

## **Title 6: Economic Development**

### **Part 4: Community Services**

#### **Part 4 Chapter 3: Local Governments Capital Improvements Revolving Loan Program (CAP)**

*Rule 3.1 Purpose.* The Local Governments Capital Improvements Revolving Loan Program (CAP) administered by the Mississippi Development Authority (MDA) is designed for making loans to counties or municipalities (Applicant) to finance capital improvements in Mississippi. Applicants are encouraged to use these loans in connection with state and federal programs. Funding for loans to Applicants is derived from the issuance of state bonds. The State Legislature enacted CAP during the regular 1994 session. (See Section 57-1-301 through 57-1-335 et seq., Mississippi Code, Annotated.)

Source: Miss. Code Ann. § 57-1-301 *et seq.* (Rev. 2014).

*Rule 3.2 Eligibility.* Application for assistance must be submitted by the governing authority of the county or an incorporated municipality.

Source: Miss. Code Ann. § 57-1-301 *et seq.* (Rev. 2014).

*Rule 3.3 Eligible Projects.* Projects that are eligible for assistance must be for capital improvements in Mississippi's counties and municipalities:

- A. Construction or repair of water and sewer facilities
- B. Construction or repair of drainage systems for industrial development
- C. Improvements in fire protection
- D. Construction of new buildings for economic development purposes
- E. Renovation or repair of existing buildings for economic development purposes
- F. Construction or repair of access roads for industrial development
- G. Purchase of buildings for economic development purposes
- H. Construction or repair of railroad spurs for industrial development
- I. Construction of any county or municipally-owned health care facilities, excluding any county health departments
- J. Construction, purchase, renovation or repair of any building to be utilized as an auditorium or convention center
- K. Construction of multipurpose facilities for tourism development
- L. Loans to a county to aid in retiring interest-bearing loans utilized for the purchase of a motion picture sound stage
- M. Construction, repair and renovation of parks, swimming pools and recreational and athletic facilities. (Not intended to be used for school districts or for commercial purposes, such as health clubs, skating rinks, miniature golf courses, etc.)

Source: Miss. Code Ann. § 57-1-301 *et seq.* (Rev. 2014).

*Rule 3.4 General Project Requirements.*

- A. The Applicant must fulfill the requirement of the standard application, which must be Submitted to MDA for review and acceptance.
- B. The Applicant may only submit one project per application.
- C. The construction or renovation of economic development buildings for speculative purposes requires a 50/50 match. The match must be in cash or in-kind assets.
- D. The Applicant may not use the funds to retire any debts, except for current construction type loans directly related to the project.
- E. Recreational sites acquired and/or developed with CAP assistance cannot be converted to uses other than their original scope/intent during the life of the loan.
- F. The Applicant must not purchase a building or facilities from individual(s), company(ies), or corporation(s) with CAP funds, and subsequently lease them to the seller (previous owner) within 5 years of acquisition.
- G. The Applicant may not purchase a building that has been constructed in the last six months.
- H. The Applicant may not purchase an existing building or facility for more than the appraised value.
- I. The Applicant may not utilize CAP proceeds to make a loan to any private entity, public entity, or individuals.
- J. If applicable, the Applicant must obtain written approval from the MDA-appointed legal counsel stating that the project qualifies for a tax-exempt status. The associated costs are the responsibility of the applicant and are subject to change. (Currently approximately \$275.00).
- K. Before releasing CAP funds, the Applicant must provide title insurance on all real property acquisitions or title opinion on all other projects from the Applicant's attorney.
- L. The Applicant must follow all procurement and purchase laws. If an applicant has not advertised for bids within 120 days after receiving loan approval, the state will have the option to recall the CAP funds.
- M. The Applicant must comply with all nondiscrimination and equal opportunity requirements. MDA encourages the use of Minority-owned Business Enterprises (MBE) and Women-owned Business Enterprises (WBE).
- N. If the CAP funds are used in a joint project with other funds, then the CAP may be subject to the other funds' regulations.
- O. If applicable, an access road for industrial development must follow state requirements. CAP loan funds are not to be utilized on major highways.
- P. The Applicant must retain title and maintain, preserve and keep the project in good working order and condition until the CAP loan is satisfied.

Source: Miss. Code Ann. § 57-1-301 *et seq.* (Rev. 2014).

*Rule 3.5 Eligible Applicants.* The Applicant must be an incorporated municipality or a county.

Source: Miss. Code Ann. § 57-1-301 *et seq.* (Rev. 2014).

