

Title 14 INDEPENDENT AGENCIES

Subtitle 29 MARYLAND HERITAGE AREAS AUTHORITY

Chapter 04 Maryland Heritage Areas Loan Program

**Authority: Financial Institutions Article, §§13-1107(6) and (12) and 13-1113,
Annotated Code of Maryland**

.01 General.

This chapter prescribes the policies, procedures, and authorizations for administering the Maryland Heritage Areas Loan Program and providing loans from the Maryland Heritage Areas Authority Financing Fund of the Maryland Heritage Areas Authority, an independent unit of government that operates in the Department of Housing and Community Development.

.02 Purpose.

The purpose of the Program is to provide a source of funding, including loans to local jurisdictions or other appropriate entities, to assist and encourage preservation and economic development of heritage areas certified by the Maryland Heritage Areas Authority.

.03 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Act" means Financial Institutions Article, §§13-1101—13-1124, Annotated Code of Maryland.

(2) "Acquisition" means the act or process of acquiring fee title or an interest other than fee title of real or personal property.

(3) "Authority" means the Maryland Heritage Areas Authority established under Financial Institutions Article, §13-1103, Annotated Code of Maryland.

(4) "Borrower" means an applicant who receives a loan from the Authority.

(5) "Business entity" means a corporation, association, partnership, joint venture, or other legally organized entity.

(6) "Capital project" means the acquisition, development, preservation, or restoration of real property.

(7) "Certified heritage area" means a recognized heritage area designated as a certified heritage area by the Authority under Financial Institutions Article, §13-1111, Annotated Code of Maryland.

(8) "Fund" means the Maryland Heritage Areas Authority Financing Fund established under Financial Institutions Article, §13-1114, Annotated Code of Maryland.

(9) **Heritage Area.**

(a) "Heritage area" means a developed area of public and private uses that:

(i) Ranges in size from a portion of a county or municipal corporation to a regional area with a special coherence;

(ii) Is distinguished by physical and cultural resources which have played a vital role in the historic life and development of the community and contribute to the public through interpretive, educational, and recreational use; and

(iii) Is composed of contiguous or noncontiguous geographic areas.

(b) "Heritage area" may include traditional parks or historic places or property on the National Register of Historic Places or the Maryland Register of Historic Properties.

(10) "Loan" means a loan made from the Fund.

(11) "Loan documents" means the note, loan agreement, and other documents between a borrower and the Authority which evidence the terms and conditions of a loan.

(12) "Local jurisdiction" means any of the 23 counties of the State, the city of Baltimore, any municipal corporation in the State subject to the provisions of Article XI-E of the Maryland Constitution, or any of their authorized agencies or instrumentalities.

(13) "Management plan" means a document prepared in accordance with Financial Institutions Article, §13-1111, Annotated Code of Maryland, that includes a comprehensive statement in words, maps, illustrations, or other media of communication of the objectives, policies, and standards to guide public and private action for the preservation, interpretation, development, and use of the cultural, historic, natural, and architectural resources of a heritage area certified under Financial Institutions Article, §13-1111, Annotated Code of Maryland.

(14) "Noncapital project" means a planning, design, interpretation, marketing, or programming activity.

(15) "Nonprofit organization" means a corporation, foundation, governmental entity, or other legal entity, no part of the net earnings of which inures to the benefit of a private shareholder or individual holding an interest in the entity.

(16) "Program" means the Maryland Heritage Areas Loan Program of the Authority established by this chapter under the provisions of the Act.

(17) "Project" means one or more of the eligible activities set forth in Regulation .05 of this chapter.

(18) "Recognized heritage area" means a heritage area that the:

(a) Local jurisdictions within the heritage area have nominated for designation by the Authority as a recognized heritage area under Financial Institutions Article, §13-1110, Annotated Code of Maryland; and

(b) Authority has designated, without conditions, as eligible to apply for designation as a certified heritage area under Financial Institutions Article, §13-1111, Annotated Code of Maryland.

(19) "Rehabilitation" means the act or process of returning property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features which are significant to its historical, architectural, and cultural values.

(20) "Restoration" means the act or process of applying measures to sustain the existing form, integrity, and material of property, or of accurately recovering the form and details of property as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.

(21) "Target investment zone" means a specific priority area within a certified heritage area:

(a) Where a heritage area is attempting to leverage private investments; and

(b) Which has been designated by the Authority based upon criteria established by the Authority.

.04 Eligible Borrowers.

A. The following are eligible borrowers under the Program:

(1) Nonprofit organizations;

(2) Local jurisdictions;

(3) Business entities; and

(4) Individuals.

