

## DIVISION 18

### CAPITAL ACCESS PROGRAM

#### 123-018-0000

##### Purpose and Scope

(1) The purpose of this division of administrative rules is to provide definitions, procedures, standards and criteria, to establish eligibility, and to stipulate rights and obligations for operation of the Capital Access Program.

(2) The Capital Access Program assists small businesses needing financial capital to grow and to undertake economic activity in this state by subsidizing loss reserves so that conventional lending institutions have greater capacity to satisfy this need.

Stat. Auth.: ORS 183.310 - 183.550 & 285.109 - 285.119

Stats. Implemented: ORS 285.109 - 285.119

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

#### 123-018-0010

##### Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001 as used in this division of administrative rules, the following definitions apply, unless the context requires otherwise:

(1) "Agreement" means a contract between a Financial Institution and the Department authorizing the Financial Institution to participate in the Program as required under ORS 285B.113.

(2) "Borrower" means a Qualified Business, including but not limited to a corporation, partnership, limited liability company, joint venture, sole proprietorship, cooperative, or non-profit corporation, that has received a Qualified Loan from a Participating Financial Institution. The borrower, or any principal of the borrower, may not be an executive officer, director, or principal shareholder of the financial institution lender; a member of the immediate family of such executive officer, director or principal shareholder; or a related interest to any of the above. The terms "executive officer", "director", "principal shareholder", "immediate family", and "related interest" are described in 12 C.F.R. part 215.

(3) "Brownfield" means any real property where expansion or redevelopment is complicated by actual or perceived environmental contamination.

(4) "Department" means the State of Oregon Business Development Department under ORS Chapter 285A.

(5) "Distressed Area" means a geographic area so designated as described in division 024 of these administrative rules.

(6) "Enrolled Loan" means a Qualified Loan enrolled in the Program as described in OAR 123-018-0080, including but not limited to a term loan or line of credit.

(7) "Environmental action" on a brownfield(s) 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; or

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

(8) "Fund" means the Capital Access Fund in the State Treasury under ORS 285B.109.

(9) "Loss" means any principal amount due and not paid, accrued interest due and not paid, and actual and necessary, documented out-of-pocket collection expenses at the time the Participating Financial Institution determines, in a manner consistent with its standard lending and loan loss criteria and normal method for making such determinations, that an Enrolled Loan is uncollectible and is to be charged off as a loss. The amount of principal and interest included in the Loss shall not exceed the principal amount of the Enrolled Loan, plus accrued and unpaid interest on covered principal amount from the date the Qualified Loan is made.

(10) "Loss Reserve Account" means an account in the State Treasury or any Financial Institution that is established and maintained by the Department for the benefit of a Financial Institution participating in Program.

(11) "Participating Financial Institution" means a Financial Institution that has executed an Agreement with the Department to participate in the Program, has enrolled one or more qualified loans, and has adequate capacity, as determined by the Department, to underwrite and monitor business-purpose loans.

(12) "Primary Economic Effect" means the majority of economic benefit resulting from a business activity. A business's Primary Economic Effect is in a particular geographic location if either at least 51 percent of the business's total revenues are generated, or at least 51 percent of the business's total jobs are created or retained, in that location.

(13) "Principal" in regards to a Borrower is defined as:

(a) If a sole proprietorship, the proprietor;

(b) If a partnership, each managing partner and each partner who is a natural person and holds a twenty percent (20%) or more ownership interest in the partnership; and

(c) If a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of twenty percent (20%) or more of the ownership stock or stock equivalent of the entity.

"Principal" in regards to a Lender is defined as:

(d) If a sole proprietorship, the proprietor;

- (e) If a partnership, each partner; and
- (f) If a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers or employees of the entity, and each direct or indirect holder of twenty percent (20%) or more of the ownership stock or stock equivalent of the entity.

(14) "Program" means the Capital Access Program authorized by ORS 285B.109 to 285B.119.

(15) "Qualified Business" means any person, conducting business for profit or not for profit, which is authorized to conduct business in the State of Oregon.

(16) "Qualified Loan" means a loan or portion of a loan made by a Participating Financial Institution to a Qualified Business for any business activity that has its Primary Economic Effect in Oregon. The term does not include a loan or portion of a loan used for any of the following purposes:

(a) The purchase of owner-occupied residential housing or for the construction, improvement, or purchase of residential housing that is owned or to be owned by the Borrower;

(b) The purchase of real property that is intended for resale or not used for the business operations of the Borrower;

(c) Refinance of the balance of an existing loan that is not an Enrolled Loan. Any portion of the loan used for a qualified purpose (i.e., that is in excess of the balance of an existing loan that is not an Enrolled Loan) may be eligible to be enrolled.

