Statutes and Regulations Residential Energy Conservation Loans

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DEPARTMENT OF COMMERCE,
COMMUNITY, AND ECONOMIC DEVELOPMENT

DIVISION OF INVESTMENTS

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ARTICLE 2.
RESIDENTIAL ENERGY CONSERVATION FUND

Sec. 45.88.100. Fund established.
(a) There is established in the Department of Commerce, Community, and Economic Development the residential energy conservation fund to carry out the purposes of AS 45.88.100 — 45.88.190. Loans and grants made under AS 45.88.100 — 45.88.190 may be used to purchase, construct, and install an energy conservation improvement in residential buildings.

(b) Money in the fund may be used by the legislature to make appropriations for costs of administering AS 45.88.100 — 45.88.190.

(c) On June 30 of each fiscal year the unexpended and unobligated cash balance of the fund that is attributable to loans owned by the fund lapses into the general fund.

Sec. 45.88.110. Special account established.
(a) There is established as a special account within the residential energy conservation fund the foreclosure expense account. This account is established as a reserve from fund equity.

(b) The commissioner may expend money credited to the foreclosure expense account when necessary to protect the state's security interest in collateral on loans made under AS 45.88.120 or to defray expenses incurred during foreclosure proceedings after a default by an obligor.

Sec. 45.88.120. Loans.
(a) The department may make loans for the purchase, construction, and installation of an energy conservation improvement in a residential building.

(b) A loan for the purchase, construction, and installation of an energy conservation improvement under AS 45.88.100 — 45.88.190 may not exceed the lesser of
(1) an amount, as determined by an energy audit, that is equal to the estimated total energy cost saving attributable to the energy conservation improvement at a date that is 10 years after purchase, construction, or installation of the energy conservation improvement;

(2) $5,000.

(c) A loan for the purchase, construction, and installation of an energy conservation improvement under AS 45.88.100 — 45.88.190 may be made for only an energy conservation improvement that has been recommended, in any energy audit, as a measure that is likely to result in energy conservation or energy cost savings.

(d) A loan made under AS 45.88.100 — 45.88.190 may be used to finance
(1) all of the cost of purchasing, constructing, and installing an energy conservation improvement; and

(2) the costs of labor for the installation of an energy conservation improvement.

(e) Interest shall be charged on a loan made under AS 45.88.100 — 45.88.190. If a loan is made before January 1, 1984, interest shall be five percent. If the loan is made after December 31, 1983, interest shall equal the percentage of the average weekly yield of municipal bonds for the 12 months preceding the loan, as determined by the commissioner from the municipal bond yield rates reported in the 30-year revenue index of the Weekly Bond Buyer.

(f) The duration of repayment of a loan made under AS 45.88.100 — 45.88.190 may not exceed 10 years.

(g) The department may require security for a loan under this section. When a loan is made under this section, the department may require the loan applicant to present copies of invoices or billings for expenses which the proceeds of the loan will be used to pay.

(h) All principal and interest payments, and money chargeable to principal or interest that is collected through liquidation by foreclosure or other process on a loan made under AS 45.88.100 — 45.88.190, shall be paid into the residential energy conservation fund.

(i) A person who receives a loan under this section and knowingly uses the loan proceeds for purposes other than those set out in (d) of this section is guilty of the crime of misapplication of property under AS 11.46.620.

(j) If, in the opinion of the department, it is not necessary to conduct an energy audit to determine that a loan application meets the requirements of this section, the department may waive the audit requirement for the applicant.

(k) The department may not make a loan under AS 45.88.100 — 45.88.190 to a person who has a past due child support obligation established by court order or by the child support services agency under AS 25.27.160 — 25.27.220 at the time of application.

Sec. 45.88.130. Sale or transfer of mortgages and notes.
The commissioner may sell or transfer at par value or at a premium or discount to any bank or other private purchaser for cash or other consideration the mortgages and notes held by the department as security for loans made under AS 45.88.100 — 45.88.190.

Sec. 45.88.140. 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 45.88.100 — 45.88.190. 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.

