

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 886
BROWNFIELDS REDEVELOPMENT LOAN PROGRAM

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NOTE: Italics indicates statutory language.

SUBPART A: GENERAL PROVISIONS

Section 886.100 Purpose

The purpose of this Part is to provide financial assistance in the form of loans for the funding of site investigation, site remediation, or both, at brownfields sites.

Section 886.105 Administration

The Brownfields Redevelopment Loan Program shall be administered by the Illinois Environmental Protection Agency as an instrumentality of the State of Illinois in accordance with State and federal laws.

Section 886.110 Definitions

Unless specified otherwise, all terms shall have the meanings set forth in the Illinois Environmental Protection Act. Additionally, for purposes of this Part, the following definitions apply:

"Act" means the Illinois Environmental Protection Act [415 ILCS 5].

"Agency" means the Illinois Environmental Protection Agency.

"Applicant" means a unit of local government or private party that applies for a brownfields redevelopment loan.

"Brownfields redevelopment loan" means a loan issued pursuant to Section 58.15 of the Act and Subpart B of this Part.

"Brownfields site" or "brownfields" means a parcel of real property, or a portion of the parcel, that has actual or perceived contamination and an active potential for redevelopment. (Section 58.2 of the Act)

"Dedicated source of revenue" means the type of security and the basis of legal authorization that are dedicated by legislative enactment or other appropriate authority along with the applicable revenue source pledged for repayment and deposited into an account restricted to the purpose of loan repayment to the Brownfields Redevelopment Fund, which is sufficient to repay the principal and interest on the loan.

"Fixed loan rate" means one-half the market interest rate but not less than 2.50%.

"Interest rate" means not less than one-fourth of the market interest rate rounded to the nearest .01%.

"Loan agreement" means the written loan agreement documents and amendments thereto signed by both the Agency and a loan recipient in which the terms and conditions governing the loan are stated and agreed to by both parties.

"Loan recipient" means a unit of local government or private party that has been awarded a loan for brownfields redevelopment under Section 58.15 of the Act.

"Loan support rate" means not more than one-fourth of the market interest rate rounded to the nearest .01%.

"Market interest rate" means the mean interest rate of the 20 General Obligation Bond Buyer Index, from July 1 to June 30 of the preceding State fiscal year rounded to the nearest .01%.

"Unit of local government" means an incorporated city, village, or town in this State. Unit of local government does not mean a township, town when that term is used as the equivalent of a township, incorporated town that has superseded a civil township, county, or school district, park district, sanitary district, or similar governmental district. (Section 58.2 of the Act)

"Principal" means all disbursements, including interest and loan support accrued on the disbursements, that will be financed at the time the repayment schedule period begins.

"Project" means the activities or tasks the Agency identifies in the loan agreement for which the loan recipient may expend loan funds.

"State" means the State of Illinois.

Section 886.115 Severability

If any Section, subsection, sentence or clause of this Part shall be adjudged unconstitutional, void, invalid, or otherwise unlawful, such adjudication shall not affect the validity of this Part as a whole, or any Section, subsection, sentence, or clause thereof not adjudged unconstitutional, void, invalid, or otherwise unlawful.

SUBPART B: BROWNFIELDS REDEVELOPMENT LOANS

Section 886.200 Scope and Availability of Loans

- a) *The Agency shall establish and administer a revolving loan program to be known as the "Brownfields Redevelopment Loan Program" for the purpose of providing loans to be used for site investigation, site remediation, or both, at brownfields sites. (Section 58.15(a) of the Act)*
- b) *Loans shall be at or below market interest rates in accordance with a formula set forth in this Part. (Section 58.15(b)(1) of the Act)*
- c) *Loans shall be awarded subject to availability of funding based on the order of receipt of applications satisfying all requirements as set forth in this Part. (Section 58.15(b)(2) of the Act)*
- d) In addition to any other requirements or conditions placed on loans by this Part, loan agreements shall include the following requirements:
 - 1) *The loan recipient shall secure the loan repayment obligation. (Section 58.15(b)(4)(A) of the Act)*
 - 2) *Completion of the loan repayment shall not exceed 5 years. (Section 58.15(b)(4)(B) of the Act)*
 - 3) *Loan agreements shall provide for a confession of judgment by the loan recipient upon default. (Section 58.15(b)(4)(C) of the Act)*
 - 4) *Loans shall not be used to cover expenses incurred prior to the approval of the loan application. (Section 58.15(b)(5) of the Act)*
- e) Repayment of loans shall commence within 12 months of the initial disbursement of funds by the Agency.

- f) Loan recipients may use up to 10% of borrowed funds for administrative costs as defined in the loan agreement.