(d) The purchase of securities;

(e) Lobbying activities;

(f) Repayment of delinquent federal or state income taxes unless the Borrower has a payment plan in place with the relevant taxing authority;

(g) Repayment of taxes held in trust or escrow;

(h) Reimbursement of funds owed to any owner, including any equity injection or injection of capital for the business' continuance;

(i) Purchase of any portion of the ownership interest of any owner of the business; or

(j) Refinance of any portion of a loan enrolled in another state or federal credit enhancement or credit insurance program.

The term also does not include a loan where any Principal of the Borrower has been convicted of a sex offense against a minor as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911).[Publications: Publications referenced are available from the agency.] Stat. Auth.: ORS 285A.075, 285B.115(3), 285B.117(4)

Stats. Implemented: ORS 285B.109 - 285B.119

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 1-1994(Temp), f. & cert. ef. 1-11-94; EDD 9-1994, f. 5-27-94, cert. ef. 6-1-94; EDD 10-1997(Temp), f. & cert. ef. 10-7-97; EDD 9-1998, f. & cert. ef. 5-22-98; EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-

07 thru 2-29-08; EDD 6-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08; EDD 22-2008, f. 7-31-08, cert. ef. 8-1-08

### **123-018-0020**

#### **Authority to Implement Program**

The manager of the Department's Business Finance programs, or his/her designee, may execute any document reasonably necessary or convenient to implement the Program.

Stat. Auth.: ORS 285A.075 & 285B.115(3) Stats. Implemented: ORS 285B.109 - 285B.119 Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

### **123-018-0030**

#### **Program Registration Procedure**

(1) A Financial Institution wishing to participate in the Program must submit a completed program registration application using a form prescribed by the Department. (2) The Department shall determine the Financial Institution's eligibility to participate in the Program, based on the submitted application and other information the Department may deem necessary or appropriate.

(3) A Financial Institution that the Department determines is eligible to participate in the Program may enter into an Agreement with the Department as described in OAR 123-018-0040.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.109 & 285B.119

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

### **123-018-0040**

#### **Agreement**

All Agreements entered into between a Participating Financial Institution and the Department shall provide:

(1) For the creation of a Loss Reserve Account by the Department, owned by the Department for the benefit of the Participating Financial Institution in accordance with ORS 285B.115;

(2) That the liability of the State of Oregon and the Department to the Participating Financial Institution under the Agreement is limited to the outstanding balance in the Loss Reserve Account for that Participating Financial Institution, less the portion of the interest that is available for withdrawal by the Department for administrative costs as described in OAR 123-018-0060;

(3) That the terms and conditions of Qualified Loans are to be determined solely by the Participating Financial Institution and Borrower;

- (4) The method for enrolling Qualified Loans in the Program;
- (5) That the Borrowers, the Participating Financial Institution, and (subject to the availability of money in the Fund) the Department will deposit moneys into the Participating Financial Institution's Loss Reserve Account when the Participating Financial Institution makes a Qualified Loan to a Borrower;
- (6) A claims process for reimbursement of Losses that have been incurred from defaults on Enrolled Loans;
- (7) For payment by the Department from the Loss Reserve Account to the Participating Financial Institution to reimburse it for such Losses, up to the total amount of the then current balance available in the Loss Reserve Account, less the portion of the earned interest that belongs to the department for administrative costs.
- (8) For disposition of any recoveries from a Borrower made by the Participating Financial Institution subsequent to being reimbursed for any Loss by the Department;
- (9) Conditions for subrogation of the Department, at the Department's request, to the rights of the Participating Financial Institution in collateral, personal guarantees or other forms of security for the Qualified Loan;
- (10) Conditions for withdrawal by the Department of excess balances or of certain interest earnings (see OAR 123-018-0150) in the Loss Reserve Account;
- (11) Conditions for termination by the Department of the obligation to enroll Qualified Loans under the Program;
- (12) Conditions for termination of the Agreement, and disposition by the Department of any remaining balance in the Loss Reserve Account;
- (13) For withdrawal by the Participating Financial Institution from the Program and disposition by the Department of any remaining balance in the Loss Reserve Account;
- (14) For the Participating Financial Institution to periodically report to the Department any information the Department requires, including financial information that is identifiable with, or identifiable from, the financial records of a Borrower;
- (15) For inspection by the Department of the Participating Financial Institution's pertinent files relating to Enrolled Loans;
- (16) That the Department may require from the Participating Financial Institution information relating to the Participating Financial Institution's status and performance, as developed by or for applicable state or federal regulatory bodies, and relevant to the Participating Financial Institution's participation in the Program or the financial health of institution, or that the Department may obtain public information from state or federal regulatory bodies such as the Oregon State Department of Consumer and Business Services, Division of Finance and Corporate Securities; and
- (17) For other terms and conditions as the Department may require.

