

Statutes and Regulations Community Quota Entity Revolving Loan Fund

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DEPARTMENT OF COMMERCE,
COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF INVESTMENTS

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Sec. 16.10.345. Community quota entity revolving loan fund.

Sec. 16.10.350. Administration of fund.

(a) The commissioner shall administer the commercial fishing revolving loan fund.

(b) The commissioner shall annually prepare a report detailing the number and nature of reinstatements authorized by AS 16.10.335(a)(5) and notify the legislature that the report is available.

Sec. 16.10.353. Waiver of confidentiality.

(a) The commissioner may release information about a borrower's loan to any individual when release of the information has been authorized by the borrower.

(b) A person obtaining a loan under AS 16.10.300 — 16.10.370 after June 28, 1991 may, by signing a form prepared for the purpose, designate the names of persons and organizations to whom a copy of the notice required by AS 16.10.335 must be sent.

Sec. 16.10.355. Disposal of property acquired by default or foreclosure.

The department shall dispose of property acquired through default or foreclosure of a loan made under AS 16.10.300 — 16.10.370 or former AS 16.10.650 — 16.10.720. Disposal shall be made in a manner that serves the best interests of the state, and may include the amortization of payments over a period of years, but may not be by lease.

Sec. 16.10.360. Definitions.

In AS 16.10.300 — 16.10.370,

- (1) “commission” means the Alaska Commercial Fisheries Entry Commission;
- (2) “commissioner” means the commissioner of commerce, community, and economic development;
- (3) “debtor” means an individual commercial fisherman who either initially contracts for a loan under AS 16.10.333 — 16.10.337 or assumes a loan as provided in those sections;
- (4) “department” means the Department of Commerce, Community, and Economic Development;
- (5) “quota share” means a transferable license, permit, or right issued by the federal government that conveys a right to engage in a fishery in or off Alaska and to take a specified portion of the annual harvest quota for that fishery.

Sec. 16.10.370. Short title.

AS 16.10.300 — 16.10.370 may be cited as the Commercial Fishing Loan Act.

CHAPTER 80 COMMERCIAL FISHING LOANS

Article

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3 AAC 80.200. Application process.

- (a) To apply for a loan for the purchase of quota shares, the applicant shall file with the department
 - (1) a completed application for a community quota entity loan, on a form provided by the department;
 - (2) a letter of denial from a recognized quota share lender recognized by the department;
 - (3) a copy of the applicant's National Marine Fisheries Service application to be designated as a community quota entity and all attachments;
 - (4) a list of the applicant's key personnel, directors, and officers;
 - (5) the corporate resolution supporting the application;
 - (6) applicant's corporate by-laws;
 - (7) copies of the applicant's federal income tax returns for the preceding three years;
 - (8) a financial statement consisting of a current balance sheet and a profit and loss statement, on a form provided by the department;
 - (9) a statement of projected income and expenses for the following year's operating plan, on a form provided by the department;
 - (10) a copy of the purchase agreement signed by all parties and the down payment receipt or earnest money receipt;
 - (11) authorization to release information or obtain credit information, on a form provided by the department;
 - (12) the application fee required by 3 AAC 80.245(b); and
 - (13) any other information requested by the department needed to process the application.
- (b) The department may process loan requests without the information described in (a) of this section if the department determines that the information is not necessary for making the lending decision.
- (c) To prequalify for a loan for the purchase of quota shares, an applicant shall file with the department

(1) the materials listed in (a) of this section, except the materials listed in (a)(10) and (12) of this section; and

(2) the prequalification application fee required by 3 AAC 80.245(e).

(d) If the department determines an applicant previously submitted a false sworn or unsworn statement on or in support of a loan application, the department may deny any future loan application submitted by the applicant. An applicant who submits a false sworn or unsworn statement on or in support of a loan application is subject to AS 11.56.200 - 11.56.210.

(e) A request for prequalification will be processed in the same manner as a loan request. A prequalification commitment may not exceed 90 days.

Authority: AS 16.10.310

3 AAC 80.205. Examination.

(a) The materials described in 3 AAC 80.200 will be processed and evaluated by a loan officer.

(b) On the basis of the evaluation, the loan officer will either

(1) inactivate the application due to

(A) lack of information required under 3 AAC 80.200; or

(B) the ineligibility of the applicant; or

(2) recommend proposed action on the loan request to the appropriate loan committee; however, the recommendation of a loan officer is not binding on a loan committee.

