

400 CMR 8.00: CANNABIS SOCIAL EQUITY TRUST FUND

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8.01: Purpose

400 CMR 8.00 governs the structure and administration of the Cannabis Social Equity Trust Fund, established by section 14A of chapter 94G of the General Laws, to encourage the full participation in the Commonwealth's regulated marijuana industry of entrepreneurs from communities that have been disproportionately harmed by marijuana prohibition and enforcement.

8.02: Definitions

Board. The Cannabis Social Equity Advisory Board.

Borrower. Any person or entity who receives a Loan from the Fund.

Commission. The Cannabis Control Commission.

Confidential Records. As defined in 935 CMR 500.002 and 935 CMR 501.002.

Contract. The written agreement between EOED and the person or entity receiving Financial Assistance, as required by section 8.05(3).

Economic Empowerment Priority Applicant. A person or entity who has been designated by the Commission as an Economic Empowerment Priority Applicant, as defined at 935 CMR 500.002 and 935 CMR 501.002.

EOED. The Executive Office of Economic Development.

Financial Assistance. A grant or loan from the Fund. Financial Assistance may be structured as a grant, loan, forgivable loan, loan guarantee or other form of credit enhancement at the sole discretion of EOED.

Fund. The Cannabis Social Equity Trust Fund established by section 14A of chapter 94G of the General Laws.

License. As defined in 935 CMR 500.002 and 935 CMR 501.002.

License Applicant. A person or entity pursuing a license to operate a Marijuana Establishment or Medical Marijuana Treatment Center who has submitted or intends to submit a license application to the Commission, as defined in 935 CMR 500.100 or 935 CMR 501.100. A License Applicant may also be considered a prospective Marijuana Establishment.

Licensee. As defined in 935 CMR 500.002 and 935 CMR 501.002.

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Marijuana Establishment. As defined in 935 CMR 500.002.

Medical Marijuana Treatment Center. As defined in 935 CMR 501.002.

Person or Entity Having Direct Control. As defined in 935 CMR 500.002 and 935 CMR 501.002.

Program Guidelines. A document issued by EOED that describes the types of Financial Assistance available from the Fund, the process for applying for Financial Assistance, and the criteria by which EOED will evaluate applications for Financial Assistance. Program guidelines shall be developed in consultation with the Board and shall be in place prior to making Financial Assistance available on a rolling basis.

Provisional License. Either a Provisional Marijuana Establishment License or Provisional Medical Marijuana Treatment Center License, as defined in 935 CMR 500.002 and 935 CMR 501.002.

Request for Proposals or RFP. A document issued by EOED on an annual or semi-annual basis announcing that EOED is accepting applications for Financial Assistance. An RFP shall describe the types of Financial Assistance available from the Fund, the process for applying for Financial Assistance, and the criteria by which EOED will evaluate applications for Financial Assistance. Any RFPs will be developed in consultation with the Board.

Restricted Assets. Any real estate interest, equipment, capital asset or other asset with a market value in excess of five thousand dollars (\$5,000) acquired in whole or in part using Financial Assistance.

Social Equity Business. A Marijuana Establishment with not less than 51 per cent majority ownership of individuals who are eligible for the social equity program or whose ownership qualifies it as an Economic Empowerment Priority Applicant, as defined by Section 1 of Chapter 94G of the General Laws. For purposes of administering the Fund, EOED may rely on the Commission's verification of an entity as a Social Equity Business.

Social Equity Program Participant. An individual who qualified to participate in the Social Equity Program and is designated as a program participant by the Commission, as defined by 935 CMR 500.002 and 935 CMR 501.002.

8.03: Eligibility for Financial Assistance - Individuals and Business Entities

(1) Individuals and business entities eligible to receive Financial Assistance. To be eligible to receive Financial Assistance, a person or business entity must be a Licensee, License Applicant or prospective License Applicant and meet one of the following criteria:

- (a) The individual or business entity is an Economic Empowerment Priority Applicant;
- (b) The business entity is a Social Equity Business; or
- (c) The individual is a Social Equity Program Participant;

(2) Municipalities. Municipalities may be eligible for Financial Assistance pursuant to section 8.06.

8.04: Applications for Financial Assistance

(1) Timing of applications. EOED may administer the Fund by accepting applications for Financial Assistance on a rolling basis or through the issuance of requests for proposals at least once per calendar year.

(2) Required information. EOED shall publish the application form to be used to apply for Financial Assistance. Minimum required information may include:

- (a) The name, address, and contact information of the person or entity applying for Financial Assistance.

