

**CHAPTER 138d. AGRICULTURAL TECHNOLOGY
LOAN PROGRAM—STATEMENT OF POLICY**

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Source

The provisions of this Chapter 138d adopted September 22, 1989, effective September 23, 1989, 19 Pa.B. 4087, unless otherwise noted.

§ 138d.1. Program objectives.

The Agricultural Technology Loan Program is a matching loan program which allows farmers in this Commonwealth to compete annually for low-cost loans. Farmers demonstrating the greatest need and proposing the most innovative use of technology will be awarded low-cost loans for projects which will increase productivity or provide entrance into new product markets. The number of loans made annually will depend on the amount of money contained in the revolving fund.

§ 138d.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Applicant—An individual, partnership, association or corporation applying for a loan under this chapter.

Department—The Department of Agriculture of the Commonwealth.

Farm operation—A Pennsylvania farm which produces farm products for profit.

Farm product—An agricultural, horticultural, vegetable, fruit or floricultural product of the soil, livestock or meats, wools, hides, poultry, eggs, dairy products, nuts, mushrooms or fish produced in an aquacultural project which is part of a farm operation.

Lender—A bank, savings bank, mutual savings bank, building and loan association, mortgage or finance company organized under the laws of the Commonwealth or the United States.

Loan Committee—See § 138d.11 (relating to Loan Committee).

Quorum—A majority of the Loan Committee.

Secretary—The Secretary of the Department.

§ 138d.3. Amount of loan.

The maximum amount of a loan is \$50,000. The amount of the loan may not exceed the amount of matching funds provided by the lender under § 138d.6 (relating to evidence of matching funds).

Cross References

This section cited in 7 Pa. Code § 138d.12 (relating to action by Secretary).

§ 138d.4. Eligible uses.

Proceeds from a loan made under this chapter shall be used by the applicant solely for the purchase and installation of machinery or equipment to be used in connection with the applicant's farm operation or for the construction or reconstruction of a building used in connection with the installation of the machinery or equipment. Loan proceeds may not be used for any of the following purposes:

- (1) To cause, aid or assist indirectly or directly in the relocation of a farm from one location in this Commonwealth to another.
- (2) To supplant funding that is readily available from private sector sources on commercially reasonable terms.
- (3) To refinance a portion of the total project cost or other existing loans or debts.
- (4) For use in a project outside the geographic boundaries of this Commonwealth.
- (5) For the purchase of motor vehicles.

Cross References

This section cited in 7 Pa. Code § 138d.12 (relating to action by Secretary).

§ 138d.5. Citizenship.

(a) *Individuals*. To be eligible for a loan under this chapter, the applicant, if an individual, shall be:

- (1) A citizen of the United States.
- (2) A resident of this Commonwealth.

(b) *Corporations.* If the applicant is a corporation, the applicant shall be incorporated or registered to do business in this Commonwealth.

Cross References

This section cited in 7 Pa. Code § 138d.12 (relating to action by Secretary).

§ 138d.6. Evidence of matching funds.

(a) Prior to loan approval, the applicant shall provide evidence to the Department that it has secured matching funds from a lender for the project for which the loan is requested. The type of evidence that the Department will require will be in the sole discretion of the Department.

(b) The applicant shall also provide a letter from the lender providing matching funds recommending that a loan under this chapter be granted and stating that its loan to the applicant would not be feasible without a loan from the Department.

Cross References

This section cited in 7 Pa. Code § 138d.3 (relating to amount of loan); 7 Pa. Code § 138d.7 (relating to general conditions); and 7 Pa. Code § 138d.12 (relating to action by Secretary).

§ 138d.7. General conditions.

(a) *Interest rates.* The interest rate will be established once a year by the Secretary.

(b) *Term of loan and rate of payment.* The maximum term of a loan may not exceed 7 years. Payments shall be made monthly, quarterly or semi-annually, as determined by the Loan Committee.

(c) *Security.*

(1) *Policy.* The Department will fully secure each loan before distributing the loan proceeds and its lien position may not be less than a second position as to liens on real estate and equipment connected with the farm operation. Only a lender providing matching funds under § 138d.6 (relating to evidence of matching funds) will be permitted to have a lien position superior to that of the Department. A loan shall be fully secured and no part of the loan shall be unsecured.

(2) *Valuation of collateral.* Real estate security shall be valued on the basis of appraised value and equipment security shall be valued on the basis of resale value.

(3) *Additional security.* The Department may require other and additional security as it deems just and reasonable, including personal liability, additional collateral, insurance and guarantees.

(d) *Sale of real or personal property.* If the applicant sells real or personal property connected with the farm operation which is subject to a lien in favor of

the Department, the entire principal balance of the loan and interest incurred to date shall immediately become due and payable.

(e) *Verification.* Within 6 months after receiving the proceeds of the loan, the applicant shall submit to the Department written receipts for the total amount of the project costs. If receipts are not submitted within the 6-month period or a portion of loan proceeds are unaccounted for, the entire principal balance of the loan and interest incurred to date shall immediately become due and payable.

(f) *Prepayments.* To the extent the applicant prepays the loan made by the lender providing matching funds, the applicant shall repay the loan made by the Department.

(g) *Building and zoning.* Construction of a building shall conform to zoning and building codes.

(h) *Loan agreement.* The applicant shall sign a loan agreement setting forth the term and amount of the loan, a repayment schedule and other terms or conditions as the Department may require.

(i) *Previous default.* A loan will not be made under this chapter to an applicant who has previously defaulted on a loan made, guaranteed or insured by the Commonwealth, the Federal Government or by the government of another state to finance the purchase or improvement of a farm, a farm building or farm-related operation.