Authority: AS 16.10.310

3 AAC 80.210. Loan committee.

(a) A loan committee consists of one or more persons appointed by the director to act on a loan request.

(b) A loan committee may approve, deny, or modify a loan request, or may table a loan request subject to obtaining additional information.

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

(1) additional collateral to secure the loan; and

(2) subordination of prior lien holders' rights to the interests of the state.

(d) A loan committee shall consider the applicant's eligibility for a loan, financial and credit record, ability to repay, management plan, program organization, and the adequacy of collateral offered to secure the loan. A loan committee may also consider the recommendations of the loan officer assigned to process the application and any other relevant information.

(e) A loan committee may fix, within the limitations set by AS 16.10.320, the term of a loan and repayment schedule.

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

(g) A material misstatement or omission of fact made by an applicant constitutes grounds for denial of a loan request.

Authority: AS 16.10.310 AS 16.10.320

3 AAC 80.215. Eligibility.

(a) The applicant must be a community quota entity as certified by the National Marine Fisheries Service or its successors.

(b) The community quota entity must be in good standing with both state and federal governments.

Authority: AS 16.10.310

3 AAC 80.220. Financial and credit record.

(a) The department may consider the following factors in evaluating an applicant's financial and credit record:

(1) existing and prior debts;

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

(3) prior loan history with the department;

(4) timeliness in making payments on loans and other debts;

- (5) existence of tax liens;
- (6) judgments and foreclosures;
- (7) financial and credit reputation.

(b) Information establishing unacceptable credit will be more heavily weighed by the department if it has occurred not later than 10 years from the date of application.

Authority: AS 16.10.310

3 AAC 80.225. Ability to repay.

(a) The department may consider the following factors in evaluating an applicant's ability to repay:

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

(b) The department may compare revenue projections contained in an applicant's profit and loss statement with information it acquires through its own efforts or from the National Marine Fisheries Service or its successors, or the performance of other community quota entities in similar circumstances to determine the reasonableness of the applicant's projections.

Authority: AS 16.10.310

3 AAC 80.230. Collateral.

(a) A loan must be secured by collateral acceptable to the department, such as a mortgage or other security instrument in real property or commercial fishing vessels with gear. The collateral must include the quota shares purchased.

(b) A loan for the purchase of quota shares will be made only if the quota shares are placed in the name of the applicant.

Authority: AS 16.10.310

3 AAC 80.235. Lending practices.

(a) A loan will not be approved for refinancing long-term debt. Interim financing is not considered long-term debt if the term is 12 months or less and the promissory note or the original agreement was executed less than 12 months before the department received the application.

(b) In determining the maximum loan amount that may be approved for the purchase of quota shares, the department will rely on market analysis through appropriate sources as determined by the department.

(c) Loan proceeds may not be used to reimburse an applicant for the purchase of quota shares if they were purchased more than 12 months before receipt of the application by the department.

(d) The department will set the interest rate for loans under 3 AAC 80.200 - 3 AAC 80.265 on the first day of each calendar quarter. The interest rate set for a quarter remains in effect until the department changes the rate, will not exceed the maximum or minimum interest allowed under AS 44.33.965(b)(2), and will be established at the nearest one-quarter point. The interest rate will be based on the prime rate, as defined in AS 44.88.599, during the previous quarter.

(e) The interest rate for a loan is the interest rate in effect at the time the loan commitment is made. The interest rate for a loan will be at a fixed rate for the term of the loan.

Authority: AS 16.10.310 AS 16.10.320

3 AAC 80.240. Disbursement of loan money.

Loan money will be disbursed when

- (1) the state has perfected a security interest in the collateral;
- (2) the requirements of the department as specified by the loan committee have been met; and
- (3) the borrower is in compliance with provisions of the loan documents, AS 16.10.310 and 16.10.320,

and 3 AAC 80.200 - 3 AAC 80.265.

