PENNSYLVANIA ECONOMIC DEVELOPMENT FINANCING AUTHORITY BOND FINANCING

Program Guidelines | July 2022

Commonwealth of Pennsylvania | Josh Shapiro, Governor
PA Department of Community & Economic Development | dced.pa.gov

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Section I – General

A. Introduction

The Pennsylvania Economic Development Financing Authority (PEDFA) was established in 1987 pursuant to the Economic Development Financing Law to provide access to low-interest financing through the issuance of tax-exempt and taxable debt, including bonds or notes. References to "bonds" in these guidelines include bonds, notes or other instruments evidencing indebtedness or obligations. PEDFA finances projects on a stand-alone basis.

The guidelines are intended to give an overview of the rules and regulations governing this program. Tax-exempt and taxable financings differ in terms of eligibility criteria and interest rates; tax- exempt projects must meet stringent eligibility criteria established by federal tax law, but generally receive more favorable interest rates. For tax-exempt projects, PEDFA's bond counsel will further review projects for eligibility under federal tax law.

Advantages of tax-exempt financing through PEDFA may include the following:

- **Low Interest Rates –** generally 20% to 30% below comparable commercial alternatives.
- **Long-Term Financing –** longer than conventional financing, often up to 30 years (no more than 120% of the depreciable life of the assets being financed).
- **Comprehensive Funding –** funds can be used for construction and take-out financing for land, buildings and equipment, but cannot be used to refinance borrowings or costs incurred prior to an inducement resolution. While up to 100% of qualified costs may be funded, in most cases lenders or credit banks require a significant equity contribution.
- **TEFRA Hearing –** Federal tax law requires that a public "TEFRA" hearing be held at least 7 days after the giving of published notice apprising the community of a proposed tax-exempt bond issuance and the nature and the location of the project. Because PEDFA is a statewide issuer, only one hearing needs to be held by telephone conference, even if the sites for a given project are located in several different municipalities.

There may also be advantages to taxable financing through PEDFA. These may include the following:

- **Greater Flexibility –** Unlike tax-exempt bonds, taxable bonds (those not exempt from federal income tax) carry few, if any, restrictions. Businesses are not limited by regulations in the amount borrowed nor by the use of the proceeds. The flexibility of taxable bonds can be a significant advantage when compared to tax-exempt financing.
- **Accelerated Tax Depreciation –** Another frequently overlooked but very important advantage to taxable financing is the availability of accelerated tax depreciation. The Internal Revenue Code requires that projects funded by tax-exempt sources of financing be depreciated using the alternative depreciation system (ADS). ADS rules require longer recovery periods and the slower straight-lined method of calculating tax depreciation. In years where bonus depreciation is available, projects placed in service and funded by tax-exempt financing do not benefit because bonus depreciation is not allowed for assets required to be depreciated using ADS rules. Taxable financing, on the other hand, allows for use of the general depreciation system and faster, accelerated methods of calculating tax depreciation. In addition, a borrower may also take advantage of bonus depreciation.

B. Eligible Projects

1. **Tax-Exempt Projects:**

   a. **Manufacturing Facilities (Small Issue):** Defined under federal tax law as any facility which is used in "the manufacturing or production of tangible personal property (including processing resulting in a change in condition of such property)." At least 95% of the net tax-exempt proceeds must be used for the manufacturing facility, of which 25% may be used for facilities directly related and ancillary to the manufacturing facility such as office, research & development, and warehousing, provided that they are located on the same site as the manufacturing facility.

   b. Exempt Facilities: Certain facilities designated by federal tax law as eligible for tax-exempt financing. These facilities may include:

   - Solid waste disposal facilities
   - Sewage facilities
   - Facilities for the local furnishing of electric energy or gas
   - Facilities for the furnishing of water
   - Qualified hazardous waste facilities
   - Local district heating or cooling facilities
   - Airports, docks, wharves, and mass commuting facilities
   - High-speed intercity rail facilities
   - Environmental enhancements of hydroelectric generating facilities
   - Qualified residential rental projects
   - Qualified public educational facilities
   - Qualified green building and sustainable design projects
   - Qualified highway or surface freight transfer facilities
   - Qualified broadband projects
   - Qualified carbon dioxide capture facilities

   c. **Non-Profit 501(c)(3) Facilities:** Facilities to be used by organizations which have received 501(c)(3) status from the Internal Revenue Service. These facilities may include residential facilities, nursing homes, hospital facilities, health care facilities, and educational facilities.

