

DIVISION 21

OPERATION OF OREGON CREDIT ENHANCEMENT FUND

123-021-0000

Purpose

The purpose of these rules is to provide procedures, standards, and criteria for making loan guarantees or other forms of credit guarantees from the Oregon Credit Enhancement Fund.

Stat. Auth.: ORS 285.065 & 285.466 – 285.481

Stats. Implemented: ORS 285.466 - ORS 285.481

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94

123-021-0010

Definitions

For the purpose of these rules, the following terms shall have the following definitions, unless the context clearly indicates otherwise:

~~(1) "Application" means a request for a loan or other credit guarantee submitted to the department by a financial institution.~~

~~(2) "Average annual employment" means:~~

~~(a) In the case of a borrower existing for more than twelve months preceding the date of application, the average level of employment for the twelve months preceding the date of application;~~

~~(b) In the case of a borrower that has existed for less than twelve months prior to the date of application, the average of all monthly employment levels preceding the date of application;~~

~~(c) In the case of a new borrower, the number of employees at the time of application.~~

~~(3) "Borrower" means a business entity which meets the eligibility requirements of OAR 123-021-0015, and includes a prospective borrower where the context requires.~~

~~(4) "Brownfield" or "Brownfields" means real property where expansion or redevelopment is complicated by real or perceived environmental contamination.~~

~~(5) "Commission" means the Oregon Economic and Community Development Commission appointed under ORS 285A.040 or its designee.~~

~~(6) "Department" means the Economic and Community Development Department created under ORS 285A.070.~~

~~(7) "Deputy Director" means any deputy director or any assistant director appointed by the director under ORS 285A.070.~~

(81) "Destination activities or facilities other than retail or food service" means a qualified business which has a significant impact on the regional recreational or tourism economy. Incidental food service or retail facilities necessary to the operation of a destination activity or facility are eligible. Sleeping accommodations without unique attraction capabilities are not qualified businesses.

~~(9) "Director" means the director of the department appointed under ORS 285A.070.~~

~~(10) "Distressed area" means any area as defined by the department under ORS 285A.010.~~

~~(11) "Environmental Action" means activities undertaken to:~~

~~(a) Determine if a release has occurred or may occur, if the release or potential release, poses a significant threat to human health or the environment, or if additional remedial actions may be required at the site;~~

~~(b) Conduct a remedial investigation and a feasibility study;~~

~~(c) Plan for remedial action or removal action; or~~

~~(d) Conduct a remedial action or removal action at a site.~~

(422) "Financial institution" means a financial institution defined in ORS 706.008.

(433) "Fund" means the Credit Enhancement Fund created by ORS 285B.215.

(444) "Loan insurance authorization" means a letter from the director or deputy director or their designees to a financial institution agreeing to insure a loan to a borrower on the terms and conditions and subject to the requirements stated therein.

(455) "Loan insurance agreement" means the agreement between the financial institution and the ~~department~~Department required by OAR 123-021-0100.

~~(16) "Program(s)" means the loan insurance and other credit guarantee programs governed by this division of the rules.~~

(476) "Working capital loan" means any loan for which the proceeds ~~of which~~ are to be used for operating, maintenance and other costs and expenses, or for purposes other than acquiring real or personal property.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 12-1997(Temp), f. & cert. ef. 10-7-97; EDD 11-1998, f. & cert. ef. 5-22-98; EDD 8-1999, f. & cert. ef. 10-1-99; EDD 4-2007(Temp), f & cert. ef. 8-28-07 thru 2-22-08; EDD 5-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08

123-021-0015

Qualified Business

A Qualified business is defined as any existing or proposed business that, except when located in a distressed area, sells goods or services in markets for which national and-or international competition exists. In a

distressed area, any existing or proposed business is a qualified business. Any company that owns, occupies, operates, or has entered into an agreement to own, occupy or operate real property containing a Brownfield is a qualified business. Outside of a distressed area, any existing or prospective business entity that will result in or will aid, promote or facilitate the development of one or more of the following activities shall be a qualified business:

- (1) Manufacturing or other industrial production;
- (2) Food processing;
- (3) Aquaculture development or seafood processing;
- (4) Convention facilities or trade centers;
- (5) Destination facilities other than retail or food service;
- (6) Transportation or freight facilities;
- (7) Distribution facilities; or
- (8) Other activities, as approved by the ~~department~~Department, that represent new technology or diversifying activity but not including:
 - (a) Construction of office buildings;
 - (b) Retail businesses, shopping centers and food service facilities;
 - (c) Motels or bed and breakfast hotels; ~~without unique attraction facilities;~~
 - (d) Professional services for medicine, law, dentistry or finance;
 - (e) Athletic, racquetball, handball clubs, private membership clubs, and golf courses;
 - (f) Sand and gravel facilities; or
 - (g) Newspapers.
- (9) For the Evergreen Entrants Program, a Qualified business includes persons or enterprises without, or about to be without, existing line of credit ~~Working~~working capital loans. For the Evergreen Plus Program, a Qualified business includes persons or enterprises with existing line of credit ~~Working~~working capital loans.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08

123-021-0020

Eligibility

(1) In order for a qualified business to be eligible its project must meet one of the following purposes; Eligible purposes means the acquisition, improvement, rehabilitation, or construction of real or personal property, working capital for operations, export transactions, maintenance and other costs and expenses which are used for purposes other than acquiring real or personal property, but not including:

- (a) An insured loan used for any personal, family, or household expenses of the borrower or any guarantor;
- (b) An insured loan used for construction financing;
- (c) An insured loan for the construction of residential housing;

~~(d) An insured loan made primarily to pay off or refinance an existing debt to a creditor whose loan is inadequately secured or who is in danger of sustaining a loss. The Department will consider refinancing requests on a case by case basis, except in the case of loans where refinancing constitutes a portion of an application and is necessary to improve a collateral position. In evaluating such requests the department will consider the requirements of this section and the financial benefits to the borrower, the prospects for success, public benefits such as jobs created or retained, the extent to which financial institutions agree to extend terms or provide other favorable financing to a borrower, and the extent to which collateral securing an insured loan is improved.~~

(ed) An insured loan used to purchase an existing qualified business, except for:

(A) ~~Acquisition/e~~Expansions where the majority of loan proceeds are used to support expansion improvements;

(B) 100% Asset and Stock Purchase Acquisitions, Restructured enterprises, including Employee Stock Ownership Plans, where jobs ~~might otherwise be lost.~~ will be created or retained.

(2) The Department will consider refinancing requests on a case by case basis. In evaluating such requests, the Department will consider the financial benefits to the borrower, the prospects for success, public benefits such as jobs created or retained, the extent to which financial institutions agree to extend terms or provide other favorable financing to a borrower, and the extent to which collateral securing an insured loan is improved.

(23) The maximum term for an eligible loan guaranty per borrower project is the lesser of fifteen (15) years or the useful life of the assets being financed, or one year plus four annual renewals for the Evergreen Entrants or Evergreen Plus Programs.

(34) Eligible borrowers are defined in OAR 123-021-0015.

(45) Eligible financial institutions ~~peras defined by ORS 706.008 are defined in OAR 123-021-0010(13).~~

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.200 - 285B.218 & SB 402 & SB 128

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 8-1999, f. & cert. ef. 10-1-99; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08

123-021-0030

Borrower Preferences

~~(1) Not less than 20 percent of all moneys available for loan guarantees from the Ffund is reserved for loan guarantees to Eemerging small business.~~

~~(2) The amounts reserved for the 1999–2001 biennium for Eemerging small businesses is: \$13 million.~~