Sec. 45.88.150. Regulations.
(a) The department shall adopt regulations necessary to carry out the provisions of AS 45.88.100 — 45.88.190, including regulations to establish reasonable fees for services provided and charges for collecting the fees.

(b) The department may collect the fees and collection charges established under (a) of this section.

Sec. 45.88.190. Definitions.
In AS 45.88.010 — 45.88.190,

(1) "commissioner" means the commissioner of commerce, community, and economic development;

(2) "department" means the Department of Commerce, Community, and Economic Development;

(3) "energy audit" means

(A) [Repealed, § 10 ch 79 SLA 1983.]

(B) an energy audit performed under § 215(b)(1)(A) of the federal residential energy conservation program of the National Energy Conservation Policy Act (42 U.S.C. 8216(b)(1)(A)); or

(C) an energy audit completed before July 1, 1980, that has been approved by the commissioner as an audit that fairly demonstrates the energy consumption characteristics of a residence and that indicates likely energy conservation and cost savings measures;

(4) "energy conservation improvement" means

(A) structural insulation;

(B) thermal windows and doors;

(C) a furnace replacement burner designed to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency;

(D) a device for modifying flue openings designed to increase the efficiency of operation of the heating system;

(E) an electrical or mechanical furnace ignition system which replaces a gas pilot light;

(F) an automatic energy-saving setback thermostat;

(G) a meter which displays the cost of energy usage;

(H) caulking and weatherstripping of doors and windows;

(I) insulating shades and shutters;

(J) air and water recuperators;

(K) any other energy-saving device approved by the commissioner.

CHAPTER 79
RESIDENTIAL ENERGY CONSERVATION LOANS

Section

3 AAC 79.010. Application process.

(a) To apply for an assumption of an existing residential energy loan assumption, an applicant shall file with the department

(1) a completed application for an energy conservation loan assumption, on a form provided by the department;

(2) a financial statement, on a form provided by the department;

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

(4) an employment verification, on a form provided by the department;

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

(6) a $100 nonrefundable application fee; and

(7) any other information that might be helpful to the applicant in qualifying for an assumption, as requested by the department.

(b) The department will, in its discretion, process an application for an assumption without the information described in (a) of this section, if the department determines that the department can make an informed lending decision without access to the information.

Authority: AS 45.88.120 AS 45.88.150

3 AAC 79.015. Examination.

(a) The materials described in 3 AAC 79.010 will be processed and evaluated by a loan officer. The loan officer will evaluate the applicant's financial and credit history, ability to repay, and proposed collateral.

(b) On the basis of the evaluation, the loan officer will either inactivate the application, due to lack of information required under 3 AAC 79.010, or 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 45.88.120 AS 45.88.150

3 AAC 79.020. 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 and approve 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;
(2) additional guarantors; and
(3) subordination of prior lienholders' rights to the interests of the state.
(d) A loan committee shall consider the applicant's financial and credit record, ability to repay, and proposed collateral. A loan committee may consider recommendations of the loan officer assigned to process the application, and other relevant information.
(e) repealed 8/10/97.
(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 45.88.120 AS 45.88.150

3 AAC 79.030. Loan amounts.
Repealed.

3 AAC 79.035. Eligibility.
Repealed.

3 AAC 79.040. Financial and credit record.
(a) The department will, in its discretion, 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) prior bankruptcies;
(6) existence of tax liens;
(7) unpaid judgments and prior foreclosures; and
(8) financial and credit reputation.
(b) Information establishing unacceptable credit will be more heavily weighed by the department if it has occurred in recent years.

Authority: AS 45.88.120 AS 45.88.150

3 AAC 79.045. Ability to repay.
The department will, in its discretion, consider the following factors in evaluating an applicant's ability to repay a proposed assumption:
(1) income history, including present income;
(2) prospects for future income;
(3) assets and their liquidity; and
(4) liabilities.

Authority: AS 45.88.120 AS 45.88.150

3 AAC 79.050. Collateral.
A loan must be secured by collateral acceptable to the department, such as a mortgage or other security instrument in real property, buildings, machinery, equipment, or fixtures.