   d. **Multi-Family Housing Facilities:** Facilities which provide multi-tenant residential rental housing and meet the following criteria:

      i. 20% or more of the units will be occupied by individuals whose income is 50% or less of the area median gross income, or

      ii. 40% or more of the units will be occupied by individuals whose income is 60% or less of the area median gross income. These facilities may include assisted living and continuing care retirement facilities.

2. **Taxable Projects:**
   All businesses qualified to do business in Pennsylvania may be eligible for taxable financing. Speculative activities are not eligible.

C. Eligible Uses of Funds

1. **Tax-Exempt Projects:**

    a. **Land:** Includes acquisition, site preparation and testing costs.

    b. **Building:** Includes acquisition, construction, rehabilitation, engineering, and architectural costs. For building acquisition, rehabilitation in an amount equal to at least 15% of the portion of the building acquisition cost being financing with tax-exempt bonds must be done within two years of the bond closing.

    c. **New equipment:** Includes acquisition, delivery, installation, renovation. Used equipment may qualify only if contained within a facility being acquired through tax-exempt financing.

    d. **Refunding:** Outstanding tax-exempt debt as allowed by federal tax law.

    e. **Closing costs:** No more than 2% of the tax-exempt financing amount. Closing costs in excess of 2% may be paid by the borrower at closing (i.e., equity contribution), or may be funded through taxable debt.

2. **Taxable Projects:**

    a. **Land:** Includes acquisition, site preparation and testing costs.

    b. **Building:** Includes acquisition, construction, rehabilitation, engineering, and architectural costs.

    c. **Equipment:** Includes acquisition, delivery, installation, and renovation of both new and used equipment.

    d. **Refinancing:** Any existing debt.

    e. **Working capital:** Includes inventory and business operating expenses.

    f. **Closing costs:** All costs may be included.

Section II – Financing Method

A. Financing Structure

The financing structure and participants (other than bond counsel) are usually chosen by the borrower, with the consent of PEDFA. While PEDFA may issue bonds for any size project, medium and large sized projects, usually ranging from approximately $10 million and up, will generally be found to be most cost-effective for the borrower when issued though PEDFA.

The timing for all projects is flexible. Applications may be submitted at any time. The timing for exempt facility and multi-family housing projects will depend on the availability of volume cap allocation. PEDFA staff should be consulted on these projects.

Section III – Loan Parameters

A. Minimum Loan Size

For all PEDFA projects is $400,000.

B. Maximum Loan Size

There is no maximum loan size for exempt facility, multi-family housing, or taxable projects; however, exempt facility and multi-family housing projects may be limited by the availability of volume cap allocation. The following maximum loan size rules, established by federal tax law, apply to tax-exempt manufacturing and 501(c)(3) projects:

1. **Manufacturing Projects:** The borrower, along with its affiliates, together cannot incur more than $20,000,000 of capital costs in the city or municipality of the project during a six-year period beginning three years prior to the date of the bond closing. These capital costs include the current project costs and any outstanding tax-exempt debt. Up to $1,000,000 of tax-exempt financing, including outstanding tax-exempt debt, is allowed without regard to the $20 million capital costs limit.

   In addition, the borrower, along with its affiliates, together cannot have outstanding tax-exempt debt anywhere in the United States or its territories in excess of $40,000,000, including the current financing.

2. **501(c)(3) Projects:** The 501(c)(3) organization and all related entities cannot have more than $150,000,000 of outstanding non-hospital tax-exempt debt, including the current financing.

C. Loan Term

For tax-exempt projects, the term of the loan cannot exceed 120% of the depreciable life of the assets. The term may be negotiated for taxable projects.

D. Loan Amortization

The repayment/amortization schedule will be structured to best accommodate the proposed financing. All terms will be negotiated between the borrower and its bank or underwriter, with the concurrence of PEDFA.

