

MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

RE: New Program – InvestNJ Business Grant Program

DATE: December 19, 2008

Request:

The Members are requested to approve the implementation of a \$120 million InvestNJ Business Grant Program. This program is part of Governor Corzine’s State Economic Assistance and Recovery Plan. In accordance with the InvestNJ Business Grant Program Act that was enacted on December 9, 2008 as P.L. 2008, c.112, the Authority is directed to establish a new business assistance program to stimulate certain capital investment and job creation in New Jersey during the current challenging economic climate. The specific program recommendations are outlined below and in the attached exhibit.

Background:

Funded by up to \$120 million in State Appropriations from the Long Term Obligation and Capital Expenditure Fund to the EDA, the InvestNJ Business Grant Program is a two-year economic incentive grant program intended to stimulate certain capital investment and job creation in New Jersey during the current national economic crisis. Targeted across a broad base of New Jersey business structures, this program is a core component of Governor Corzine’s New Jersey Economic Assistance and Recovery Plan.

Developed in partnership with the New Jersey Department of Labor and Workforce Development and the Division of Taxation in the Department of the Treasury, and administered by the Economic Development Authority, this new program will provide new capital investment and employment grants to help expand and improve New Jersey’s economic and job growth and business retention capabilities during a challenging economic period.

The InvestNJ Program will be available until January 1, 2011, during which time businesses may apply. This program will consist of two distinct products, namely, a capital investment grant component and a job creation grant component.

Up to \$70 million will be appropriated to EDA in Fiscal Years 2009, 2010, and 2011 to cover the costs of the capital investment grants. This grant component is intended to encourage new capital investments by businesses in New Jersey by the award of grants to reimburse up to 7% of qualifying capital investments made over a defined period.

The InvestNJ Program also includes an employment grant component to provide incentives to businesses to create full-time jobs in New Jersey that are retained for at least one year, among other parameters. Awards of grants of \$3,000 to qualified businesses for each eligible job created will be provided. Up to \$50 million will be appropriated to EDA to cover the costs of these new employment grants.

The EDA will closely monitor the InvestNJ program, and will provide regular progress reports every six months to our Board on program performance.

Recommendations:

Recommendation 1: Temporarily Add 2 Year Capital Investment Grant Product to EDA Portfolio as part of the InvestNJ Business Grant Program

Program Description:

Description:

Under the InvestNJ program, the EDA will receive a \$120 million appropriation from the State, of which \$70 million will be allocated to encourage capital investments and \$50 million to encourage new job creation throughout the State during the current economic crisis. Specific to the \$70 million capital investment incentive portion of InvestNJ, businesses would be reimbursed for up to 7% of their qualifying capital investment costs during a period after the effective date of P.L. 2008, c.112, and prior to January 1, 2011. Capital investments mean expenses for the direct use and operation of a New Jersey business and include site preparation, construction, renovations and obtaining machinery and, under certain conditions, site remediation expenses¹. These grants will provide the equivalent of the State sales tax that may be paid on their capital investment expenses.

Of the \$70 million to be appropriated for this program, no more than \$20 million will be allocated towards grants for fixture, machinery, and equipment expenditures not associated with newly constructed, renovated, or improved buildings.

Product: Capital Investment Grant

Product Family: Incentive

Approval Authority: CEO

¹ Reference Appendix 1 for definition of "Capital Investment" per InvestNJ Business Grant Program Act

Funding Source: State Appropriation

Eligibility:

- Projects located in New Jersey with businesses being in business at least 2 years
- Employs at least 5 full-time employees
- Makes a capital investment of at least \$5,000 in New Jersey after the effective date of P.L. but prior to January 1, 2011 for a new project
- Excludes any expenses incurred at a site receiving BEIP, BRRAG or Urban Transit Hub Tax Credit incentive
- Excludes any expenses covered by a sales tax exemption (i.e., UEZ, manufacturing equipment)
- Excludes soft costs, furniture, decorative items, and office equipment with recovery periods of less than 5 years
- Includes remediation of a business facility site, but only to the extent the remediation has not received financial assistance from another Federal, State, or local government funding source

Terms/Conditions:

- All applications shall be submitted prior to January 1, 2011
- Payments will be issued subject to submission of proof of the expenditures contributing to the capital investment
- A grantee that fails to comply with a grant agreement shall repay any grant amount received
- Grantee may also be subject to a penalty not to exceed 10% of the grant amount

Maximum/Limits:

- 7% of capital investment not to exceed \$1 million per grantee
- Sum of capital investment reimbursement grants awarded not to exceed \$70 million over program life, of which no more than \$20 million shall be allocated to grants for obtaining and installing fixtures and machinery, apparatus or equipment in an existing building, structure, or facility

EDA Fees:

- No fees to applicant
- Up to \$400,000 to be appropriated to EDA for InvestNJ program administration

Recommendation 2: Temporarily Add Job Creation Grant Product for 2 Years to EDA portfolio as part of the InvestNJ Business Grant Program

Under the InvestNJ program, the EDA will receive a \$120 million appropriation from the State, of which \$70 million will be allocated to encourage capital investments and \$50 million to encourage new job creation throughout the State during the current economic crisis. Specific to the \$50 million employment incentive portion of InvestNJ, awards of grants of \$3,000 per new hire will be provided to qualifying businesses that create full-time jobs, and retain those hires for at least one year, among other program requirements identified below.

Product: Employment Grant

Product Family: Incentive

Approval Authority: CEO

Funding Source: State Appropriation

Eligibility:

- Business has operated continuously in New Jersey for at least 2 years prior to filing an application for a grant
- Employs at least 5 full-time employees
- Adds an eligible position² created in New Jersey after December 1, 2008 and before January 1, 2011 for a period of at least 12 consecutive months in New Jersey
- The business has experienced a net increase in employment of eligible positions in New Jersey during the same 12 consecutive months
- Excludes those applicants currently receiving BEIP, BRRAG, or Urban Transit Hub Tax Credit incentive
- New employees must be full-time and receive health benefits

Terms/Conditions:

- Grant shall be issued upon submission of proof of increase in full-time positions at a business during at least 12 consecutive months and proof of other requirements as defined in the eligibility section above
- All submissions shall be subject to review and audit by the Department of Labor and Workforce Development

Maximum/Limits:

- \$3000 grant for each eligible position up to \$500,000 per business
- Sum of job creation grants awarded not to exceed \$50 million over program life

EDA Fees:

- No fees to applicant
- Up to \$400,000 to be appropriated to EDA for Invest NJ program administration

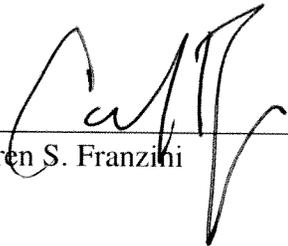
Proposed Rule Amendments:

The proposed Administrative Rules to be implemented through a special Adoption are provided in Exhibit II.

