MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	**Date Filed with AELR Committee** 06/09/2014	**TO BE COMPLETED BY DSD** Date Filed with Division of State Documents Document Number Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 6/13/2014

2. COMAR Codification

Title	Subtitle	Chapter	Regulation
14	26	01	.00-.18

3. Name of Promulgating Authority

Maryland Energy Administration

4. Name of Regulations Coordinator | **Telephone Number**
David W Beugelmans | 410-260-2611

Mailing Address

60 West Street, Suite 300

City	State	Zip Code
Annapolis	MD	21401

Email
dbeugelmans@energy.state.md.us

5. Name of Person to Call About this Document | **Telephone No.**
David Beugelmans | 4102602611

Email Address
david.beugelmans@maryland.gov

6. Check applicable items:

X- New Regulations

X- Amendments to Existing Regulations
Date when existing text was downloaded from COMAR online: 5/5/14.
_ Repeal of Existing Regulations
_ Recodification
_ Incorporation by Reference of Documents Requiring DSD Approval
_ Reproposal of Substantively Different Text:

: Md. R

(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:
X- Yes _ No

If yes, corresponding proposed text published in:

X- same issue

_ future issue

_ previous issue; it appeared in

: Md. R

(vol.) (issue) (page no's) (date)

Under Maryland Register docket no.: --E.

8. Incorporation by Reference
_ Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting
_ OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.
_ OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection
_ Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer
I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Brent Bolea, Assistant Attorney General, (telephone #4102607538) on 6/9/14. A written copy of the approval is on file at this agency.

Name of Authorized Officer
David Beugelmans

Title
Policy Advisor
Date
6/9/14

Telephone No.
4102602611

Title 14
INDEPENDENT AGENCIES

Subtitle 26 MARYLAND ENERGY ADMINISTRATION

14.26.01 Jane E. Lawton Energy Conservation Program

Authority: State Government Article, §9-20A-04, Annotated Code of Maryland

Notice of Proposed Action

[]

The Maryland Energy Administration proposes to (1) Amend Regulations .01 –.17 under COMAR 14.26.01; and
(2) Adopt new Regulation .18 under COMAR 14.26.01

Statement of Purpose

The purpose of this action is to amend the current regulations of the Jane E. Lawton Energy Conservation Program in order to implement SB875/HB1165 from the 2014 Legislative Session. This action amends the: (1) definition of an eligible business; (2) definition of energy cost savings; (3) definition of a project; (4) minimum borrower obligations under the program; and (5) requirements related to the publication and utilization of template loan documents by the Maryland Energy Administration. This action also implements the Maryland Energy Administration's expanded authority to offer credit enhancements under the Jane E. Lawton Energy Conservation Program by setting forth application requirements and applicable review processes. Additionally, it sets forth the requirements for entities to receive and/or benefit from credit enhancements under the Jane E. Lawton Energy Conservation Program.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Frederick H. Hoover, Director, Energy Programs, Maryland Energy Administration, 60 West Street, Suite 300, Annapolis, MD 21401, or call 410-260-7655, or email to fred.hoover@maryland.gov, or fax to 410-974-2250. Comments will be accepted through 30 days after publication. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 15

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

Special (Jane E. Lawton Conservation Fund)

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

Theese regulations have no economic impact because they do not regulate the public. Rather, they set forth the requirments for a discretionary direct loan and credit enhancement program.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

Theese regulations have no small business impact because they do not regulate the public. Rather, they set forth the requirments for a discretionary direct loan and credit enhancement program.

G. Small Business Worksheet:

Small Business Analysis Worksheet

This worksheet is designed to assist the agency in determining if and how the proposal impacts small businesses. Quantify the number of affected small businesses and estimates of costs and benefits to small businesses if possible. State Government Article, §2-1505.2, includes the following definitions which are relevant to the analysis:

“Economic impact analysis” means an estimate of the cost or the economic benefit to small businesses that may be affected by a regulation proposed by an agency pursuant to Title 10, Subtitle 1 of this article.

“Small business” means a corporation, partnership, sole proprietorship, or other business entity, including its affiliates, that: (i) is independently owned and operated;
(ii) is not dominant in its field; and (iii) employs 50 or fewer full-time employees.

1a. Intended Beneficiaries. Who are the intended beneficiaries of the proposed regulation?

The intended beneficiaries are primarily businesses, non-profit organizations, and local governments.

