to acquire real or personal property to be used in a business, or to finance business operations. Ineligible uses of Loan proceeds include:
- (1) refinancing of existing indebtedness of the Lender that is not insured by the Authority and as to which the Lender is reasonably likely to suffer a loss, as determined by the authority, unless specifically approved by the Authority on the basis that a significant benefit to the Borrower will result from the loan which benefit would not be extended to the Borrower without loan insurance;
 - (2) personal, family or household expenses of the borrower or any guarantor;
 - (3) acquisition, construction or operational expenses related to residential housing, investment real estate, gambling facilities or adult entertainment facilities;
- C. **Lender Eligibility.** In order to be eligible for Loan insurance, a Lender must be capable of prudently monitoring the loan in accordance with industry standards, as determined by the Authority.

SECTION 3. Application

A. Procedures

- (1) A Lender shall submit an application which complies with the requirements of this Rule on such forms and in such numbers as may be specified with such supporting information as shall be required by this Rule and the Credit Policy and such additional information as may be requested by the chief executive officer or the members.
- (2) The chief executive officer shall be responsible for making application forms available and assisting lenders in preparing applications.
- (3) No application will be considered complete unless substantially all questions are answered, and substantially all supporting information is provided.

- B. **Contents.** Unless waived by the chief executive officer or the members, the Lender shall submit to the Authority a fully completed Loan Insurance application in a form and with such information prescribed by the chief executive officer or the members, which may require, without limitation, the following:

- (1) Identification of the proposed amount of the loan, the proposed percentage of insurance, the purpose, terms and conditions of the loan and a description of the collateral.
- (2) Copies of all conditional letters of commitment to the borrower from the lender and any other sources of financing.

- (3) A written statement of the material benefit the proposed insurance will provide to the Borrower.
- (4) Historical business financial statements, including income tax returns, income statements and balance sheets, as applicable.
- (5) Personal financial statements and tax returns for all partners, owners, officers and guarantors, as applicable.
- (6) Pro forma financial statements for at least a three-year period, including an income statement, balance sheet and cash flow projections.
- (7) The Lender's loan analysis.
- (8) A statement of the number of jobs proposed to be retained and new jobs created by the project. In the event that the borrower will have ten or more employees as of the date the loan is to be made, the application must include an employment plan, on a form to be provided by the chief executive officer.
- (9) Appraisal of collateral.
- (10) Business credit history reports.
- (11) A description of the public benefit that is expected as a result of the project.
- (12) Any other information or certifications from the borrower or the lender deemed by the chief executive officer or the members to be necessary or desirable in connection with the application

SECTION 4. Review of and Action upon Application

- A. Applications for Loan Insurance shall be reviewed and approved or denied by the members, unless the members delegate authority for approval or denial to the chief executive officer, which may be done by specific resolution on a loan by loan basis, or by incorporating a level of authority in the Credit Policy approved by the Board, or by a general resolution delegating authority to the chief executive officer to approve or deny loans meeting certain criteria set forth in such resolution.
- B. In cases where the application will be reviewed and acted upon by the members, the chief executive officer shall prepare and present to the members an analysis of the application, including, without limitation, a description of the proposed project, and any recommendation the chief executive officer may wish to make to the members, along with the reasons for such recommendation. Once Loan insurance is approved by the members, and an insurance agreement is in force with respect to a Loan, the insurance may be modified or extended by the chief executive officer, so long as the chief executive officer determines, in his or her discretion, that the modification or extension is not likely to affect the authority's potential insurance liability in a materially adverse manner, or that such modification or extension is necessary to protect the interests of the authority.

- C. In cases where the application will be reviewed and acted upon by the chief executive officer, the chief executive officer shall prepare a written analysis of the application, the action to be taken with respect to the application, and the reasons therefore.

SECTION 5. Criteria and Considerations

- A. **Required Findings.** An application may not be approved unless the Authority determines:

- (1) that there is a reasonable prospect that the loan will be repaid according to its terms, and repayment will be secured by appropriate levels of collateral;
- (2) it is prudent for the Authority to provide the amount, percentage and period of insurance proposed that such amount, percentage and period of insurance is necessary to complete the financing;
- (3) that borrower and lender have met applicable requirements of the Act and this Rule, as well as the Credit Policy, and that the loan will be serviced by the Lender as required by the Authority;
- (4) that the Borrower and the Project are eligible, and the Borrower is creditworthy and of good character;
- (5) the application is complete and that information sufficient to make an informed decision on the application has been received;
- (6) A significant public benefit will result from the project; and
- (7) The Borrower is not known to be in violation of any State, federal or local law or regulation;
- (8) For insurance liability exceeding \$1,000,000, and in such other instances where the Authority determines it is appropriate, the Authority shall obtain from the State Department of Environmental Protection a written assessment of the environmental conditions known to the Department to exist at a project location.

- B. **Other Considerations.** In reviewing applications, the Authority may consider the following, as applicable, without limitation:

- (1) The extent to which the borrower demonstrates need for the loan.
- (2) The economic feasibility of the business endeavor as evidenced by the borrower's present and past financial situation and business experience and the general reasonableness of the business proposal and financial projections for the future.
- (3) Whether the borrower and any guarantors have satisfactory credit histories.
- (4) Whether the borrower has sufficient capital and other resources to conduct the business as planned, and the amount and source of equity contributed.
- (5) The adequacy of the security offered for the loan.

- (6) The extent to which the risk of financial loss is shared by others.
- (7) The current environment and short and long term viability of the industry of which the enterprise is a part and the contribution of the enterprise to that industry, as well as the effect of the project on competitors within the State.
- (8) The extent of public benefit expected to result from the Loan.

SECTION 6. Loan and Insurance Terms and Conditions

A. Loan Terms

- (1) **Interest Rate and Term.** The rate of interest on the insured loan and the term of the loan shall be agreed between the lender and the borrower, subject to the approval of the Authority.
- (2) **Covenants.** Any loan approved for insurance shall impose covenants and requirements in accordance with prudent lending practices as approved by the Authority.
- (3) **Use of Loan Proceeds.** The lender shall ensure that proceeds of an insured loan are used only for the business purposes approved by the Authority.
- (4) **Personal Guaranties.** All insured loans shall be guaranteed by any shareholder of the Borrower who:
 - (a) owns 20% or more of the Borrower; or
 - (b) owns 5% or more of the Borrower and receives substantial income from the Borrower,

Unless such shareholder is a passive investor in a Borrower that is applying under the Authority's Technology Commercialization Loan Program ("Passive Investor").