The Members are requested to authorize staff to submit program rules for promulgation and adoption in the New Jersey Register, subject to final review and approval by the Office of the Attorney General, and the Office of Administrative Law (OAL). Pursuant to Special Adoption,

² Reference Appendix I for definition of "Eligible Position" per InvestNJ Business Grant Program Act

the rules will be effective for a period not to exceed 12 months following enactment³ and effective immediately upon Board approval.



Caren S. Franzini

Prepared By: Barbara Pierce

³ And may thereafter be amended, adopted, or readopted by the Authority in accordance with the requirements of the Administrative Procedure Act, P.L.1968,c.410(C;52-14B-1 et seq.)

EXHIBIT I: InvestNJ PROGRAM DEFINITIONS

Capital Investment:

Expenses of at least \$5,000 incurred for the direct use and operation of a business for:

- (1) the site preparation and construction, renovation, improvement, equipping of, or obtaining and installing fixtures and machinery, apparatus or equipment in, a newly constructed, renovated or improved building, structure, facility, or improvement to real property; and
- (2) obtaining and installing fixtures and machinery, apparatus or equipment in a building, structure, or facility. Provided however, that "capital investment" shall not include soft costs such as financing and design, furniture or decorative items such as artwork or plants, or office equipment if the office equipment is property with a recovery period of less than five years. The recovery period of any property, for purposes of this section, shall be determined as of the date such property is first placed in service or use in this State by the business, determined in accordance with section 168 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.168). "Capital investment" shall also include remediation of a business facility site, but only to the extent the remediation has not received financial assistance from another federal, State or local government funding source.

Eligible Position:

A full-time position filled by an individual whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. An eligible position shall include only a position for which a business provides employee health benefits under a group health plan as defined under section 14 of P.L.1997, c.146 (C.17B:27-54), a health benefits plan as defined under section 1 of P.L.1992, c.162 (C.17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes. An eligible position shall not include an independent contractor or a consultant.

EXHIBIT II: PROPOSED RULE AMENDMENTS

D R A F T

SPECIAL ADOPTION

12.19.08

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

InvestNJ Business Grant Program; Main Street Business Assistance Program

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

Special New Rules Adopted and Concurrent Proposed New Rules Authorized: December __, 2008 by Caren S. Franzini, Chief Executive Officer, New Jersey Economic Development Authority.

Filed: December __, 2008 as _____.

Authority: P.L. 2008, c. 112 and P.L. 2008, c. __.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Agency Control Number:

Concurrent Proposal Number: PRN 2008-

Effective Date: December __, 2008.

Expiration Date: December __, 2009.

Submit written comments by _____ __, 2009 to:

Maureen Hassett, SVP Governance & Communications
New Jersey Economic Development Authority
PO Box 990
Trenton, NJ 08625-0990

These new rules were adopted in accordance with P.L. 2008, c. __ and P.L. 2008, c. __ and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-6.4).

Concurrently, the provisions of these new rules are being proposed for readoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted new rules will become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-6.4(f) if filed on or before the 12 months expiration date, in accordance with P.L. 2008, c. 112 and P.L. 2008, c. ___.

The agency special adoption and concurrent proposal follows:

Summary

The New Jersey Economic Development Authority (“EDA” or “Authority”) is adopting new rules to implement the requirements of the InvestNJ Business Grant Program Act, P.L. 2008, c. 112 and Main Street Business Assistance Program, P.L. 2008, c. ___.

Both laws are part of a package of legislative initiatives intended to address the fiscal challenges facing the State as a result of the current national economic crisis. The package is derived from Governor Corzine’s State Investment For Short-Term Solutions agenda developed as part of the New Jersey Economic Assistance and Recovery Plan previously presented to the Legislature in Joint Session.

P.L. 2008, c. 112 authorizes a total of \$120 million in capital investment and job creation grants, subject to the approval of the Director of the Division of Budget and Accounting in the Department of Treasury, to qualifying businesses for a specified period through a new InvestNJ Business Grant Program established in EDA.

The investment grant component is intended to encourage capital investments through the award of grants of seven percent of the qualifying capital investment of at least \$5,000 made by a business in New Jersey after the effective date of P.L. 2008, c. 112 but prior to January 1, 2011.

Under the InvestNJ Program, qualified businesses that apply for capital investment grants shall have operated continuously for at least the prior two years and must employ at least 5 full-time employees. Up to \$70 million is available for capital investment grants, not to exceed \$1

million per grantee, to fund expenses for the direct use and operation of a business including site preparation, construction, renovation and improvement and obtaining fixtures, machinery and equipment and under certain conditions, site remediation expenses. Of the \$70 million for capital investment grants, not more than \$20 million will be allocated to grants for obtaining and installing fixtures, equipment and machinery in other than newly constructed, renovated or improved buildings, structures or facilities. The calculation of eligible expenses shall exclude those incurred at a site for which a business is receiving a Business Employment Incentive Program grant, assistance from the Business Retention and Relocation Assistance Grant Program or an Urban Transit Hub Tax Credit; and, shall exclude certain expenses exempted from Sales and Use Taxes as set forth in N.J.A.C. 19:31-5.6(a). In applying for a capital investment grant, applicants shall certify that they have not received a construction permit relating to the phase of the project that includes the capital investment or purchased the equipment until after the effective date of P.L. 2008, c. 112.

The job creation grant component will provide an incentive to similarly qualified businesses that have operated continuously in this State for at least two years and create full-time jobs that provide health benefit coverage and that are retained for at least one year. Up to \$50 million is available for job creation grants of \$3,000, not to exceed \$500,000 per grantee, for each eligible position created after December 1, 2008 and before January 1, 2011 by qualified businesses that experience a net increase in employment of eligible positions in this State during the same 12 consecutive months. The calculation of eligible positions shall exclude those used in the calculation of a Business Employment Incentive Program grant, assistance from the Business Retention and Relocation Assistance Grant Program or an Urban Transit Hub Tax Credit, as applicable.

P.L. 2008, c. ___ establishes the Main Street Business Assistance Program and appropriates \$50 million to the Economic Recovery Fund in EDA for financial support to commercial banks to assist in offering loans and guarantees to small and mid-size businesses and not-for-profit corporations.

Under the Main Street Program, funding will be deployed on an expedited basis for a period of two years from the effective date of P.L. 2008, c. ___ to assist eligible businesses through new EDA loan participation and guarantee and line of credit guarantee offerings.

