Statutes and Regulations
Rural Development Initiative Fund

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DEPARTMENT OF COMMERCE,
COMMUNITY, AND ECONOMIC DEVELOPMENT

DIVISION OF INVESTMENTS

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ARTICLE 10.
RURAL DEVELOPMENT

Secs. 44.33.765 — 44.33.775. Rural development initiative fund; rural development loans; disposal of property acquired by default or foreclosure. [Repealed, § 15 ch 117 SLA 2000.]

Sec. 44.33.780. Definitions.
In AS 44.33.740 — 44.33.780,

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

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

CHAPTER 170
RURAL DEVELOPMENT INITIATIVE FUND

Section

3 AAC 170.010. Scope of chapter.
The provisions of 3 AAC 170.010 - 3 AAC 170.900 establish procedures for the use of money in the rural development initiative fund.

Authority: AS 44.33.770

3 AAC 170.020. Use of money in fund.
The division will use money in the rural development initiative fund either to

(1) purchase participations in loans in accordance with 3 AAC 170.030 from eligible lenders; or

(2) transfer money to reserve accounts described in 3 AAC 170.040.

Authority: AS 44.33.765 AS 44.33.770

3 AAC 170.030. Purchase of participations.
(a) The division will, in its discretion, use money in the rural development initiative fund to purchase a participation interest in an eligible loan from an eligible lender in accordance with the procedures established in this section. The division will purchase the participation interest at a price equal to principal amount of the participation interest.

(b) The division will purchase a participation interest in an eligible loan under (a) of this section only from an eligible lender and only following (1) receipt and approval by the division of an application submitted to the division by the eligible lender that has made or proposes to make the loan and (2) receipt by the division of the amounts described in (d) of this section. The eligible lender may submit the application in the form of a letter or in any other form that the eligible lender desires as long as the application (1) contains information sufficient for the division to reasonably determine that the loan satisfies or will satisfy the requirements of this chapter, (2) is accompanied by the documentation described in 3 AAC 170.030(c), (3) states whether the loan is expected to be guaranteed by the Alaska Industrial Development and Export Authority under 3 AAC 99.700 - 3 AAC 99.785, and (4) is accompanied by a nonrefundable application fee of $100.

(c) Unless waived by the division, an eligible lender must submit to the division each of the following documents with respect to an application described in 3 AAC 170.030(b) before the division will agree to purchase a participation interest in the loan to which the application relates:

(1) a loan summary, including the eligible lender's loan approval;

(2) a copy of the signed loan application accompanied by a written release from the borrower consenting to the delivery to the division of the information required by this chapter;

(3) a financial statement, including a profit and loss statement of the borrower's business, that is signed by the borrower and is current to within 90 days of the date on which the division receives the application;

(4) a description of the purpose for which the loan will be made;

(5) a current report of the credit history of the borrower and of any guarantors;

(6) copies of the borrower's federal income tax returns or financial statements prepared by a public accounting firm for the preceding three fiscal years of the borrower;

(7) a description and evaluation of the collateral to be used to secure the loan, including

(A) if the loan is to be secured by real property, a narrative appraisal report acceptable to the division estimating the fair market value of the real property in a format consistent with standards established by the American Institute of Real Estate Appraisers or Society of Real Estate Appraisers including a cost approach, a market approach, and an income approach, or

(B) if the loan is to be secured by tangible personal property, an appraisal in a format acceptable to the division prepared by an appraiser who is acceptable to the division;

(8) a finding that the borrower has adequate projected cash flow to pay all amounts to become due on the loan when and as those amounts become due;

(9) an environmental risk assessment satisfactory to the division followed by an environmental audit if required by the division;

(10) a description of other nonstate sources committed for use on the project or enterprise for which money from a loan will be used;

(11) any other information considered necessary by the division in order to evaluate the borrower and borrower's business.

(d) On or before the date of purchase of a participation interest in an eligible loan, the division must receive a nonrefundable commitment fee equal to one-half percent of the principal amount of the participation to be purchased.