In any event, all insured loans with FAME liability in excess of \$200,000 to Borrowers that are for-profit organizations which are not held by 20 or more shareholders shall be guaranteed by holders of at least 51% of the ownership interests of Borrower and in the aggregate, provided however, that Passive Investors shall not be required to so guaranty.

Exceptions may be made to the requirements of this paragraph only if two-thirds (2/3) of the Members of the Board present and voting at a meeting find:

- (i) extraordinary public benefit will result from the project; and
- (ii) substantial equity is present in the project.

- (5) **Lien Priorities.** Where the Authority's insurance liability exceeds \$1,000,000, the insured Loan must have a first, or shared first priority lien on all material collateral that secures the loan.

B. Insurance Terms

- (1) **Types of Insurance.** A lender may request insurance on a pro-rata or leveraged basis.
- (a) Pro Rata Insurance shall cover up to 100% (or such lesser amount as indicated in the Loan Insurance Authorization or Loan Insurance Agreement) of a lender's loss of principal, interest, and reasonable costs of collection including attorney's fees, on an insured loan on a pro rata basis, as a percentage of the Lender's total loss after default by borrower and application of all loan payments, proceeds of collateral and recoveries after default from borrower and guarantors, but in no event more than the specified percentage of the original loan amount, and in all cases subject to the limitations set forth in this Rule, the Loan Insurance Agreement required in Section VII and the Loan Insurance Authorization for the insured loan. By way of illustration, on a \$100,000 loan with 90% pro rata loan insurance, the Authority's maximum insurance liability is \$90,000, or 90% of the original principal balance of the loan. If, after default, liquidation of all collateral and reasonable enforcement of collection from borrowers and guarantors, the loan balance is 65,000, the Authority's pro rata insurance liability would be \$58,500.
- (b) Leveraged Insurance shall cover 100% of a Lenders loss of principal, interest, and reasonable costs of collection including attorney's fees, up to the lesser of (a) 25% (or such lesser amount as indicated in the Loan Insurance Authorization or Loan Insurance Agreement) of the original loan amount; or (b) 25% (or such lesser amount as indicated in the Loan Insurance Authorization or Loan Insurance Agreement) of the loan balance at the time of default, prior to application of any proceeds of collateral or recoveries after default from borrower or guarantors to the insured loan, in all cases subject to the limitations set forth in this Rule, the Loan Insurance Agreement required in Section VII and the Loan Insurance Authorization for the insured loan prior to determining the applicability of insurance. By way of illustration, on a \$100,000 loan with 25% leveraged loan insurance, the Authority's maximum insurance liability is \$25,000, or 25% of the original principal balance of the loan. If, at the time of borrower default, the loan balance is \$85,000, and after liquidation of collateral, application of all such proceeds and payments collected after default from borrower and guarantors, the loan balance is \$20,000, the Authority's insurance liability would be \$20,000.00.
- (2) **Limitations on Insurance**
- (a) **Exclusions.** Notwithstanding anything to the contrary elsewhere in this rule, Loan insurance does not cover any part of an insured loan balance that represents:

- (i) accrued interest at the contract (non-default) rate in excess of 90 days;
 - (ii) late fees;
 - (iii) default rate interest or penalty interest over the contract rate;
 - (iv) unreasonable attorney's fees or other collection costs; or
 - (v) costs of environmental remediation.
- (b) **Maximum Insurance.** Notwithstanding anything to the contrary elsewhere in this rule, the Authority's maximum aggregate liability to any one Borrower shall not exceed the lesser of (i) fifteen percent (15%) of the Authority's Mortgage Insurance Fund balance plus Loan Insurance loan loss reserves, all as determined by the Authority at the end of each fiscal year of the Authority, or (b) the maximum amount permitted by 10 MRSA §1026-A. In addition, the leveraged insurance liability of the authority to any one Borrower shall be \$2,500,000.
- (c) **Enhanced insurance coverage for certain projects.** Notwithstanding anything to the contrary elsewhere in this rule, pro rata loan insurance shall not exceed 90% except in the following cases:
- (i) loans to veterans (provided Authority insured loans to veterans at rates greater than 90% shall not exceed \$5,000,000 in the aggregate at any one time);
 - (ii) loans for oil storage facility projects (provided Authority insured loans for oil storage facility projects at rates greater than 90% shall not exceed \$5,000,000 in the aggregate at any one time);
 - (iii) loans for clean fuel vehicle projects (provided Authority insured loans for clean fuel vehicle projects at rates greater than 90% shall not exceed \$5,000,000 in the aggregate at any one time);
 - (iv) loans for waste oil disposal site clean up projects (provided Authority insured loans for waste oil disposal site clean up projects at rates greater than 90% shall not exceed \$1,000,000 in the aggregate at any one time);
 - (v) loans for Plymouth waste oil remedial projects (provided Authority insured loans for Plymouth waste oil remedial projects at rates greater than 90% shall not exceed \$1,000,000 in the aggregate at any one time);
- (d) **Limit on Insurance during construction periods.** Where the insured loan is projected in whole or in material part to finance a project involving construction or substantial renovation of a facility, and where such facility is a substantial part of the collateral for the insured Loan, Loan insurance shall not be effective until construction is completed and all costs of construction

are paid, unless the Loan is otherwise adequately secured or the completion of construction is adequately ensured by a Performance Bond, such that the Authority determines, in its discretion, that the risk of loss on account of construction related issues is *de minimus*.

(e) *[Repealed effective December 9, 2012]*

SECTION 7. Additional Terms for Working Capital Loans

- A. **Insurance Limits.** Notwithstanding any provision hereof to the contrary:
- (1) The Authority may authorize insurance on working capital loans up to a maximum \$1,000,000 of insurance liability with respect to any one loan or any Borrower when insurance is authorized on a Pro-Rata basis, not to exceed 90% of the original loan amount, and subject to the additional limitations of this section; or
 - (2) The Authority may authorize insurance on working capital loans up to a maximum of \$1,000,000 of insurance liability with respect to any one loan or any Borrower, when insurance is authorized on a Leveraged basis, not to exceed 20% of the original loan amount, and subject to the additional limitations of this section.
- B. **Collateral and Loan to Value Standards.** The loan must be secured by a first lien on eligible accounts receivable and/or inventory meeting the applicable loan to value standards set forth in the Credit Policy, as it may be amended from time to time.
- C. *[Repealed Effective September 2, 2007]*
- D. **Lender Eligibility.** In addition to any other Lender requirements in this Rule, in order for an application for loan insurance for a working capital loan to be approved, the Authority must approve the monitoring and servicing policies and procedures the Lender intends to apply to the loan in question, and must be satisfied that the lender is sufficiently experienced and capable of effectively implementing such policies and procedures.