1b. Intended Beneficiaries: Households. If households are the primary intended beneficiaries, will the proposal affect their income or purchasing power such that the volume or patterns of their consumer spending will change? If so, what directions of change would you anticipate? Will these expected spending changes have a disproportionate impact on small businesses? Can you descriptively identify the industries or types of business activities that are impacted?

N/A.

1c. Intended Beneficiaries: Businesses. If businesses are the intended beneficiaries, identify the businesses by industry or by types of business activities.

How will businesses be impacted?

Businesses will not be regulated on this program. However, they will benefit from low cost financing from direct loans and through credit enhancements that allow for energy efficiency improvements to occur.

Are these Maryland establishments’ disproportionately small businesses?

No.

If so, how will these Maryland small businesses be affected?

N/A

Can you identify or estimate the present number of small businesses affected?

No.

Can you estimate the present total payroll or total employment of small businesses affected?

No.

2a. Other Direct or Indirect Impacts: Adverse. Businesses may not be the intended beneficiaries of the proposal. Instead, the proposal may direct or otherwise cause businesses to incur additional expenses of doing business in Maryland. Does this proposal require Maryland businesses to respond in such a fashion that they will incur additional work-time costs or monetary costs in order to comply?

No.

Describe how Maryland establishments may be adversely affected.
Individuals who own a Maryland bred horse will not be adversely affected by this proposal. Will Maryland small businesses bear a disproportionate financial burden or suffer consequences that affect their ability to compete?

No.

Can you estimate the possible number of Maryland small businesses adversely affected? (Note that small business compliance costs in the area of regulation are the sum of out-of-pocket (cash) costs plus time costs — usually expressed as payroll, akin to calculations for legislative fiscal notes. Precise compliance costs may be difficult to estimate, but the general nature of procedures that businesses must accomplish to comply can be described.)

No.

2b. Other Direct or Indirect Impacts: Positive. Maryland businesses may positively benefit by means other than or in addition to changed consumer spending patterns. How may Maryland businesses be positively impacted by this initiative?

Unknown.

Can you estimate the possible number of Maryland small businesses positively affected?

No.

3. Long-Term Impacts. There are instances where the longer run economic impact effects from regulations differ significantly from immediate impact. For example, regulations may impose immediate burdens on Maryland small businesses to comply, but the overall restructuring of the industry as a consequence of monitoring and compliance may provide offsetting benefits to the affected small businesses in subsequent years. Can you identify any long run economic impact effects on Maryland small businesses that over time (a) may compound or further aggravate the initial economic impact described above, or (b) may mitigate or offset the initial economic impact described above?

No.
4. Estimates of Economic Impact. State Government Article, §2-1505.2 requires that an agency include estimates, as appropriate, directly relating to: (1) cost of providing goods and services; (2) effect on the work force; (3) effect on the cost of housing; (4) efficiency in production and marketing; (5) capital investment, taxation, competition, and economic development; and (6) consumer choice.

N/A

Attached Document:

Title 14
INDEPENDENT AGENCIES
Subtitle 26 MARYLAND ENERGY ADMINISTRATION

14.26.01 Jane E. Lawton Energy Conservation Program
Authority: State Government Article, §9-20A-04, Annotated Code of Maryland

Notice of Proposed Action

[●]

The Maryland Energy Administration proposes to:
(1) Amend Regulations **.01 –.17** under **COMAR 14.26.01**; and
(2) Adopt new Regulation **.18** under **COMAR 14.26.01.**

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.00
Authority: State Government Article, §9-20A-04, Annotated Code of Maryland

.01 Purpose.
This chapter describes the policies and procedures for making loans to *and offering credit enhancements that benefit* local governments, nonprofits, and eligible businesses from the Jane E. Lawton Conservation Loan Fund.

.02 Scope.
[The Jane E. Lawton Conservation Loan Program authorizes the Maryland Energy Administration to make low interest loans to nonprofit organizations, businesses, and local jurisdictions to promote energy efficiency, reduce consumption of fossil fuels, and enhance energy-related economic development and stability in business, commercial, and industrial sectors.**]**

To promote energy efficiency, reduce consumption of fossil fuels, and enhance energy-related economic development and stability in the commercial and industrial, non-profit, and government sectors, the Jane E. Lawton Conservation Loan Program authorizes the Maryland Energy Administration to:
A. Make low interest loans to eligible nonprofit organizations, businesses, and local jurisdictions; and
B. Enhance the credit of financings offered by eligible banks and other financial institution to benefit eligible nonprofit organizations, businesses, and local jurisdictions .