Authority: AS 44.33.765 AS 44.33.770

3 AAC 170.040. Reserve accounts.

(a) If the division determines that it will purchase a participation interest in a loan which is expected to be guaranteed by the Alaska Industrial Development and Export Authority under 3 AAC 99.700 - 3 AAC 99.785, the division will establish a reserve account within the fund for that loan. Before the division purchases the participation interest in the loan, but after the loan is guaranteed as described in this subsection, the division will transfer from the fund into the reserve account created for that loan an amount equal to 180 days of interest on the guaranteed portion of the loan at the interest rate applicable to that portion of the loan or a lesser amount if necessary under (b) of this section. The division will transfer money to a reserve account as provided in this section only in conjunction with the purchase of a participation interest in the loan under 3 AAC 170.030, and the amount deposited in the reserve account for a loan will not exceed the amount paid by the division for the purchase of the participation interest.

(b) If there is insufficient money in the fund to purchase a participation in a loan described in (a) of this section and to transfer money to a reserve account for the loan as described in (a) of this section, the division will notify the eligible lender of that fact. At the request of the eligible lender, the division will, depending upon the availability of money in the fund, (1) purchase a smaller participation in the loan, (2) transfer money to the reserve account at a smaller amount, or (3) both.

(c) The division will use money held in a reserve account created under this section solely for the purpose of paying accrued and unpaid interest on the guaranteed portion of the loan in the event of a default with respect to the loan. The division will make the payment of interest when the Alaska Industrial Development and Export Authority has paid the guaranteed portion of the loan. To the extent that the division uses any amount in a reserve account as described in this subsection, the division will be entitled to seek recovery of that amount, together with interest on that amount from the date of payment by the division, from the borrower. The division must be a secured party under, or an assignee of the eligible lender's interest in, any security agreements or documents relating to the loan.

(d) From time to time, the division will review the amount held in each reserve account established under this section and, to the extent the amount in a reserve account exceeds 180 days of interest, or the lesser amount established for a loan under (b) of this section, with respect to the loan for which the reserve account was established, the division will transfer the excess from the reserve account in to the fund. If there is money remaining in a reserve account after the loan for which the reserve account is created is fully paid, the division will transfer the money out of the reserve account and back into the fund.

Authority: AS 44.33.765 AS 44.33.770

3 AAC 170.050. Loan eligibility.

(a) The division will purchase a participation in a loan with money from the fund only if (1) the borrower is an eligible borrower as described in (c) of this section and (2) the proceeds of the loan will be used by the borrower for working capital, equipment, construction costs, or other commercial purposes relating to the borrower's business. For the purposes of this subsection, the division does not consider the use of the loan proceeds to refinance another loan to be for any of the purposes described in this subsection. In addition to the other provisions of this subsection, the division will purchase a participation in a loan only if (1) the borrower's principal place of business is located within a rural community in the state or if the borrower verifies to the satisfaction of the division that the primary beneficiaries of the loan will be residents of a rural community in the state; (2) the loan is made to pay costs described in this subsection which were incurred by the borrower no earlier than six months before the loan application described in 3 AAC 170.030 was filed with the division. For the purposes of this subsection, a "rural community in the state" means a community with a population of 5,000 or less.

(b) In addition to the limitations stated in (a) of this section, the division will purchase a participation in a loan only if the division concludes, based upon the information available to it, that the loan will result in new job creation or the retention of existing jobs in the community described in (a) of this section.

(c) A borrower is eligible for a loan for purposes of (a) of this section if the division has received information that it determines is sufficient to make a determination as to the borrower's creditworthiness and, based upon that information, determines that the borrower will be able to repay the loan in accordance with its terms.

(d) The division will not purchase a participation in a loan with money from the fund if the borrower has an outstanding loan in which the division has purchased a participation with money from the fund.

(e) The division will not purchase a participation in a loan with money from the fund unless the loan bears interest at the rate described in 3 AAC 170.080, is secured by collateral as described in 3 AAC 170.100, contains terms and conditions as described in 3 AAC 170.110, and otherwise complies with the requirements of AS 44.33.765 - 44.33.780 and this chapter.

Authority: AS 44.33.765 AS 44.33.770

3 AAC 170.060. Lender eligibility.

(a) The division will treat any private institution or any federal, state, or municipal agency as an eligible lender if the:

(1) division is reasonably satisfied, based upon information provided to it from the institution or agency or other information available to the division, the institution or agency is capable of making the loan which is the subject of an application described in 3 AAC 170.030;

(2) division is reasonably satisfied, based upon the information provided to it from the institution or agency or other information available to the division, that the institution or agency is capable of servicing the loan and performing its duties under the servicing agreement described in the following clause; and

(3) institution or agency has entered into a servicing agreement with the division as described in 3 AAC 170.090.

