

RHODE ISLAND ECONOMIC DEVELOPMENT CORPORATION

RULES AND REGULATIONS FOR THE JOB CREATION GUARANTY PROGRAM

Date of Public Notice: 04/27/2011

Date of Public Hearing: 05/23/2011

Date of Adoption: 07/25/2001

Date of Filing with Secretary of State: 07/27/2011

Effective Date: 08/16/2011

RHODE ISLAND ECONOMIC DEVELOPMENT CORPORATION

RULES AND REGULATIONS FOR THE JOB CREATION GUARANTY PROGRAM

Section 1.00. Purpose.

The Rhode Island Economic Development Corporation, in order to develop an efficient procedure (a) to create a loan guaranty and bond program pursuant to which it will be able to issue its bonds, guaranty debt service thereon or on bonds issued by the Rhode Island Industrial Facilities Corporation, or guaranty debt service of another, including without limitation debt service of borrowers on loans by other lenders and capital providers, or guaranty 15% of debt service on any loan made subject to a guaranty issued by the Small Business Administration pursuant to its Section 7(a) Program, and (b) to induce lending to companies growing their employment in the State, hereby adopts these rules and regulations to implement its authority and the policies set forth in Chapters 026/029 of the Rhode Island Public Laws of 2010.

Section 2.00. Legal Authority.

These rules and regulations are promulgated (a) pursuant to the provisions of Chapters 026/029 of the Rhode Island Public Laws of 2010, under which the Corporation is authorized to establish the Job Creation Guaranty Program and may issue bonds or otherwise guaranty indebtedness not to exceed a principal amount of one hundred twenty-five million dollars (\$125,000,000) in the aggregate and (b) pursuant to the provisions of Title 42, Chapter 35.

Section 3.00. Definitions.

For the purposes of these rules and regulations, the following terms shall have the following meanings:

3.01 “Board of Directors” shall mean the Board of Directors of the Corporation.

3.02 “Corporation” shall mean the Rhode Island Economic Development Corporation as established, administered and governed by R.I.G.L. Title 42, Chapter 64, as amended.

3.03 “Corporation Guaranteed SBA 7(a) Project” shall mean any Project for which the Corporation has made a Fifteen Percent Loan Guaranty.

3.04 “Fifteen Percent Loan Guaranty” shall mean any guaranty made by the Corporation of any loan guaranteed by the Small Business Administration under its Section 7(a) Program, provided that such guaranty by the Corporation shall not exceed fifteen percent (15%) of the principal amount of such loan.

3.05. “Full-time Job” shall mean one in which the employee works a minimum of thirty (30) hours per week within the State with industry comparable benefits.

3.06 “General Assembly” shall mean the General Assembly of the State.

3.07 “Governor” shall mean the Governor of the State.

3.08 “Job Creation Guaranty Program” shall mean the Job Creation Guaranty Program authorized pursuant to Chapters 026/029 of the Rhode Island Public Laws of 2010.

3.09 “Maximum Project Amount” shall mean a principal amount of bonds issued or indebtedness otherwise guaranteed not to exceed ten million dollars (\$10,000,000) per Project (other than a Corporation Guaranteed SBA 7(a) Project).

3.10. “Project” shall mean any project as approved by the Board of Directors, or a committee of the Board of Directors so designated by the Board of Directors, which shall consider and be guided by the following objectives:

(a) Projects that promptly create permanent Full-Time Jobs of a quantity and within a ratio of jobs to the amount of the credit enhancement as deemed appropriate by the

Corporation, with annual wages in excess of two hundred fifty percent (250%) of the then current minimum wage earned annually with industry comparable benefits or, with respect to any Fifteen Percent Loan Guaranty, with annual wages in excess of one hundred seventy-five percent (175%) of the then current minimum wage earned annually with industry comparable benefits.

(b) Any guaranty or bond obligations hereby authorized should leverage capital formation to facilities or business development with new and existing companies that will create or retain jobs in the State.

(c) The documentation reflecting guaranty and bond obligations shall contain adequate legal provisions for assuring performance by the borrower of creating and retaining new jobs within the State.

(d) Priority shall be given to guarantees that align with the State's economic development strategy to expand high-wage jobs in knowledge industry growth clusters or with respect to assets related thereto.

(e) Guarantees or loan obligations from any borrower will be collateralized by any and all available assets of the borrower and guarantors, where applicable, including subordinate collateral positions, cross collateralization with other lenders and collateralized guarantees as appropriate.

(f) Insurances, including hazard and key person life, may be required where appropriate.

(g) The Corporation may utilize such data and retain experts as necessary to assess and validate associated guaranty risk, and the Corporation may charge any borrower reasonable fees for the Corporation's guaranty and reimbursement of expenses.

(h) No Project approved after the effective date of these rules and regulations may exceed the Maximum Project Amount.

3.11 “Reserve Fund” shall have the meaning set forth in Section 5.00.

3.12 “State” shall mean that State of Rhode Island and Providence Plantations.