.03 Definitions.
A. In this chapter, the following terms have the meanings indicated.
B. Terms Defined.
(1) "Act" means the Jane E. Lawton Conservation Loan Program set forth in State Government Article, Title 9, Subtitle 20A, Annotated Code of Maryland.
(2) "Administration" means the Maryland Energy Administration.
(3) "Borrower" means a[n eligible] local jurisdiction, nonprofit organization, or eligible business that applies and qualifies for a loan under [this] *the* Program.
(4) "County" means any of the 23 counties of the State, and the Mayor and City Council of Baltimore, and any authorized agency or instrumentality of a county or counties.
(5) "Credit enhancement" means a financial arrangement designed to improve the accessibility or affordability of a financing.
[(5)] *(6)* "Director" means the Director of the Administration or the Director's designated representative.
[(6)] *(7)* Eligible Business.
(a) "Eligible business" means a commercial enterprise or business *that is in good standing with the State Department of Assessments and Taxation and is*:
(i) **[**That is incorporated] *Incorporated* in the State; or

(ii) **[**Whose principal owners are State residents and the business of which is primarily carried out**]** *Registered to business* in the State.

(b) "Eligible business" includes a corporation, association, general partnership, limited partnership, joint general partnership, joint venture, or other form of legal organization.

[(7)] *(8)* "Energy cost savings" means the actual reduction in operating expenses **[**realized by a borrower as a result of the improved energy efficiency generated by an energy conservation**]** *resulting from the installation, operation, and maintenance of a* project financed under the Program.

[(8)] *(9)* "Fund" means the Jane E. Lawton Conservation Loan Program Fund.

(10) "Loan" means an issuance of debt by the Administration to a qualified borrower under the Program.

[(9)] *(11)* "Local jurisdiction" means any county or municipality of the State and includes the board of education or community college of a county.

[(10)] *(12)* "Municipality" means any municipal corporation or State-created special taxing district in Maryland subject to the provisions of Article XI-E of the Maryland Constitution, or any authorized agency or instrumentality of the municipality.

[(11)] *(13)* "Nonprofit organization" means a corporation*, foundation, school, hospital,* or other legal entity, no part of the net earnings or assets of which inure to the benefit of *any private shareholder or individual holding an interest in the entity*[, or to be distributed to, its directors, officers, members, or other private persons, except that the corporation or entity may pay reasonable compensation for services rendered**]**.

[(12)] *(14)* "Program" means the Jane E. Lawton Conservation Loan Program.

[(13)] *(15)* Project.

(a) "Project" means one or more improvements or modifications that enhance the energy efficiency and reduce the operating expenses of a structure *located in Maryland*.

(b) **[**"Project" includes start-up opportunities for new businesses if the loan would enhance the energy efficiency of the borrower's business.

(c)**]** "Project" does not include improvements or modifications for energy conservation in structures used primarily for religious or fraternal activities.

.04 Eligibility and Requirements for Loans.

A. A loan under the Program may be made to:

(1) Eligible local jurisdictions;

(2) Eligible nonprofit organizations [located within the State]; and

(3) Eligible businesses.

B. **[**In addition to any other conditions required by the Administration, a loan applicant shall meet the following minimum conditions to be eligible to apply for a loan under the Program**]** *A borrower for a loan under the Program shall*:

(1) Have the legal capacity and all necessary legal authority to incur the obligations of a loan under the Program;

(2) *Provide a complete application to the Administration before the expiration of any applicable deadlines*[Be able to provide a contribution to the project that is of a type and amount acceptable to the Administration]; and

(3) If the borrower is a business entity, be in good standing *with the State Department of Assessments and Taxation and:* **[**and qualified to do business in the State.**]**

(a)Incorporated in the State; or

(b)Registered to do business in the State;

(4) Pay any fees required by the Administration; and

(5) Meet any other requirement deemed appropriate by the Administration.

.05 Permissible Uses for Loan Funds.