SECTION 8. Commitment or Rejection

- A. Upon approval of an application by the Authority, a loan insurance Authorization will be issued setting forth the terms and conditions upon which the loan will be insured.
- B. No Authorization shall be valid unless properly approved as set forth herein, and unless set forth in writing and executed by the chief executive officer. An Authorization shall be effective for a stated period. An Authorization may be extended in the manner stated therein.
- C. No insurance shall become effective until the applicant has signed the Authorization, has paid to the Authority the commitment fee, if any, and initial insurance premium specified in this rule (which shall indicate the applicant's acceptance of the loan insurance authorization) the Lender has signed a Loan insurance agreement that remains in full force and effect, and until the Lender has complied with all preconditions set forth in the Authorization and the Loan insurance Agreement.

- D. If, upon examination of the application and supporting information the Authority rejects such application, the Lender and the Borrower shall be so informed.

SECTION 9. Loan Insurance Agreement

No loan insurance shall be effective unless the lender and the chief executive officer have executed a loan insurance agreement in form acceptable to the chief executive officer setting forth the relative rights and responsibilities of the lender and the Authority for all insured loans. The loan insurance agreement shall include without limitation the following:

- A. **General Conditions.** General conditions and provisions incorporating the requirements of the Act and this rule.
- B. **Responsibilities of the lender.** Provisions setting forth the responsibility of the lender to:
- (1) investigate the borrower's character and business ability;
 - (2) investigate the value and ownership of collateral;
 - (3) ensure that the loan documentation, including necessary recordings and filings, is prepared and executed in a manner which will ensure that the borrower and any guarantors have binding, enforceable obligations to repay the loan and that the lender has such valid and enforceable mortgages, security interests and assignments as may be necessary to protect the interests of the lender and Authority;
 - (4) ensure that any guarantors waive any right to contribution from the Authority and acknowledge that the Authority is not a coguarantor;
 - (5) ensure the loan is prudently serviced and administered;
 - (6) ensure records with respect to the loan are maintained and made available to the Authority;
 - (7) not assign, transfer or release any of its interest in the loan or loan documents without the consent of the Authority;
 - (8) supervise the use and disposition, if authorized, of collateral and loan proceeds;
 - (9) not assign any right or obligation under the insurance contract without the Authority's consent;
 - (10) exercise all such responsibilities and shall service insured loans at a minimum in such manner as would be the normal and customary practice of a prudent lender making or servicing a loan without relying on loan insurance.
- C. **Loan Charges.** A prohibition of the imposition of charges on a borrower which would not have been imposed had the loan not been insured, except for the commitment fees and insurance premiums payable to the Authority.

- D. **Default.** A requirement that the lender notify the Authority in writing within 10 business days after a payment is 60 days late and within 10 business days of any other default or event or condition which indicates the loan may be difficult to collect in full. Upon default, the lender shall take such action as may be prudent, including, with the consent of the Authority, repossessing and liquidating or foreclosing on collateral.
- E. **Authority Insurance.** Subject to the limitations of Section VI (B), the Authority may insure principal, interest and reasonable and necessary expenses of enforcement and collection, provided that the insurance premiums are fully paid, and all other conditions hereof, of the loan insurance authorization or commitment, and of the Loan Insurance Agreement are met.
- F. **Cancellation.** The Authority shall be entitled at its discretion to cancel or reduce its insurance obligation if the lender breaches its responsibilities under the loan insurance agreement.

SECTION 10. Insurance Claim Options

Pursuant to the loan insurance agreement, the Authority will require the lender to notify the Authority of any default by the borrower. After passage of a period of time specified in the agreement and upon performance of such obligations by the lender as the Authority may by agreement require, the Authority may require that it have the following options with respect to payment of the loan insurance:

- A. Cure one or more defaults up to a stated limit;
- B. Purchase the loan on the terms specified in the contract;
- C. Pay the remaining balance of the Authority's insurance liability;
- D. Authorize the lender to liquidate the collateral for the loan and at the conclusion of the liquidation pay off any deficiency of the lender on terms specified in the agreement; and
- E. Such other options as the agreement may provide.

SECTION 11. Premiums, Fees and Other Charges

- A. The authority may charge an application fee of up to 1% of the amount of proposed authority insurance liability, with a minimum application fee, if so imposed, of \$250.
- B. In addition to other requirements, no loan insurance or renewal of loan insurance shall be effective until the Authority has received a commitment fee of between 0% and 2%, as determined by the Authority from time to time and set forth in the Credit Policy, of the insured percentage of the principal amount of the insured loan, due upon acceptance of the commitment.
- C. In addition to other requirements, the Authority shall be paid a loan insurance premium of between 0% and 5%, as determined by the Authority from time to time and set forth in

the Credit Policy, of the maximum insurance liability on the insured loan on the date of closing and on each anniversary thereof while insurance is still in force.

- D. Where application is made to obtain the Authority's consent pursuant to a loan insurance contract to transfer of collateral, alteration of rights or other matters, the Authority may charge the borrower for the cost of the Authority's staff utilized to review the application and for the Authority's out-of-pocket expense in connection with the application.

SECTION 12. Waiver of rule

The members or the chief executive officer may waive any requirement of this rule, except to the extent that the requirement is mandated by the Act, in cases where deviation from the rule is insubstantial.

SECTION 13. Miscellaneous

Any approvals, reviews, determinations or findings of the Authority related to any plans, specifications, contracts, application or other documents required or contemplated by this rule or the Act are solely for the benefit of the Authority and shall not in any way constitute any approval of the adequacy of such documents or of the project.

SECTION 14. Appeal

In the event that any application of a borrower or a lender is reviewed and denied by the chief executive officer under authority delegated by the members, the borrower or lender shall have the right to appeal the decision of the chief executive officer to the members. Notice of the appeal, together with a statement of the reasons why the chief executive officer's decision should be reversed or modified, shall be given to the chief executive officer in writing within twenty days after the date on which the chief executive officer mailed the notice of decision to the borrower or lender. The appeal shall be heard at a meeting of the members, and the borrower or lender must be present to support the appeal. The appeal shall be based on the record before the chief executive officer on the date of the decision. The decision of the chief executive officer shall be final unless the members determine that the decision by the chief executive officer was arbitrary, capricious or an abuse of discretion, in which event the members may overturn or modify the decision of the chief executive officer and may direct the chief executive officer to take further action with respect to the request.