Authority: AS 45.88.120 AS 45.88.150

3 AAC 79.055. Lending practices.
Repealed.

3 AAC 79.065. Disbursement of loan money.
Repealed.

3 AAC 79.070. Supervision of loans.
If a loan is in default, the department will, in its discretion, require a borrower to furnish annual financial statements consisting of a balance sheet, profit-and-loss statement, sources and application of all money received, and a schedule of change of owner's equity. The department will, in its discretion, also require an audit to determine whether the borrower has complied with the provisions of the loan, and conduct periodic inspection of collateral securing repayment of the loan.

Authority: AS 45.88.120 AS 45.88.150

3 AAC 79.075. Costs.
(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) An assumption fee of one percent of the loan balance is due from the borrower when all applicable provisions of this chapter have been met.
(c) A late fee not to exceed five percent of the payment amount will, in the department's discretion, be charged to a borrower for each loan payment that is more than 15 days past due.
(d) An extension fee not to exceed $100 will, in the department's discretion, be charged to a borrower to process a loan extension.

Authority: AS 45.88.120 AS 45.88.150

3 AAC 79.080. Assumptions.
(a) The department will, in its discretion and when it is in the state's best interests, allow an assumption of a loan made under AS 45.88 and this chapter.
(b) A request for an assumption of a loan made under AS 45.88 and this chapter will be processed in the same manner as a loan application. The department will, in its discretion, require one or more of the items specified in 3 AAC 79.010.
(c) Wraparound financing that includes a loan made under AS 45.88 and this chapter is prohibited, and constitutes a default on the loan.

Authority: AS 45.88.120 AS 45.88.150

3 AAC 79.081. Closing an assumption.
An assumption agreement will be considered by the department to be closed when
(1) all required signatures have been obtained and the assumption agreement has been properly recorded;
(2) all requirements of the loan committee have been met; and
(3) the borrower is in compliance with all provisions of the loan documents, including insurance requirements, and this chapter.

Authority: AS 45.88.120 AS 45.88.150

3 AAC 79.082. Modifications.
(a) A request for a modification to a loan made under AS 45.88 and this chapter will be processed in the same manner as a loan application. The department will, in its discretion, require one or more of the items specified in 3 AAC 79.010.
(b) A loan committee may permit a loan modification only if the security of the state and its investment is preserved.

Authority: AS 45.88.120 AS 45.88.150

3 AAC 79.085. Reconsideration of an assumption request.
(a) If an assumption of a loan request is denied, inactivated, or significantly modified by the department, an applicant may file a written request for reconsideration within 30 days after receipt of notice of the department's decision.
(b) The department will, in its discretion, reconsider a request upon a showing by the applicant that
(1) there has been a substantial change in the circumstances leading to the department's decision;
(2) additional relevant information can be provided to the department that was not initially available; or
(3) administrative errors were made by the department.

Authority: AS 45.88.120 AS 45.88.150

3 AAC 79.090. 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 deeds of trust, financing statements, warranty deeds, bills of sale, mortgages, liens, and vehicle titles;
(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; and
(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 directly from banks and other creditors, and reports obtained from consumer reporting agencies;
(2) loan committee memoranda and minutes containing information relating to creditworthiness of an applicant; and
(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. On 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:	Ak Const.	Art. I	AS 40.25.110
	AS 45.88.120	AS 40.25.120	AS 45.88.150

3 AAC 79.900. Definitions.
Unless the context requires otherwise, in this chapter
(1) repealed 8/10/97;
(2) "default" includes a violation of any provision of this chapter, AS 45.88, or the loan document, failure to make the necessary payment within 15 days after it is due, or failure to maintain the insurance required by the department;
(3) "department" means the Department of Commerce, Community, and Economic Development;
(4) "wraparound financing" means a contract that includes the balance due on an existing debt and an additional amount to cover the difference between the selling price and the existing debt; and
(5) "director" means the director of the division assigned economic development functions or its successor agency in the department.

Authority: AS 45.88.120 AS 45.88.150