Section 886.201 Eligible Applicants

Units of local government and private parties shall be eligible to apply for loan assistance to perform investigative or remedial activities at a site where there is a release, threatened release, or suspected release of hazardous substances, pesticides, or petroleum, provided the project site is eligible for entry into the Site Remediation Program pursuant to 35 Ill. Adm. Code 740.

Section 886.205 Loan Issuance Criteria

- a) Criteria for awarding loans shall include, but shall not be limited to, the following:
 - 1) Credit worthiness and ability to repay the loan;
 - 2) Potential for economic redevelopment;
 - 3) Long-term benefits and sustainability;
 - 4) Strength of community and local support;
 - 5) Interest of potential future users of the brownfields site;
 - 6) Protection of human health and the environment; and
 - 7) A written commitment by the loan recipient or other entity to enter the brownfields site into the Site Remediation Program.

- b) In awarding loans, the Agency may give weight to geographic location to enhance geographic distributions of loans across the State.

Section 886.210 Pre-Applications for Brownfields Redevelopment Loans

Every loan applicant shall submit to the Agency a pre-application that, at a minimum, includes the following items:

- a) the reason for the proposed project;
- b) a description of the proposed project;
- c) an estimated cost of the proposed project;
- d) a proposed schedule for completion of the proposed project;
- e) a summary of prior environmental assessments;
- f) an explanation of the applicant=s relationship to the brownfields site; and
- g) a strategy for loan repayment.

Section 886.215 Applications for Brownfields Redevelopment Loans

- a) To be considered for a brownfields redevelopment loan, an applicant shall file with the Agency a complete application, in accordance with the requirements of this Section.
- b) Applicants for brownfields redevelopment loans shall use loan application forms furnished by the Agency, or a similar format. Loan applications, including budget forms, may be obtained from and must be submitted to: Illinois Environmental Protection Agency, Bureau of Land, Office of Brownfields Assistance, 1021 North Grand Avenue East, Springfield, Illinois 62794-9276.
- c) A complete brownfields redevelopment loan application shall include the following:
 - 1) Background information, including:
 - A) An identification of the site location and size, including the legal description and the Property Tax ID;
 - B) An explanation of the relationship of the loan applicant to the site;
 - C) A description of the investigative and remedial work performed at the site, if any, and a summary of all prior environmental assessments and conclusions, including attachments of copies of all environmental reports generated for any part of the site (i.e., Site Investigation Report, Remediation Objectives Report, Remedial Action Plan, Remedial Action Completion Report, or their equivalents);
 - D) A description of the negative effects on the local community of the site and the positive effects on the local community of funding and implementing the proposed project;
 - E) A description of the local government's involvement and planned additional involvement in the proposed project;
 - F) A description of the anticipated long-term benefits of the project and the means by which the local government will sustain the benefits;
 - G) A description of the future participation of the site in the Site Remediation Program and an identification of who the remedial applicant will be, including a letter committing the site's entry into the Site Remediation Program; and
 - H) An indication as to how the success of the project will be measured.
 - 2) The project plan, including:

- A) A description of all components and phases of the proposed project, including an indication of each activity's relationship to Site Remediation Program (35 Ill. Adm. Code 740) regulations and program requirements;
 - B) A description of the planned or proposed tasks to be performed by parties involved;
 - C) A schedule of the work plan by tasks, including specific activities and events;
 - D) Letters of agreement or other documentation showing the applicant is authorized, by law or consent, to act on behalf of or in lieu of the owner or operator of the site;
 - E) Letters of agreement or other documentation from the contractor or subcontractors involved in or responsible for components or phases of the proposed project; and
 - F) Maps showing the location of the proposed project and the areas affected by the proposed project.
- 3) Information on project team members, including:
- A) The name of the applicant project manager and a description of his or her previous management experience and other pertinent experience and capabilities;
 - B) The names of other applicant project team members and a description of their job titles, work assignments and experience; and
 - C) The name, telephone number, fax number and e-mail address, if any, of the applicant project team member designated to serve as liaison with the Agency.
- 4) Information on any environmental consultant to be employed by the applicant, including:
- A) The name, telephone number, fax number and e-mail address, if any, of the environmental consulting firm;
 - B) A description of any previous project management experience and other pertinent experience and capabilities of the environmental consultant;