Rule History

Chapter 101: MORTGAGE INSURANCE PROGRAM

EFFECTIVE DATE:

June 17, 1984

AMENDED:

February 6, 1985

June 30, 1985

August 12, 1985

October 8, 1985

December 28, 1985

September 22, 1986

November 4, 1987

June 11, 1988

August 28, 1988

April 26, 1991 (EMERGENCY)

August 21, 1991

October 2, 1993

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 4, 1996

NON-SUBSTANTIVE CORRECTIONS:

October 4, 1996 - minor spelling

Chapter 103: SMALL BUSINESS AND VETERANS' SMALL BUSINESS MORTGAGE INSURANCE PROGRAMS

EFFECTIVE DATE:

June 11, 1985

AMENDED:

December 28, 1985

September 22, 1986

November 4, 1987

June 11, 1988

September 1990

April 30, 1992

July 21, 1992

October 2, 1993

NON-SUBSTANTIVE CORRECTIONS:

October 7, 1996 - minor spelling

REPEALED AND REPLACED:

January 1, 2005 – absorbed into Chapter 101 through filing 2004-564

**BOTH CHAPTER 101 AND 103 REPEALED AND REPLACED BY NEW CHAPTER 101,
LOAN INSURANCE PROGRAM:**

STATUTORY AUTHORITY: 10 M.R.S.A. §969-A(14), and 1026-A

EFFECTIVE DATE:

January 1, 2005 – filing 2004-564

AMENDED:

June 5, 2006 – Section XI(B, C), filing 2006-231 (Amendment 1)

September 2, 2007 – filing 2007-360 (Amendment 2)

June 7, 2011 – Section 6 and 7, filing 2011-172 (Amendment 3)

December 9, 2012 – filing 2012-339 (Amendment 4)

September 1, 2013 – filing 2013-212 (Amendment 5)

April 9, 2017 – filing 2017-059 (Amendment 6)

FINANCE AUTHORITY OF MAINE
LOAN INSURANCE AGREEMENT

In consideration of the mutual undertakings set forth in this Agreement, **LENDER** (the "Lender") and Finance Authority of Maine (the "Authority") agree that Lender will make secured commercial loans that in its sole judgment are advisable to eligible borrowers, and the Authority will insure payment of such loans subject to the following terms and conditions:

1. **INCLUDED LOANS:** The Authority shall insure those loans and only those loans: (A) that are made by the Lender to a borrower, for an amount and purpose and on terms which have been approved specifically by the Authority in a written loan insurance authorization (the "Authorization") issued with respect to each loan; and (B) with respect to which Lender has complied with the further terms and conditions of this Agreement, 10 M.R.S.A. §961 et seq. (the "FAME Act") and Chapter 101 of the Rules of the Authority (the "Rule").

2. **INSURANCE PREMIUM:** Upon disbursement of the loan proceeds and on or before each subsequent anniversary date of an insured loan until either the debt is discharged or the Lender terminates the insurance, the Lender shall pay to the Authority a loan insurance premium in an amount equal to such percent of the outstanding principal balance at the time the annual premium is due as is set forth in the Authorization.

3. **RESPONSIBILITIES OF THE LENDER:**

- A. Prior to forwarding a request for insurance to the Authority, the Lender shall:
- i. Make such investigation of the character, credit history and business ability of the applicant and the stability and earning prospects of the business in which the loan proceeds are to be used, as would be the normal practice of a prudent lender making an uninsured or unguaranteed loan in the amount proposed, including a review of personal and business financial statements.
 - ii. Make such investigation of the value and existence of title to the proposed collateral as would be normal for a prudent lender contemplating an uninsured loan in the amount proposed.
 - iii. If required by the Authority, provide the Authority with a certificate, in such forms as it shall prescribe, that the loan proposed for insurance would not be obtainable by the applicant from the Lender, but for the Authority's insurance.

- B. Upon and after closing the loan and disbursing the loan proceeds, the Lender shall:
- i. Cause to be executed, delivered, and where necessary filed or recorded with the proper authorities, a note, mortgage, security agreement, financing statement, continuation statement, and such other instruments, documents and agreements as may be necessary to comply with the requirements of the Authorization or applicable law, and shall take such other actions as are required to ensure that the borrower has a binding obligation to repay the loan, that the Lender has a valid and enforceable mortgage or security interest in the collateral that is prior to the interests or claims of all other persons, except as may be specifically excepted by the Authority, that collateral is adequately maintained and insured, that any taxes on property will be paid when due, and that the interests of the Lender and Authority in the loan are fully protected, consistent with prudent lending practices.
 - ii. Cause to be executed and delivered in proper form a guaranty by any guarantors required in the Authorization and take such further actions to ensure that all guarantors have a binding, enforceable obligation to repay the loan, and that the Lender has a valid enforceable mortgage or security interest in any security for the guaranty. It shall be the Lender's responsibility to ensure that all guarantors waive any right or claim for contribution or reimbursement from the Authority and acknowledge that the Authority is not a co-guarantor or co-surety.
 - iii. Exercise supervision over the collateral and its disposition, if authorized, as would normally be considered necessary by a prudent lender, not relying on a guaranty or insurance, to perfect and preserve Lender's security interest in the collateral and any proceeds of the collateral.
 - iv. Exercise such supervision of the use of loan proceeds, including, where possible, issuing joint payee checks, as may be necessary or prudent to ensure that proceeds are used for authorized purposes.
 - v. Promptly upon the first disbursement of each loan to be insured, furnish the Authority with a copy of the executed note and closing or disbursement statement. Upon request, Lender shall provide the Authority copies of all documents executed in connection with the loan (collectively the "Financing Documents") and loan disbursement and the loan records maintained by the Lender. Lender shall maintain such records with respect to insured loans as are customarily maintained by prudent lending institutions with respect to uninsured loans.

4. **LOAN CHARGES:** Lender will impose no charges on the borrower of a loan insured hereunder that would not normally be imposed had the loan not been insured, other than the insurance premiums payable to the Authority.