Stat. Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.113, 285B.115, 285B.117 & 285B.118

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 6-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08; EDD 22-2008, f. 7-31-08, cert. ef. 8-1-08

### **123-018-0050**

#### **Establishing a Loss Reserve Account**

After executing an Agreement with a Participating Financial Institution, the Department shall establish a Loss Reserve Account to receive the fees described in OAR 123-018-0070 from the Borrower and the Participating Financial Institution, as well as the Department's matching contribution from the Fund as described in OAR 123-018-0080 and 123-018-0085. Except as determined by the Department to be otherwise necessary or desirable, the Loss Reserve Account shall be domiciled with the Participating Financial Institution in the form of an insured, interest-earning demand deposit account.

Stat. Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.115 & 285B.117

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

### **123-018-0060**

#### **Ownership, Control, Investment of Loss Reserve Account**

(1) All moneys in a Loss Reserve Account are the exclusive property of the State of Oregon, acting by and through the Department, and are controlled solely by the Department. The Department may withdraw funds from a Loss Reserve Account only as described in this division of administrative rules or as contained in provisions of the applicable Agreement.

(2) The Department may withdraw and transfer into the Capital Access Fund up to 50% of the interest earned on moneys in Loss Reserve Accounts to pay for administrative expenses incurred by the Department.

(3) Any earnings on the balance in a Loss Reserve Account are part of the Loss Reserve Account, except as described in this section and in OAR 123-018-0150.

Stat. Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.115 & 285B.119

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 6-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08; EDD 22-2008, f. 7-31-08, cert. ef. 8-1-08

### **123-018-0065**

## **Loan Eligibility**

A Participating Financial Institution may determine that a Qualified Loan is eligible for the Department to enroll in the Program if the Participating Financial Institution determines the Qualified Loan meets the following conditions:

- (1) The Qualified Loan is not for a business enterprise in which a person described in section (2) of this section has a shared ownership, investment or other significant pecuniary interest; and
- (2) The Qualified Loan is provided to a Borrower, who is not an executive officer, director or principal shareholder of the Participating Financial Institution, or person with comparable official capacity with or significant ownership in the Participating Financial Institution, or a member of the immediate family of such a person.
- (3) The Borrower may not be:
  - (a) A business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business; or
  - (b) A business that earn more than half of its annual net revenue from lending activities; or
  - (c) A business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants; or
  - (iv.) A business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted; or
  - (d) A business engaged in gambling enterprises, unless the business earns less than 33% of its annual net revenue from lottery sales.

Stat. Auth.: ORS 285A.075) & 285B.115(3)

Stats. Implemented: ORS 285B.115 & 285B.119

Hist.: EDD 8-2005, f. & cert. ef. 10-24-05

## **123-018-0070**

### **Fees**

- (1) When making a Qualified Loan for which enrollment under the Program will be sought, the Participating Financial Institution shall charge the Borrower a fee that is at least 1.5 percent but not more than 3.5 percent of the principal amount of the Qualified Loan.
- (2) The Participating Financial Institution shall pay a fee equal to the fee paid by the Borrower pursuant to section (1) of this rule. The Participating Financial Institution may charge the Borrower a fee to recover its contribution.
- (3) These fees are non-refundable once the Qualified Loan is enrolled.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.117

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-

1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

## **123-018-0080**

### **Procedure for Enrollment of a Qualified Loan**

(1) A Participating Financial Institution may enroll a Qualified Loan in the Program by taking the following actions:

(a) Notifying the Department in writing of the Qualified Loan to be enrolled, using a form prescribed by the Department, within 30 days after the date the Participating Financial Institution disburses proceeds of the Qualified Loan to the Borrower or the date the loan documents are fully executed and the Participating Financial Institution is obligated to disburse proceeds, whichever occurs sooner; and

(b) Transmitting to the Department the fees required by OAR 123-018-0070. If the Loss Reserve Account is domiciled with the Participating Financial Institution, the deposit of fees by the Participating Financial Institution into the Loss Reserve Account satisfies the requirements of this section if the Participating Financial Institution provides the Department with proof of deposit or written notification confirming the deposit.