~~Stat. Auth.: ORS 285A.075(5) & 285A.110~~

~~Stats. Implemented: ORS 285B.200–285B.218, SB 402 & SB 128~~

~~Hist.: EDD 5–1994(Temp), f. & cert. ef. 3–3–94; EDD 11–1994, f. & cert. ef. 7–29–94; EDD 12–1997(Temp), f. & cert. ef. 10–7–97; EDD 11–1998, f. & cert. ef. 5–22–98; EDD 8–1999, f. & cert. ef. 10–1–99; Suspended by EDD 4–2007(Temp), f. & cert. ef. 8–28–07 thru 2–22–08; Suspended by EDD 5–2008(Temp), f. & cert. ef. 2–26–08 thru 8–1–08~~

123-021-0040

Application Contents

(1) Required Contents. Unless waived by the ~~department~~Department, the financial institution shall submit to the ~~department~~Department an application containing the following:

(a) A completed General Information Sheet provided by the ~~department~~Department;

(b) A written narrative by the Ffinancial institution analyzing the borrower's application (i.e. credit analysis), including an identification of the proposed amount of the loan, the requested percentage of insurance and ~~department~~Department insurance program, the purpose, terms and conditions of the loan, a description of the collateral and basis for its valuation, a summary of the borrower's credit standing, and a description of other sources of financing;

(c) Complete resumes of the borrower, all partners, owners, officers and guarantors, as applicable;

(d) Historical business financial statements for the prior three years, including income statements and balance sheets (income tax returns may also be required), as applicable, if an existing borrower. Income tax returns may be sufficient if accountant prepared statements are unavailable. Interim financial statements must also be included if the most recent statements are beyond 90 days;

(e) Signed current personal financial statement(s) of owners with a minimum 20% ownership interest in the borrower. Federal tax returns may be required. This information may also be required of guarantors;

(f) Pro forma balance sheet and income statement with supporting assumptions. In some instances, monthly cash flow statements may also be required. Cash flow statements are required in cases where loan repayment is dependent on projections, and for borrowers seeking Workingworking capital financing;

(g) Completion of the ~~department~~Department's environmental questionnaire or a comparable one provided by the financial institution and approved by the ~~department~~Department for loans secured in whole or part by real property and for other insured loans, if requested by the ~~department~~Department;

(h) Other information as the ~~department~~Department may require such as projected jobs created or jobs retained by a borrower.

(2) Supplemental Information. The ~~department~~Department may require, at its discretion:

- (a) Appraisals of collateral or the financial institution's basis for determining collateral value;
- (b) A business or marketing plan, including an analysis of competition;
- (c) Certificates from the Oregon Department of Environmental Quality or any other governmental or regulatory agencies with jurisdiction, if applicable;
- (d) Copies of leases or purchase agreements, as applicable;
- (e) Any other information or certifications from the borrower or the financial institution deemed by the ~~department~~Department to be necessary or desirable in connection with an insured loan application.

Stat. Auth.: ORS 285.065 & 285.466 - 285.481

Stats. Implemented: ORS 285.474(3)

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08

123-021-0050

Application Procedure

- (1) The ~~department~~Department shall determine when an application is complete.
- (2) It shall be the responsibility of the financial institution to submit a complete application.
- ~~(3) The department shall consider the application as expeditiously as possible after a complete application is received with the goal of processing applications within ten business days.~~
- (4) The ~~department~~Department will review an application based on the following criteria and considerations:
 - (a) An application will not be approved unless the ~~department~~Department determines that there is a reasonable prospect that the borrower will repay a loan according to its terms.
 - (b) An application will only be approved to the extent, in terms of amount, percentage and period of insurance, that is necessary and prudent for the ~~department~~Department to provide to complete the financing. ~~In no event shall the insurance provided for a borrower exceed the maximum permitted for a particular Insurance Program.~~
 - (c) No application will be approved unless the ~~department~~Department determines that the insured loan will be serviced by a financial institution as required by the ~~department~~Department.
 - (d) No application will be approved unless the ~~department~~Department determines that the borrower is eligible and the insured loan proceeds will be used for an eligible purpose.
 - (e) No application will be approved unless the ~~department~~Department determines that the application is complete and that information sufficient to make an informed decision on the application has been received.
 - (f) In reviewing applications, the ~~department~~Department will consider the following, as applicable:

- (A) The extent to which the borrower demonstrates a need for an insured loan.
- (B) The economic feasibility of the business endeavor as evidenced by the borrower's present and past financial situation and business experience and the general reasonableness of the business proposal and financial projections for the future.
- (C) Whether the borrower and any guarantors have satisfactory credit histories.
- (D) Whether the borrower has sufficient capital and other resources to conduct the business as planned, and the amount and source of equity contributed.
- (E) The adequacy of the security offered for the loan.
- (F) The extent to which the risk of financial loss is shared by others.
- (G) The viability of the industry of which the borrower is a part and the contribution of the borrower to that industry.
- (H) The extent to which the borrower contributes to local economic development, market development and employment opportunities.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 12-1997(Temp), f. & cert. ef. 10-7-97; EDD 11-1998, f. & cert. ef. 5-22-98; EDD 4-2007(Temp), f & cert. ef. 8-28-07 thru 2-22-08; EDD 5-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08

123-021-0060

Application Approval or Rejection

- (1) Upon approval of an application by the director, deputy director or their designees or members of the commission, a loan [insurance](#) authorization will be issued setting forth the terms and conditions upon which the loan will be insured.
- (2) No loan [insurance](#) authorization shall become effective until the financial institution has paid the initial [loan insurance](#) premium required by OAR 123-021-0110. Such payment, along with an executed loan [insurance](#) authorization, shall indicate the financial institution's acceptance of the terms of the loan [insurance](#) authorization.
- (3) No loan [insurance](#) authorization shall be effective unless a loan insurance [agreement](#) has been executed by the financial institution and the ~~department~~[Department](#) and remains in effect.
- (4) In the event the director or deputy director or their designees reject an application, ~~they upon written request, the Department~~ will promptly send the financial institution ~~and borrower~~ a notice, including reasons for the rejection. The notice shall include a statement of the borrower's right to appeal the director's or deputy director's or their designees' decision to the commission.

Stat. Auth.: ORS 285.065 & 285.466 - 285.481

Stats. Implemented: ORS 285.474(3)

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08

123-021-0070

Appeal to the Commission

In the event that an application is rejected, the borrower or the financial Institution shall have the right to appeal the decision to the commission. Notice of the appeal must be submitted in writing, within twenty days of receiving ~~the mailed notification~~ of ~~the~~ rejection, to the ~~department~~Department. The notice of appeal must include the departmental rejection statement(s) together with a statement of why the decision should be reversed or modified. ~~The department shall inform the financial institution of any such appeals. The appeal shall be heard at the next meeting of the Commission at which there is room on the agenda. The Department shall inform the applicants of the time and location of the appeal hearing, and the borrower and financial institution and the borrower may must be present to support the appeal through public comment. The commission may, at its discretion, direct the appeal to a Finance Committee for the commission for final review and disposition.~~

Stat. Auth.: ORS 285B.200

Stats. Implemented: ORS 285B.200 - 285B.218 & OL 1997, Ch. 148

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 12-1997(Temp), f. & cert. ef. 10-7-97; EDD 11-1998, f. & cert. ef. 5-22-98; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08

123-021-0080

Loan and Insurance Terms and Conditions

(1) Interest rate and term. The rate of interest on the insured loan and the term of the loan shall be agreed between the financial institution and a borrower provided that no term may exceed the lesser of fifteen years or the useful life of the assets being financed or one year plus four annual renewals for the Evergreen Entrants or Evergreen Plus Programs.

(2) Collateral. Repayment of an insured loan shall be secured by such collateral as the ~~department~~Department deems prudent.