5. **ADMINISTRATION AND SERVICING OF LOANS:** Lender shall hold the Financing Documents, collect and receive all payments of principal and interest, monitor and enforce borrower compliance with covenants contained in the Financing Documents, and take such other action as may be required or advisable to administer and service the loan in accordance with the normal and customary practice of prudent lending institutions and the requirements of the Authorization. In addition, Lender shall exercise the same degree and standard of care that Lender exercises in the servicing and administration of similar loans for which Lender has not obtained Authority insurance. Prudent lending practices should include, without limitation, a periodic review of financial statements and collateral, and Lender should maintain contact with the borrower so as to promote detection of material adverse management or operational changes. Lender shall not, without the written consent of the Authority: (A) make or consent to any transfer or assignment of any note or interest therein, or any material alteration in or amendment to the terms of any Financing Document; (B) make or consent to any subordination, release, conveyance, lease, substitution or exchange of any collateral; (C) waive, extend or postpone any repayment terms or compliance with any other covenants contained in the Financing Documents; (D) consent to or permit any sale, merger, consolidation or reorganization of borrower, if borrower is a legal entity other than an individual; (E) waive or release any claim against any borrower, surety, guarantor or other obligor, or any other creditor, or trustee in bankruptcy, arising out of any Financing Document; or (F) exercise any demand feature under the Financing Documents other than in the circumstances and in compliance with the procedures set forth in paragraph 7. In addition, in the event of the bankruptcy of the borrower or any guarantor, or the filing of a petition or complaint by or against the borrower or any guarantor under any bankruptcy, moratorium, insolvency or similar law including without limitation, Title 11 of the United States Code, the Lender will file on a timely basis an appropriate proof of claim against the borrower or any guarantor for all amounts due or owing under the Financing Documents, and take such other action in the proceeding to fully protect the interests of the Lender and the Authority.

6. **REPORTS:** Lender will provide the Authority with such financial or other information on insured loans as the Authority may reasonably require in the Authorization or from time to time thereafter.

7. **DEFAULT AND NOTICE OF DEFAULT:** Lender agrees to notify the Authority promptly upon the occurrence of any event of default by borrower or any guarantor under the Financing Documents (an "Event of Default"). In any case, Lender must notify the Authority in writing: (i) within sixty (60) days of any default in the payment of any interim installment payment of principal or interest of an insured installment loan that remains uncured; (ii) within fifteen (15) days of discovery of any event of default (other than that mentioned in subparagraph (i) above), condition or event that in its reasonable judgment indicates the loan has or will become difficult to collect in full; and (iii) within sixty (60) days of discovery of any other event of default (other than those mentioned in subparagraphs (i) and (ii) above). Notwithstanding the

foregoing, in the case of a default in the payment of any final installment or payment upon maturity of any insured installment loan, or any default in the payment of principal and/or interest of an insured line of credit or other one-principal-payment loan, the Lender shall notify the Authority as soon as reasonably possible, but in no event later than fifteen (15) days after the default. With any said notice to the Authority of a default, the Lender shall provide the Authority with a detailed, written proposed plan to address said default. Within thirty (30) days after receipt of notice of default, the Authority will notify the Lender which of the following options the Authority will elect:

- A. Cure. The Authority shall have the right, but not the obligation, to cure any Event of Default. If the Authority elects to proceed under this subparagraph (A), it shall, within thirty (30) days after receipt of the notice from the Lender, cure such Event of Default or if such Event of Default (other than a default due to non-payment under the applicable promissory note) cannot be cured within said thirty (30) days, commence and diligently pursue appropriate action to cure such Event of Default, provided that this shall not impair the Lender's right to accelerate any loans not insured by the Authority, or to enforce the Financing Documents to the extent they also secure such uninsured loans. If the Authority so requests, prior to taking any such action to cure such Event of Default, the Lender shall consult with the Authority as to whether or not such action would be prudent in view of the circumstances of the Event of Default and would fulfill the purposes of the FAME Act. The Lender covenants and agrees that following receipt of notice of the Authority's election to cure any Event of Default, the Lender will not accelerate the maturity of the insured loan, assess a late payment charge, take any action to enforce the Financing Documents or liquidate any of the collateral or other security for the insured loan without specific written consent of the Authority except items of collateral in which the Lender has an independent security interest superior to that securing the insured loan. Nothing contained in this Agreement or the Authorization shall obligate the Authority to cure any Event of Default nor shall the curing of any Event of Default by the Authority constitute (1) a waiver of any claim or remedy of the Lender or the Authority under the Financing Documents against the borrower, the Lender or any other person, or (2) an agreement on the part of the Authority to cure any similar or dissimilar Event of Default in the future. The Lender shall assign the Financing Documents to the Authority when all obligations of the borrower to the Lender under the Financing Documents have been paid and satisfied in order to facilitate the Authority's collection of any funds expended to cure any default or defaults. Any amounts paid by the Authority to or for the benefit of the Lender pursuant to this subsection shall be credited against the Authority's maximum insurance liability pursuant to this Agreement. At any time after the Authority has elected to exercise its right to cure under this subsection, upon fifteen (15) days notice of the Lender, the Authority may, in lieu of or in addition to effectuating such cure, proceed under any of the remaining options described in this section. In the

event the Lender and the borrower are parties to any loan, insured or not, secured by accounts or inventory or other collateral subject to rapid diminution in value, notwithstanding anything to the contrary herein set forth, nothing herein shall prevent the Lender upon immediate written notice *via* facsimile, or via electronic mail acknowledged to have been received, to the Authority, from taking reasonable steps for the protection of accounts and inventory, which serves as collateral for such loan, including but not being limited to exercising (consistent with paragraph 5 of this Agreement) as to proceeds thereof, rights of set off regarding deposit accounts and holding such proceeds thereof,

- B. Loan Purchase. If the Authority elects to purchase the insured loan, it shall notify the Lender of its intent to proceed under this subparagraph. Within thirty (30) days following such notice, on a date designated by the Authority, the Authority shall purchase the Financing Documents by payment in full of the outstanding principal balance due under the insured loan plus all accrued and unpaid interest thereon, and all other sums due under the Financing Documents as of the date of such purchase, provided that no accrued interest in excess of 90 days following default, nor any late charges, shall be due from or payable by the Authority, and provided further that accrued interest shall not include any increase in interest on account of default. Payment by the Authority of such amounts shall satisfy in full its obligations to Lender under this Agreement. Simultaneously with any such purchase, the Lender and the Authority will enter into an agreement regarding the purchase and sale of the insured loan, and the Lender shall assign to the Authority, without recourse, all of its right, title and interest in the Financing Documents, the collateral and all other security for the insured loan. The Lender shall thereafter forward to the Authority any payment or recovery it shall receive on account of such insured loan.
- C. Early Payment of Insurance Liability. The Authority may elect at any time to pay the remaining balance of its insurance liability to the Lender, determined in accordance with paragraph 11. If pro-rata insurance is involved, such payment may be made either as a lump sum of the full amount of such insurance liability, or may be made in periodic installments, which installments shall be equal to the periodic payments under the Financing Documents multiplied by the percentage of insurance coverage set forth in the Authorization and shall be paid on the payment dates specified therein. In the case of leveraged insurance, payment may only be made in the form of a lump sum. The Lender shall, unless otherwise instructed by the Authority, thereafter undertake all prudent efforts to collect all amounts legally due, including liquidation of collateral and to enforce the loan documents against the Borrower and all Guarantors of the insured loan, all in accordance with a collection/liquidation plan to be approved by the Authority, and shall keep the Authority informed of its collection efforts. Payments made by the

Authority pursuant to this paragraph shall be rebated to the Authority by the Lender as provided in paragraph 11(D)(ii) below.