Section IV – Loan Fees and Costs

A. Application Fee (for all projects)

A nonrefundable fee of $500 is required at the time of the filing of the application. This fee is used to pay PEDFA's expenses associated with each project. The fee will be credited against the closing costs charged at the time of closing.

B. Annual Fees

1. In general, the borrower should expect to receive annual servicing bills from the trustee, the letter of credit bank (if applicable), the remarketing agent (if applicable), and the rating agency. These annual fees are negotiated by the borrower with each entity.
2. In general, PEDFA does not charge an annual fee. In addition, the sponsoring industrial and commercial development authority or industrial development agency are prohibited from charging annual fees on PEDFA projects.

C. Closing Costs

Closing costs are variable depending upon the complexity of the financing transaction. In general, PEDFA itself charges a one-time fee to the borrower of 0.2% of the loan amount at the time of bond closing.

Section V – Program Requirements

A. Commencement of a Project

Tax-exempt projects should not commence and project costs, including deposits or down payments, should not be incurred prior to a PEDFA inducement of the project. Taxable projects may begin to incur project costs at any time, without prior approval from PEDFA.

B. Relocation

Use of PEDFA loan funds is prohibited for relocation of a company from one labor market area of the commonwealth, unless a waiver of this requirement is obtained from the Secretary of the Department of Community and Economic Development. Please consult staff to determine acceptable circumstances for a waiver to be considered.

C. Interim Financing

No portion of PEDFA tax exempt-financing may be used as interim or bridge financing pending receipt of other permanent financing.

D. Compliance Checks

The borrower along with its principal owners must be current in payment of all applicable state and local taxes, and all other obligations to the commonwealth or any agency affiliated with the commonwealth.

Program staff will perform a search with the Department of Revenue to ensure the borrower is compliant in its obligations and filings with the commonwealth. A search of the Contractor Responsibility database with the Department of Labor and Industry will also be performed.

E. Religious Affiliation

PEDFA is prohibited from providing financing for religious facilities. If the borrower has a religious affiliation, it must verify in the application narrative that no bond proceeds will be used to finance religious facilities (such as churches, chapels, or seminaries) and that the facilities will not be limited to use by, or preference given to, persons of a certain religious affiliation.

F. Nondiscrimination

No assistance shall be awarded to an applicant under this program unless the applicant certifies to PEDFA that the applicant shall not discriminate against any employee or against any person seeking employment by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act, which prohibits discrimination on the basis of race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, or in violation of any applicable federal laws. All contracts for work to be paid with Pennsylvania Economic Development Financing Authority Bond Financing Program assistance must contain the commonwealth's official nondiscrimination clause.

G. Bond Counsel

Borrowers must competitively select bond counsel through the use of a Request for Proposal ("RFP") process. Please contact PEDFA staff for a list of preapproved bond counsel firms. The list may also be found at the Governor's Office of General Counsel website. PEDFA strongly encourages the use of Small Diverse Businesses (SDB) and Veteran Business Enterprises (VBE).

Section VI – Application Submission and Approval Procedures

All applications must be submitted online by an Industrial Development Authority (IDA) or Industrial Development Corporation (IDC), which is the "Applicant", through the Electronic Single Application. In addition, the PEDFA Application will also be submitted through the Electronic Single Application. Applications will not be accepted directly from the borrower or its counsel.

Each complete application will be reviewed and evaluated by the program office. The application will not be considered complete without the required attachments. If the application is approved for tax-exempt financing, the borrower will receive a PEDFA inducement letter which allows it to proceed with incurring project costs.

All financings by PEDFA must be approved by the PEDFA Board of Directors. The PEDFA Board meets on a monthly basis.

Pursuant to the Commonwealth Attorney's Act, financing documents must be approved as to form and legality by both the Office of Attorney General and the Office of General Counsel. In addition, all PEDFA tax-exempt projects must also receive highest elected official approval of the TEFRA proceedings as required by federal tax law. The highest elected official for PEDFA is the Governor. This approval must be in place before closing.

Certain tax-exempt projects designated by federal tax law also require volume cap allocation (please see Section II, Financing Method).

A. Contact Information

Program inquiries should be directed to:

Department of Community and Economic Development
Pennsylvania Economic Development Financing Authority
Center for Private Financing
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Harrisburg, PA 17120-0225

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