B. A local jurisdiction shall submit an application together with all other local jurisdictions within the certified heritage area that will benefit from the loan.

C. A nonprofit organization or business entity shall:

(1) Be authorized to submit an application by the entity designated to manage the certified heritage area that will benefit from the loan;

(2) Be in good standing and be qualified to do business in Maryland; and

(3) Have the legal capacity and all necessary legal authority to incur the obligations involved in the loan.

D. An individual shall:

(1) Be authorized to submit an application by the entity designated to manage the certified heritage area that will benefit from the loan; and

(2) Have the legal capacity to incur the obligations involved in the loan.

.05 Eligible Activities.

A. General Eligibility. To be eligible for a loan, the project shall:

- (1) Address or complete a priority activity outlined in an approved management plan;
- (2) Be located within a certified heritage area target investment zone; and
- (3) Conform to the Secretary of Interior Standards for Treatment of Historic Properties, if applicable.

B. Loans. The Authority may provide loans from the Fund to an eligible borrower for:

- (1) Acquisition of property;
- (2) Rehabilitation of property;
- (3) Restoration of property;
- (4) New construction;
- (5) Improvements to leasehold property, including rehabilitation, restoration, and minor new construction, if the term of the lease is at least equal to the term of the loan;
- (6) Purchase of capital equipment, furnishings, and inventory; and
- (7) Working capital to be used in conjunction with a capital project.

.06 General Loan Allocation Procedures.

A. Application Solicitation. Loan applications are accepted on a schedule determined by the Authority.

B. Funds Allocation.

(1) Loans from the Program generally are available on a first-come, first-served basis based upon the satisfaction of application requirements and selection criteria contained in this regulation, especially the readiness of the project to initiate activity.

(2) If a project application is submitted but funding is not then available under the Program, the Authority may continue to process the application until funding is available, and then may authorize the loan without a new application.

C. Forms and Documentation. Applications shall be made on forms prescribed by the Authority. Each application shall include sufficient information and documentation to:

- (1) Evaluate the project in relation to the approved management plan;
- (2) Evaluate the historical or cultural significance of the project;
- (3) Determine the ownership and all lessees or substantial users of the property;
- (4) Evaluate the current and proposed condition and use of the property, and the extent, if any, to which the proposed activity will impact the use of the property;

- (5) Evaluate the nature and cost of the proposed activity;
- (6) Evaluate the income and repayment capability of the applicant;
- (7) Evaluate the readiness of the project to initiate activity and to be completed within an established time frame;
- (8) Evaluate the administrative capability of the applicant and project sponsor; and
- (9) Support other factors determined necessary by the Authority.

D. Selection Criteria. The Authority shall review and evaluate loan applications in accordance with the following selection criteria:

- (1) The viability and potential for the successful completion of the project;
- (2) Readiness of the project to initiate activity and to be completed within an established time frame;
- (3) Urgency of the need for financial assistance for the project;
- (4) Consistency of the project with the management plan;
- (5) Impact the project will have on the certified heritage area;
- (6) Extent to which the project can be utilized as a demonstration model for other projects within certified heritage areas Statewide;
- (7) Extent to which the project will contribute to the cumulative equitable Statewide geographic distribution of funds;
- (8) Administrative capability of the applicant and project sponsor; and
- (9) Additional criteria which the Authority considers to be appropriate, such as:
 - (a) The need for loan assistance; and
 - (b) The complexity and level of effort required to plan for preservation, tourism, and economic development in the heritage area.

E. Application Fee. The Authority may require applicants for loans to pay an application fee to cover some portion of the cost of processing the loan including any credit reports.

F. Notification Letter. Upon receipt of all documentation necessary to assess the feasibility of a project, the Authority shall issue a written notification letter to the applicant that details all the conditions for the Authority to approve a loan.

G. Commitment Letter. After the approval process in Regulation .07 of this chapter has been satisfied, the Chairman or the Chairman's designee may issue a commitment letter for an approved loan setting forth the amount of the loan and the terms and conditions under which it shall be made.

H. Expiration of Commitment. The Authority shall specify in the commitment letter a time limit within which the execution of the loan documents shall occur. The time limit may be extended in the Authority's sole discretion. If execution of the loan documents does not occur within the time limit specified by the Authority, the commitment expires and the Authority may withdraw the moneys encumbered for the project and use them for any other project authorized by the Act.

I. Withdrawal of Application. An applicant may withdraw an application at any time before closing of the loan by written notice to the Authority. The applicant shall bear any costs incurred for items other than internal processing, including, but not limited to, title examinations, credit reports, and appraisals.