(a) Insured loans may, at the discretion of the ~~department~~Department, be secured by collateral valued for collateral purposes at less than the amount of the insured loan, provided the borrower, its principals, ~~and the guarantors, to the satisfaction of the Department, and any guarantors are~~are of good character, ~~and~~ have good credit histories, ~~and exhibit to the satisfaction of the Department the ability to service~~retire the proposed and existing debt with historical cash flow;

(b) Real estate or unmovable machinery or equipment constituting a significant portion of collateral for repayment of an insured loan shall be located within the state. Mobile machinery or equipment, including vessels, constituting a significant portion of collateral for repayment of an insured loan shall be registered with and taxed by the state or municipal authorities, if the State or municipal authorities register or tax machinery or equipment of a type similar to the collateral, and shall be stored or berthed in the state when not in use.

(3) Covenants. The covenants and requirements of the loan shall be established by the financial institution in accordance with prudent lending practices. The ~~department~~Department may require such additional

covenants and requirements as may be necessary, prudent or desirable. At a minimum, the loan documents should require the borrower to:

- (a) Make periodic payments of principal and interest, with the exception of short term working capital loans or evergreen working capital loans or lines of credit where periodic interest payments with a balloon principal payment and/or term options may be acceptable, as determined by the [departmentDepartment](#);
- (b) Make any lease payments;
- (c) Maintain adequate insurance on collateral, and maintain books and records on the business;
- (d) Pay any taxes or governmental charges assessed against the collateral and comply with all applicable laws and regulations;
- (e) Keep the collateral free of liens and encumbrances except for as may be expressly accepted by the financial institution and [departmentDepartment](#);
- (f) Provide for periodic financial reports to the financial institution;
- (g) Pay advances necessary to protect the collateral and all expenses of protecting or enforcing the rights of the financial institution and [departmentDepartment](#).

Stat. Auth.: ORS 285.065 & 285.466 - 285.481

Stats. Implemented: ORS 285.474(4)

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08

123-021-0090

Loan Insurance Programs

The [departmentDepartment](#) shall offer the following insurance programs:

- (1) Conventional Insurance, under which the [departmentDepartment](#) may insure up to 90 percent of a loan to a maximum of \$700,000. Should a borrower which receives an insured loan default or otherwise be unable to make loan payments, the [departmentDepartment](#) would pay the financial institution up to 90 percent of the deficiency. The balance of any loss is absorbed by the financial institution. Loan payments and the proceeds of collateral are applied pro rata to the insured and uninsured portion of a loan. The [departmentDepartment](#)'s obligation would be limited to a payment of the insured percentage of a loan times the amount of principal, accrued interest and the financial institution's reasonable costs of collection, exclusive of costs attributed to environmental problems, remaining unpaid after liquidation of collateral, up to the lesser of \$700,000 or an amount equal to the insured percentage of the original loan amount authorized in the loan authorization.
- (2) Evergreen Entrants Insurance, under which the [departmentDepartment](#) may insure up to 75 percent, on a pro rata basis, of a line of credit working capital loan, not to exceed the lesser of \$500,000 or an amount equal to the insured percentage of the original loan amount authorized in the loan [insurance authorizationAuthorization](#). Eligible borrowers include persons or enterprises without or about to be without existing line of credit [Workingworking](#) capital loans. To participate in the Evergreen Entrants Program, the [departmentDepartment](#) must be satisfied the financial institution has the capacity to service the loan effectively, including monitoring compliance with any audit and control procedures prescribed by the

~~department~~Department or comparable procedures of the financial institution approved by the ~~department~~Department.

(a) To participate in the Evergreen Entrants program, a financial institution must have in place and operating a lending program specializing in line of credit loans secured by or with advances based upon eligible accounts receivable and inventory or other assets. The Department must be satisfied that the financial institution is sufficiently experienced and capable of operating such a lending program effectively.

(3) First Loss Insurance, under which the ~~department~~Department may insure 100 percent of any loss to a financial institution up to the lesser of 25 percent of the original loan amount or \$300,000. If a financial institution makes a payment request, the ~~department~~Department's obligation would be limited to 100 percent of the amount of principal, accrued interest and the financial institution's reasonable costs of collecting the loan, exclusive of costs attributable to environmental problems, remaining unpaid after liquidation of collateral, up to the lesser of: 25 percent of the outstanding balance of the loan, including accrued interest and reasonable costs and expenses of collection and liquidation of collateral, but not taking into account the proceeds of liquidation and payments by guarantors, or an amount equal to the insured percentage of the original loan, or \$300,000.