- D. Liquidation. If the Authority elects to proceed under this subparagraph D, it shall send notice to the Lender, directing the Lender to accelerate the maturity of the loan, to proceed to enforce the Financing Documents, to liquidate the collateral and all other security for the loan, and to diligently pursue and exhaust any and all other sources of repayment (including guarantors of the insured loan), all in accordance with a liquidation plan to be approved by the Authority. *Nothing herein shall require the Lender to take any step that would, in the reasonable opinion of its counsel, expose it to environmental liability.*
- E. No Action. Upon the occurrence of an Event of Default other than nonpayment of principal and interest under the applicable promissory note, the Authority shall have the option of taking no action, or taking any action whether or not specified in this paragraph 7.

The Authority and Lender may take such other action upon default as they may agree in writing.

8. **SHARING OF REPAYMENT PROCEEDS AND COLLATERAL:** All repayments and proceeds of collateral or guarantees of any nature (other than insurance received pursuant to this Agreement), including without limitation rights of setoff and counterclaim, which Lender may at any time receive or have in any insured loan, shall repay and secure the interests of Lender and the Authority in the same proportion as the insured portion of the loan bears to the uninsured portion of the loan, unless otherwise specified in the Authorization. If Lender has any other loans outstanding to a borrower of an insured loan and receives any payments or proceeds of collateral, the Lender agrees to apply to the insured loan an amount not less than the lesser of the amount then due on the insured loan or the pro-rata share represented by the insured loan of all indebtedness of the same borrower to the Lender, provided that proceeds attributable to the sale or disposition of collateral for the insured loan which is secured by a lien with higher priority than the lien securing the uninsured loan shall be applied in full to the insured loan and proceeds attributable to the sale or disposition of collateral for any uninsured loan which is secured by a lien with higher priority than the lien securing the insured loan may be applied by the Lender in full to such uninsured loan. Notwithstanding the foregoing, all payments or proceeds received by the Lender must be applied to the insured loan unless Lender has disclosed the uninsured loan to the Authority and, in the case of loans made subsequent to the application to the Authority, obtained the Authority's approval.

9. **PAYMENT OF EXPENSES:** All expenses of making, servicing, and collecting an insured loan shall be paid by, or be recoverable from the borrower. All reasonable expenses incurred by Lender or the Authority which are not recoverable from the borrower shall be shared ratably by Lender and the Authority in accordance with their respective interests in any such loan, subject to any limitations in the Authorization.

10. REQUESTS FOR PAYMENT OF INSURANCE: In the event that the Authority has directed the Lender to accelerate the loan and liquidate the collateral (and in cases where the Authority has notified the Lender that it intends to pay insurance early under paragraph 7(C), but in such cases only paragraphs (B) and (C) shall apply), the Lender's request for payment of insurance shall be accompanied by the Lender's written certification:

- A. That the Lender has liquidated the collateral and all guarantees for the loan, and has diligently pursued and exhausted all sources of repayment, in both cases, to the extent commercially reasonable under the circumstances;
- B. That the Lender has allocated repayments, proceeds of collateral and any guarantees, and any expenses to the respective interests of the parties, as required by paragraphs 8 and 9 of this Agreement, which certification shall be accompanied by a detailed accounting of the loan balance at the time of default, and all debits and credits to the loan account following default; and
- C. Of the principal and interest (up to 90 days at contract (non-default) rate) remaining unpaid, and any reasonable costs of collection and liquidation of collateral incurred by Lender.

11. PAYMENT OF INSURANCE:

- A. Pro-rata Insurance. Upon receipt of a written certification pursuant to paragraph 10 and provided the general and specific conditions and duties set forth in this Agreement and the Authorization have been satisfied and discharged, the Authority shall pay to the Lender the lesser of: (a) 100% (or such lesser percentage as may have been committed by the Authority in the applicable Authorization) of the principal, interest and costs remaining unpaid, as certified pursuant to paragraph 10, (b) 100% % (or such lesser percentage as may have been committed by the Authority in the applicable Authorization) of the original loan amount, or (c) the maximum dollar amount of insurance stated in the applicable Authorization.
- B. Leveraged Insurance.
 - i. If the Authority has issued an Authorization specifying that the Authority will provide leveraged insurance, the provisions of paragraph 11(A) of this Agreement will not apply and the following provisions will apply.
 - ii. In the event that, upon default of a loan approved with leveraged insurance, the Authority authorizes or directs the Lender to accelerate the loan and liquidate the collateral pursuant to paragraph 7(b) of this

Agreement, the Lender shall make the same request for payment of insurance as required by paragraph 10 of this Agreement.

iii. Upon receipt of Lender's written certification pursuant to paragraph 10 and provided that the general and specific conditions and duties set forth in this Agreement and the Authorization have been satisfied and discharged, the Authority shall pay to the Lender the lesser of: (a) 100% of the principal, interest and costs remaining unpaid, as certified pursuant to paragraph 10, (b) 25% (or such lesser percentage as may have been committed by the Authority in the applicable Authorization) of the sum of (1) the principal, interest and costs remaining unpaid, as certified pursuant to paragraph 10, plus (2) proceeds of liquidation of collateral and other recoveries received by Lender following the Event of Default, (c) 25% (or such lesser percentage as may have been committed by the Authority in the applicable Authorization) of the original loan amount; or (d) the maximum dollar amount of insurance stated in the applicable Authorization..

iv. Loans approved with leveraged insurance shall in all other respects be governed by the other provisions of this Agreement not inconsistent with these provisions.