- C) The names of key environmental consultant personnel and a description of their job titles, work assignments and experience;
 - D) A detailed explanation of the tasks the consultant is to perform in the proposed project; and
 - E) Evidence of relevant experience of all environmental consultant personnel involved in the project.
- 5) A completed budget package on forms provided by the Agency.
- 6) A demonstration of the loan applicant's credit worthiness, including:
- A) The loan applicant's credit history;
 - B) Information as to whether the loan applicant has ever defaulted on any of its prior debt issues;
 - C) The loan applicant's source of revenue for repaying the loan;
 - D) Information as to whether there are restrictions on what additional debts can be issued by the loan applicant;
 - E) The loan applicant's plan for financing any project costs that are not eligible for loan financing;
 - F) An explanation as to whether the amount and timing of the loan applicant's revenues match up with the loan repayment schedule; and
 - G) An indication as to whether the loan applicant will receive project funds from multiple sources, including whether funding from those sources will be available at the same time.
- 7) A written demonstration of the loan applicant's willingness to monitor the project's activities, progress, spending and budget.

Section 886.220

Agency Action on Application

- a) Issuance of brownfields redevelopment loans is subject to availability of funding.
- b) The Agency shall take action on all pending complete brownfields redevelopment loan applications, at a minimum, at the close of each of two loan application periods per year, the first ending January 1 and the second ending July 1, except as provided in subsection (c) of this Section.

- c) The Agency may award and fund any loan prior to the end of a loan application period provided that the loan applicant demonstrates that:
 - 1) Remediation of the project site is necessary to assure protection of human health and environment; and
 - 2) Failure to issue the loan prior to the end of the loan application period would substantially impair implementation of the project.

- d) If an applicant submits an incomplete application, the Agency shall so notify the applicant in writing, identifying the information that is lacking, and shall impose a deadline by which the deficiencies shall be corrected or additional information is to be provided to the Agency by the applicant. Failure on the part of the loan applicant to correct the deficiencies or provide the additional information by the deadline imposed by the Agency shall be sufficient basis for the Agency to treat the application as withdrawn by the applicant.

- e) The Agency shall, no more than 90 days after the close of each loan application period, or in accordance with subsection (c) of this Section, in writing, notify each applicant with a pending application:
 - 1) If funding is available for brownfields redevelopment loans, of that applicant=s selection or rejection for a loan; or
 - 2) If funding is not available, of the unavailability of loan assistance.

- f) Loan applicants shall not obtain loan assistance by default due to failure by the Agency to act within the time frame set forth in subsection (e) of this Section.

Section 886.225

Loan Award A

No more than 30 days after receipt of loan award selection notification by the Agency, the loan recipient shall notify the Agency in writing of its acceptance. If the loan recipient fails to so notify the Agency, the loan award shall be null and void.

Section 886.230

Loan Agreeeme

- a) Upon receipt of written acceptance of a loan award, the Agency shall send to the loan recipient formal loan agreement documents, including:

- 1) A loan agreement to be signed by the Agency and the loan recipient;
 - 2) A copy of the loan recipient's complete application, including budget forms; and
 - 3) A form on which the loan recipient is to state the loan recipient's federal taxpayer identification number or social security number.
- b) The Agency shall not sign a loan agreement until the loan recipient has corrected any errors identified by the Agency in the loan application and has signed the loan agreement.
 - c) The loan takes effect on the date that the Agency signs the loan agreement and interest begins to accrue on the date of the first loan disbursement.
 - d) Once signed by both the Agency and the loan recipient, the loan agreement, comprising the written loan agreement documents, and any amendments thereto, shall govern the loan.
 - e) The Agency shall keep the original loan agreement documents and provide a copy to the loan recipient.
 - f) The loan agreement may be amended in accordance with Section 886.235 (Amendments to Loan Agreement) of this Part.

Section 886.235 Amendments to Loan Agreement

- a) To implement a project change, the loan recipient first must obtain a formal amendment to the loan agreement. The loan recipient may request an amendment to the loan agreement by submitting an amended loan application to the Agency at any point during the loan term.
- b) The loan agreement may be amended only by the mutual consent of the parties set forth in writing as a formal loan agreement amendment, signed and dated by the Agency and the loan recipient.
- c) The loan recipient may request amendments for project changes, including, but not limited to:
 - 1) Increasing the amount of State funds needed to complete the project;
 - 2) Altering the scope of the loan, as agreed to at the time of the loan award (e.g., by changing methodologies or personnel to be used); or
 - 3) Extending any contractual or completion date for the project.
- d) No more than 90 days after receipt of an amended loan application, the Agency shall notify the loan recipient in writing of its approval or rejection of the requested amendment to the loan agreement.