J. Inspections.

(1) Initial Inspections. Upon receipt of an application, the Authority may conduct an initial inspection to determine the condition of the project and whether the proposed activities are eligible.

(2) Payment and Progress Inspections. The Authority may conduct periodic inspections during the construction of a project to:

(a) Ensure that activities are eligible, or that work is conducted in a satisfactory manner;

(b) Ensure conformance with any applicable standards established by the Authority;

(c) Verify percentage of completed work before releasing draws; and

(d) Assist in resolution of any disputes between the borrower and a contractor.

K. Loan Closing. The closing of the loan shall be scheduled at a time and place acceptable to the borrower, the Authority, and the Office of the Attorney General.

.07 Authority Approval.

A. After analysis by Authority staff and review by the MHAA Technical Advisory Committee, the Authority shall review each proposed loan, including any proposed special terms or conditions for the activity, and approve or disapprove each loan. The Authority may fund applications at levels lower than requested. Not all applicants may be funded.

B. If the Authority does not approve a loan, the Authority shall notify the applicant in writing.

C. A decision to approve or disapprove a loan is not a contested case within the meaning of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, or COMAR 05.01.01.

.08 Loan Terms and Conditions.

A. General Requirements.

(1) Maximum Loan Amount. The Authority shall establish a maximum loan amount for any proposed project proportionate to the value of the project to be assisted, less any preexisting indebtedness on the property or collateral securing the loan.

(2) Interest Rate.

- (a) From time to time, the Authority shall establish interest rates.
- (b) Interest rates may be preferred in relation to rates for other loans made at the time.
- (3) Insurance. The borrower shall cause the project to be insured against loss or damage by fire and other hazards, casualties, and contingencies as may be required from time to time by the Authority in the form and amount satisfactory to the Authority.
- (4) Term. The Authority shall establish a maximum loan term depending upon the use and amount of the loan.
- (5) Repayment.
 - (a) Except as otherwise provided in §A(5)(b) of this regulation, a single monthly payment shall be charged which shall be applied to expenses, if applicable, interest, and principal in that order.
 - (b) At the discretion of the Authority, interest and principal repayments may be deferred in accordance with the terms and provisions of the loan documents.
- (6) Late Charge. The Authority may impose late charges, as permitted by law.
- (7) Security. The Authority may require that the loan be secured by liens, guarantees of repayment, or other forms of collateral acceptable to the Authority. The Authority may require appraisal of any real property, personal property, or other forms of collateral securing the loan.
- (8) Plans and Specifications.
 - (a) The plans and specifications for acquisition, construction, rehabilitation, and restoration projects are subject to review and approval by the Authority.
 - (b) Projects shall conform to standards for acquisition, construction, rehabilitation, and restoration established by the Authority as well as any other applicable standards and requirements established by the Authority.
- (9) Disbursement. Disbursement of loan funds shall be made as the project progresses based upon requests for disbursement submitted by the borrower in a form satisfactory to the Authority.
- (10) Modification or Acceleration of Loan. In accordance with the terms of the loan documents, the Authority may modify the terms of repayment or accelerate the payment of the entire principal and interest due if the borrower defaults.
- (11) Change of Ownership. The borrower may not sell, cease to own, assign, transfer, or dispose of all or any portion of the project during the term of the loan without the prior written consent of the Authority.
- (12) Prepayment Penalty. The Authority may not charge a prepayment penalty.
- (13) Other Requirements. The Authority may establish other terms and conditions in the loan documents as considered reasonable and necessary by the Authority.

B. Deferred Loan Requirements. In addition to the conditions and requirements of §A of this regulation, deferred loans shall meet the following additional requirements:

(1) The loan term may provide for deferred payments of either principal or interest or of both principal and interest;

(2) The deferred terms shall provide for repayment of deferred amounts at the maturity date or any earlier date established by the Authority, or upon any sale or other transfer of the project or an interest in the historic property; and

(3) The Authority may, but need not, charge interest on deferred interest payments.

C. Real Property Requirements. In addition to the conditions and requirements of §§A and B of this regulation, if the project assisted by the loan is real property, the loan shall meet the requirements of §§D—G of this regulation.

D. Mortgage or Deed of Trust. Repayment of the loan shall be secured by a mortgage or deed of trust on the real property in the form required by the Authority. The mortgage or deed of trust shall be recorded in the land records of the political subdivision in which the real property is situated. The mortgage or deed of trust may be subordinate to other recorded mortgage liens provided that the Authority and the other mortgagee give any required consents.