(4)(a) Evergreen Plus Insurance, under which the ~~department~~Department may insure up to 90 percent of a new increment of a line of credit ~~working capital loan~~, with maximum insurance of \$500,000. If a financial institution makes a payment request for any deficiency remaining after liquidation of collateral and payment by any guarantors, the ~~department~~Department's obligation would be limited to the lesser of:

(A) A ratable share of the total default charges; or

(B) 90 percent of the deficiency.

(b) The formula for calculating the ~~department~~Department's ratable share of total default charges is:

$$R = (G \div T) * P$$

R represents the ratable share of total default charges.

G represents the guaranteed loan amount as set out in the insurance authorization.

T represents the total credit facility made available.

P represents the principal outstanding upon default plus accrued interest and liquidation charges.

Guaranteed Loan Amount

(as set out in Authorization)

Total credit facility made available

X

(Principal outstanding upon default plus accrued interest and liquidation charges)

(c) ~~Qualified businesses include persons or enterprises with existing line of credit Working capital loans.~~ To participate in the Evergreen Plus program, a financial institution must have in place and operating a lending program specializing in line of credit loans secured by or with advances based upon eligible accounts receivable and inventory or other assets, as determined by the department~~Department~~. The ~~department~~Department must be satisfied that the financial institution is sufficiently experienced and capable of operating such a lending program effectively~~an effective Evergreen Plus Program~~.

(5) The Conventional and First Loss Insurance Programs are available for all types of non-revolving loans with regular periodic payments of principal and interest no less often than annually for eligible purposes, including ~~Working~~working capital loans that are secured by fixed assets.

Stat. Auth.: ORS 285.065 & 285.466 - 285.481

Stats. Implemented: ORS 285.474(4)

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 13-2002(Temp), f. & cert. ef. 6-18-02 thru 12-13-02; Administrative correction 4-15-03; EDD 6-2005(Temp), f. & cert. ef. 8-5-05 thru 1-31-06; EDD 1-2006, f. & cert. ef. 2-10-06; EDD 5-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08

123-021-0100

Loan Insurance Agreement

No loan authorization shall be effective unless the financial institution and the ~~department~~Department have executed a loan insurance agreement in a form acceptable to the ~~department~~Department setting forth the relative rights and responsibilities of the financial institution and the ~~department~~Department for all insured loans. The loan insurance agreement shall include without limitation the following:

(1) General conditions and provisions incorporating the requirements of this division of the rules and ORS 285.466 to 285.481.

(2) Provisions setting forth the responsibilities of the financial institution to prudently underwrite and service insured loans in such a manner as would be the normal and customary practice of a prudent lender making or servicing a loan without relying on loan insurance.

(3) A requirement that the financial institution notify the ~~department~~Department in writing within 5 business days after a borrower's payment is 30 days late and within fifteen business days of any other default or event or condition which indicates the loan may be difficult to collect in full. Upon default, the financial institution and/or ~~department~~Department shall take such action as may be prudent, including without limitation foreclosing on and liquidating collateral.

(4) A description of the ~~department~~Department's insurance programs and the method for paying insurance claims.

(5) The ~~department~~Department shall be entitled at its discretion to cancel or reduce its insurance obligation if the financial institution breaches its responsibilities under the loan insurance agreement.

Stat. Auth.: ORS 285.065 & 285.466 - 285.481

Stats. Implemented: ORS 285.474(4)

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08

123-021-0110

Insurance Premiums

(1) The [departmentDepartment](#) shall charge a one-time (up-front) insurance premium. Premiums are due at the time financial institution's originate loans and execute loan authorizations with the [departmentDepartment](#). The [departmentDepartment](#)'s insurance is not effective until premiums are paid. It is expected that financial institutions will pass along the cost of premiums to borrowers. Premiums, expressed as a percentage of the insured loan amount, shall be charged in accordance with the following schedule for the programs indicated: [Schedule not included. See ED. NOTE.]