- e) The Agency shall not approve any amendment to the loan agreement in violation of the limitations on loans set forth in this Part.
- f) The Agency shall approve an amendment to the loan agreement to the extent that the Agency may approve the amendment consistent with the requirements of this Part, if the loan recipient makes a showing that:
 - 1) The original project cost approval was based on estimated costs or contractor bids, where the actual costs or contractor bids are over or under the estimated costs;
 - 2) Amendments to State statutes have affected or will affect the project cost;
 - 3) A project element was inadvertently omitted; or
 - 4) An approved project element has been found unnecessary.
- g) If the Agency approves a requested amendment to a loan agreement, the Agency shall prepare and send an amended loan agreement and a formal amendment signature page to the loan recipient. The loan recipient shall sign and date the formal amendment signature page and then return it to the Agency. The Agency shall sign and date the formal amendment signature page and then send a copy of the formal amendment signature page and a copy of the amended loan agreement, along with a letter notifying the loan recipient of the Agency's approval of the requested amendment, to the loan recipient.

Section 886.240 Cost Criteria

- a) The Agency shall approve for payment to the loan recipient, under the terms set forth in Section 886.245 of this Part, only costs that have been incurred by the loan recipient and that meet the following criteria:
 - 1) Costs within the scope of the project for which the loan was awarded;
 - 2) Costs that are reasonable and necessary include, but are not limited to, costs associated with:
 - A) Agency oversight that result from the loan recipient=s participation in the Site Remediation Program of Title XVII of the Act;
 - B) Environmental consultant oversight services;
 - C) Remedial investigation and design;
 - D) The development and implementation of activities necessary to establish remediation objectives;
 - E) Laboratory services necessary to determine site characterization and to establish cleanup objectives;

- F) The installation and operation of groundwater investigation and groundwater monitoring wells;
 - G) The development and implementation of a soil sampling plan;
 - H) The development of a groundwater corrective action system;
 - I) The development of a soil corrective action plan;
 - J) Seeking payment from the Brownfields Redevelopment Loan Program in accordance with Section 886.200(f) of this Part;
 - K) The purchase of non-expendable materials, supplies, equipment or tools used for the brownfields project;
 - L) Removing, mitigating or preventing the release, threatened release or suspected release of hazardous substances, pesticides or petroleum;
 - M) The demolition and removal of buildings and other structures located upon the site if such activity is necessary to the performance of the remediation; and
 - N) Monitoring activities, including sampling and analysis, that are reasonable and necessary during the site remediation process;
- 3) Costs equal to, but not exceeding, the total amount of the loan award;
 - 4) Costs incurred on or after the date the loan agreement is executed;
 - 5) Costs incurred without a knowing violation of any State or federal law; and
 - 6) Costs incurred pursuant to a contract or subcontract in conformance with Section 886.255 (Requirements Applicable to Contracting and Subcontracting) of this Part.
- b) Costs the Agency shall not approve for payment because they are not necessary for the completion of the work required pursuant to the Agency-approved application and loan agreement include, but are not limited to:
- 1) Costs or losses resulting from business interruption in connection with the project;
 - 2) Costs associated with improperly collected, transported or analyzed laboratory samples;
 - 3) Costs associated with improperly installed sampling or monitoring wells;

- 4) Interest or finance costs charged as direct costs;
- 5) Insurance costs charged as direct costs;
- 6) Costs associated with land acquisition;
- 7) Cost of fines and penalties for violations of local, State and federal law;
- 8) Costs outside the scope of the Agency-approved project;
- 9) Costs associated with the ordinary operating expenses of local government;
- 10) Costs associated with ordinary site maintenance;
- 11) Costs associated with personal injury compensation or damages arising out of the project;
- 12) Costs incurred prior to the execution of the loan agreement; and
- 13) Costs associated with the replacement of buildings and other structures located upon the site.

Section 886.245 Loan Disbursements

- a) The Agency shall disburse loan proceeds to loan recipients for eligible costs incurred by the loan recipient, provided those costs are within the scope of the budget submitted pursuant to Section 886.215 of this Part.
- b) To receive a loan disbursement from the Brownfields Redevelopment Loan Program, the loan recipient shall submit a written request for a disbursement to the Agency with documentation of the activities performed and a breakdown of the costs sufficient to demonstrate that the costs for which a disbursement is sought are reasonable and have been incurred by the loan recipient. Documentation provided shall include, but not be limited to, the following:
 - 1) An identification of the time period for which the activities/services were performed and the costs were incurred;
 - 2) A brief description of the work performed;
 - 3) A breakdown of the activities/services performed cross-referencing tasks proposed in the work plan schedule;
 - 4) The names and titles of individuals performing activities/services and the dates and hours worked;