(2) The Department shall, upon receipt of documentation and fees satisfying the requirements in section (1) of this rule, enroll the Qualified Loan if:

(a) The Department is satisfied that the Qualified Loan is eligible under OAR 123-018-0065; and

(b) Sufficient moneys are or can be made available from the Fund to meet the Department's minimum contribution obligation described in OAR 123-018-0085.

(3) The Department shall notify the Participating Financial Institution of enrollment within 10 business days from receipt of the required documentation and fees.

(4) After notifying the Participating Financial Institution that the Qualified Loan is enrolled, the Department shall transfer from the Fund to the Loss Reserve Account of the Participating Financial Institution a contribution amount as described in OAR 123-018-0085.

(5) Before making a Qualified Loan, a Participating Financial Institution may request a commitment from the Department that sufficient funds are available to meet the Department's contribution as described in OAR 123-018-0085 and are available to be transferred to the Loss Reserve Account when the Qualified Loan is enrolled. If the Department provides the commitment, it will be binding on the Department for 30 days after the date of the commitment if the Participating Financial Institution has complied with section (1) of this rule and the Qualified Loan is eligible under OAR 123-018-0065.

Stat. Auth.: ORS 285A.075 & 285B.115(3) Stats. Implemented: ORS 285B.115 & 285B.117  
Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 1-1994(Temp), f. & cert. ef. 1-11-94; EDD 9-1994, f. 5-27-94, cert. ef. 6-1-94; EDD 8-2005, f. & cert. ef. 10-24-05

## **123-018-0085**



## **State Contributions to Loss Reserve Accounts**

The Department shall determine the amount of money it transfers from the Fund to a Loss Reserve Account as follows:

- (1) For each Enrolled Loan, the Department shall deposit an amount equal to or greater than the total fees transmitted as described in OAR 123-018-0080(1)(b) and as required in OAR 123-018-0070, subject to further limitations in this rule.
- (2) If one or both of the following conditions exist, the Department shall deposit an amount equal to 200 percent of the minimum allowed by section (1) of this rule, except as otherwise restricted in section (4) of this rule:
  - (a) The Borrower's business operations that benefit from the Enrolled Loan are entirely located in a Distressed Area at the time that the Qualified Loan is made consistent with OAR 123-018-0080(1)(a); or
  - (b) The Enrolled Loan provides the Borrower with funding for use in an environmental action on a brownfield(s).
- (3) For any Participating Financial Institution, the Department may deposit 200 percent of the minimum allowed by section (1) of this rule if the Loss Reserve Account currently contains less than \$100,000 according to the most recent information provided to the Department at the time of loan enrollment.
- (4) The Department may not transfer:
  - (a) An amount greater than \$35,000 per Enrolled Loan and associated, concurrent transactions with related business interests; or
  - (b) More than a total of \$150,000 from the Fund to a Loss Reserve Account for a single Qualified Business and related business interests.
- (5) Unless otherwise provided in this rule, the Department may transfer up to 200 percent of the minimum described in section (1) of this rule, if the Department finds the Qualified Loan advances economic development or job creation in this state by small business.

Stat. Auth.: ORS 285A.075, 285B.115(3) & 285B.117(4)

Stats. Implemented: ORS 285B.115 & 285B.117

Hist.: EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 6-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08; EDD 22-2008, f. 7-31-08, cert. ef. 8-1-08

### **123-018-0090**

#### **Procedure for Making Claim for Reimbursement of Loss**

- (1) If a Participating Financial Institution charges off all or part of an Enrolled Loan as a result of a default by the Borrower, the Participating Financial Institution may claim reimbursement for all or part of the Loss incurred by notifying the Department of the claim in writing on a form prescribed by the Department within three calendar months of the date the Enrolled Loan was charged off.

(2) Subject to OAR 123-018-0110 to 123-018-0130, a Participating Financial Institution may make a claim for reimbursement of a Loss prior to the liquidation of collateral, or to realization on personal or other financial guarantees or from other sources.

(3) The Participating Financial Institution shall retain documentation in its files substantiating all claims for a term commensurate with standard banking records retention practices but not less than five years after the date that the Enrolled Loan is terminated.

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.141

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

### **123-018-0100**

#### **Payment of Claims by Department**

(1) The Department shall reimburse a Participating Financial Institution for Losses claimed as described in OAR 123-018-0090. The Department may reject a claim only if the Department determines the representations and warranties provided by the Participating Financial Institution at the time of enrolling the Qualified Loan were false.