C. Insurance Limitations. Notwithstanding anything to the contrary herein, or in the Authorization, the Lender acknowledges that this Agreement provides no insurance coverage whatsoever for:

i. accrued interest for any period in excess of ninety (90) days following borrower default;

ii. any loss or liability occasioned by or resulting from any environmental liability, charges, loss or damages levied on, incurred by, or threatened against the Lender or the borrower or any costs associated with such environmental liability, charges, loss or damages.

iii. The amount of any balloon payment due at maturity on loans (including but not limited to line of credit loans) which do not require full amortization over the life of the loan, to the extent that the Authority is willing to continue its insurance coverage on such loan on the same general terms and conditions as existed prior to maturity, but the Lender is not willing to extend the loan on the same general terms and conditions.

D. Obligations of Lender Following Insurance Payment or Loan Purchase.

i. Payment of insurance by the Authority will be done concurrently with the execution by the Authority and the Lender of an agreement

detailing the specific facts of the claim, the basis for payment, and the continuing responsibilities of the parties under the Authorization and this Agreement, if any.

ii. In the event the Lender receives payment or other form of recovery on the insured loan, from whatever source, following payment by the Authority of its insurance obligations hereunder, it shall: (a) (with respect to leveraged insurance) to the extent such payment or recovery, when added to the amount of the Authority's payment to Lender, exceeds the balance of the loan prior to the Authority's insurance payment, including accrued interest (which shall not include, however, any increase in the interest rate as a result of default, or any amount of interest accruing more than 90 days following default) and costs of collection and liquidation (provided however that the allocated portion of costs of collection and liquidation shall not exceed an amount which is reasonable under the circumstances) but excluding penalties and late charges, rebate the full amount of such excess to the Authority; or (b) (with respect to pro-rata insurance) rebate to the Authority an amount equal to the product of (1) the amount of such payment or recovery, multiplied by (2) the insured percentage of the loan.

iii. If following payment by the Authority of its insurance liability to Lender, any certification made by Lender pursuant to paragraph 10 proves materially false, or if the Lender is found not to have complied with this Agreement or with the Authorization in any material respect, the same shall be a breach by Lender hereunder, and in addition to any other remedies available to the Authority, the Lender shall be liable for and shall immediately repay to the Authority, all insurance proceeds it has received on the insured loan to which the breach is related.

12. **BREACH BY LENDER:** The Lender's material breach of or negligence in discharging or failure to discharge any of its obligations or responsibilities under this Agreement, which includes under any specific Authorization executed in accordance herewith, whenever discovered, shall, at the option of the Authority, constitute a default which shall nullify and terminate the insurance of any loan affected, unless the Authority has specifically waived the default in writing. The Authority shall notify Lender in writing of the breach and its election to nullify the insurance. If the Lender's breach is reasonably susceptible of being cured within thirty (30) days, the Authority shall give the Lender thirty (30) days from receipt of the notice to cure the default. With respect to notice of default pursuant to paragraph 7 of this Agreement, time is of the essence.

13. **NO WAIVER BY IMPLICATION:** This Agreement may be amended, or any provisions hereof waived, only upon express written consent of the parties hereto. No party's delay in enforcing, or failure to enforce, any provision of this Agreement shall constitute a waiver of any provision of this Agreement. In particular, but without limitation, any breach by Lender of

its obligations and responsibilities under this Agreement shall entitle the Authority to its remedies under this Agreement regardless of when the breach occurs, when it is discovered by the Authority, or when the Authority notifies the Lender of the breach and any election of remedies under this Agreement.

14. ASSIGNMENT: Neither party may assign any right or obligation under this Agreement without the prior written consent of the other.

15. TERMINATION: Either party may terminate this Agreement upon giving ten (10) days written notice by certified mail to the other, but termination will not affect the rights and obligations of the parties with respect to loans previously authorized by the Authority. Lender may terminate the insurance of any loan at any time prior to requesting repayment thereunder, by giving written notice thereof to the Authority, signed by an officer of the Lender.

16. SUCCESSORS AND ASSIGNS: This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto.

17. PRIOR AGREEMENTS: This Agreement supersedes any prior loan insurance agreement between the Lender and Authority and shall govern any existing insured loans as well as future loans insured by the Authority, provided that this Agreement shall not be construed to alter or amend a specific existing Authorization pertaining to any particular loan.

IN WITNESS WHEREOF, Lender and the Authority have caused this Agreement to be executed as of the _____ day of _____, 2016.

WITNESS:

LENDER

By:
Its:

FINANCE AUTHORITY OF MAINE

By: Bruce E. Wagner
Its: Chief Executive Officer

Please provide the following information for Bank's designated FAME contact representative:

Contact Name: _____

Bank Name: _____

Main Branch Mailing Address: _____

Phone: _____

Email: _____

94-457 FINANCE AUTHORITY OF MAINE**Chapter 311: ECONOMIC RECOVERY PROGRAM**

Summary: This rule establishes the procedures, standards and fees applicable to borrowers applying for loans from the Authority's program of direct loans for distressed but viable businesses unable to obtain necessary credit from other sources.

1. Definitions

- A. **Reference to Act Definitions.** Certain terms used in this rule, which are defined in the Finance Authority of Maine Act, 10 M.R.S.A. Section 961 and following (the Act), shall have the meanings set forth in the Act, unless clearly specified otherwise or unless the context clearly indicates otherwise.
- B. **Defined Terms**
- (1) "Borrower" means a person or entity which meets the eligibility requirements set forth in section 3 of this rule, and includes a prospective borrower where the context requires. A borrower includes an individual or entity which is the recipient or beneficiary of a loan and also includes any related entity having 50% or greater common ownership or beneficial interest with the borrower or any individual or entity having a 50% or greater ownership or beneficial interest in the borrower.
 - (2) "Chief executive officer" means the Authority's chief executive officer or a person acting under the supervisory control of the chief executive officer.
 - (2-A) "Fund" means the economic recovery program fund established under 10 M.R.S.A. §1023-I.
 - (2-B) "Loan" means any program funds disbursed to a borrower, regardless of its payment terms and structure.
 - (3) "Loan commitment" means a letter from the chief executive officer to a borrower agreeing to make a loan to a borrower on the terms and conditions and subject to the requirements stated therein.
 - (4) "Members" means the members of the Authority appointed pursuant to the Act.
 - (5) "Program" means the Economic Recovery Program governed by this rule and the Act.
 - (6) "State" means the State of Maine.

- (7) "Wall street prime" means the highest rate of interest as published in the *Wall Street Journal*.