A. A loan under the Program may be used to pay for:

(1) The costs of implementing projects, including the costs of all necessary:

(a) Technical assessments;

(b) Studies;

(c) Surveys;

(d) Plans and specifications; and

(e) Start-up, architectural, engineering, and other special services;

(2) The costs of procuring necessary technology, equipment, licenses, or materials; and

(3) The costs of construction, rehabilitation, or modification related to a project including the purchase and installation of necessary machinery, equipment, or furnishings.

B. A loan may be made in conjunction with, or in addition to, financial assistance provided through utility and government programs.

.06 Minimum Borrower Obligations.

In addition to any other condition or requirement determined to be necessary by the Administration, a borrower shall:

A. Make a contribution to the project that is of a type and amount acceptable to the Administration;

B. **[**If the sole or primary purpose of the project is to reduce energy consumption, document**]** *Document* that the anticipated energy savings *to the borrower* over a defined period after the completion of the project are greater than the total cost of the project to the borrower *in a manner that allows the Administration to verify the anticipated energy savings at the time of the application*;

C. Repay the loan and interest **[**from specified revenues that may include the energy cost savings generated by the project**]** in accordance with a schedule set by the Administration;

D. *Pay an interest rate and any other fees and expenses assessed by the Administration***[**Bear an interest rate that the Administration determines to be necessary and reasonable for the project**]**;

E. Repay the loan and interest in accordance with a schedule **[**that the**]** *set by the* Administration [sets, which may be on a deferred payment basis]; and

F. Execute necessary assurances including a promissory note and other forms of collateral required by the Administration[**.**]*; and*

G. Provide the Administration with a letter of counsel that gives any assurances requested by the Administration.

.07 Terms and Conditions of Loan.

A. The borrower shall make a contribution to the project, acceptable to the Administration, which may take the form of:

(1) Cash;

(2) Payment of certain predevelopment costs such as preliminary architectural site plans, engineering design studies or feasibility studies, or technical assessments necessary to implement the project;

(3) Contribution of in-kind services acceptable to the Administration; or

(4) Contribution of equipment, labor, or materials for use in the project.

B. Security.

(1) Security or collateral are required for any loan to a nonprofit organization or *eligible* business. **[**Upon a showing of good cause, the Director may waive those requirements for nonprofit organizations.**]**

(2) When security is required, a loan shall be secured by liens on real property, equipment, or other assets purchased with loan proceeds and any other collateral approved by the lender and the Administration which may include, but are not limited to:

(a) The personal guarantees of the principals of the applicant;

(b) Liens on the business assets of the applicant;

(c) Guarantees of related entities;

(d) Indemnity deeds of trust on real property owned by the principals of the applicant;

(e) A cash escrow; or

(f) Any other form of security or collateral acceptable to the Administration.

(3) If applicable, the borrower shall make the necessary arrangements and, if necessary, execute a waiver in favor of MEA with a landlord to facilitate MEA's security and collateral.

C. Repayment.

(1) The principal and interest of a loan under the Program shall be repaid:

(a) From energy cost savings realized by the energy conservation project, or other revenues specified by the borrower *equal or equivalent to energy cost savings*; and

(b) In accordance with a schedule acceptable to the Administration, provided that the date for beginning of the repayment of a loan may not be later than 2 years from closing of the loan.

(2) In calculating the energy cost savings, the Administration, on a case by case basis, may take a number of factors into consideration, including:

(a) Actual or anticipated changes to the energy consumption and energy use of a borrower; and

(b) Whether these changes will produce monetary or other forms of savings to a borrower.

(3) At the conclusion of each fiscal year**[**:

(a) The borrower and the Administration shall compute in the manner prescribed by the Administration, the following:

(i) Actual energy cost savings resulting from the implementation of the energy conservation project financed by the loan; and

(ii) Projected energy cost savings for subsequent fiscal years;

(b) If] *if* the energy cost savings resulting from the project do not equal or exceed the expected repayment schedule for the loan, the Administration may *upon the petition of a Borrower*:

[(i)**]** *(a)* Adjust the terms of repayment with the borrower in such a manner as to assure that the annual payment amount does not exceed the actual energy cost savings resulting from the project; and

[(ii)**]** *(b)* Extend the repayment period for up to 1 additional year beyond the original maturity date, at the discretion of the Program, or a longer period at the discretion of the Director.

D. Interest Rate. The principal of the loan shall bear interest at a rate determined to be necessary and reasonable for the project, which, [in exceptional circumstances and] at the discretion of the Director, may be as low as zero percent.