- 5) Copies of invoices; and
 - 6) A list of expenses and/or costs incurred in connection with the activities/services performed.
- c) The loan recipient may submit an initial request for a loan disbursement at any time after the costs for which payment is sought have been incurred. Subsequent requests for loan disbursements must be spaced at least 90 days apart.
 - d) The Agency shall use the criteria set forth in Section 886.240 (Cost Criteria) of this Part in determining whether to approve a loan disbursement to the loan recipient for costs included in each request for a loan disbursement.
 - e) The Agency shall send a voucher for payment of an approved request for a loan disbursement to the Comptroller's office no more than 90 days after receipt of the request.
 - f) Following a review of the applicant's request for a loan disbursement, the Agency shall have the authority to deny a request for a loan disbursement that does not meet all of the requirements of this Part. The Agency shall notify a loan applicant in writing of its denial of a request for a loan disbursement within 45 days after its receipt of a request, and the written notification shall include a statement of specific reasons why the request is being denied in whole or in part.

Section 886.250 Loan Recipient Responsibilities

- a) The loan recipient shall submit quarterly progress reports to the Agency during the term of the loan. Each progress report should be a short narrative of the activities performed and the dates that they were performed during that quarter and shall include, but not be limited to, the following information:
 - 1) The report period;
 - 2) A summary of the activities/services performed and identified by project task;
 - 3) The dates that the activities/services were performed;
 - 4) The names of firms and individuals performing the activities/services;
 - 5) A disclosure of any personnel changes;
 - 6) A disclosure of significant issues that arose during the quarter that may necessitate a modification or amendment to the original work plan submitted;
 - 7) A disclosure of major threshold accomplishments; and

- 8) Projected completion dates for the remaining activities/services to be performed.
- b) The loan recipient shall submit a detailed final report to the Agency at the end of the loan term. In the final report, the loan recipient shall describe how the tasks described in the project plan submitted by the loan recipient have been fulfilled.
- c) If the loan recipient fails to timely submit quarterly progress reports or a final report, the Agency may impose any of the sanctions set forth in Subpart C (Noncompliance with Loan Conditions and Procedures) of this Part.

Section 886.255 Requirements Applicable to Contracting and Subcontracting

- a) The following conditions and limitations shall apply to all contracts and subcontracts entered into by the loan recipient:
 - 1) The loan recipient must use a freely and openly competitive bidding process in contracting and must require the same of any contractor in subcontracting;
 - 2) Only fair and reasonable profits may be earned by contractors and subcontractors in contracts and subcontracts under Agency loans. Factors to be considered in determining a fair and reasonable profit shall include project-related: material acquisition costs; labor costs; management costs; contract risks; capital investments; degree of independent development; and cost control and record keeping efforts. The determination of a fair and reasonable profit shall not be based upon the application of a predetermined percentage factor;
 - 3) The loan recipient, rather than the Agency, is responsible for the administration and successful accomplishment of the project for which the Agency loan is awarded. The loan recipient, rather than the Agency, is responsible for the settlement and satisfaction of all contractual and administrative issues arising out of contracts and subcontracts entered into under the loan. This responsibility includes, but is not limited to, issuance of invitations for bids or requests for proposals, selection of contractors, award of contracts, protest of awards, claims, disputes and other procurement matters;
 - 4) Any contract or subcontract must include a provision allowing project-related access, in accordance with Section 886.400 (Access) of this Part;
 - 5) Any contract or subcontract must provide that the Agency or any authorized representative shall have access to any books, documents, papers, and records, including computer-generated documents, of the contractor or subcontractor that are pertinent to the project, for the purpose of making an audit, examination, excerpts, and transcriptions thereof;

- 6) Neither the Agency nor the State shall be a party to any contract or subcontract, solicitation, or request for proposals;
 - 7) Any contract or subcontract shall be in compliance with all local, State and federal law.
- b) No contract or subcontract shall be awarded to any person or organization that does not:
- 1) Have adequate financial resources, experience, organization, technical qualification, and facilities for performance of the subagreement, or a firm written commitment or arrangement to obtain such;
 - 2) Have staffing sufficient to comply with the completion schedule for the project;
 - 3) Have a demonstrated record of integrity, good judgment, and performance, including any prior performance under grants, loans or contracts with the federal or any state government;
 - 4) Have an established financial management system and audit procedure;
 - 5) Maintain a written property management system that provides procedures for the acquisition, maintenance, safeguarding and disposition of all project-related property; and
 - 6) Conform to the civil rights law, equal employment opportunity law, and labor law requirements, as well as all other statutes of the State.