The Main Street Program, in addition to assistance provided through loan participations and loan guarantees, will make available guarantees of bank lines of credit with certain lending institutions, with which the EDA has existing relationships. Eligible businesses shall be those which have operated continuously for at least the prior two years and are advancing a project which maintains jobs; creates or maintains tax ratables; is located in an economically distressed area; or, represents an important economic sector of the State. The Authority will require eligible applicants to comply with regular EDA application procedures as set forth at N.J.A.C. 19:31-2.3 and the EDA will utilize its' standard underwriting criteria for review of all requests for assistance as set forth at N.J.A.C. 19:31-2.4. Finally, the proposed new rules address the terms of financial assistance and application of the Authority's affirmative action and prevailing wage requirements.

Further information about the InvestNJ and Main Street programs, including applications and process and disbursement guidelines, shall be found on the EDA's website at www.njeda.com.

As the Authority has provided a 60-day comment period in this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The new rules will have a positive social impact by providing immediate economic stimulus intended to support community investment and growth of the State's economy during the current economic crisis.

Economic Impact

The new rules implementing the InvestNJ Grant Program will provide \$120 million to stimulate capital investment and job creation in New Jersey. The Department of Treasury will appropriate funds on an annual basis to fulfill the obligations of the program, subject to funding availability. It is anticipated that \$70 million will be available to encourage capital investments by businesses through the award of grants to reimburse seven percent of qualifying capital investments made over a defined period; and, an additional \$50 million will be available for the award of \$3,000 grants to qualified businesses for each full-time eligible position created and retained for at least one year. Based on the seven percent grant calculation, the capital investment component may generate \$1 billion of investment in the State during the life of the program.

The new rules implementing the Main Street Program will enable EDA to utilize \$50 million in State appropriations to provide banks with additional security for their commercial customer base, encouraging greater lender activity to businesses. The EDA estimates that the \$50 million fund will leverage upwards of \$300 million in increased lending activity throughout the State.

Federal Standards Statement

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

Jobs Impact

The new rules will result in existing private sector jobs being retained and new full-time jobs being created, particularly through InvestNJ, which will provide a total of up to \$500,000 in total job creation benefits per participating company. If the program reaches capacity, the EDA estimates it has the potential of supporting the creation of over 16,600 new jobs in the State.

Agriculture Industry Impact

The new rules, through access to funds supporting capital investment and job creation, may have a positive impact on the agriculture industry of the State of New Jersey.

Regulatory Flexibility Statement

The proposed new rules do not impose reporting, recordkeeping, or other compliance requirements on small business, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required. In fact, the proposed new rules are intended to confer a substantial financial benefit upon qualifying small businesses, among others, in order to help them cope with the current economic crisis.

Smart Growth Impact

The new rules may impact the achievement of smart growth and implementation of the State Development and Redevelopment Plan if additional funding is afforded to projects in areas designated for growth, particularly under the capital investment component of InvestNJ and the Main Street Program, which provides funding for capital investment including new construction.

Housing Affordability Impact

The new rules will not impact the amount or cost of housing units, including multi-family rental housing and for-sale housing, in the State.

Smart Growth Development Impact

The new rules will not impact the number of housing units or result in any increase or decrease in the average cost of housing in Planning Area 1 of the State Development and Redevelopment Plan.

Full text of the proposed new rules follows:

SUBCHAPTER 5. INVESTNJ BUSINESS GRANT PROGRAM

19:31-5.1 Applicability and scope

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

19:31-5.2 Definitions

“Authority” means the New Jersey Economic Development Authority.

“Business” means any entity including, but not limited to a corporation, an S corporation, limited liability corporation, partnership, limited liability partnership, and sole proprietorship, and shall include all entities related by common ownership or control.

“Capital investment” means expenses of at least \$5,000 incurred for the direct use and operation of a business for (1) the site preparation and construction, renovation, improvement, equipping of, or obtaining and installing fixtures and machinery, apparatus or equipment in, a newly constructed, renovated or improved building, structure, facility, or improvement to real property; and (2) obtaining and installing fixtures and machinery, apparatus or equipment in a building, structure, or facility. Provided however, that “capital investment” shall not include soft costs such as financing and design, furniture or decorative items such as artwork or plants, or office equipment if the office equipment is property with a recovery period of less than five years. The recovery period of any property, for purposes of this section, shall be determined as of the date such property is first placed in service or use in this State by the business, determined in accordance with section 168 of the federal Internal Revenue Code of 1986 (26 U.S.C. s. 168). “Capital investment” shall also include remediation of a business facility site, but only to the extent the remediation has not received financial assistance from another federal, State or local government funding source. If a construction permit was received prior to the effective date of

P.L. 2008, c. 112 relating to the phase of a project that will include a capital investment, such capital investment shall not be included in the this definition. A capital investment that was ordered prior to the effective date of P.L. 2008, c.112 also shall not be included in this definition.

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

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

19:31-5.3 Grant components and amounts

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

1. The value of the grant shall be 7 percent of the capital investment provided that no grantee shall receive more than \$1,000,000; and

2. The sum of investment grants awarded shall not exceed \$70,000,000, of which not more than \$20,000,000 shall be allocated for capital investment grants described under paragraph (2) of "capital investment" as defined in N.J.A.C. 19:31-5.2.

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

1. The value of the grant shall be \$3,000 to qualified businesses for each eligible position created, provided that no grantee shall receive more than \$500,000; and

2. The sum of employment grants awarded shall not exceed \$50,000,000.

19:31-5.4 Eligibility criteria

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

1. has operated continuously for at least the two years preceding the filing of an application for a grant;

2. employs at least 5 full-time employees; and

3. makes a capital investment in New Jersey after the effective date of P.L. 2008, c. 112 but prior to January 1, 2011.

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

1. has operated continuously in this State for at least the two years preceding the filing of an application for a grant;

2. employs at least 5 full-time employees;

3. adds an eligible position created in New Jersey after December 1, 2008 and before January 1, 2011, for a period of at least 12 consecutive months in this State; and

4. the applicant has experienced a net increase in employment of eligible positions in this State during the same 12 consecutive months.

19:31-5.5 Application requirements

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

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

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

19:31-5.6 Restrictions

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

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

N.J.A.C. 19:31-5.7 Affirmative Action and Prevailing Wage

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

19:31-5.8 Forfeiture and repayment of grants

A grantee of the investment grant that fails to comply with a grant agreement, which shall include a requirement that the capital investment be maintained in New Jersey for not less than a

year, shall repay any grant amount received and, if so determined by the Chief Executive Officer, shall pay a penalty not in excess of ten percent of the grant amount.