E. Title Insurance.

(1) For loans in amounts greater than \$15,000 the Authority in its discretion, may require the borrower to provide a American Land Title Association Loan Policy acceptable to the Authority, for an amount equal to the maximum principal amount of the loan. This policy shall insure the Authority, evidencing that title to the real property on which the improvements are located as of the date of closing is vested in the borrower, and may contain only standard exceptions and encumbrances approved by the Authority.

(2) For loans in amounts up to \$15,000, the Authority may require the borrower to provide an attorney's certificate of title acceptable to the Authority certifying that the title to the real property on which the improvements are located as of the date of closing is vested in the borrower. The certificate of title may contain only standard exceptions and encumbrances approved by the Authority.

F. Appraisals. The Authority, in its discretion, may require an appraisal of the assisted real property showing the property's value after completion of any scheduled restoration or rehabilitation.

G. Deed of Easement. The Authority may require the borrower, and the owner of the real property if the owner is not the borrower, to convey a deed of easement on the property assisted by a loan, to the Maryland Historical Trust containing preservation covenants applicable to the historic property in form and substance satisfactory to the Trust and the Authority.

.09 Loan Administration.

A. Books and Records.

(1) Borrowers, contractors, and subcontractors shall maintain the books, accounts, and records and shall file with the Authority the financial and other reports as the Authority may from time to time require. All of the books, accounts, and records shall be open to the inspection of representatives of the Authority or other agencies of the State during reasonable working hours before, during, or after the term of the loan. Borrowers shall make their administrative offices and personnel, whether full-time, part-time, consultants, or volunteers, available to the Authority upon request before, during, or after the term of the loan.

(2) Books, accounts, and records of contractors and subcontractors shall be maintained and made available for inspection for up to 3 years after either the date of the borrower's final expenditure of loan proceeds or the termination of the contractual relationship between the contractor and the borrower, whichever is later.

B. Reports. Borrowers shall submit a final report, and interim reports as may be required by the Authority, documenting project progress and evaluating project effectiveness.

C. Nondiscrimination.

(1) Borrowers may not discriminate on the basis of age (except with respect to residents in elderly projects), race, color, religion, national origin, sex, sexual orientation, marital status, or physical or mental handicap in leasing or otherwise providing dwelling accommodations, or in any other aspect of the development, administration, or operation of any project financed or assisted under the Program, or in any aspect of employment by any borrower, developer, or contractor of any project financed under the Program.

(2) Each borrower shall comply with all applicable federal, State, and local laws and Authority policies and programs regarding discrimination and equal opportunity in employment, housing, and credit practices including:

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

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

(c) The Code of Fair Employment Practices, Executive Order 01.01.1995.19; and

(d) The Authority's Minority Business Enterprise Program, as amended, if the borrower does not have its own minority business participation program which is acceptable to the Authority.

.10 Default.

A. Modification. In the event of default of a loan, the Authority may:

(1) Modify the rate of interest;

(2) Defer payment of principal, interest, or both;

(3) Modify the term of the loan; or

(4) Modify the loan in any other manner in order to promote repayment of the loan and achieve the purposes of the Program.

B. Foreclosure.

(1) In the event of default of a loan, the Authority may exercise all remedies provided by law and the loan documents, including foreclosure, attachment, and repossession of property and collateral securing the loan.

(2) If the Authority obtains title to the property in accordance with §B(1) of this regulation, the Authority shall secure the approval of the Board of Public Works before it reconveys title to the property.

.11 Program Administration.

- A. Except for waivers, any action or decision required or permitted to be taken or made by the Authority under this chapter may be taken or made by the Authority's designee.
- B. The Authority may terminate a loan or refuse to make additional disbursements under the loan documents if it finds that the borrower is not complying with any of the requirements of the Program or the loan documents.
- C. The Authority may establish from time to time operational handbooks or manuals governing matters relating to the Program, including descriptive statements of Program procedures, which do not directly affect the rights of the public or procedures available to the public.

.12 Waiver.

The Authority may waive or vary a provision of this chapter if:

- A. The waiver or variance is not inconsistent with the Act; and
- B. In the written determination of the Authority, applying the provision in a specific case or emergency situation would be inequitable or contrary to the purposes of the Act.

.13 False Statements.

- A. A person may not knowingly make, or cause to be made, a false statement in any document submitted to the Authority in connection with an application for a loan or affecting an existing loan.
- B. A person who violates any provision of this chapter is subject to:
 - (1) Immediate cancellation and reimbursement of the loan; and
 - (2) Any penalties authorized by law.