*Rule 3.6 Application Requirements.*

- A. A certified copy of the Resolution of Intent from the Applicant must be submitted. (All Applicants must use the Public Notice Form provided by MDA.)
- B. A letter on official letterhead from the Applicant's certified public accountant, auditor or fiscal officer verifying that the Applicant's financials reflect the ability to repay the CAP loan. This verification must include the source of repayment (i.e., surcharge or other verifiable means of repayment).
- C. Certified Proof of Publication of the required Public Notice of the Applicant to enter into a Loan Agreement with MDA for CAP funds. The Resolution must be published once a week for at least four (4) consecutive weeks in a newspaper having general circulation in the county. The Resolution must have been published within the last 6 months prior to submittal of the loan application.
- D. Once the publication process is complete, a certified copy of the minutes of the Applicant showing their decision to proceed with the loan.
- E. If applicable, written verification that the Applicant has consulted with the Public Service Commission regarding water and wastewater projects.
- F. Fire Protection loans must be made to enhance structural firefighting capabilities. Loans for fire trucks must provide proof that the National Fire Protection Association standards are/will be met.
- G. If applicable, official certification of preliminary project plans and specifications from the project engineer and the operating railroad indicating that the project meets American Railway Engineering and Maintenance-of way Association (AREMA) and Federal Railroad Administration (FRA) standards and other necessary compliance requirements.
- H. If applicable, an appraisal and two review appraisals, must be conducted no more than three months prior to loan closing, on buildings to be purchased.
- I. Maps reflecting the project location as well as detailing of the improvements.
- J. Cost verifications must be on engineers' or architects' original letterhead, signed and sealed by the firm's representative.
- K. The Applicant's certified public accountant, auditor or fiscal officer must furnish to MDA the most current annual audit and the latest financial summary reflecting any additional long-term debt or any changes in their financial position since the last annual audit was prepared.
- L. If two separate local units of government jointly fund a project, the Applicants must have an inter-local agreement with the Attorney General's approval.
- M. If applicable, the Applicant must provide an award letter or documentation verifying other funding sources.

Source: Miss. Code Ann. § 57-1-301 *et seq.* (Rev. 2014).

*Rule 3.7 General Loan Limitations.*

- A. Community Development related projects are defined as non-job creating projects that benefit a need in a community unrelated to economic development. Project loan awards will be limited to \$750,000.00 per project or \$1,000,000.00 per applicant, per

calendar year. Loans for construction, repair and renovation of parks, swimming pools and recreational and athletic facilities shall not exceed \$250,000.00 per project.

B. Economic Development related projects are defined as projects that promote full time private sector job creation and/or retention. One full-time job is the equivalent of a minimum of 1,820 annual work hours. Project Awards will be limited to: not more than \$20,000.00 per job or a maximum loan amount of \$2,500,000.00, whichever is less.

C. Up to 8% of the principal loan amount may be used for design work, i.e., engineer or architect excluding brownfield projects. Engineering and/or architectural costs above 8% must be paid from other funding sources.

D. CAP Loan funds cannot be used for administrative costs, legal or appraisal fees.

E. All loans have annual interest computed daily on the outstanding loan balance. Daily interest begins to accrue at the time of the first disbursement.

F. The Applicant will be required to expend all CAP loan funds within two years from the date of loan approval, unless a waiver, at MDA's discretion, is granted upon good cause shown. If the funds are not expended within the two years, MDA will have the option to adjust the loan to the actual disbursements and recall the remaining funds.

Source: Miss. Code Ann. § 57-1-301 *et seq.* (Rev. 2014).

*Rule 3.8 Loan Terms.* The term of any loan must be reasonable and shall not exceed 20 years. The loan amount allowed will be determined by the Applicant's ability to repay the loan within acceptable terms. The rate of interest on all CAP loans is calculated according to the actuarial method. CAP loans that qualify for tax-exempt status shall be at 2% per annum; and taxable CAP loans shall be at 3% per annum. The interest on any loans converted from non-interest bearing loans on sound stages to other eligibility categories will be changed to an applicable interest-bearing rate. The loan term for fire trucks shall not exceed 10 years.

Source: Miss. Code Ann. § 57-1-301 *et seq.* (Rev. 2014).

*Rule 3.9 Special Provisions.* Under the 2005 Regular Legislative Session, \$2,500,000 shall be used only to provide loans to the counties and incorporated municipalities for remediation of a brownfield agreement sites under Sections 49-35-1 through 49-35-25.

Source: Miss. Code Ann. § 57-1-301 *et seq.* (Rev. 2014).