SUBCHAPTER 6. MAIN STREET BUSINESS ASSISTANCE PROGRAM

19:31-6.1 Applicability and scope

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

19:31-6.2 Terms of financial assistance

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

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

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

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

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

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

(d) For purposes of (a)1 and 2 above, the term shall not exceed 5 years; and, for (a)3 above, the term shall be up to 2 years based on the term of bank line of credit.

19:31-6.3 Eligibility criteria

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

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

2. a project which may i.) maintain employment; ii.) create or maintain tax ratables; iii.) be located in an economically distressed area; or, v.) represent an important economic sector of the State.

19:31-6.4 Application requirements

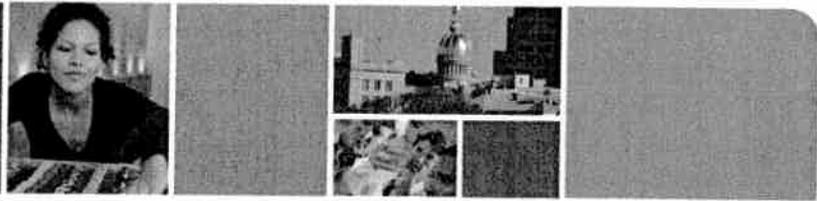
(a) A business seeking to participate in the loan participation and guarantee and line of credit products shall comply with the Authority application procedures as set forth in N.J.A.C. 19:31-2.3; and

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

19:31-6.5 Affirmative action and prevailing wage

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

The company we keep,
keeps getting better.



InvestNJ: Frequently Asked Questions

1) Q: *What is the InvestNJ program?*

A: The InvestNJ program is a two-year, two-part program designed to encourage companies to create jobs and make investments in their businesses during these difficult economic times. The first part of the program provides a \$3,000 grant per new employee to any New Jersey business that creates a new full-time job and maintains that job for one year. The second part provides a grant of up to 7% for capital investments.

2) Q: *How much money is available through the InvestNJ program?*

A: InvestNJ is a \$120 million program.

Of the \$120 million, \$50 million has been allocated for job creation grants. In the job creation program, companies can receive a \$3,000 grant for each eligible position created up to a maximum grant amount of \$500,000.

The remaining \$70 million has been allocated to capital investment grants. Within the \$70 million, \$50 million will be used for expenses for the site preparation and construction, renovation, improvement, equipping of, or obtaining and installing fixtures and machinery, apparatus or equipment in, a newly constructed, renovated or improved building, structure, facility, or improvement to real property. The remaining \$20 million will be allocated for obtaining and installing fixtures and machinery, apparatus or equipment in a building, structure, or facility.

Grants under this program are a maximum of 7% of eligible capital investment with a cap of \$1 million per business.

3) Q: *Who can apply for a grant?*

A: To qualify for the Job Creation Grant, your company must meet the following criteria:

- a) Have been operating continuously in New Jersey for at least the prior two years
- b) Currently employ at least 5 full-time employees
- c) Create an eligible position and maintain a net increase in jobs over a 12-month period.

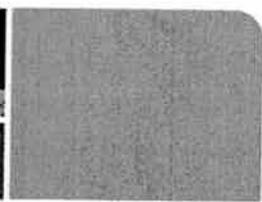
As an example, a company that currently has 5 employees which hires an additional full time employee will receive a grant of \$3,000 if their employment for the subsequent 12-month period maintains 6 employees (original 5 plus the new one created).



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

609-777-4898 www.njeda.com

The company we keep,
keeps getting better.



Positions benefiting from the Business Employment Incentive Program (BEIP), Business Retention and Relocation Assistance Grant (BRRAG) Program or Urban Transit Hub Tax Credit (UTHTC) are not eligible for grants under the program.

To qualify for the Capital Investment program a company must meet the following criteria:

- a) Have operated continuously for at least the prior two years
- b) Employ at least 5 full-time employees
- c) Make a capital investment in New Jersey after December 9, 2008, but before January 1, 2011.
- d) Will maintain the capital investment in New Jersey for one year.

Companies currently benefiting from state assistance through the Business Employment Incentive Program (BEIP), Business Retention and Relocation Assistance Grant (BRRAG) Program, Urban Transit Hub Tax Credit (UTHTC) or any retail sales purchase exemption, including, but not limited to, Urban Enterprise Zone, manufacturing, and R&D, at the site of the capital investment are not eligible for grants under the program.

4) Q: ***How many employees do I need to have to qualify for a grant?***

A: A company must have at least five (5) full time employees in order to qualify for either a job creation grant or capital investment reimbursement

5) Q: ***What kinds of new jobs qualify as “eligible positions” for a job creation grant?***

A: An eligible position means a full-time position, filled by an individual whose wages are subject to withholdings as provided in the “New Jersey Gross Income Tax Act.” Eligible positions are further defined as those covered under the requesting company’s group health plan. Eligible positions will be those created after December 1, 2008 and before January 1, 2011, for a period of 12 consecutive months. Independent contractors and consultants are not considered eligible positions.

6) Q: ***Do I need to provide health benefits to my employees in order to qualify for a job creation grant?***

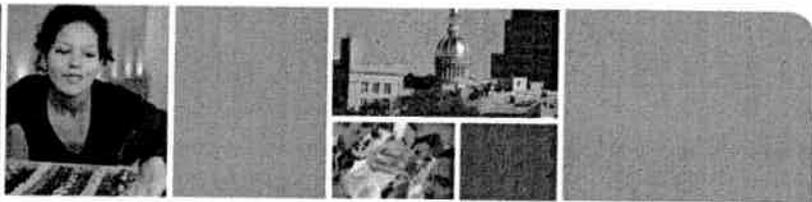
A: Yes. If you are applying for a job creation grant, health care must be available to the new employee under a group plan.



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

609-777-4898 www.njeda.com

The company we keep,
keeps getting better.



7) Q: *What is an eligible “capital investment?”*

A: A capital investment means expenses of at least \$5,000 incurred for the direct use and operation of a business. This includes costs for site preparation and construction, renovation, improvement, equipping of, or obtaining and installing fixtures and machinery, apparatus or equipment. Capital investments do not include soft costs such as financing or design, furniture or decorative items such as artwork or plants. Capital investments also do not include any equipment with a useful life of less than five (5) years, as defined by the Internal Revenue Code (IRC).

Please note: Construction projects will not be considered eligible if the construction permit for the phase of the project that will include the capital investments was received prior to the date of the Act, December 9, 2008.

Equipment purchases will not be considered eligible if the equipment was ordered prior to the date of the Act, December 9, 2008.