Authority: AS 16.10.310 AS 16.10.320

3 AAC 80.245. Costs and fees.

- (a) All expenses incurred by the department in processing an application must be paid by the applicant. These expenses include the cost of title reports and insurance, recording fees, appraisals, surveys, travel, and other direct costs.
- (b) A nonrefundable loan application fee of \$100 is due to the department at the time an application under 3 AAC 80.200 - 3 AAC 80.265 is submitted.
- (c) An origination fee of one percent of the total loan amount or an assumption fee of one percent of the loan balance is due from the borrower when provisions of 3 AAC 80.200 - 3 AAC 80.265 have been met.
- (d) A late fee not to exceed five percent of the payment amount will be charged to a borrower for each loan payment that is received more than 15 days after the due date for the payment.
- (e) A nonrefundable prequalification application fee of \$200 is due to the department at the time a prequalification application is submitted under 3 AAC 80.200 - 3 AAC 80.265
- (f) A fee not to exceed \$100 will be charged to a borrower to process a loan extension application.
- (g) The department will not charge the late fee described in (d) of this section if
 - (1) the department receives from the borrower a loan extension application or a payment plan not more than 15 days after the due date for the payment;
 - (2) the department approves the loan extension application or payment plan; and
 - (3) one or more of the following occurs:
 - (A) the borrower meets all conditions for the loan extension or the payment plan;
 - (B) the department receives payment during its review of the loan extension application or payment plan.

Authority: AS 16.10.310

3 AAC 80.250. Assumptions.

- (a) A request for permission to assume the obligations and benefits of a loan made under AS 16.10.310(a)(1)(E) and 3 AAC 80.200 - 3 AAC 80.265 will be processed in the same manner as an application for a loan.
- (b) A loan committee may permit an assumption if the applicant meets eligibility requirements as outlined in 3 AAC 80.200 - 3 AAC 80.265, is a good financial risk, and the security of the state's investment is preserved.
- (c) Wraparound financing that includes a loan made under AS 16.10.310(a)(1)(E) is prohibited and constitutes a default on the loan.

Authority: AS 16.10.310

3 AAC 80.255. Modifications.

- (a) A request for a modification to a loan made under AS 16.10.310(a)(1)(E) and 3 AAC 80.200 - 3 AAC 80.265 will be processed in the same manner as an application for a loan. The department will require the applicant to file one or more of the items specified in 3 AAC 80.200 if information on those items has changed since they were previously filed, or if the department needs additional information not appearing in the previously filed items in order to review the request for modification.
- (b) A loan committee may permit a loan modification only if the security of the state and the state's investment is preserved.

Authority: AS 16.10.310

3 AAC 80.260. Reconsideration of a loan request.

- (a) If a loan request is denied, inactivated, or significantly modified by the department, an applicant may file a written request for reconsideration not later than 30 days after receipt of notice of the decision of the department.
- (b) The department will reconsider the request on a showing by the applicant that
 - (1) there has been a substantial change in the circumstances leading to the decision of the department;
 - (2) additional relevant information that was not initially available can be provided to the department; or
 - (3) administrative errors were made by the department.

Authority: AS 16.10.310

3 AAC 80.265. Confidentiality of loan information.

(a) The following information is not confidential and is available for public inspection upon request:

- (1) a document that is already a public record, including a deed of trust, financing statement, limited entry permit, quota share, warranty deed, bill of sale, mortgage, lien, vehicle title, or vessel documentation;
- (2) general information regarding loans, including the original loan amount, loan terms, personal guarantees, and disbursement and repayment schedules;
- (3) insurance matters, including title insurance policies and correspondence with insurance companies or borrowers regarding losses, accident reports, and nonpayment of premiums;
- (4) foreclosure and default proceedings.

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

- (1) personal and financial information, including income tax returns, financial statements, business income statements, pro forma profit and loss statements, credit information obtained from banks and other creditors, reports from consumer reporting agencies, cannery statements, and commercial fishing pink slips (fish tickets);
- (2) loan committee memoranda and minutes containing information relating to creditworthiness of an applicant;
- (3) the payment history on a loan, unless the loan is in default.

(c) Information not described in (a) or (b) of this section may be subject to public disclosure. Requests for disclosure must be made, and will be determined, in accordance with 2 AAC 96. Upon receipt of a request for disclosure, the department will notify the loan applicant and other persons with a privacy interest in the request to permit them to present reasons why the requested information should not be disclosed.

Authority: Art.. I, sec. 22 AS 16.10.345 AS 40.25.120
Ak. Const. AS 40.25.110