Section 886.260 Agency Cost Recovery

- a) If the Agency undertakes a response action at the site of an approved project, the Agency will not seek recovery of its costs under Section 22.2 or Title XVII of the Act from a loan recipient as an owner or operator if the loan recipient's status as an owner or operator is based solely on the loan recipient's:
- 1) Execution of a loan agreement; or
 - 2) Implementation of an approved project.
- b) The exclusion provided under subsection (a) of this Section shall not apply to any loan recipient who has caused or contributed to the release or threatened release of a hazardous substance or pesticide from the facility, and such loan recipient *shall be subject to the provisions of the Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including*

liability under Sections 22.2(f) and 58.9 of the Act. (Section 22.2(h)(2)(H) of the Act)

SUBPART C: NONCOMPLIANCE WITH LOAN CONDITIONS AND PROCEDURES

Section 886.300 Agency Action for Noncompliance with Loan Agreements and Procedures

- a) *If the loan recipient fails to make timely payments or otherwise fails to meet its obligations as provided in this Part, the Agency is authorized to pursue the collection of the amounts past due, the outstanding loan balance, and the costs thereby incurred, either pursuant to the Illinois State Collection Act of 1986 or by taking any other means provided by law, including the taking of title, by foreclosure or otherwise, to any project or other property pledged, mortgaged, encumbered, or otherwise available as security or collateral. (Section 58.15(b)(6) of the Act)*
- b) In addition to such other remedies as may be provided by law, if the loan recipient fails to comply with any term or condition of the loan agreement or this Part, the Agency may:
 - 1) Revoke the loan and recover all loan funds disbursed;
 - 2) Terminate the loan in accordance with Section 886.305 of this Part;
 - 3) Issue a stop-work order or suspend all project work in accordance with Section 886.315 of this Part; or
 - 4) Take such other action as the Agency is authorized by law.
- c) No action shall be taken under this Section without prior oral or written consultation with the loan recipient.
- d) In determining whether to take action and which action to take under this Section, the Agency shall consider factors, including, but not limited to:
 - 1) The severity of the violations;
 - 2) The number of violations by the loan recipient;
 - 3) Whether the violation is a continuing one;
 - 4) Whether the loan recipient can remedy the violation; and
 - 5) Whether the loan recipient and any contractor or subcontractor remain capable of complying with the approved work project.

a period of not more than 30 days from the date of the order, or for any further period to which the parties may agree in writing. The Agency shall include in any stop-work order a list of the project activities to which the order applies.

- b) Upon receipt of a stop-work order, the loan recipient must comply with its terms and stop the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- c) No more than 30 days after the date of the stop-work order, or within any extension of that period to which the parties agree in writing, the Agency shall:
 - 1) Upon resolution of the violation leading to the stop-work order, cancel the stop-work order; or
 - 2) Terminate the portion of the loan covered by the stop-work order, as provided in Section 886.305 (Loan Termination by the Agency) of this Part.
- d) If a stop-work order issued under this Section is canceled, or the effective period of the order or any written extension thereof expires, the loan recipient shall resume work.
- e) The loan recipient may not obtain payment for costs associated with a stop-work order unless the Agency authorizes payment in writing.

Section 886.320 Covenant Against Contingent Fees

- a) The loan recipient must warrant, as part of the loan agreement, that no person has been employed or retained to solicit or secure a loan under this Part based upon an agreement or understanding for a commission, percentage, brokerage or contingent fee.
- b) For breach or violation of this warranty, the Agency shall have the right to terminate the loan in accordance with Section 886.305 (Loan Termination by the Agency) of this Part, without liability, or to deduct from the loan award, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

Section 886.325 Recovery of Loan Funds

If the Agency determines that any loan funds are being misspent or improperly held by the loan recipient, the Agency or the Office of the Illinois Attorney General shall have the authority to

recover those funds and take any action authorized by law, including, but not limited to, Section 58.15(b)(6) of the Act.

Section 886.330 Indemnification

The loan recipient, rather than the Agency, shall assume the entire risk, responsibility and liability for any and all loss or damage to property owned by the loan recipient, the Agency, or third persons, and any injury to or death of any persons (including employees of the loan recipient) caused by or arising out of, or occurring in connection with, the execution of any work, contract or subcontract arising out of the loan. The loan recipient shall indemnify, save harmless and defend the State and the Agency from all claims for any such loss, damage, injury or death. However, a loan recipient's execution of a loan agreement, or implementation of an approved project, does not, in itself, render the loan recipient an owner or operator for purposes of 415 ILCS 5/22.2(h)(2), or under regulations promulgated pursuant to 415 ILCS 55/8 [35 Ill. Adm. Code Part 620]. The loan recipient shall require any contractor or subcontractor engaged by the loan recipient to agree in writing to look solely to the loan recipient for performance of its contract or subcontract with the loan recipient and for satisfaction of any and all claims arising under the contract or subcontract.