3.13 Any capitalized terms not otherwise defined herein shall have the meaning ascribed to them in R.I.G.L. Title 42, Chapter 64.

Section 4.00. Requests For Utilization of the Job Creation Guaranty Program; Pre-Conditions for Issuance of Fifteen Percent Loan Guaranty.

4.01 Requests for utilization of guarantees or the utilization of bonds of the Job Creation Guaranty Program shall use the procedure in this Section 4.01.

4.01. (a) Applications for Guarantees or Bonds.

All requests for the utilization of guarantees or the issuance of bonds by the Corporation for the Job Creation Guaranty Program shall be submitted to the Corporation on application forms that may be obtained from the Corporation.

4.01. (b) Approval Criteria.

Criteria for approval of projects utilizing the Job Creation Guaranty Program are as follows:

(i) creation of Full-Time Jobs as described in Section 3.10.(a);

(ii) the amount of leverage of private or third-party capital to facilitate business development with new or existing companies that will create or retain Full-Time Jobs in the State;

(iii) the degree of alignment with the Corporation’s and the State’s economic development strategies to expand high-wage Full-Time Jobs in industry growth clusters or with

companies that utilize such high-wage full-time employees, or with respect to assets related thereto;

(iv) quality and estimated value of collateral securing the repayment of guaranteed loans or repayment of the bonds;

(v) quality of insurances as requested or required by the Corporation;

(vi) results of internal or independent analyses of the industry or project being considered for the guaranty or issuance of bonds; and

(vii) additional traditional and sophisticated underwriting criteria including project feasibility, financial viability, projected revenues and expenses, costs, project management capabilities, position in existing market or time to new markets, analysis of market conditions and additional economic development costs and risks.

No project after the effective date of these rules and regulations may be approved by the Board of Directors, or a committee of the Board of Directors so designated by the Board of Directors for more than the Maximum Project Amount.

4.02. Application.

4.02. (a) Application. The Corporation from time-to-time shall create an application(s) for projects requesting the utilization of the Job Creation Guaranty Program, without amending these rules and regulations; provided, however, that such application(s) shall not reduce or diminish the due diligence, scope or analysis or authority of the Board of Directors to approve projects for qualification pursuant to the Job Creation Guaranty Program.

4.02. (b) Public Records and Open Meetings. The Corporation may receive from a project applicant trade, commercial or otherwise confidential information that should be marked as such by the applicant. The Corporation will treat such information as confidential to the

extent permitted by applicable public records and open meetings laws and may from time to time consider such information in either open or closed sessions pursuant to applicable open meetings laws.

4.03 Reserve for Fifteen Percent Loan Guarantees. A principal amount not to exceed five million dollars (\$5,000,000) of the one hundred twenty-five million dollars (\$125,000,000) available under the Job Creation Guaranty Program may be reserved by the Corporation to provide Fifteen Percent Loan Guarantees.

4.04 Pre-Conditions for Fifteen Percent Loan Guaranty. For administrative efficiency, each Fifteen Percent Loan Guaranty shall be made in accordance with the regulations established for the Small Business Administration Section 7(a) Program to the extent reasonably possible. Notwithstanding the foregoing, the Corporation may add any terms, conditions or requirements to any Fifteen Percent Loan Guaranty that it deems necessary and appropriate to protect the interests of the Corporation and to fulfill the purposes of the Job Creation Guaranty Program. No Fifteen Percent Loan Guaranty shall be made by the Corporation unless the Corporation has received written confirmation satisfactory to it that the Small Business Administration has issued its guaranty under the Small Business Administration Section 7(a) Program.

4.05 Carryover of Available Capacity. In the event that the Corporation has outstanding at any time one hundred twenty million dollars (\$120,000,000) of bond obligations or guarantees for Projects (other than Corporation SBA 7(a) Guaranteed Projects), the Board of Directors may allocate any or all of the then remaining capacity for bond indebtedness or guarantees, if any, then reserved for potential Corporation Guaranteed SBA 7(a) Projects, provided, however that the aggregate amount of bonds or guarantees outstanding shall not at any time exceed one hundred twenty-five million dollars (\$125,000,000).

Section 5.00 Reserve Fund.

In order to assure that any payments due on guarantees or bond obligations issued by the Corporation in connection with the Job Creation Guaranty Program are made, and to assure the continued operation and solvency of the Corporation for carrying out its corporate purposes, and accept as otherwise set forth in R.I.G.L. Title 42, Chapter 64, as amended:

(i) the Corporation shall create a reserve fund (the “Reserve Fund”) from which shall be charged any and all expenses of the Corporation with respect to guarantees or bond obligations of the Corporation resulting from a borrower’s default under the Job Creation Guaranty Program;

(ii) the Corporation shall credit to the Reserve Fund no less than fifty percent (50%) of all receipts of the Corporation including guaranty fees, premiums and any other receipts or recoveries from collections received pursuant to the Corporation’s rights to recover payments as a guarantor under the Job Creation Guaranty Program; and