(2) All interest earnings shall be available to pay Loss claims, except for:

(a) Earnings available for withdrawal by the Department from the Loss Reserve Account, as described in OAR123-018-0060, and

(b) As provided for in OAR 123-018-0150.

(3) When there are insufficient funds in the Loss Reserve Account to cover the total amount of a Loss claim, the Department shall pay an amount equal to the balance of the Loss Reserve Account, less the Department's share of any accumulated interest earnings on the account. This payment will fully satisfy the claim and the Participating Financial Institution will have no further right to receive any other amount with respect to such claim.

(4) The Department shall reimburse Loss claims in the order it receives them. If a Participating Financial Institution files two or more Loss claims simultaneously and there are insufficient funds in the Loss Reserve Account to pay them, the Participating Financial Institution may designate the order the Loss claims are to be paid by the Department.

Stat. Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.115, 285B.1178 & 285B.118

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 6-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08; EDD 22-2008, f. 7-31-08, cert. ef. 8-1-08

### **123-018-0110**

## **Recoveries on Loans Subsequent to Payment of Claim**

(1) If, subsequent to the payment of a Loss claim by the Department, the Participating Financial Institution recovers from the Borrower, through liquidation of collateral or from any other source, amounts for which Participating Financial Institution was reimbursed from the Loss Reserve Account, the Participating Financial Institution shall promptly repay into the Loss Reserve Account the amount received up to the amount of the reimbursement.

(2) If the Loss Reserve Account is domiciled with the Participating Financial Institution, the deposit to the Loss Reserve Account of the amount recovered from the Borrower by the Participating Financial Institution (with written notification by the Participating Financial Institution to the Department confirming such deposit) is deemed payment to the Department of the amount recovered from the Borrower by the Participating Financial Institution and shall satisfy the requirements of this rule. Stat.

Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.115, 285B.117 & 285B.18

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

### **123-018-0120**

#### **Available Collateral, Guarantees and Other Security Not Realized**

(1) After the Department has received a request to pay a Loss claim to the Participating Financial Institution from the Loss Reserve Account, as described in OAR 123-018-0100, and if requested by the Department, the Participating Financial Institution shall promptly provide the Department with all available information, including but not limited to, copies of documents related to all pledges or security against the Enrolled Loan, or payment of principle or interest thereon. Such pledges or security include, but are not limited to:

(a) Collateral, such as real estate, bonds and personal property assets;

(b) Duly recorded and perfected liens, certificates of title, deeds, UCC information and other documents representing security related to the collateral or other sources of payment; and

(c) Guarantees (personal or otherwise), warranties, insurance, letters of credit and other instruments from the Borrower, or a third party, supporting the Qualified Loan.

(2) When a Participating Financial Institution furnishes information pursuant to section (1), it shall identify:

(a) Whether the pledges or security remain outstanding or available for potential collection;

(b) If the pledges or security has been liquidated or realized to recover some or all of the Loss;

(c) Any reason that the pledges or security is otherwise forfeit, worthless or undiscoverable; or

(d) The extent to which the lender has attempted to exercise its right to recover its Loss through that source.

Stat. Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.115 & 285B.118

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

### **123-018-0130**

#### **Subrogation**

(1) The Department may request to be subrogated to the rights of a Participating Financial Institution to the pledges and security, pursuant to OAR 123-018-0120.

(2) The Department may make such a request if the Department believes that it would be able to take effective and proper action to more completely realize a return on the remaining available collateral or other sources of security, compared to the Lender, regardless of whether:

(a) The Lender has indicated its inability or unwillingness to take such action;

(b) Full or partial recovery of the Lender's loss has occurred through reimbursement of the Loss claim by the Department or by combination of such reimbursement and by liquidation or realization of pledges and security.

(3) In response to such a request, the Lender shall promptly subrogate its rights to the Department, providing the Department with originals of all applicable documents, accompanied by enforceable assignments and conveyances to the Department.

Stat. Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.115 & 285B.118

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

### **123-018-0140**

#### **Reporting**

(1) When a Loss Reserve Account is domiciled with the Participating Financial Institution, the Participating Financial Institution shall provide the Department with a monthly statement providing details of the balance and the payments and receipts activity in the Loss Reserve Account for the prior month.

(2) On or before January 15, April 15, July 15, and October 15 of each year, a Participating Financial Institution must file a quarterly report with the Department providing a complete list of Enrolled Loans and indicating the outstanding balance of each of its Enrolled Loans.