Section 886.335 Statutory Requirements

The loan recipient is solely responsible for assuring compliance with all statutory requirements, including, but not limited to, the Local Government Professional Services Selection Act [50 ILCS 510] and the Construction Contract Indemnification for Negligence Act [740 ILCS 35].

Section 886.340 Waiver of Procedures

- a) Except as provided in subsection (b) below or otherwise required by law, the Director of the Agency may waive any of the loan procedures or requirements, either in whole or in part, by a written statement to the loan applicant, either as a special condition of the loan or otherwise, provided the Director of the Agency finds that the procedure or requirement to be waived is not necessary to insure the integrity of the project, will not reduce an applicant's ability to repay the loan to the Agency or will not, in general, weaken the financial position of the loan recipient.

- b) The following procedures and requirements shall not be waived:
 - 1) Section 886.200 (Scope and Availability of Loans);
 - 2) Section 886.205 (Loan Issuance Criteria);
 - 3) Section 886.250 (Loan Recipient Responsibilities);

- 4) Section 886.300 (Agency Action for Noncompliance with Loan Agreements and Procedures)
- 5) Section 886.405 (Audit and Records);
- 6) Section 886.500 (Fixed Loan Rate);
- 7) Section 886.505 (Limitations on Loan Amounts);
- 8) Section 886.510 (Credit Worthiness and Financial Capability); and
- 9) Section 886.600 (Dedicated Source of Revenue, Security and Collateral).

SUBPART D: ACCESS, AUDIT AND RECORDS

Section 886.400 Access

- a) The Agency or any authorized representative shall have access to the premises where any portion of the project for which the loan was awarded is being performed, both during normal business hours and at any other time project-related work is being performed.
- b) The Agency or any authorized representative shall have access, during normal business hours, to the project records, as defined in Section 886.405 (Audit and Records) of this Part, to the full extent of the loan recipient=s right to access the project records.
- c) If the Agency or any authorized representative is denied access in violation of this Section, the Agency shall provide notice in writing to the loan recipient that failure to provide access within 10 days will be cause for:
 - 1) Termination of the loan pursuant to Section 886.305 (Loan Termination by the Agency) of this Part;
 - 2) Refund to the State of any unexpended loan funds in the possession of the loan recipient; and
 - 3) Refund of any loan funds previously expended by the loan recipient, contractor or subcontractor found in noncompliance with this Section.

Section 886.405 Audit and Records

- a) The loan recipient shall maintain books, records, documents, reports and other evidentiary material, using accounting procedures and practices that conform to Generally Accepted Accounting Principles as established by the Financial Accounting Standards Board, an independent organization, to account properly for:
 - 1) The receipt and disposition by the loan recipient of all financial assistance received for the project, including both State assistance and any local share; and
 - 2) The costs charged to the project for which the loan has been awarded, including all direct and indirect costs of whatever nature incurred in performance of the project.
- b) The loan recipient=s facilities, or such facilities as may be engaged in the performance of the project for which the loan has been awarded, and the loan recipient=s records, shall be subject to inspection and audit by the Agency or any authorized representative at the times specified in Section 886.400 (Access) of this Part.

- c) The loan recipient shall preserve records and make records available to the Agency or any authorized representative:
 - 1) For a period of 3 years from the date of final payment under the loan, or for a longer period if required by applicable statute or regulation;
 - 2) For records relating to loan work that has been terminated, for a period of 3 years from the date of termination; or
 - 3) For records relating to disputes and/or appeals, litigation or the settlement of claims arising out of the performance of the project for which the loan was awarded, or costs and expenses of the project to which exception has been taken by the Agency or any of its duly authorized representatives, until disposition of such appeals, litigation, claims or exceptions.

Section 886.410 Single Audit Act

The loan recipient shall comply with the provisions of the Single Audit Act of 1996 (31 USC 7501).

SUBPART E: INTEREST RATES, LOAN LIMITATIONS, CREDIT WORTHINESS AND
FINANCIAL CAPABILITY

Section 886.500 Fixed Loan Rate

The fixed loan rate is comprised of an interest rate and a loan support rate. The fixed loan rate charged for a brownfields redevelopment loan shall be a simple annual rate at one-half the market interest rate, but not less than 2.50%.