(iii) to the extent the Corporation’s obligations as a guarantor or issuer of bond obligations are not satisfied by amounts in the Reserve Fund, the Executive Director of the Corporation shall annually, on or before December 1st, make and deliver to the Governor a certificate stating the minimum amount, if any, required for the Corporation to make payments due on such guarantees or indebtedness. During each January session of the General Assembly, the Governor shall submit to the General Assembly, as part of the Governor’s proposed budget, the total of such sums, if any, required to pay any and all obligations of the Corporation under such guarantees or bond obligations. All sums appropriated by the General Assembly for that purpose, and paid to the Corporation, if any, shall be utilized by the Corporation to make payments due on such guarantees or bond obligations. Any recoveries by the Corporation of

guaranty or bond payments are to be returned to the Reserve Fund and utilized to reduce any obligation of the State pursuant to any guarantees entered into or bonds issued by the Corporation.

Section 6.00. Reporting.

On or before January 1 of each year, the Corporation shall issue a report to the Board of Directors, the president of the Rhode Island Senate, the speaker of the Rhode Island House of Representatives, the Rhode Island General Treasurer and the Rhode Island Secretary of State on all guarantees and bonds issued by the Corporation pursuant to the Job Creation Guaranty Program. The report shall include at a minimum: a list of each guaranty and bond issued; a description of the borrower on behalf of which the guaranty or bond was issued; the lender or lenders that made the loan, and the amount of such loan, to such borrower; the amount of principal and interest on each such loan outstanding as of the date of such report; a summary of the collateral securing the repayment of such loan for which the guaranty was issued; and a summary of the economic impacts made by such borrower as a result of the guaranteed loan, including but not limited to the number, type and wages of jobs created by such borrower, any impacts on the industry in which the borrower operates and an estimate of income taxes for the State generated by the employees of such borrower and the borrower itself.

Section 7.00. Finality.

Any request for qualification or for utilization of any guaranty or bond indebtedness under the Job Creation Guaranty Program shall not constitute a “contested case” under the Administrative Procedures Act as set forth in R.I.G.L. Title 42, Chapter 35. No opportunity to object to any request shall be afforded, nor shall judicial review be available from a decision rendered by the Corporation pursuant to applicable law.

Section 8.00 Reconsideration of Corporation Decision.

Any affected person may request in writing reconsideration of a decision of the Corporation. Requests for reconsideration will be granted only where it can be demonstrated that there have been:

- (i) significant changes in the proposed project's ability to meet the applicable criteria as related to it; or
- (ii) significant changes in factors or circumstances relied upon by the Corporation in reaching its decision.

Section 9.00. Rescission of Guaranty or Bonds.

The Corporation may revoke any guaranty or bonds authorized by it prior to any final execution and delivery of them, whether in whole or in part, upon a finding by the Corporation that:

- (a) the Project authorized for funding has been significantly altered in scope or impact, or in any other way the criteria utilized by the Corporation in determining the authorization for the funding has been altered, changed or impacted in a material way; or
- (b) the Project applicant has not made substantial and significant advancement with respect to the implementation of the Project since the authorization was approved by the Corporation, as determined by the Corporation.
- (c) the Project applicant has not satisfied any pre-funding conditions set forth by the Corporation.

Section 10.00. Performance.

Any person or entity for which any bonds have been issued or any guaranty has been made pursuant to these rules and regulations shall report to the Corporation on the progress the applicant has made with respect to the implementation of the Project for which such bonds or any guaranty was authorized. Such reports shall be in form and substance satisfactory to the Corporation and performed with a frequency as determined by the Corporation.

Section 11.00. Authority Regarding Documentation.

Any Projects may be documented by the Corporation with such agreements, promissory notes, memoranda of understanding, security instruments, mortgages, pledges, hypothecations and other documentation as deemed reasonably necessary and prudent by the Corporation upon terms and conditions as deemed necessary, desirable and in the best interest of the Corporation and the funds under its administrative care, including, without limitation, the right to charge interest, take warrants, options or any form of equity interests, impose penalties and charges, and recover costs reasonably incurred by it as may be deemed appropriate and in the best interest of the Corporation and the funds administered by it.

Section 12.00. Liberal Application.

The terms and provisions of these rules and regulations shall be liberally construed to allow the Corporation to implement the intended public policy of the Job Creation Guaranty Program regulated hereby.

Section 13.00. Severability.

If a court with jurisdiction invalidates any provision of these rules and regulations or their application to any local government unit or circumstance, the remaining rules and regulations will not be affected. The invalidity of any section or sections, or parts of any section or sections, shall not affect the validity of the remainder of these rules and regulations.

The foregoing rules and regulations, after due notice and an opportunity for hearing, are hereby adopted and filed with the Secretary of State of the State of Rhode Island to become effective after filing in accordance with applicable law.

RHODE ISLAND ECONOMIC DEVELOPMENT
CORPORATION

Keith W. Stokes, Executive Director

Adopted by the Rhode Island Economic Development Corporation Board of Directors on:

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Filed with Secretary of State: _____