(b) The division will, in its discretion, request information from an institution or agency for the purpose of making the determinations described in (a) of this section at any time, including any time after an initial determination that the institution or agency is an eligible lender. If, in the reasonable judgment of the division, the institution or agency fails to adequately or timely respond to a request for information or if the division reasonably determines that, based upon information it has received, it cannot justify or sustain the findings required by (a) of this section, the division will in its discretion, decline to treat or decline to continue to treat the institution or agency as an eligible lender and will deliver written notice to that effect to the institution or agency.

Authority: AS 44.33.765 AS 44.33.770

3 AAC 170.070. Size of participation interests.
(a) For a loan that is a guaranteed loan, the division will only purchase a participation interest in the loan that is not the guaranteed portion. The division's participation interest in the loan will not exceed the lesser of

(1) 20 percent of the entire loan, including the guaranteed portion; or

(2) the amount described in (c) of this section.

(b) For a loan that is not a guaranteed loan, the division's participation interest in the loan will not exceed the lesser of

(1) 80 percent of the entire loan; or

(2) the amount described in (c) of this section.

(c) In addition to the provisions of (a) and (b) of this section, the division's participation interest in a loan may not exceed $100,000 if the loan is made to an individual or $200,000 if the loan is made to two or more individuals. If the loan is made to a corporation, joint venture, partnership, or other form of business consisting of more than one individual, the division's participation interest in a loan will not exceed $200,000. For a loan that is a guaranteed loan, the amounts described in this subsection will be reduced by any amount required to be deposited in a reserve account for the loan.

Authority: AS 44.33.765 AS 44.33.770

3 AAC 170.080. Interest rate.
Until October 1, 1993, the interest rate applicable to the participation interest in a loan which the division purchases under 3 AAC 170.030 must be seven percent per annum. After October 1, 1993, the interest rate applicable to the participation interest in a loan which the division purchases under 3 AAC 170.030 must be a fixed rate of interest equal to one percent per annum above the prime rate of interest published in The Wall Street Journal on the Friday before the date the division signs a commitment letter to purchase a participation interest in the loan under 3 AAC 170.030(a), except that in no event may the interest rate be less than six percent per annum. The rate of interest applicable to the portion of the loan not purchased by the division under 19 AAC 70.030 is set by the eligible lender but may not exceed a market rate determined by the division at the time the division signs a commitment letter under 3 AAC 170.130(a). The eligible lender may determine whether to calculate interest on the basis of a 365-day year and the actual number of days elapsed or on the basis of a 360-day year consisting of twelve 30-day months or on any other basis conventionally used in the banking industry.

Authority: AS 44.33.765 AS 44.33.770

3 AAC 170.090. Servicing agreement.
Before the division purchases a participation interest in a loan under 3 AAC 170.030, the division will enter into a servicing agreement with the eligible lender. The servicing agreement will include

(1) an agreement by the eligible lender that the eligible lender will provide all servicing for the loan;

(2) provisions establishing methods for the collection of delinquent payments of principal and interest and provisions relating to foreclosure and enforcement of other security rights and relating to audits that may be required by the division;

(3) provisions relating to periodic reports to be filed with the division by the eligible lender and relating to reports of inspections and other information relating to the financial condition of each borrower who is in default;

(4) agreements by the eligible lender to service the loan in accordance with accepted business practices, including prompt collection of amounts due under the loan;

(5) provisions relating to forms of deed of trust and other security documents that are acceptable to the division;

(6) provisions relating to servicing fees that may be charged by the eligible lender;

(7) provisions relating to the payment of late fees to the division;

(8) provisions permitting the division to terminate the servicing agreement with the eligible lender for failure to properly perform under the servicing agreement by the eligible lender;

(9) provisions prohibiting the eligible lender from selling or otherwise disposing of an interest in a loan without prior notice to and approval of the division; and

(10) provisions requiring the eligible lender to collect and deliver to the division an assumption fee equal to one-half percent of the outstanding balance of the loan at the time of any assumption or modification permitted under 3 AAC 170.120.