8) Q: *What is the process for applying for a grant?*

A: The InvestNJ applications will be available on the EDA’s website, <http://www.njeda.com>, in early January 2009. You should apply when you are ready to begin hiring for new positions or have plans to make a capital investment. You will be asked to provide your company’s name and address, year established, the number of existing full time employees, and contact information. You will receive email notification that your application was received.

If you are applying for a job creation grant you will also be asked to provide the estimated number of eligible positions you will be creating between December 1, 2008 and January 1, 2011. Please see “*When will I receive my grant?*” for questions on disbursements.

If you are applying for a capital investment reimbursement, you will also be asked to provide a brief description of the planned capital investment and a line item budget for each site. This budget should include all eligible costs (see *What is a “capital investment?”* above) and calculate 7% to estimate the reimbursement amount you may receive. Applicants must certify that they have not received a construction permit or ordered equipment until after the date of the Act, December 9, 2008. Evidence of fulfillment of Prevailing Wage and Affirmative Action requirements will be required, if applicable.

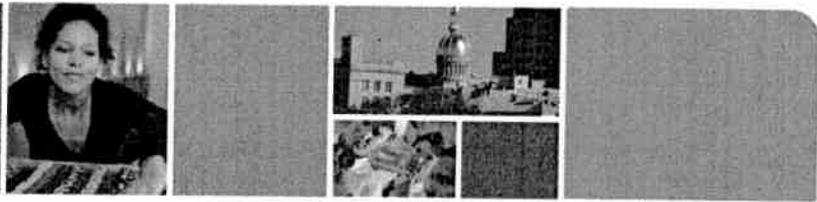
Please be aware that receipt of an application by the EDA does not ensure that a Job Creation or Capital Investment Grant will be awarded. Grant awards will be contingent upon verification of applicant eligibility as well as the appropriation and availability of funds.



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

609-777-4898 www.njeda.com

The company we keep,
keeps getting better.



9) Q: *When will I receive my grant?*

A: For job creation grants, disbursements will be made after eligible positions have been sustained for a 12-month period with verification provided through the Department of Labor and Workforce Development (LWD). To begin the verification and disbursement process, companies will be required to notify the EDA that the new eligible positions have been maintained during the entire the 12-month period along with evidence that these newly created positions have been covered under a group health plan. You will also be asked to complete a tax clearance certificate and a debarment questionnaire identifying any pending legal matters. Once these items are received and reviewed by the EDA and LWD has verified the growth in net employment, a grant agreement will be sent to you. Once the grant agreement is signed by both EDA and the company, a disbursement check will be mailed to you.

Please be advised that employment verification is reviewed on a quarterly basis. Therefore, employment verification requested after a quarter has commenced, will not be reviewed until the beginning of the next quarter See example below:

Company files application for InvestNJ: December 15th, 2009

Company begins creating new eligible jobs:
December 17th, 2009 – December 17, 2010

Company notifies EDA with copy to LWD that new eligible jobs have been sustained for 1 year and health benefits have been provided to those new employees:
December 18th, 2010

LWD Review begins:
January 1, 2011 (commencement of new quarter)

(Please be aware that the EDA is in the process of finalizing requirements for the verification of employment creation. These requirements will be posted to the EDA's website.)

For capital investment grants, disbursements will be made after invoices are sent to the EDA for review and approval. Together with your invoices, the requesting company needs to provide the following: A copy of your original application, a completed tax clearance certificate application and a completed debarment questionnaire, identifying any pending legal matters.



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

609-777-4898 www.njeda.com



Once these items are received and reviewed by the EDA, a grant agreement, which will include the requirement to maintain the capital investment in New Jersey for one year or be subject to partial repayment, will be sent to the company via email. Once a grant agreement is signed, companies should request disbursements either: a) when the project is complete and all invoices for materials are received, or; b) in no more than two intervals.

10) Q: *Are there any additional requirements?*

A: All EDA financings are subject to prevailing wage and affirmative action. If you contemplate that the acquisition of capital investments or hiring of employees under the InvestNJ program will involve entering into a construction contract, prevailing wage and affirmative action will apply to that construction contract.

The Affirmative Action and Prevailing Wage requirements include filing of certified payroll records as well as Monthly Project Workforce Reports (Form AA202) with the EDA to ensure compliance with affirmative action goals.

11) Q: *What documentation will I have to provide the EDA in order to receive funding under InvestNJ?*

A: For a job creation grant:

1. Application including number of existing employees
2. Request for disbursement of grant (after 12 months of sustained job creation):
 - i. Number of eligible employees
 - ii. Evidence of health insurance coverage for the eligible employees
 - iii. Completed Tax Clearance Certificate Application
 - iv. Completed Debarment Questionnaire
 - v. Evidence of fulfillment of Prevailing Wage and Affirmative Action requirements, if applicable

Please note that the EDA may perform random site visits to verify employment.

B: For a capital investment grants:

1. Application including narrative description of capital investment project and line item list of project costs by project site
2. 7% calculation of reimbursement amount based on eligible Capital Investments costs
3. Evidence of payment, including paid invoices
4. Completed Tax Clearance Certificate Application
5. Completed Debarment Questionnaire



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

609-777-4898 www.njeda.com



6. Evidence of fulfillment of Prevailing Wage and Affirmative Action requirements, if applicable

Please be advised that for the Job Creation Grant and the Capital Investment Grant, the EDA may request additional information prior to making any disbursements.

MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

RE: New Program – New Jersey Main Street Business Assistance Program

DATE: December 19, 2008

Request:

The Members are requested to approve the implementation of the \$50 million Main Street Business Assistance Program. This program has been designed in alignment with Governor Corzine’s New Jersey Economic Assistance and Recovery Plan, in accordance with the Main Street Business Assistance Act that was enacted December 16, 2008. The Act directs the Authority to provide necessary loan and guarantee products in support of small and mid-size business and not for profit corporations that have the greatest potential for stimulating economic growth during the current challenging economic climate. This initiative has been reviewed by the EDA Policy Committee at the meeting of November 6, 2008. The specific program recommendations are outlined below and in the attached exhibit.

Background:

Funded by a \$50 million State Appropriation to the Economic Recovery Fund administered by the EDA, the New Jersey Main Street Business Assistance Program is an immediate economic stimulus program intended to support community investment and growth of the State’s economy during the current economic crisis. Targeted to small and mid-size New Jersey businesses and not-for-profit corporations, this program is a core component of Governor Corzine’s New Jersey Economic Assistance and Recovery Plan.