E. In the event of default, the Administration may modify:

(1) The rate of interest;

(2) The time or amount of payment; or

(3) Any other term of the loan in order to ensure repayment and achieve the purposes of the Program.

F. *Template Documents.*

(1) The Administration shall **[**provide the borrower with loan documents which are consistent with the terms and requirements of a loan set forth in the Act and this chapter. The loan documents shall specify the reports necessary to monitor compliance by the borrower with the terms and conditions of the Act and this chapter**]** *publish a loan agreement, note, and security agreement on its website no later than 30 days following the start of each fiscal year that will serve as the Program documents for that fiscal year*.

(2) The Program documents published under subsection (1) of this section shall conform to the minimum provisions required under §G of this regulation and include any additional provisions deemed appropriate by the Administration.

(3) Except as provided in subsection (4) of this section, the Administration shall utilize the Program documents published under subsection (1) of this section for each loan issued to a borrower under the Program.

(4)The Administration may grant a modification or amendment to a Program document published under subsection (1) of this section only upon a determination by the Administration of good cause, which may include a determination by the Administration that:

(a) A provision of a template document is contrary to law; or

(b) A modification or amendment is necessary to facilitate the issuance of a loan to an applicant that is otherwise eligible for a loan under the Program.

G. Document Requirements.

(1) A loan agreement issued under the Program shall, at a minimum, include:

(a) A definition of terms;

(b) Interest rates, fees, and other expenses to be paid by the Borrower;

(c) A disbursement schedule consistent with the schedule proposed by the Borrower in its application;

(d) Conditions precedent and other terms that affect the disbursement and availability and funds;

(e) Applicable representations, warranties, and covenants;

(f) Indemnification of the Administration and its employees

(g) A requirement to hold the Administration and its employees harmless;

(h) Default events;

(i) Contact information;

(j) A statement of governing law;

(k) Terms related to confession of judgment; and

(l) Collection procedures.

(2) A security agreement issued under the Program shall, at a minimum, include:

(a) A description of collateral;

(b) Applicable representations, warranties, and covenants; and

(c) Default events.

(3) A note issued under the Program shall, at a minimum, include:

(a) A definition of terms;

(b) Interest rates, fees, and other expenses to be paid by the Borrower;

(c) Applicable representations, warranties, and covenants;

(d) Indemnification of the Administration and its employees

(e) A requirement to hold the Administration and its employees harmless;

(f) Default events;

(g) A statement of governing law;

(h) Terms related to confession of judgment;

(i) Collection procedures; and

(j) A requirement for notarization.

[G.] *H.* Insurance.

(1) The Administration may require a borrower to maintain insurance as described in this section.

(2) Multi-Peril Insurance. Multi-peril insurance provides fire and extended coverage insurance on the project both during and upon completion of construction, rehabilitation, or modification of a project. The insurance coverage shall include the endorsements that the Administration may require, including:

(a) Collapse;

(b) Explosion;

(c) Loss of rents; and

(d) Vandalism.

(3) Liability Insurance. Comprehensive general liability insurance shall be maintained with the endorsements that the Administration may require both during and after construction, rehabilitation, or modification of a project.

(4) Flood Insurance. If the project is located on real property which is in the 100-year flood plain, as designated by the U.S. Department of Housing and Urban Development, the project shall be covered by a flood plain insurance

policy. Before closing of a loan for a project, permits shall be secured from the Maryland Department of Natural Resources and the political subdivision in which the project is located.

(5) Contractor's Insurance. If a project involves construction, rehabilitation, or modification of a structure or improvements of any kind, the general contractor shall provide insurance coverage for comprehensive public liability, property damage, and Workers' Compensation in the form and amounts required by the Administration.

(6) Other Insurance. The borrower shall provide at closing of the loan other insurance the Administration may require, including:

(a) Builder's risk;

(b) Boiler insurance;

(c) Comprehensive automobile liability; and

(d) Broad form Workers' Compensation.