Cross References

This section cited in 7 Pa. Code § 138d.12 (relating to action by Secretary).

§ 138d.8. Submission of application.

An applicant desiring to be considered for a loan under this chapter shall submit to the Department, on a form prepared by the Department, an application for a loan. Applications will be accepted only between October 15 and December 31 each year.

§ 138d.9. Processing applications.

Upon receipt of an application and the required supporting documentation, the Department will review this information for completeness and accuracy. If the application is found to be incomplete or inaccurate, additional data will be requested and final processing of the application will be discontinued until the requested data is supplied by the applicant. The Department may terminate the processing of an incomplete application when the additional data is not supplied to the Department within 30 days of a written request.

§ 138d.10. Review of application.

(a) The evaluation of the application by the Loan Committee will be based on the following criteria:

- (1) *Credit factors.*

(i) *The applicant.* Character, experience, education, training, management of finance and farm operation, absence of prior criminal record, credit history and rating as determined from credit reporting services and other sources.

(ii) *Financial responsibility.* Financial responsibility reflecting the ability to meet obligations, continue farm operations and protect the lender and the Department against undue risk. The applicant's total assets controlled, equity owned, contingent liabilities and history of earnings to date are significant measures of financial responsibility.

(iii) *Repayment capacity.* The determination of repayment capacity requires an analysis of cash flow history and projection. A cash flow project shall reflect cash generated from the applicant's farm operation and from other sources. Generally, the flow of cash shall be sufficient to meet current obligations and provide a remainder for contingencies.

(iv) *Collateral offered on available security.* Collateral requirements are contingent upon the requirements of the law as dictated by the strengths or weaknesses of credit factors. The requirement of collateral and collateral taken shall reasonably protect the Department, provide the necessary control of equity and repayment and leave the applicant in a position to reasonably manage his farm operation. The applicant's ability to give the Department a first position in terms of a lien on collateral or to share a first position with the lender providing matching funds, will be given great weight.

(2) *Capital needs.* The capital needs of the applicant in light of available funds.

(3) *Tax obligations.* The payment to date of tax obligations due and owing by the applicant to the Commonwealth or a political subdivision thereof.

(b) Loans will be awarded to applicants for projects demonstrating the greatest return on investment.

(c) In consideration of subsections (a) and (b), an equitable geographic distribution of loans throughout this Commonwealth.

Cross References

This section cited in 7 Pa. Code § 138d.12 (relating to action by Secretary).

§ 138d.11. Loan Committee.

(a) *Function.* The Loan Committee shall review the application and supporting documents in accordance with this chapter and forward its recommendation of approval or rejection of the application to the Secretary. The Loan Committee shall also provide the Secretary with the rationale for its decision, other information requested by the Secretary and restrictions or special conditions to be placed on the loan. If the Loan Committee does not submit its recommendation to the Secretary within 60 days after the first meeting at which the complete and accu-

rate application was considered, the Loan Committee shall be deemed to have recommended approval of the application.

(b) *Majority required.* The Loan Committee will not recommend the approval of a loan unless a majority of the quorum present at the meeting vote in favor of the loan.

(c) *Membership.* The seven member Loan Committee will be appointed by the Secretary and will consist of two Departmental staff members, one financial staff member of the Department of Commerce, two farmers involved in agricultural production, one person involved in agricultural finance, and one expert in rural economics and sociology. The Secretary will designate the Chairperson of the Loan Committee. The members of the Loan Committee shall serve for terms of 2 years commencing with the date of their respective appointments, and shall serve at the discretion of the Secretary.

(d) *Meetings.* The Loan Committee shall hold meetings as needed to perform their duties. Meetings of the Loan Committee shall be called by the Secretary.

(e) *Reimbursement.* The members of the Loan Committee are not entitled to compensation for their services as members, but are entitled to reimbursement for expenses incurred in connection with the performance of their duties at the current rates set by the Commonwealth.

Cross References

This section cited in 7 Pa. Code § 138d.2 (relating to definitions).

§ 138d.12. Action by Secretary.

(a) *Prompt action.* The Secretary will have final authority regarding loan approval. An applicant is entitled to prompt notice of action on his application after it has been forwarded to the Secretary from the Loan Committee with a recommendation of approval or rejection.

(b) *Criteria for action and discretion of Secretary.* The Secretary will approve a loan for an applicant only after consideration of the recommendation of the Loan Committee and only in accordance with the eligibility and evaluation criteria and loan limits under §§ 138d.3—138d.7 and 138d.10. The Secretary may approve a loan in a lesser amount and on less favorable terms than recommended by the Loan Committee and may impose conditions not recommended by the Loan Committee.

§ 138d.13. Conflict of interest prohibited.

A member of the Loan Committee, employe of the Department, person in the immediate family or household of a member of the Loan Committee or employe of the Department may not be a party to or be in any manner interested in a contract, agreement or loan made under this chapter. If a contract, agreement or loan is made in violation of this section, it is void and without effect and no action may be maintained thereon by a person or entity against the Commonwealth. If

a contract, agreement or loan is made in violation of this section, the Commonwealth may maintain an action, including an action in mortgage foreclosure to seek reimbursement of funds it may have disbursed to the applicant.

§ 138d.14. Loan cancellation.

A loan may be cancelled by the Secretary upon a determination that the funds are not being properly used.

§ 138d.15. Right of recovery.

The Department has the right to make a claim for and receive from the loan recipient monies not expended in accordance with this chapter.

§ 138d.16. Deficits.

The Department's financial obligation is limited to the amount of the loan. The Department is not responsible for funding cost overruns incurred by loan recipients.

§ 138d.17. Default.

A loan shall be declared in default if the loan recipient fails to make a monthly, quarterly or semi-annual payment within 30 days of its due date.

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