Section 886.505 Limitations on Loan Amounts

- a) The maximum loan amount for site investigation activities shall not exceed \$120,000 per site.
- b) The maximum loan amount for any single application submitted pursuant to Section 886.215 (Applications for Brownfields Redevelopment Loans) of this Part shall be limited to \$500,000.
- c) *The maximum loan amount for any single project shall be \$1,000,000. (Section 58.15(b)(3) of the Act)*

Section 886.510 Credit Worthiness and Financial Capability

- a) The loan applicant shall demonstrate to the Agency that it has the necessary legal, financial and managerial capability to:
 - 1) Retire the loan; and
 - 2) Meet any covenants and requirements in the loan agreement.
- b) The Agency may suggest mitigative measures to improve the loan applicant's financial capability to undertake the project, including, but not limited to, acquisition of grant funding, reduction of project costs, additional or different sources of dedicated revenues and changes to existing financial practices that may threaten generation of adequate revenues.
- c) The Agency may require a loan repayment period of less than the 5 year maximum. In evaluating the appropriateness of alternative loan terms, the Agency shall consider such factors as the scope of the proposed project, the impacts of alternative loan terms on user fees, and the overall cost of the project.

SUBPART F: DEDICATED SOURCE OF REVENUE, REPAYMENT AND DELINQUENCY

Section 886.600 Dedicated Source of Revenue, Security and Collateral

- a) Units of local government shall be required to secure the loan repayment obligation by pledging and dedicating a source of revenue to make loan repayments. Prior to loan approval, the Agency shall review the proposed dedicated and pledged revenue source to assure that it will generate revenues adequate to make the loan repayments and will provide a continuing source of revenue adequate to make loan repayments for the term of the loan. If the source of revenue is pledged in a subordinate position to a revenue bond ordinance, the covenants regarding coverage and reserve for the revenue source shall be identical to those in the revenue bond ordinance.
- b) The necessary legislative enactments to dedicate and pledge the source of revenue must be in place before the Agency can make the first loan disbursement.
- c) Units of local government shall establish an account, maintained by a bank or trust, that is restricted to use for loan repayment, in which to deposit the dedicated revenues prior to the time of first loan disbursement.
- d) Units of local government shall, for the term of the loan, review and adjust the dedicated source of revenue as necessary to provide adequate funds for the repayment of the loan. The unit of local government shall timely notify, and

submit to the Agency for approval, all proposed changes to the dedicated source of revenue.

- e) The unit of local government shall submit to the Agency, upon request, a statement on the status of the restricted account after initiation of the loan repayment period that contains the status of the dedicated revenue account, including the projected revenues, actual revenues fund balance, debt service obligations and other requirements of the loan agreement. The Agency's approval will be based on, but not limited to, ensuring that the revised dedicated source of revenue is legally authorized, generates sufficient revenue and is otherwise in accordance with this Part.
- f) In the event that the actual revenues fall short of the amount required to retire the loan, the Agency shall have the authority to require the unit of local government to re-examine the dedicated revenue source and restructure it as necessary.
- g) Private parties shall be required to secure the loan repayment obligation by pledging and dedicating security or collateral sufficient in value to secure the full amount of the loan.

Section 886.605 Loan Repayment to the Agency

Loan repayment to the Agency shall be in accordance with the loan repayment provisions contained in the loan agreement.

- a) Loan repayment shall commence within 12 months after the initial disbursement of funds by the Agency.
- b) The Agency shall set a principal amount and give the loan recipient an interim repayment schedule.
- c) After a final cost review of the project, the Agency shall establish the final principal amount and give the loan recipient a final repayment schedule.

Section 886.610 Delinquent Loan Repayments

- a) If a repayment is not made according to the repayment schedule, the loan recipient shall notify the Agency in writing within 15 days after the repayment due date. The notification shall state the reasons the repayment was not timely tendered and the circumstances under which the late repayment will be satisfied, and shall contain binding commitments to assure future repayments. After receipt of this notification, the Agency shall accept the plan or take action in accordance with subsection (b) below.
- b) If a loan recipient fails to comply with subsection (a) above, the Agency shall promptly issue a notice of delinquency to the loan recipient and require a written response within 15 days. The notice of delinquency shall require the loan recipient to take specified actions as may be appropriate to remedy the delinquency and to assure future repayments.
- c) In the event that the loan recipient fails to timely or adequately respond to a notice of delinquency, or fails to meet any obligations pursuant to subsections (a) and (b) above, the Agency may impose against the loan recipient any of the sanctions set forth in Section 886.300 (Agency Action for Noncompliance with Loan Agreements and Procedures) of this Part, including, but not limited to, termination of the loan.
- d) The Agency shall have the authority to impose a late payment fee on individual loan repayments that are deemed delinquent by the Agency in accordance with the procedures set forth in this Section. The late payment fee shall be an amount equal to twice the fixed loan rate, as stated in the loan agreement, multiplied by the delinquent loan repayment amount. The late payment fee may be assessed commencing on the date that the Agency deems the individual loan repayment to be delinquent in accordance with this Section, and may be assessed for each 30-day period that the individual repayment remains delinquent.