(3) When a Participating Financial Institution computes the aggregate outstanding balance of all its Enrolled Loans, it may only consider the balance of the portion of a loan enrolled in the Program.

Stat. Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.115 Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

### **123-018-0150**

#### **Withdrawal of Excess Deposits in Loss Reserve Accounts**

Upon and after a formal determination or order by the Director of the Department:

(1) The following shall apply to all interest earnings on moneys transferred by the Department to match transmitted fees, as described in OAR 123-018-0085, for any loan enrolled after the date of Director's order: (a) All Participating Financial Institutions shall continually remove such interest earnings from the Loss Reserve Account, paying the amount of such interest to the Department or sequestering them in a separate account; (b) Such interest earnings shall not be available to cover any Loss, regardless of when they are effectively sequestered or transferred as described in this rule; and

(c) Such interest earnings shall be paid or transferred to the Department consistent with policies and directions of the Department, pursuant to the Director's determination; and

(2) Interest earnings arising from prior match funds or from any fee assessed on or paid by a Borrower or Lender shall remain in the Loss Reserve Account and available to cover Losses.

Stat. Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.115 & 285B.119

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

### **123-018-0160**

#### **Termination of and Withdrawal from Program**

(1) The Department may terminate enrollment of Qualified Loans under the Program for a Participating Financial Institution on the date specified in the Department's notice of termination to the Participating Financial Institution, or for all Participating Financial Institutions under the Program upon 90 days notice, or such earlier date should the balance in the Fund reach zero, or should the Department anticipate that the balance in the Fund will reach zero. Termination shall not apply to any Qualified Loans made before the date of termination.

(2) Should a Loss Reserve Account have a zero balance, the Department may terminate the Agreement at its sole discretion.

(3) A Participating Financial Institution may withdraw from the Program after giving written notice to the Department. After receipt of this notice, the Department shall determine when to withdraw any remaining balance in the Participating Financial Institution's Loss Reserve Account.

(4) If a Participating Financial Institution is closed or taken over by the Federal Deposit Insurance Corporation (FDIC), with or without an Order to Cease and Desist issued by the FDIC and the Oregon Division of Finance and Corporate Securities, the Department shall terminate the failed Participating Financial Institution's membership in the Program and all funds in the Loss Reserve Account shall be transferred to the Department. This provision shall apply whether or not a new financial institution purchases some or all of the loans of the failed Participating Financial Institution.

Stat. Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.115 & 285B.119

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05; EDD 8-2007(Temp), f. & cert. ef. 9-4-07 thru 2-29-08; EDD 6-2008(Temp), f. & cert. ef. 3-4-08 thru 8-1-08; EDD 22-2008, f. 7-31-08, cert. ef. 8-1-08

### **123-018-0170**

#### **Disposition of Funds Withdrawals from Loss Reserve Accounts**

The Department shall deposit moneys withdrawn by the Department from Loss Reserve Accounts as described in OAR 123-018-0040, 123-018-0150 and 123-018-0160 into the Fund.

Stat. Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.115 & 285B.118

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

### **123-018-0180**

#### **Inspection of Files**

The Department may inspect a Participating Financial Institution's files relating to Enrolled Loans at any time during normal business hours. The Department is not required to provide a Participating Financial Institution with prior notice of an inspection.

Stat. Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.113 & 285B.115

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

### **123-018-0190**

#### **Reports of Regulatory Agencies**

The Department may require from the Participating Financial Institution information relating to the Participating Financial Institution's status and performance, as developed by or for applicable state or federal regulatory bodies, and relevant to the Participating Financial Institution's participation in the Program or the financial health of institution, or the Department may obtain public information from state

or federal regulatory bodies such as the Oregon State Department of Consumer and Business Services, Division of Finance and Corporate Securities. The Department shall not disclose any confidential information obtained as described in this rule, to the extent permitted by law.

Stat. Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.113

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05

## **123-018-0200**

### **Administrative Costs of Program**

The Department may charge actual and necessary administrative expenses in operating the Program to the Fund.

Stat. Auth.: ORS 285A.075 & 285B.115(3)

Stats. Implemented: ORS 285B.115 & 285B.119

Hist.: EDD 27-1990(Temp), f. & cert. ef. 10-16-90; EDD 3-1991, f. & cert. ef. 4-17-91; EDD 15-1991(Temp), f. & cert. ef. 10-31-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 8-2005, f. & cert. ef. 10-24-05