

## Chapter Comm 109

### ECONOMIC DEVELOPMENT LOAN CERTIFICATION

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**Note:** Chapter DOD 9 was renumbered chapter Comm 109 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1997, No. 498.

**Comm 109.01 Purpose.** The purpose of this chapter is to set forth the criteria the department will use in certifying whether an economic development loan to be financed by the Wisconsin housing and economic development authority complies with the statutory conditions under s. 234.65 (3), Stats.

**History:** Cr. Register, September, 1984, No. 345, eff. 10-1-84.

**Comm 109.02 Eligibility.** Small- and medium-sized businesses, together with affiliates, subsidiaries and parent companies, which have current gross annual sales of \$35 million or less, are located in or in the process of locating in the state of Wisconsin, and which will use authority-assisted financing programs for economic development projects, are eligible. The purpose of these projects will be to preserve or increase permanent, full-time employment.

**History:** Cr. Register, September, 1984, No. 345, eff. 10-1-84.

**Comm 109.03 Definitions.** In this chapter:

(1) "Affiliate" means a person that directly or indirectly through one or more intermediaries, a) has 80% voting control of another person, b) 80% of whose voting control is owned by another person, or c) is in 80% common voting control with another person.

(2) "Authority" means the Wisconsin housing and economic development authority.

(3) "Business receiving the benefits of the loan proceeds" means the borrower owning the facilities or equipment financed with the proceeds of an authority economic development loan.

(4) "Collateral" means the term as defined in s. 234.01 (3m), Stats.

(5) "Conventional financing is unavailable on reasonably equivalent terms and conditions" means:

(a) That financing has been declined for the economic development project; or,

(b) That the maturity, rate or the amount of available financing or requirements related to the financing, such as collateral, equity, closing costs, service charges and repayment schedules offered on such financing are materially different from the financing available from the authority;

(c) The requirements of pars. (a) and (b) shall be evidenced by written documentation from one financial institution which is satisfactory to the authority and the department.

(6) "Current gross annual sales" means the gross business income of the borrower prior to the purchase of the land, plant or equipment to be permanently financed with the proceeds of the authority's economic development loan. The determination of gross business income shall be based on the average of the most recent 2 years of total company sales transactions as substantiated by the firm's 2 most recent federal or state tax returns or other such financial statements acceptable to the authority and the department.

(7) "Department" means the department of commerce.

(8) "Economic development loan" means the term as defined in s. 234.01 (4m), Stats.

(9) "Economic development project" means the term as defined in s. 234.01 (4n), Stats.

(10) "Expand employment" means the creation of new job positions as measured in terms of full-time equivalent positions.

(11) "Expansion of the business" means capital investment to increase the output or service delivery capacity of the business.

(12) "Financial institution" means the term as defined in s. 234.01 (5k), Stats.

(13) "Job" means work done by agreement for pay at or above the applicable minimum wage.

(14) "Maintain employment" means the preservation of job positions associated with the project which would otherwise be lost, as measured in terms of full-time equivalent positions.

(15) "Parent company" means a person that directly owns more than 80% voting control of another person.

(16) "Person" has the meaning specified in s. 990.01 (26), Stats.

(17) "Primary risk" means assuming a subordinated position on any loan.

(18) "Refinance existing debt" means the repayment of the firm's existing financial liabilities with the proceeds of an economic development loan.

(19) "Subsidiary" means a person, more than 80% of whose voting control is owned directly by another person.

**Note:** The 80% voting and value test is consistent with the Internal Revenue Code of 1986, 26 USC 1504 (a), which defines "affiliated group," and 1563 (a) (1), which defines "parent-subsidiary controlled groups."

**History:** Cr. Register, September, 1984, No. 345, eff. 10-1-84; emerg. renum. (1) to (15) to be (2) to (16) and am. (6), cr. (1), (14m) and (17), eff. 5-19-86; emerg. renum. (1) to (15) to be (2) to (14) and (16) to (17) and am. (6), cr. (1), (15) and (18) eff. 6-20-88; renum. (1) to (15) to be (2) to (14) and (17) to (18) and am. (6), cr. (1), (15), (16) and (19), Register, October, 1988, No. 394, eff. 11-1-88.

**Comm 109.04 Required certification.** An economic development loan may not be made unless the department certifies that:

(1) The economic development project will maintain or expand employment in this state;

(2) Conventional financing is unavailable for the economic development project on reasonably equivalent terms and conditions;

(3) The economic development project is or will be located in this state;

(4) The business receiving the benefits of the loan proceeds, together with all of its affiliates and subsidiaries and its parent company, has current gross annual sales of \$35,000,000 or less;

(5) The authority will not assume primary risk on the economic development loan; and

(6) The economic development loan will not be used to refinance existing debt, unless it is in conjunction with an expansion of the business or job creation.

**History:** Cr. Register, September, 1984, No. 345, eff. 10-1-84.

**Comm 109.05 Certification process.** (1) The applicant shall submit an application for financing to the authority.

(2) The department shall consult with the authority to ensure that the economic development loan application form includes questions that will provide the department with the information

necessary to perform its certification function as required under s. 234.65 (3m), Stats., and reporting function as required under s. 234.65 (5), Stats.

**(3)** The department shall review for certification the economic development loan applications submitted to it by the authority.

**(4)** The department shall notify the authority, in writing, as soon as it has completed its review of the applications for certification, regarding its decision on certification.

**History:** Cr. Register, September, 1984, No. 345, eff. 10-1-84.