

Article 09. NEW MARKETS TAX CREDIT ASSISTANCE GUARANTEE AND LOAN PROGRAM Sec. 44.88.700. New markets tax credit assistance

guarantees and loans. (a) Subject to the requirements of AS 44.88.700 - 44.88.799, the authority may

(1) guarantee new markets tax credit assistance leveraged loans; and

(2) make new markets tax credit assistance leveraged loans.

(b) New markets tax credit assistance guarantees and loans are limited to projects in the state for which new markets tax credits are allocated by a qualified community development entity.

(c) The authority shall determine that the project will promote economic development in the state before guaranteeing a leveraged loan or making a leveraged loan under AS 44.88.700 - 44.88.799.

(d) The authority may agree to restrictions and guidelines arising from the federal new markets tax credit program, including, for the seven-year tax credit period of the new markets tax credit project,

(1) that interest only payments be made on the leveraged loan;

(2) that substantially all capital remain invested in the project;

(3) that acceptable collateral may be an interest in a qualified community development entity or an investment entity rather than in the project; and

(4) substantive restrictions on foreclosure of collateral.

Sec. 44.88.710. Effect of guarantee. (a) A guarantee under AS 44.88.700 - 44.88.799 does not create a debt or liability of the state.

(b) A guarantee under AS 44.88.700(a)(1) may not be terminated, cancelled, or revoked except under its terms. A guarantee held by a participating financial institution is presumed to be valid.

Sec. 44.88.715. Qualifications of applicant for new loan guarantee.

(a) A business enterprise that qualifies for new markets tax credits for a project may apply for a loan guarantee under AS 44.88.700(a)(1).

(b) The authority may establish additional applicant qualifications by regulation. Those qualifications may vary depending on the type of business in which the applicant is engaged.

Sec. 44.88.720. Application for loan guarantee. An applicant for a loan guarantee shall provide information that the authority may require by regulation. The authority may require submission of an economic benefit analysis prepared by a person acceptable to the authority.

Sec. 44.88.730. Conditions of loan guarantee. (a) The authority may guarantee a loan under AS 44.88.700 - 44.88.799 if the

- (1) loan
 - (A) is commercially reasonable;
 - (B) contains payment provisions satisfactory to the authority; and
 - (C) is secured by acceptable collateral;
- (2) project
 - (A) is allocated new markets tax credits by a qualified community development entity;
 - (B) promotes economic development in the state; and
 - (C) is not a housing project;
- (3) borrower demonstrates the ability to repay the loan from either or both of the following:
 - (A) net cash flow of the borrower;
 - (B) proceeds from the sale of current assets that are collateral for the loan if the sale or receipt of proceeds from the sale is an event that creates a payment obligation; in this subparagraph, "current asset" means property that will be or could be converted into cash within one year in the normal operation of a business;
- (4) term of the loan does not exceed 10 years;
- (5) loan is originated with and serviced by a financial institution.

(b) The authority may provide a guarantee for up to 100 percent of a loan that qualifies under AS 44.88.700 - 44.88.799.

Sec. 44.88.740. Servicing of guaranteed loans. (a) The financial institution that holds a loan guaranteed by the authority under AS 44.88.700 - 44.88.799 shall

- (1) service the loan;
- (2) exercise diligence in collecting amounts due under the loan; and
- (3) comply with all requirements of the loan guarantee agreement.

(b) Amounts received toward satisfaction of a default on a loan guaranteed under AS 44.88.700 - 44.88.799 shall be allocated between the lender and the revolving fund according to the guaranteed percentage of the loan until the principal

balance and accrued interest have been repaid.

Sec. 44.88.750. New markets tax credit assistance leveraged loan.

(a) The authority may make a new markets tax credit assistance leveraged loan under AS 44.88.700(a)(2) only if the authority determines that an applicant for a new markets tax credit assistance guarantee is unable to obtain a leveraged loan from a financial institution under commercially reasonable terms. Before making the determination, the authority shall require the applicant to document that at least two financial institutions have reviewed an application for a leveraged loan for which the authority would issue a new markets tax credit assistance guarantee for the loan, and either rejected the application or approved the application subject to terms the authority determines are commercially unreasonable. The authority may require the applicant to submit applications for a leveraged loan to one or more additional financial institutions.

(b) Subject to (a) of this section, the authority may make a new markets tax credit assistance leveraged loan under AS 44.88.700 - 44.88.799 to the applicant to finance a portion of the project using funds from the enterprise development account (AS 44.88.155).

Sec. 44.88.760. Limitations of guarantees and leveraged loans.

The combined outstanding principal balance of loan guarantees and loans under AS 44.88.700 - 44.88.799 may not exceed \$40,000,000.

Sec. 44.88.770. Powers of the authority. The authority may

- (1) adopt regulations to implement AS 44.88.700 - 44.88.799;
- (2) establish terms and conditions for loan guarantees and loans, subject to the requirements of AS 44.88.700 - 44.88.799;
- (3) make and execute contracts and other instruments to implement AS 44.88.700 - 44.88.799;
- (4) charge reasonable fees and interest rates that the authority may establish by regulation for the service it provides under AS 44.88.700 - 44.88.799;
- (5) acquire real or personal property by purchase, transfer, or foreclosure when the acquisition is necessary to protect the authority's interest in a loan or a loan guarantee;
- (6) exercise any other power necessary to implement AS 44.88.700 - 44.88.799; and
- (7) to the extent the authority considers it to be in its best interest to do so, use money to pay expenses relating to the liquidation of collateral securing loans guaranteed or

made by the authority under AS 44.88.700 - 44.88.799.

Sec. 44.88.799. Definitions. In AS 44.88.700 - 44.88.799,

(1) "federal new markets tax credit program" means the program administered by the Community Development Financial Institutions Fund that arises out of 26 U.S.C. 45D (Internal Revenue Code) and related regulations;

(2) "new markets tax credit" means tax credits that arise out of 26 U.S.C. 45D (Internal Revenue Code) and related regulations;

(3) "new markets tax credit assistance leveraged loan" and "leveraged loan" mean a loan made into an investment entity, the proceeds of which, together with other funds, including tax credit equity, are invested as a qualified equity investment in a qualified community development entity that will use the funds to finance a project for which the entity allocates new markets tax credits;

(4) "qualified community development entity" has the meaning given in 26 U.S.C. 45D(c) (Internal Revenue Code) and related regulations;

(5) "qualified equity investment" means an equity investment in a qualified community development entity that satisfies the conditions described in 26 U.S.C. 45D(b) (Internal Revenue Code) and related regulations.