[H.] *(7)* Terms and Conditions. Insurance coverage shall meet the following minimum requirements plus any additional requirements which may be set by the Administration:

[(1)] *(a)* Insurance shall be provided by:

[(a)] *(i)* Companies or other legal entities that are authorized to transact business in the State, and which are reputable and financially sound, as determined by the Administration; or

[(b)] *(ii)* In the case of local jurisdictions, self-insurance programs that are acceptable to the Administration;

[(2)] *(b)* To the extent applicable, insurance shall be in force upon the closing of the loan;

[(3)] *(c)* To the extent applicable, an insurance policy shall contain a standard lender endorsement attached to or printed in the policy naming the Administration as mortgagee;

[(4)] *(d)* To the extent required by the Administration, the insurance policy shall name the Administration as loss payee and additional insured;

[(5)] *(e)* Insurance shall provide for notification to the Administration before termination; and

[(6)] *(f)* Insurance shall contain terms and coverage satisfactory to the Administration.

I. Disbursement. Loan proceeds shall be disbursed directly to the borrower upon the terms and conditions set forth in the loan documents.

.08 Evaluation Criteria.

[A. The Administration shall reserve 20 percent of the annual amount of funds available under the Program for loans to nonprofit organizations. If sufficient applications for the reserved funds have not been received from nonprofit organizations, those funds may be made available to other borrowers in the Program.**]**

[B.] The [Program shall] *Administration may* take the following factors into consideration in prioritizing loans for any fiscal year:

[(1)] *A.* Type of applicant with local governments, including schools, and nonprofits receiving special priority;

[(2)] *B.* Amount of projected electricity saved, fossil fuels displaced, or renewable energy generated;

[(3)] *C.* The extent to which the loan would leverage other energy investment dollars, including funds from the applicant or other private, local government, or federal financing;

[(4)] *D.* Risk profile of loan, including the length of the payback period, the applicant's ability to repay or provide security or collateral, or both, as required by the Administration;

[(5)] *E.* The availability of insurance;

[(6)] *F.* How the loan interacts with the applicant's broader energy conservation strategy; and

[(7)] *G.* Project readiness.

.09 Application Process.

A. Application for a Loan.

(1) An application for a loan shall be:

(a) Made upon standard forms required by and submitted to the Administration; and

(b) Submitted only by an eligible borrower in accordance with a schedule developed and publicized by the Administration.

(2) If the borrower is a:

(a) Local jurisdiction, the application shall be signed by the local jurisdiction's chief elected officer or, if none, by the governing body to the local jurisdiction;

(b) Public school, the application shall be approved by the board of education of the county in which the project is located and signed by the superintendent of public schools for the county;

(c) Institution of higher learning, the application shall be signed by the president of the institution or other authorized official;

(d) Business entity, the application shall be signed and verified:

(i) If a corporation, by an officer of the corporation;

(ii) If another form of business entity, by a person or official with authority to bind the entity to the commitments required; or

(e) Nonprofit organization, the application shall be signed by the executive director, president, chairman of the board, or other authorized official.

(3) An application for a loan shall be submitted to the Administration and shall contain:

(a) Sufficient information and documentation to determine:

(i) The eligibility of a project in accordance with the criteria set forth in Regulations .04 and .06 of this chapter; [and]

(ii) Whether the terms and requirements of the loan as set forth in Regulation .07 of this chapter can be met; and

(iii) For a business or nonprofit organization, sufficient information to allow the Administration to make a determination about the creditworthiness of the borrower and the risk profile of the loan; and

(b) The following additional information:

(i) Identification of the business, structure or structures, or equipment which will be the subject of a project, including, as applicable, a brief description of the existing condition of the structure or equipment evidencing a need for the project;

(ii) The cost of a proposed project and the amount of dollars committed from private and public resources;

(iii) A project budget identifying all sources and uses of project funds;

(iv) Proposed terms of the loan, including interest rates and repayment schedules;

(v) The type of security, if any, to be provided by the borrower;

(vi) A description of type, amount, and source of the contribution to be made by the borrower;

(vii) As determined by the Administration, the projected energy cost savings to be achieved in dollars, units of fuel, *kilowatt-hours*, or British thermal units, and the engineering calculations to support these savings estimates; and

(viii) The anticipated environmental benefits in the form of reduced emissions or pollution attributable to the proposed project.

B. Approval Process.

(1) Upon receipt of all the information required by the Program for an eligible project, the Program shall undertake an analysis of each application based on the criteria specified in Regulation .08 of this chapter.

(2) Upon completion of its analysis, the Program shall make recommendations to the Director, including any recommended terms and conditions for a project. After receipt of a recommendation from the program, the Director may approve or disapprove the loan and the terms of the loan.