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- (b) The names, contact information and ownership interest of all Persons or Entities Having Direct Control of the entity applying for Financial Assistance.
- (c) Confirmation from the Commission that the person or entity applying for Financial Assistance is an Economic Empowerment Priority Applicant, Social Equity Business or Social Equity Program Participant.
- (d) A copy of (i) the License or other Commission notification of provisional licensure issued by the Commission to the person or entity applying for Financial Assistance; or (ii) if the person or entity applying for Financial Assistance does not yet have a License, a copy of the License application; or (iii) if the person or entity has not yet submitted an application, documentation acceptable to EOED showing that the person or entity has taken affirmative steps toward submitting an application for a License.
- (e) Certificates of good standing, issued within 30 days of the application, from the Corporations Division of the Secretary of the Commonwealth, Department of Revenue, and Department of Unemployment Assistance, if applicable.
- (f) Proof of occupancy or intent to occupy the premises where the person or entity applying for Financial Assistance will conduct its Licensed business, including evidence that the intended use of the premises as a Marijuana Establishment or Medical Marijuana Treatment Center complies with all applicable state regulations and local codes, ordinances and bylaws.
- (g) Information sufficient to justify the amount of Financial Assistance requested, including
  - 1. actual or projected expenses of the Marijuana Establishment or Medical Marijuana Treatment Center;
  - 2. actual or projected revenue of the Marijuana Establishment or Medical Marijuana Treatment Center; and
  - 3. actual or projected sources of debt and equity financing.
- (h) Statement of the need for and intended use of the Financial Assistance, including a schedule for the use of funds.

EOED may require any other information or documentation it deems relevant to ensure Financial Assistance is distributed in accordance with the purpose and intent of M.G.L. c. 94G § 14A and the requirements of 935 CMR 500.000, 935 CMR 501.000 and 400 CMR 8.00.

(3) Request for additional information. EOED shall notify the person or entity applying for Financial Assistance if EOED determines that the person or entity's application is incomplete. EOED may at any time require the submission of additional information it deems necessary to complete its review of an application for Financial Assistance.

(4) Fees. EOED may establish and collect reasonable application fees from persons and entities requesting Financial Assistance to offset costs of administering the Fund.

(5) Outreach. When issuing an RFP or when accepting applications for Financial Assistance on a rolling basis, EOED shall advertise the program to encourage participation from applicants representing all License types.

8.05: Awards of Financial Assistance

(1) Review and selection process. EOED will publish the evaluation and selection criteria in Program Guidelines or in one or more Request for Proposals. EOED may consider the following criteria, in addition to any other criteria established in Program Guidelines or a Request for Proposals:

- (a) The type of License held, or type of license being applied for, by the person or entity applying for Financial Assistance.
- (b) Whether the person or entity applying for Financial Assistance has demonstrated the need for Financial Assistance.
- (c) Whether the person or entity applying for Financial Assistance faces barriers to obtaining sufficient working capital to obtain or maintain a License and operate a successful Marijuana Establishment or Medical Marijuana Treatment Center.
- (d) Demonstrated readiness to deploy the Financial Assistance requested.
- (e) The viability of the Marijuana Establishment or Medical Marijuana Treatment Center as evidenced by other sources of debt or equity financing.

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(2) Types of Financial Assistance. EOED shall determine if Financial Assistance shall be provided in the form of grants or loans, which may include direct grants, recoverable grants, low-interest loans, forgivable loans, loan guarantees or other credit enhancements, or other forms of direct or indirect financial support. The types of Financial Assistance available shall be described by EOED in program guidelines or in a request for proposals.

(3) Contracts. All persons or entities awarded Financial Assistance shall enter into a grant agreement, loan agreement, or other contract with EOED. Such Contract will set forth the (i) permitted uses of the Financial Assistance; (ii) repayment terms of any loan, forgivable loan or recoverable grant; (iii) remedies and penalties resulting from a breach of the Contract; (iv) recordkeeping and reporting requirements; (v) restrictions on the sale, conveyance, transfer or pledge of Restricted Assets; and (vi) such other terms and conditions that EOED deems appropriate to ensure the Financial Assistance is used for its intended purpose and in compliance with applicable law. Contracts may also provide for the grant of security interests to EOED to secure performance of the contract by the entity receiving financial assistance.

(4) Administrative support. EOED may procure the assistance of a quasi-public authority or third party to assist with the administration of the Fund.

8.06: Municipal Grants

EOED may, in its discretion, use a portion of the Fund to make grants to municipalities to promote equity and eliminate barriers to entry for Economic Empowerment Priority Applicants, Social Equity Businesses and Social Equity Program Participants. The scope and details of municipal grants shall be established in an RFP made available to all eligible municipalities.

8.07: Prohibition on the Sale, Transfer or Pledge of Certain Assets

(1) A person or entity who expends any amount of Financial Assistance to acquire a Restricted Asset shall not sell, convey, transfer or pledge such Restricted Asset, nor any interest in the entity that owns such Restricted Asset, except if such sale, conveyance, transfer or pledge is to or for the benefit of a Social Equity Business or an Economic Empowerment Priority Applicant. Such restrictions shall expire on the fifth anniversary of the Contract commencement date. EOED may, in its discretion, provide in a Contract that the restriction period shall be fewer than five years, but in no event shall the restriction period be fewer than three years.