*Rule 3.10 Audit.* Funds provided under the CAP Loan Program are subject to audit by the MDA, Office of the State Auditor, Department of Environmental Quality and/or Department of Health.

Source: Miss. Code Ann. § 57-1-301 *et seq.* (Rev. 2014).

*Rule 3.11 Penalties.* An Applicant which fails to meet repayment obligations shall cause all or part of its sales tax allocation and/or homestead exemption reimbursement to be withheld and may be subject to other penalties as set forth in Miss. Code Ann., Section 57-1-303(4) (Rev. 2014). The Applicant will also be ineligible for additional financial assistance from the agency until the loan balance is current.

Source: Miss. Code Ann. § 57-1-301 *et seq.* (Rev. 2014).

*Rule 3.12 Accrued Interest.* Applicants should be aware that interest begins accruing daily on the outstanding loan balance after the first request for cash is dispersed. Once the CAP activity is complete, the applicant will be responsible for the first month's payment and interest plus the total of accrued interest from the construction phase of the CAP activity.

Source: Miss. Code Ann. § 57-1-301 *et seq.* (Rev. 2014).

*Rule 3.13 Delinquent Notice Process.* Invoices will be sent to communities with an active CAP loan status. Failure to submit timely payments will prohibit that community from other MDA assistance until the loan is no longer delinquent. In addition, the following procedures will take place:

- A. If a community is 60 days delinquent, MDA may issue a letter stating the catch-up amount, terms of their loan agreement and explain the process for turning collection over to the State Auditor.
- B. If a community is 90 days delinquent, MDA may issue a letter stating in 30 days if the catch-up payment amount has not been received, then MDA will turn the community over to the State Auditor.
- C. If a community is 180 days delinquent, MDA may request the State Auditor to audit the receipts and expenditures of the loan (Section 57-1-303(5)). If the State Auditor finds that the county or municipality is in arrears in payments, he shall immediately notify the Executive Director of the Department of Finance and Administration who shall withhold all future payments to the county of homestead exemption reimbursements under Section 27-33-77 and all sums allocated to the county or the municipality under Section 27-65-75 until such time as the county or the municipality is again current in its loan payments as certified by the Mississippi Development Authority.

Source: Miss. Code Ann. § 57-1-301 *et seq.* (Rev. 2014).

### *3.14 Brownfield Project Requirements.*

- A. Remediation of brownfield agreement sites in accordance with Sections 49-35-1 through 47-35-25 may be considered as an eligible project.
- B. Loans for remediation of brownfield sites in accordance with Sections 49-35-1 through 49-35-25 shall not exceed \$250,000.00 per site.
- C. Up to 10% of the principal loan amount may be used for the Mississippi Department of Environmental Quality (MDEQ) approved Brownfield Consulting Firm's fees for brownfield projects during the clean-up phase. Consultant fees above 10% must be paid from other funding sources.
- D. Remediation costs shall not include:
  - (i) costs incurred after the issuance of a No Further Action letter under Section 49-35-15, Mississippi Code of 1972;
  - (ii) costs incurred before the executed brownfield agreement;
  - (iii) costs incurred for any legal services or litigation costs; and
  - (iv) any funds provided by any federal, state or local government agency or political subdivision.

- E. Administrative fees and legal fees are not allowable costs to be reimbursed by CAP funds.
- F. The operating expenses, monitoring expenses and maintenance expenses incurred after the brownfield cleanup phase will not be an allowable cost to be reimbursed by CAP Loan funds.
- G. Before loan approval for remediation of a brownfield site, the Applicant must provide MDA with an executed copy of the brownfield agreement between the Applicant and the Executive Director of MDEQ.
- H. Within thirty days after the brownfield agreement is executed and before any loan disbursements are released, the Applicant shall provide a copy of deed, clear certificate of title or other instrument certifying that the property is owned by the Applicant and subject to a brownfield site agreement.
- I. During the brownfield cleanup process, the CAP funds must be expended within one year from the date of the loan approval, unless waiver is granted by MDA upon good cause shown.
- J. The Applicant will be responsible for the operating and maintenance (O&M) of the brownfield site and for any post remediation monitoring required under the brownfield agreement.
- K. Any amendments, changes or violations of the brownfield agreement site must be reported to MDA and MDEQ within 10 business days.
- L. The Applicant shall include in all contacts with Participating Parties a provision that each Participating Party agrees that any duly authorized representative of MDA and/or MDEQ shall, at all reasonable times, have access to any portion of the Project in which such Participating Party is involved until the completion of all brownfield agreement requirements.

Source: Miss. Code Ann. § 57-1-301 *et seq.* (Rev. 2014).