(3) If the Director approves an application for a loan on the terms recommended by the Program, or other terms that the Director considers proper, the Director shall execute a determination that the loan is authorized by the Act as codified in State Government Article, §§9-20A-01—9-20A-09, Annotated Code of Maryland. The execution of a determination of this type by the Director shall constitute an approval of a loan and authorize issuance of a commitment letter obligating the Administration to provide the loan and setting forth the amount of the loan and the terms and conditions under which it will be made.

(4) The Director may delegate the responsibilities described in §B(2) and (3) of this regulation, including approval of loans under the Program.

(5) If the Program determines not to recommend approval of an application for an eligible project, the Program shall issue a written notice of rejection.

.10 Fees and Charges.

A. The Administration may charge an application and an administrative fee to cover the costs of making, servicing, or settling a loan.

B. A borrower by written notice to the Administration. The borrower may be required to bear any costs incurred by the Administration for items other than Administration processing, including a nonusage fee.

C. The Administration may return the application and administrative fees paid upon the withdrawal of an application.

.11 Closing.

A. Time. The closing of an award of a loan shall be scheduled at a time acceptable to the Administration and the Office of the Attorney General.

B. Place. The closing shall be at the Administration's offices unless otherwise agreed to by the Administration.

.12 Program Administration.

A. The Director may delegate to any other official or employee of the Administration or the Program the authority to approve loans *and credit enhancements* under the Program, or to execute or approve any loan documents or other documents governing a loan *or credit enhancement*, including a commitment.

B. The Administration may enter into contracts with third parties to make, service, or settle loans under the Program.

C. The Administration shall reserve 20 percent of the annual amount of funds available under the Program for loans to nonprofit organizations. If sufficient applications for the reserved funds have not been received from nonprofit organizations, those funds may be made available to other loans or credit enhancements under the Program

.13 Books and Records.

A. Borrowers, *recipients of credit enhancements*, contractors, and subcontractors shall maintain books, accounts, and records, and shall file with the Administration financial and other reports, that the Administration may from time to time require.

B. The books, accounts, and records referenced in §A of this regulation, as well as the administrative personnel, whether full-time or part-time, shall be available for inspection by representatives of the Administration or other agencies of the State during reasonable working hours.

C. Books, accounts, and records of contractors and subcontractors shall be maintained and made available for inspection for 3 years past the date of termination of the contractual relationship between the contractor and the borrower.

.14 Nondiscrimination.

A. A borrower *or recipient or beneficiary of a credit enhancement* may not discriminate against an individual on the basis of race, color, religion, national origin, sex, marital status, physical or mental handicap, or age in any aspect of the program.

B. A borrower *or recipient or beneficiary of a credit enhancement* shall comply with all applicable federal, State, and local laws and Administration policies and programs regarding discrimination and equal opportunity in employment, housing, and credit practices including:

(1) Titles VI and VII of the Civil Rights Act of 1964, as amended;

(2) Title VIII of the Civil Rights Act of 1968, as amended; and

(3) The Governor's Code of Fair Practices, as amended.

C. Covenants implementing these requirements, including affirmative action measures, shall be included in appropriate agreements between the Administration and other parties.

.15 *.16* Drug-Free and Alcohol-Free Policy.

As a condition of receipt of a loan from the Program, the Administration may require the Borrower *or recipient or beneficiary of a credit enhancement* to adopt and administer a program to promote a drug-free and alcohol-free workplace in accordance with Executive Order 01.01.1989.18.

.16 Waiver.

The Director may waive or vary provisions of this chapter to the extent that the waiver or variance is consistent with the Act as codified in State Government Article, §§9-20A-01—9-20A-09, Annotated Code of Maryland.

.17 False Statements or Report.

A. A person may not knowingly make or cause to be made any false statement or report in any document required to be furnished to the Administration by any agreement relating to a loan *or credit enhancement*.

B. A person applying for a loan *or credit enhancement* under the Program may not knowingly make or cause to be made any false statement or report for the purpose of influencing the action of the Administration on an application for a loan *or credit enhancement* or for the purpose of influencing the action of the Administration affecting a loan *or credit enhancement* already provided.

C. A person who violates §A or B of this regulation is guilty of a misdemeanor, and on conviction is subject to a fine not exceeding $50,000 or imprisonment not exceeding 1 year, or both.

.18 Credit Enhancements

A. Subject to the requirements of this regulation, the Administration may authorize a credit enhancement to carry out the purpose of the Program under State Government Article, § 9-20A-03, Annotated Code of Maryland.