2. Program Implementation and Assistance Provided

The program shall be administered by and is delegated to, the chief executive officer, except to the extent that any proposed liability under this program pertaining to a single borrower or borrowers in common ownership exceeds \$500,000 or when proposed liability under this program to such borrower or borrowers, in combination with liability under the Authority's Loan Insurance Program exceeds \$1,000,000. The Authority may provide financial assistance of up to \$1,000,000 to an eligible borrower on such terms and conditions as the chief executive officer may require or approve. Assistance under this program may be combined, to the extent possible, with assistance under other Authority programs.

3. Eligibility

To be eligible for financial assistance under the program, a borrower must demonstrate each of the following:

- A. The business receiving assistance is a manufacturing, industrial, recreational or natural resource enterprise.
- B. The business receiving assistance must be located within the State.
- C. The business receiving assistance must provide significant public benefit to the State in relation to the amount of the financial assistance. Public benefits include, but are not limited to, preservation of jobs, increased opportunities for employment, increased capital flows, particularly capital flowing in from outside the State, and increased state and municipal tax revenues.
- D. The business is creditworthy and reasonably likely to repay its obligations, including the proposed loan.
- E. The business receiving assistance is a for-profit or nonprofit commercial entity.
- F. The business has obtained funds from all other reasonably available sources of capital, which shall include, but not be limited to loans from financial institutions, the resources of the borrower and the personal resources of the owner of the borrower which in the case of a corporation or partnership includes the personal resources of any individual with a 50% or greater ownership interest.
- G. The borrower and the business have insufficient access to other funds.
- H. The public benefits to be obtained by making the financial assistance available will not be realized in the absence of receipt of the loan.

4. Application Procedure and Content

Each borrower shall submit an application to the chief executive officer on such forms and with such attachments as the chief executive officer may require consistent with the purposes of the program and this rule. The chief executive officer will review each application for completeness and eligibility. Applications which are not substantially complete may be deemed not received until completed. The chief executive officer shall determine when an application is received, which determination shall be final. An application shall contain, at a minimum, such general information identifying and describing the borrower, the proposed sources and uses of the program funds and other funds to be obtained concomitantly, as specified in the application form and as otherwise requested by the chief executive officer.

5. Criteria and Considerations

- A. No application will be approved unless the chief executive officer determines that the borrower is eligible, including a determination that the loan proceeds will be put to an appropriate use.
- B. No application will be approved unless the chief executive officer determines that the application is complete and that information sufficient to make an informed decision on the application has been received.

6. Terms and Conditions; Premiums, Fees and Other Charges

- A. Periodic payments of principal and interest shall be established in accordance with a borrower's needs. The authority may defer principal and interest payments as necessary.
- B. Loan terms shall not exceed five (5) years, although interim payments may be based on amortizations of up to twenty (20) years in the case of loans primarily secured by real estate, up to ten (10) years in the case of loans primarily secured by machinery and equipment and up to seven (7) years for other loans.
- C. All loans shall accrue interest at Wall Street prime plus 2% fixed on the date of the Commitment. Exceptions may be made by the Authority in cases where the borrower demonstrates a need for a lower rate of interest and such lower rate of interest is justified by the magnitude of the public benefit to be derived from the project. The authority may require payments in addition to or in place of interest, which may include royalties or additional payments based on sales, net cash flow or other financial measures and rights to equity in the business. Such additional payments may be required in situations where the risk of providing the financing is such that additional payments are reasonably required to provide a return appropriate to the authority's risk.
- D. Additional requirements and covenants of each loan may be established, provided that each borrower shall at a minimum be required to maintain and repair collateral, maintain adequate insurance covering public liability, hazard, and flood insurance if the borrower is located in a flood plain, and comply with all applicable federal, State and local laws, regulations, ordinances and orders. Each borrower shall also be required to maintain such environmental liability insurance as may be required by the chief executive officer.

- E. The borrower shall pay a loan origination fee equal to 1% of the loan amount at closing and shall be responsible for the authority's attorneys fees (whether of the authority's legal division or outside Counsel) and all out of pocket costs and expenses of underwriting, closing, administering and collecting the loan. The authority shall also be entitled to collect from the fund, a loan underwriting fee of 1% of the requested loan amount for every loan application received whether or not the loan is approved or made, plus any reasonable out-of-pocket underwriting costs not paid by the borrower. The authority shall also be entitled to collect from the fund an annual loan administration fee in an amount equal to 2% of the outstanding principal balance of the loan remaining due on each anniversary date of each loan. At the authority's election, the loan administration fee may be calculated and collected on a monthly or quarterly basis.

7. Loan Priority

[Reserved]

8. Appeal to the Members

In the event that an application is rejected by the chief executive officer, the applicant shall have the right to appeal the decision of the chief executive officer to the members, provided that such appeal shall not affect processing of other applications received prior to the notice of appeal. Notice of the appeal, together with a statement of the reasons why the chief executive officer's decision should be reversed or modified, shall be given to the chief executive officer in writing within 20 days after the date the chief executive officer mails the notice of rejection to the applicant. The appeal shall be heard at a meeting of the members. The applicant must be present to support the appeal. The appeal shall be based on the record before the chief executive officer on the date of the rejection. The decision of the chief executive officer shall be final unless the members determine that the rejection by the chief executive officer was arbitrary, capricious or an abuse of discretion, in which event the members may overturn or modify the decision of the chief executive officer and may direct the chief executive officer to take further action with respect to the application. If the chief executive officer's decision is upheld on appeal or in the event no appeal is timely taken by an applicant on the denial of a loan application, the applicant shall not be entitled to submit another application which is not materially and substantially different than the denied application, as determined by the chief executive officer, for a period of six (6) months from the date of the denied application.

9. Waiver of Rule

The chief executive officer may waive any requirement of this rule, except to the extent that the requirement is mandated by the Act, in cases where the deviation from the rule is insubstantial and is not contrary to the purposes of the program.

STATUTORY AUTHORITY: 10 M.R.S.A. Sections 969-A(14), 1023-I and 1026-J

EFFECTIVE DATES: Emergency Rule: Immediately upon passage and approval of the referendum question contained in Part A of Chapter 113 of the Private & Special Laws of 1992, and for a period of ninety (90) days thereafter. Original Rule: September 14, 1992. Amendment 1: July 1, 1999.

ORIGINAL RULE:
September 14, 1992

EFFECTIVE DATE (ELECTRONIC CONVERSION):
May 4, 1996

NON-SUBSTANTIVE CORRECTIONS:
October 7 and 29, 1996 - minor spelling
August 19, 1997 - minor capitalization; removal of redundant word "Authority" from 1(3)

AMENDED:
July 1, 1999
August 30, 2000
June 7, 2011 – Amendment 3, filing 2011-173