(2) If a Restricted Asset is sold, conveyed, transferred or pledged in violation of the preceding section 8.07(1), then EOED shall be entitled to recover 100 percent of the Financial Assistance used to acquire the Restricted Asset. EOED shall provide written notice to a person or entity of the amount to be recovered and demand repayment by a date that is not sooner than thirty days after the date of the notice.

(3) EOED may foreclose on any lien or exercise rights under any security interest on any Restricted Asset to enforce the provisions of this section 8.07. If EOED commences legal proceedings to recover money to which it is entitled pursuant to this section 8.07, EOED shall be entitled to recover reasonable attorney fees and costs.

8.08: Defaults and Other Material Breaches; Penalties

(1) Defaults and breach of Contract. Each Contract will set forth the terms and conditions of the Financial Assistance, and the remedies available to EOED in the event of a default or material breach of the Contract.

(a) A default or material breach of a Contract shall occur in the event that the person or entity receiving Financial Assistance;

1. fails to make timely repayment of Financial Assistance, taking into account any cure periods provided in the Contract, if applicable;
2. makes a material misrepresentation in the Contract or application for Financial Assistance;
3. expends any portion of the Financial Assistance for a purpose that is not permitted under the Contract;
4. loses its status as an Economic Empowerment Priority Applicant, Social Equity Business or Social Equity Program Participant;
5. has its License suspended or revoked, or is subject to any other penalty imposed by the Commission that materially impacts the operation of its business;
6. sells, conveys, transfers or pledges any Restricted Asset in violation of section 8.07; or
7. fails to comply with recordkeeping, reporting requirements or milestones set forth in the Contract.

(b) Any person or entity receiving Financial Assistance that defaults or materially breaches a contract as a result of an event occurring in accordance with 400 CMR 8.08(1)(a)(iv) or (v) shall report such default or material breach to EOED within five (5) business days.

(c) Each Contract may define other actions or events that constitute a default or material breach of the Contract.

(2) Remedies and Penalties.

(a) In the event of a default or material breach of a Contract, or a violation of 400 CMR 8.00, EOED may, in its sole discretion:

1. suspend, condition or terminate the Contract;
2. suspend, withhold, rescind or recapture all or a portion of the Financial Assistance awarded under the Contract;
3. impose and collect fines or penalties in an amount up to 50 percent of the amount of Financial Assistance disbursed under the Contract per violation;
4. notify the Commission of a default or breach of contract;
5. foreclose on any lien or exercise rights under any security interest pledged to the Commonwealth as a condition of receiving Financial Assistance; or
6. cause a sale or transfer of the License in accordance with section 8.08(3).

(b) The rights and remedies set forth herein are not exclusive and do not preclude other remedies available to EOED at law or in equity.

(3) Transfer of License upon Default.

(a) In the event of an uncured default or material breach of a Contract, EOED may require a sale or transfer of the defaulting entity's License, pursuant to 935 CMR 500.104 or 935 CMR 501.104. Such sale or transfer of the License shall be subject to the rules and regulations of the Commission.

(b) In the event a License or ownership interest in a licensed entity, property or assets of the person or entity receiving Financial Assistance is sold or transferred as a result of a default or material breach, such proceeds shall be first applied to the amount outstanding under the Contract, including any fees or penalties assessed by EOED.

(4) Any money recovered or fines or penalties paid to EOED pursuant to 400 CMR 8.00 shall be deposited into the Fund.

8.09: Continuing Role of the Cannabis Social Equity Advisory Board.

(1) EOED will consult with the Board prior to proposing any amendments to these regulations, and prior to issuing or amending program guidelines or an RFP.

(2) EOED will consult with the Board prior to filing the annual report required by subsection (d) of section 14A of chapter 94G of the General Laws.

8.10: Administration and Management of the Fund

All money deposited into the Fund shall be maintained in a segregated account separate from all other funds of EOED. All fees collected by EOED in connection with the administration of the Fund, and all Financial Assistance repaid by a person or entity receiving Financial Assistance, shall be deposited into the Fund. EOED may use money in the Fund to offset the costs of administering the Fund.

8.11: Confidential Records

EOED will collect Confidential Records only to the extent necessary to determine a person or entity's eligibility to receive Financial Assistance. EOED will maintain the confidentiality of Confidential Records as required by applicable law. All other documentation and materials submitted to EOED may be subject to public disclosure under chapter 66 of the Massachusetts General Laws, commonly known as the Public Records Law.

8.12: Severability

The provisions of 400 CMR 8.00 are severable. If any provisions or the application of any provision is held invalid or unconstitutional, such invalidity shall not be construed to affect the validity or constitutionality of any remaining provisions of 400 CMR 8.00.

REGULATORY AUTHORITY

400 CMR 8.00: M.G.L. c. 94G § 14A