B. The Administration may authorize a credit enhancement under the Program to a bank or other financial institution to facilitate financing of at least one project of an:

(1) Eligible local jurisdiction;

(2) Eligible nonprofit organization; or

(3) Eligible business.

D. A bank or other financial institution offering a financing enhanced by a credit enhancement under the Program shall:

(1) Be in good standing with the State Department of Assessments and Taxation and:

(a) Incorporated in the State; or

(b) Registered to do business in the State;

(2) Have the legal capacity and all necessary legal authority to incur the obligations associated with the credit enhancement under the Program;

(3) Provide a complete application to the Administration before the expiration of any applicable deadline;

(4) Satisfy all financial requirements established by the Administration;

(5) At the discretion of the Administration, pay a reasonable fee to the Administration for the administration of the credit enhancement; and

(5) Meet any additional requirement deemed appropriate by the Administration.

E. A beneficiary of a credit enhancement under the Program shall:

(1) Have the legal capacity and all necessary legal authority to incur the obligations associated with the credit enhancement under the Program;

(2) Satisfy all financial and credit-related requirements established by the Administration; and

(3) Meet any additional requirement deemed appropriate by the Administration.

F. Application and Review Process.

(1) An eligible local jurisdiction, nonprofit organization, or business may apply to the Administration under the Program to receive a credit enhancement for a financing offered by a bank or other financial institution.

(2) A bank or other financial institution may apply to the Administration to receive a credit enhancement to benefit an eligible local jurisdiction, nonprofit organization, or business.

(3) An application for a credit enhancement shall be:

(a) Made upon standard forms required by and submitted to the Administration; and

(b) Submitted to the Administration in accordance with a schedule developed and publicized by the Administration.

(4) If the beneficiary of the credit enhancement is a:

(a) Local jurisdiction, the application shall be signed by the local jurisdiction's chief elected officer or, if none, by the governing body to the local jurisdiction;

(b) Public school, the application shall be approved by the board of education of the county in which the project is located and signed by the superintendent of public schools for the county;

(c) Institution of higher learning, the application shall be signed by the president of the institution or other authorized official;

(d) Business entity, the application shall be signed and verified:

(i) If a corporation, by an officer of the corporation;

(ii) If another form of business entity, by a person or official with authority to bind the entity to the commitments required; or

(e) Nonprofit organization, the application shall be signed by the executive director, president, chairman of the board, or other authorized official.

(5) An application for a credit enhancement shall contain:

(a) Sufficient information and documentation to determine:

(i) Whether the terms and requirements of the credit enhancement as determined by the Administration can be met; and

(ii) For a business or nonprofit organization, sufficient information to allow the Administration to make a determination about the creditworthiness of the borrower and the risk profile of the credit enhancement; and

(b) The following additional information:

(i) Identification of the business, structure or structures, or equipment which will be the subject of a project, including, as applicable, a brief description of the existing condition of the structure or equipment evidencing a need for the project;

(ii) The cost of a proposed project and the amount of dollars committed from private and public resources;

(iii) A project budget identifying all sources and uses of project funds;

(iv) Proposed terms of the credit enhancement, including interest rates and repayment schedules;

(v) The type of security, if any, to be provided by the beneficiary of the credit enhancement;

(vi) A description of type, amount, and source of the contribution to be made by the beneficiary of the credit enhancement;

(vii) As determined by the Administration, the projected energy cost savings to be achieved in dollars, units of fuel, kilowatt-hours, or British thermal units, and the engineering calculations to support these savings estimates; and

(viii) The anticipated environmental benefits in the form of reduced emissions or pollution attributable to the proposed project.

(6) After receipt of an application for a credit enhancement, the Administration may consider whether to offer a credit enhancement under the Program using the following factors:

(a) Satisfaction of the requirements under subsection (3) of this section;

(b) Estimated energy savings;

(c) Leverage;

(d) Risk to the Administration of pecuniary loss;

(e)The extent to which the credit enhancement helps achieve the purpose of the Program under State Government Article, § 9-20A-03, Annotated Code of Maryland; and

(f) Additional factors deemed appropriate by the Administration related to the:

(i) Type of credit enhancement proposed;

(e) Project;

(f) Bank or financial institution; and

(g Beneficiary of the credit enhancement.