Authority: AS 44.33.765 AS 44.33.770

3 AAC 170.100. Collateral.

A loan in which the division will purchase a participation interest under 3 AAC 170.030 must be secured by collateral determined to be adequate by the division. The division will determine whether the collateral offered is adequate based upon the credit history of the borrower, the size of the loan, and other factors considered relevant by the division. In the division's discretion, acceptable collateral may include a deed of trust on real estate, a security interest in personal property, a guarantee from a person other than the borrower, or other forms of collateral.

Authority: AS 44.33.765 AS 44.33.770

3 AAC 170.110. General terms of loans.

A loan in which the division will purchase a participation interest under 3 AAC 170.030 must mature within the period of time, and contain amortization terms, reasonable in the determination of the division for the size and type of loan involved. The division will consider an amortization schedule that provides for equal monthly payments through the term of the loan to be reasonable. The loan must be fully repaid within the following periods:

(1) for a loan to be used for working capital, five years from the date that the loan is made;

(2) for a loan to be used to acquire property other than real property, the earlier of

(A) 15 years from the date the loan is made; or

(B) the date that represents 75 percent of the reasonably expected economic life of the property from the date the loan is made as determined by the division; and

(3) for a loan to be used to acquire, improve, or construct real property, the earlier of

(A) 20 years from the date the loan is made; or

(B) the date that represents 75 percent of the reasonably expected economic life of the real property or improvement from the date the loan is made as determined by the division.

Authority: AS 44.33.765 AS 44.33.770

3 AAC 170.120. Assumptions and modifications.

(a) A loan in which the division has purchased a participation under 3 AAC 170.030 may be assumed if the person assuming the loan would be eligible for a loan under 3 AAC 170.050.

(b) The division will consent to a modification of the terms of a loan in which the division has purchased a participation interest under 3 AAC 170.030 if the borrower and the eligible lender submit to the division a written application for the modification and if the division determines based upon the information available to it that the modification is necessary to either prevent a default or to further the purposes of the fund or to protect the interests of the state.

Authority: AS 44.33.765 AS 44.33.770

3 AAC 170.130. Loan application review and appeal.

(a) Upon receipt of an application under 3 AAC 170.030, the division will form a loan committee of one or more persons which may consist of employees of the division or persons selected for their expertise in commercial financing from outside the division. The loan committee will review the application and will make a recommendation to the division director whether the requirements of this chapter have been met with respect to the loan. If the division director determines that the requirements of this chapter have been met, the division will enter into a commitment to purchase the participation interest in the loan from available money in the fund.

(b) If the division director determines that the requirements of this chapter have not been met, the division will decline the application. Within 15 days after receipt of notice of the decision denying the loan, the lender may appeal the decision to the commissioner. The appeal must be in writing. Within 30 days of receipt of an appeal of a decision, the commissioner will review the application and any supplemental material and will notify the lender of the final determination affirming, reversing or modifying the decision and the reasons for the final determination. If the lender fails to file an appeal within 15 days after receipt of the division director's decision, the division director's decision constitutes the final determination of the department.

Authority: AS 44.33.765 AS 44.33.770

3 AAC 170.140. Confidentiality of 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;

(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 and 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) payment history on a loan, unless the loan is in default.

(c) Information not described in (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 division 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: Alaska Const. Art. I AS 40.25.110
AS 40.25.120 AS 44.33.765 AS 44.33.770

3 AAC 170.900. Definitions.

In this chapter

(1) "division" means the division assigned to administer this chapter in the Department of Commerce, Community, and Economic Development;

(2) "eligible lender" means a lender that is eligible under 3 AAC 170.060;

(3) "eligible loan" means a loan that is eligible under 3 AAC 170.050;

(4) "fund" means the rural development initiative fund;

(5) "guaranteed loan" means a loan that is guaranteed by the Alaska Industrial Development and Export Authority as described in 3 AAC 170.040;

(6) "guaranteed portion" means the portion of a loan that is guaranteed by the Alaska Industrial Development and Export Authority as described in 3 AAC 170.040;

(7) "participation interest" means a percentage of the principal amount of a loan that includes the right to receive interest on that principal amount and other rights applicable to the ownership of a loan;

(8) "reserve account" means a reserve account established under 3 AAC 170.040;

(9) "commissioner" means the commissioner of the Department of Commerce, Community, and Economic Development;

(10) "community" means a community as defined in 3 AAC 110.920 and 3 AAC 110.990(4).

Authority: AS 44.33.765 AS 44.33.770