Developed in partnership with the Division of Banking and Insurance, the Treasury’s Division of Investments, and the State’s banking community, and to be administered by the EDA, this new program will help New Jersey businesses by providing banks in the State with additional security in the form of financial support for their commercial customer base, encouraging greater lender activity to businesses and promoting economic development across the state. The law allows this program to be available for the next 24 months from date of enactment, during which time businesses may apply for assistance.

The Main Street Program will consist of two distinct products, namely, a Bank Term Loan Participation and/or Guarantee Product (offered by EDA through participating banks) and a Line of Credit Guarantee Product (offered only to our Preferred Lender Partners). In line with Governor Corzine's initiative to expedite assistance to the marketplace, Delegated Authority will be made available for those applicants that meet all defined programmatic criteria. Requests that do not fit all criteria may be submitted separately to the Authority Board for their consideration and approval.

Preliminary banking partner outreach has already indicated a strong level of support for the Main Street program, with a preliminary aggregate commitment of \$60 million in customer financing in concert with this program.

The program specifics identified in the sections below have been reviewed by the EDA Policy Committee, the New Jersey Department of Banking as well as representation from our Preferred Lender Partners and other participating New Jersey banks.

The EDA will closely monitor the Main Street program, and will provide semi-annual progress reports to our Board on program performance.

Recommendations:

Recommendation 1: Temporarily Add Bank Participation Loan and Guarantee Product to EDA Portfolio as Part of The Main Street Business Assistance Program

Program Description:

Description:

The New Jersey Main Street Business Assistance Program has been designed to complement the \$500 million in State-managed cash funds and pension funds that will be invested in New Jersey banks to loosen the tightened credit markets, provide capital to qualified businesses, and encourage lending. Specific to Main Street, the EDA will receive a \$50 million appropriation from the State to the Economic Recovery Fund to support expedited Loan Participations and Guarantees and Line of Credit guarantees as well.

The Participation Loan and Guarantee product will enable EDA participations with partner banks in fixed asset, working capital, and refinancings of existing customer debt.

Product Family: Loan/Guarantee
Sub product: Bank Participation Loan/Guarantee of Bank Loan

Approval Authority: Delegated Authority to CEO or SVP of Operations

- Any application that does not fit the defined criteria may be submitted to the Authority Board for their consideration

Funding Source: State Appropriation

Eligibility:

- Originating bank must be an approved lender with the EDA
- Projects located in New Jersey with businesses being in business at least 2 years
- In good standing with EDA, Federal/State agencies, and requesting bank
- No bankruptcy within past seven years or criminal history for owners, business, or guarantors
- Minimum credit score of 680 for at least one of the guarantors
- Business should maintain jobs in New Jersey

Terms/Conditions:

- Interest Rate on EDA loan participation: 5% fixed rate
- Maximum term of 5 years; amortization may be longer based on purpose of loan
- Personal guarantees required for any person or entity with 10% or more ownership in Applicant/Operating Company
- 1.1X Debt Service Coverage Ratio (DSCR)
 - Based on two most current years of financial statements
 - Global debt service can be used
 - DSCR defined as Net Income plus Interest, Depreciation & Amortization minus owner distributions (plus add back in rent if rent will be replaced by loan payment) divided by principal and interest payments on existing debt plus new debt
- Collateral required for all loan participations and guarantees. Collateral can be in the form of fixed assets (real estate, equipment), liquid collateral, a blanket lien on business or personal assets. Loan to value (LTV) shall not exceed 100%. EDA collateral position shall be subordinate to the bank for participations, and pari passu with the bank for loan guarantee
- EDA completes underwriting within 1 week of receipt of complete application package
 - Any application that does not fit the defined criteria may be submitted to the Authority Board for their consideration

Uses:

- Fixed Assets (real estate or equipment)
- Working Capital
- Refinancings

Maximum/Limits:

Fixed Asset Loans:

- Maximum EDA participation of 25% of bank loan not to exceed \$1,000,000
- Maximum EDA guarantee of 50% not to exceed \$2,000,000

Working Capital Loans:

- Maximum EDA participation of 25% of bank loan not to exceed \$750,000
- Maximum EDA guarantee of 50% not to exceed \$1,500,000

Refinancings:

- Maximum limits apply as above for fixed asset or working capital debt refinancing

Aggregate EDA exposure under Main Street Business Assistance Program (combined participation and all guarantees)

- Cannot exceed the lesser of 50% of the bank loan amount or \$2,000,000

EDA Fees:

- Standard EDA financing fees in effect at time of application

Required Documentation:

- EDA Application
- Tax Clearance Application
- Bank Approval Document /Underwriting
- Main Street Business Assistance Program Checklist with required information
- Participation and/or Guarantee agreement (provided by EDA)

Reporting Requirements:

- Annual submission of business and personal financial information
- Bank will notify EDA within 10 business days of all monetary and technical defaults that adversely impact the Borrower's good standing status with the bank

Recommendation 2: Temporarily Add Line of Credit Guarantee to EDA Portfolio as Part of The Main Street Business Assistance Program

Program Description:

Description:

The Line of Credit Guarantee is a component of the New Jersey Main Street Business Assistance Program **only** available to our Preferred Lender Partners. The \$50 million of the State appropriation that supports term loan participations and guarantees will also support Line of Credit guarantees as well.

Product Family: Guarantee

Approval Authority: Delegated Authority to CEO or SVP of Operations

- Any application that does not fit the defined criteria may be submitted to the Authority Board for their consideration

Funding Source: State Appropriation

Eligibility:

- Lines of Credit available through EDA Preferred Lenders **only**
- Projects located in New Jersey with businesses being in business at least 2 years
- In good standing with EDA, Federal/State agencies, and requesting bank
- No bankruptcy within past seven years or criminal history for owners, business, or guarantors
- Minimum credit score of 680 for at least one of the guarantors

- Business should maintain jobs in New Jersey

Uses:

- Fixed Assets
- Working Capital

Terms/Conditions:

- Guarantee up to 2 years based on the term of bank line
- Interest Rate set by Lending Institution
- Guarantees secured by business assets and/or personal assets
- Collateral LTV shall not exceed 100%
- Personal guarantees required for any person or entity with 10% or more ownership in Applicant/Operating Company
- 1.1X Debt Service Coverage Ratio (DSCR)
 - Based on two most current years of financial statements
 - Global debt service can be used
 - DSCR defined as Net Income plus Interest, Depreciation & Amortization minus owner distributions (plus add back for rent if rent will be replaced by loan payment divided by principal and interest payments on existing debt plus new debt and assumes full utilization of line of credit)
- Preferred Lender Partner provides underwriting
- Program will follow same guidelines as EDA term loan guarantee program

Maximum/Limits:

Guarantee:

- Up to 50% of the line of credit amount - maximum of \$250,000

Aggregate EDA exposure under Main Street Business Assistance Program (combined participation and all guarantees):