(2) The fee for the Evergreen Entrants Program is 1.25 percent annually; the fee for Evergreen Plus Program is 2.5 percent annually.

(3) For revolving lines of credit or evergreen facilities, the premium will be based on the total amount of the credit facility made available to a borrower, regardless of whether it is fully drawn down. Examples:

(a) The premium due on a \$200,000, five year loan with 85% Conventional insurance would be \$3,400 ($\$200,000 \times .85 \times .02$);

(b) The premium on a Evergreen Entrants 75% insured loan for \$200,000 would be \$1,875 ($\$200,000 \times .75 \times .0125$); this amount would be due every year thereafter for up to four additional years, assuming the loan and amount is renewed each year for the maximum term permitted under the Evergreen Entrants program (5 years);

(c) The premium due on a \$200,000, eight year, 25% First Loss insured loan would be \$2,500 ($\$200,000 \times .25 \times .05$);

(d) The premium due on a \$700,000, 25% insured Evergreen Plus loan would be \$4,375 ($\$700,000 \times .25 \times .025$); this amount would be due every year thereafter for up to four additional years, assuming the loan and amount is renewed each year for the maximum term permitted under the program (5 years).

[ED. NOTE: Schedules referenced are available from the agency.]

Stat. Auth.: ORS 285.065 & 285.466 - 285.481

Stats. Implemented: ORS 285.474(4)

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08

123-021-0120

Administrative Costs of the Program

The [departmentDepartment](#) may charge the fund actual and necessary administrative expenses in operating the fund and its programs.

Stat. Auth.: ORS 285.065 & 285.466 - 285.481

Stats. Implemented: ORS 285.476(2), 285.476(5) & 285.471(1)(b)

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08

123-021-0130

Delegation

With the exception of appeals, the ~~department~~Department may authorize and approve loan authorizations and to execute any document necessary or convenient to make effective such guarantees.

Stat. Auth.: ORS 285.065 & 285.466 – 285.481

Stats. Implemented: ORS 285.474(4)

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08

123-021-0140

Confidential Records

(1) The director or his designee shall provide nonexempt program records for inspection in accordance with ORS Chapter 192.

(2) The person requesting inspection of the records may be charged in advance the ~~department~~Department's cost for locating, compiling, copying, and mailing the records. Such costs shall include but not be limited to costs incurred in locating records, separating exempt and nonexempt records, having a custodian present during the inspection, preparing lists of data, making photocopies, and telefaxing materials. Fees to be collected shall be set forth in the ~~department~~Department's schedule of fees and may be amended from time to time as the ~~department~~Department in its sole discretion may determine.

(3) Except as otherwise provided in ORS Chapter 192, records exempt from disclosure include but are not limited to:

(a) Reports and analyses of reports obtained in confidence from creditors, employers, customers, suppliers, and others which bear on the borrower's character, finances, management ability, and reliability and which were obtained from persons or firms not required by law to submit them;

(b) Financial statements, tax returns, business records, employment history and other personal data submitted by or for borrowers, or analysis of such data;

(c) Interdepartmental advisory memoranda developed prior to a loan insurance decision;

(d) Formulas, plans, designs and related information which constitute trade secrets under ORS Chapter 192;

(e) Personal financial statements;

(f) Financial statements of borrower's;

(g) Customer lists;

(h) Information of a borrower pertaining to litigation to which the borrower is a party if the complaint has been filed, or if the complaint has not been filed, if the borrower shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded and nothing is this

section shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(i) Production, sales or cost data; and

(j) Marketing strategy information that relates to a borrower's plan to address specific markets and borrower's strategy regarding specific competitors.

Stat. Auth.: ORS 285.065 & 285.466 - 285.481

Stats. Implemented: ORS 192.430 & 285.035(5)

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08