- Cannot exceed lesser of 50% of the bank loan amount or \$2,000,000

EDA Fees:

- Standard EDA financing fees in effect at time of application

Required Documentation:

- Preferred Lender Application
- Preferred Lender Application Checklist
- Tax Clearance Application
- Bank Approval Document/Underwriting
- Guarantee agreement (provided by EDA)

Reporting Requirements:

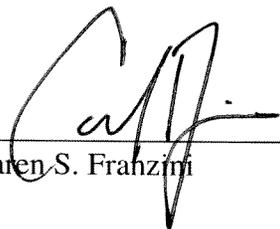
- Bank will notify EDA within 10 business days of all monetary and technical defaults that adversely impact the Borrower's good standing status with the bank

- Bank will provide annual financial statements (or financial spread sheets for the business) within 30 days of the end of the reporting period for all lines of credit having maturities that exceed one year

Proposed Rule Amendments:

The proposed Administrative Rules to be implemented through Special Adoption are provided in Exhibit 1.

The Members are requested to authorize staff to submit to the program rules for promulgation and adoption in the New Jersey Register, subject to final review and approval by the Office of the Attorney General, and the Office of Administrative Law (OAL). Pursuant to the authority provided for in Special Adoption, the rules will be effective upon filing of the notice of adoption with OAL, and will remain in effect thereafter.



Caren S. Franzini

Prepared By: Barbara Pierce

EXHIBIT I: PROPOSED RULE AMENDMENTS

D R A F T

SPECIAL ADOPTION

12.19.08

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

InvestNJ Business Grant Program; Main Street Business Assistance Program

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

Special New Rules Adopted and Concurrent Proposed New Rules Authorized: December ___, 2008 by Caren S. Franzini, Chief Executive Officer, New Jersey Economic Development Authority.

Filed: December ___, 2008 as _____.

Authority: P.L. 2008, c. 112 and P.L. 2008, c. ___.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Agency Control Number:

Concurrent Proposal Number: PRN 2008-

Effective Date: December ___, 2008.

Expiration Date: December ___, 2009.

Submit written comments by _____, 2009 to:

Maureen Hassett, SVP Governance & Communications
New Jersey Economic Development Authority
PO Box 990
Trenton, NJ 08625-0990

These new rules were adopted in accordance with P.L. 2008, c. ___ and P.L. 2008, c. ___ and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-6.4).

Concurrently, the provisions of these new rules are being proposed for readoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted new rules will become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-6.4(f) if filed on or before the 12 months expiration date, in accordance with P.L. 2008, c. 112 and P.L. 2008, c. ___.

The agency special adoption and concurrent proposal follows:

Summary

The New Jersey Economic Development Authority (“EDA” or “Authority”) is adopting new rules to implement the requirements of the InvestNJ Business Grant Program Act, P.L. 2008, c. 112 and Main Street Business Assistance Program, P.L. 2008, c. ___.

Both laws are part of a package of legislative initiatives intended to address the fiscal challenges facing the State as a result of the current national economic crisis. The package is derived from Governor Corzine’s State Investment For Short-Term Solutions agenda developed as part of the New Jersey Economic Assistance and Recovery Plan previously presented to the Legislature in Joint Session.

P.L. 2008, c. 112 authorizes a total of \$120 million in capital investment and job creation grants, subject to the approval of the Director of the Division of Budget and Accounting in the Department of Treasury, to qualifying businesses for a specified period through a new InvestNJ Business Grant Program established in EDA.

The investment grant component is intended to encourage capital investments through the award of grants of seven percent of the qualifying capital investment of at least \$5,000 made by a business in New Jersey after the effective date of P.L. 2008, c. 112 but prior to January 1, 2011.

Under the InvestNJ Program, qualified businesses that apply for capital investment grants shall have operated continuously for at least the prior two years and must employ at least 5 full-time employees. Up to \$70 million is available for capital investment grants, not to exceed \$1

million per grantee, to fund expenses for the direct use and operation of a business including site preparation, construction, renovation and improvement and obtaining fixtures, machinery and equipment and under certain conditions, site remediation expenses. Of the \$70 million for capital investment grants, not more than \$20 million will be allocated to grants for obtaining and installing fixtures, equipment and machinery in other than newly constructed, renovated or improved buildings, structures or facilities. The calculation of eligible expenses shall exclude those incurred at a site for which a business is receiving a Business Employment Incentive Program grant, assistance from the Business Retention and Relocation Assistance Grant Program or an Urban Transit Hub Tax Credit; and, shall exclude certain expenses exempted from Sales and Use Taxes as set forth in N.J.A.C. 19:31-5.6(a). In applying for a capital investment grant, applicants shall certify that they have not received a construction permit relating to the phase of the project that includes the capital investment or purchased the equipment until after the effective date of P.L. 2008, c. 112.

The job creation grant component will provide an incentive to similarly qualified businesses that have operated continuously in this State for at least two years and create full-time jobs that provide health benefit coverage and that are retained for at least one year. Up to \$50 million is available for job creation grants of \$3,000, not to exceed \$500,000 per grantee, for each eligible position created after December 1, 2008 and before January 1, 2011 by qualified businesses that experience a net increase in employment of eligible positions in this State during the same 12 consecutive months. The calculation of eligible positions shall exclude those used in the calculation of a Business Employment Incentive Program grant, assistance from the Business Retention and Relocation Assistance Grant Program or an Urban Transit Hub Tax Credit, as applicable.

P.L. 2008, c. ___ establishes the Main Street Business Assistance Program and appropriates \$50 million to the Economic Recovery Fund in EDA for financial support to commercial banks to assist in offering loans and guarantees to small and mid-size businesses and not-for-profit corporations.

Under the Main Street Program, funding will be deployed on an expedited basis for a period of two years from the effective date of P.L. 2008, c. ___ to assist eligible businesses through new EDA loan participation and guarantee and line of credit guarantee offerings.

The Main Street Program, in addition to assistance provided through loan participations and loan guarantees, will make available guarantees of bank lines of credit with certain lending institutions, with which the EDA has existing relationships. Eligible businesses shall be those which have operated continuously for at least the prior two years and are advancing a project which maintains jobs; creates or maintains tax ratables; is located in an economically distressed area; or, represents an important economic sector of the State. The Authority will require eligible applicants to comply with regular EDA application procedures as set forth at N.J.A.C. 19:31-2.3 and the EDA will utilize its' standard underwriting criteria for review of all requests for assistance as set forth at N.J.A.C. 19:31-2.4. Finally, the proposed new rules address the terms of financial assistance and application of the Authority's affirmative action and prevailing wage requirements.

Further information about the InvestNJ and Main Street programs, including applications and process and disbursement guidelines, shall be found on the EDA's website at www.njeda.com.

As the Authority has provided a 60-day comment period in this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The new rules will have a positive social impact by providing immediate economic stimulus intended to support community investment and growth of the State's economy during the current economic crisis.

Economic Impact

The new rules implementing the InvestNJ Grant Program will provide \$120 million to stimulate capital investment and job creation in New Jersey. The Department of Treasury will appropriate funds on an annual basis to fulfill the obligations of the program, subject to funding availability. It is anticipated that \$70 million will be available to encourage capital investments by businesses through the award of grants to reimburse seven percent of qualifying capital investments made over a defined period; and, an additional \$50 million will be available for the award of \$3,000 grants to qualified businesses for each full-time eligible position created and retained for at least one year. Based on the seven percent grant calculation, the capital investment component may generate \$1 billion of investment in the State during the life of the program.

The new rules implementing the Main Street Program will enable EDA to utilize \$50 million in State appropriations to provide banks with additional security for their commercial customer base, encouraging greater lender activity to businesses. The EDA estimates that the \$50 million fund will leverage upwards of \$300 million in increased lending activity throughout the State.

Federal Standards Statement

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

Jobs Impact

The new rules will result in existing private sector jobs being retained and new full-time jobs being created, particularly through InvestNJ, which will provide a total of up to \$500,000 in total job creation benefits per participating company. If the program reaches capacity, the EDA estimates it has the potential of supporting the creation of over 16,600 new jobs in the State.

Agriculture Industry Impact

The new rules, through access to funds supporting capital investment and job creation, may have a positive impact on the agriculture industry of the State of New Jersey.

Regulatory Flexibility Statement

The proposed new rules do not impose reporting, recordkeeping, or other compliance requirements on small business, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required. In fact, the proposed new rules are intended to confer a substantial financial benefit upon qualifying small businesses, among others, in order to help them cope with the current economic crisis.

Smart Growth Impact

The new rules may impact the achievement of smart growth and implementation of the State Development and Redevelopment Plan if additional funding is afforded to projects in areas designated for growth, particularly under the capital investment component of InvestNJ and the Main Street Program, which provides funding for capital investment including new construction.

Housing Affordability Impact

The new rules will not impact the amount or cost of housing units, including multi-family rental housing and for-sale housing, in the State.

Smart Growth Development Impact

The new rules will not impact the number of housing units or result in any increase or decrease in the average cost of housing in Planning Area 1 of the State Development and Redevelopment Plan.

Full text of the proposed new rules follows:

SUBCHAPTER 5. INVESTNJ BUSINESS GRANT PROGRAM

19:31-5.1 Applicability and scope

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

19:31-5.2 Definitions

"Authority" means the New Jersey Economic Development Authority.

"Business" means any entity including, but not limited to a corporation, an S corporation, limited liability corporation, partnership, limited liability partnership, and sole proprietorship, and shall include all entities related by common ownership or control.

"Capital investment" means expenses of at least \$5,000 incurred for the direct use and operation of a business for (1) the site preparation and construction, renovation, improvement, equipping of, or obtaining and installing fixtures and machinery, apparatus or equipment in, a newly constructed, renovated or improved building, structure, facility, or improvement to real property; and (2) obtaining and installing fixtures and machinery, apparatus or equipment in a building, structure, or facility. Provided however, that "capital investment" shall not include soft costs such as financing and design, furniture or decorative items such as artwork or plants, or office equipment if the office equipment is property with a recovery period of less than five years. The recovery period of any property, for purposes of this section, shall be determined as of the date such property is first placed in service or use in this State by the business, determined in accordance with section 168 of the federal Internal Revenue Code of 1986 (26 U.S.C. s. 168). "Capital investment" shall also include remediation of a business facility site, but only to the extent the remediation has not received financial assistance from another federal, State or local government funding source. If a construction permit was received prior to the effective date of

P.L. 2008, c. 112 relating to the phase of a project that will include a capital investment, such capital investment shall not be included in the this definition. A capital investment that was ordered prior to the effective date of P.L. 2008, c.112 also shall not be included in this definition.

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

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

19:31-5.3 Grant components and amounts

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

1. The value of the grant shall be 7 percent of the capital investment provided that no grantee shall receive more than \$1,000,000; and

2. The sum of investment grants awarded shall not exceed \$70,000,000, of which not more than \$20,000,000 shall be allocated for capital investment grants described under paragraph (2) of "capital investment" as defined in N.J.A.C. 19:31-5.2.

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

1. The value of the grant shall be \$3,000 to qualified businesses for each eligible position created, provided that no grantee shall receive more than \$500,000; and

2. The sum of employment grants awarded shall not exceed \$50,000,000.

19:31-5.4 Eligibility criteria

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

1. has operated continuously for at least the two years preceding the filing of an application for a grant;

2. employs at least 5 full-time employees; and

3. makes a capital investment in New Jersey after the effective date of P.L. 2008, c. 112 but prior to January 1, 2011.

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

1. has operated continuously in this State for at least the two years preceding the filing of an application for a grant;

2. employs at least 5 full-time employees;

3. adds an eligible position created in New Jersey after December 1, 2008 and before January 1, 2011, for a period of at least 12 consecutive months in this State; and

4. the applicant has experienced a net increase in employment of eligible positions in this State during the same 12 consecutive months.

19:31-5.5 Application requirements

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

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

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

19:31-5.6 Restrictions

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

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

N.J.A.C. 19:31-5.7 Affirmative Action and Prevailing Wage

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

19:31-5.8 Forfeiture and repayment of grants

A grantee of the investment grant that fails to comply with a grant agreement, which shall include a requirement that the capital investment be maintained in New Jersey for not less than a

year, shall repay any grant amount received and, if so determined by the Chief Executive Officer, shall pay a penalty not in excess of ten percent of the grant amount.

SUBCHAPTER 6. MAIN STREET BUSINESS ASSISTANCE PROGRAM

19:31-6.1 Applicability and scope

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

19:31-6.2 Terms of financial assistance

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

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

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

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

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

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

(d) For purposes of (a)1 and 2 above, the term shall not exceed 5 years; and, for (a)3 above, the term shall be up to 2 years based on the term of bank line of credit.

19:31-6.3 Eligibility criteria

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

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

2. a project which may i.) maintain employment; ii.) create or maintain tax ratables; iii.) be located in an economically distressed area; or, v.) represent an important economic sector of the State.

19:31-6.4 Application requirements

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

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

19:31-6.5 Affirmative action and prevailing wage

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