606 CMR 15.00: EARLY EDUCATION AND OUT OF SCHOOL TIME CAPITAL FUND PROGRAM

Section

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15.01: Scope, Purpose, and Applicability

(1) The Early Education and Out of School Time (EEOST) Capital Fund (Fund) was created by An Act Financing the Production and Preservation of Housing for Low and Moderate Income Residents, St. 2013, c. 129, §§ 2 (Budget Line Item 3000-0400) and 3. The statute authorizes the Department of Early Education and Care (EEC) to administer up to $45 million in general obligation bond funds for grants to develop eligible facilities for use as licensed Large Group and School Age Child Care Programs as defined in 606 CMR 7.00: *Standards for the Licensure or Approval of Family Child Care; Small Group and School Age and Large Group and School Age Child Care Programs.*

(2) The EEOST Capital Fund provides grants to tax-exempt non-profit corporations or organizations in which a non-profit corporation has a controlling interest, which shall use such grant funds to develop and/or rehabilitate eligible facilities in which at least 25% of the slots in the facility shall serve low income families who are eligible for public subsidy.

15.02: Definitions

The following definitions will apply to the EEOST Capital Fund program:

Application. An application for an EEOST Grant, in the format specified by the EEOST Fund Guidelines, which shall include, among other things, a description of a proposed Eligible Project and all proposed financing sources and uses.

CEDAC. Community Economic Development Assistance Corporation, established by M.G.L. c. 40H.

EEC. The Department of Early Education and Care.

EEOST Fund Guidelines. Guidelines issued by EEC setting out, clarifying and further explaining EEOST Capital Fund program policies and procedures. The EEOST Capital Fund Guidelines shall apply to all EEOST Grants.

EEOST Grant. A direct grant of capital funds to an Eligible Organization for payment or reimbursement of the costs of an Eligible Project.

Eligible Facility. A building or structure that is, or will be, owned or leased by one or more Eligible Organizations and licensed by EEC, provided, that

(a) at least 25% of the slots in the facility shall serve Low-income Families;
(b) a leased facility shall be leased from a *bona fide* third party, not from an entity affiliated in any way with the Eligible Organization and shall have a lease term that is consistent with the scale of the capital investment but not be less than 15 years from the date of completion of the Eligible Project; and
(c) the facility shall meet all of the requirements of 606 CMR 15.03.

15.02: continued

Eligible Organization. A non-profit corporation formed under M.G.L. c. 180 and exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or an organization in which a non-profit corporation has a controlling financial or managerial interest, and its approved successors and assigns. In all organizations where more than one party has a beneficial interest, the names and addresses of all individuals or entities holding any beneficial interest must be disclosed, as well the percentage of beneficial interest held by each interest holder and each interest holder's status as either a non-profit or for-profit corporation, individual or other type of entity. In addition, the organizational documents of any Eligible Organization that is not a non-profit corporation must be provided, along with a narrative describing the manner in which a non-profit corporation has a controlling financial or managerial interest. An Eligible Organization must also demonstrate, to the satisfaction of EEC:

(a) the capability of managing all of its responsibilities in carrying out the Eligible Project and operating the Eligible Facility and

(b) that none of its members, shareholders, officers, employees or members of its board of directors can profit, in any way, from EEOST Capital Fund assistance.

Eligible Project. The acquisition, design, construction, repair, renovation, recovery from a natural or man-made disaster, rehabilitation, or other capital improvement or deferred maintenance of an Eligible Facility. Eligible Projects shall reflect cost-effective design, material and finish decisions consistent with good architectural and engineering practice, high quality construction, and shall satisfy the requirements of EEC.

Financial Intermediary. A quasi-public or non-profit organization, including, but not limited to, CEDAC, selected by EEC to administer the EEOST Capital Fund program in accordance with M.G.L. c. 15D, § 18(c).

Financially Feasible Project. An Eligible Project that is likely to secure binding financial commitments from other funding sources which, together with the EEOST Grant described in the Financing Commitment, total the amount reflected in the estimated budget necessary to develop, repair or renovate the Eligible Facility (as approved by EEC and/or the Financial Intermediary).

Financing Commitment. A binding written commitment from EEC and/or the Financial Intermediary to fund an EEOST Grant.

Land Use Restriction. A restriction entered into by the owner or tenant, as applicable, of an Eligible Facility for the benefit of EEC and/or its Financial Intermediary restricting such Eligible Facility to use as an EEC licensed early education or out of school time program in which at least 25% of the slots shall serve Low-income Families. Such agreement, as further described in 606 CMR 15.04(2)(e) or the EEOST Fund Guidelines, shall include such terms and conditions as are required to be imposed under M.G.L. c. 15D, § 18, EEOST Fund Guidelines or any other EEC policies or requirements. The Land Use Restriction shall be recorded and/or registered in the Registry of Deeds and/or Registry District of the Land Court where the Eligible Facility is located.

Low-income Family. A family that meets one of the following criteria:

(a) the family meets EEC subsidized child care income eligibility guidelines of 50% to up to 85% of state median income (SMI), depending on activity requirements;

(b) the family meets Head Start income eligibility guidelines; or

(c) the family is receiving Transitional Aid to Families with Dependent Children (TAFDC), Supplemental Security Income Benefits (SSI) or any other Public Subsidy.

15.02: continued

Program Design. A document that a designer/architect may use to create the design or plans for the design of an Eligible Facility. It shall include but not be limited to type of facility; number of classrooms and other licensed activity areas, including information on the number of children and age groups using a particular space and the design requirements for each classroom and other licensed areas; a list of specialized classroom and support areas including but not limited to bathrooms, kitchen or other food preparation area, teachers' break area, and storage areas; and the security measures to safeguard the facility and its occupants, the hours of operation; and any public access or community use. The Program Design shall also include the gross and net square footage of the Eligible Facility and, in the case of an expansion, the gross and net square footage of the existing facility and the proposed expansion. The Program Design shall comply with all applicable EEC physical space requirements found in 606 CMR 7.00: *Standards for the Licensure or Approval of Family Child Care; Small Group and School Age and Large Group and School Age Child Care Programs* and policies adopted thereunder and with 780 CMR: *The Massachusetts State Building Code*.

Public Subsidy. Economic assistance provided to low income families by any federal, state, or local government entity or any quasi-governmental entity. Public subsidies may take the form of direct monetary payments, vouchers, services, tax credits or other benefits that assist in provision of necessities, including but not limited to, food, housing, health care, child care, or education.

Slots. The number of children who may be enrolled in the care of an early education or out of school time program licensed by EEC.

Total Development Costs. Total hard and soft costs of developing an Eligible Project, including the costs to acquire (including site acquisition), design, construct, renovate and/or rehabilitate and finance the Eligible Project.

15.03: Eligible Facilities

An EEOST Grant may only be made for development of a Financially Feasible Project that will result in an Eligible Facility that shall be used or is used currently as a licensed Large Group and School Age Child Care center as defined by EEC and which:

(1) complies with M.G.L. c.15D and all regulations and policies adopted thereunder;

(2) complies with all other applicable Federal, State and local statutes, regulations, and ordinances, including the Americans with Disabilities Act and 780 CMR: *Massachusetts State Building Code*; and

(3) (a) meets a need for a Large Group and School Age Child Care center;
(b) benefits the affected community;
(c) has a need for financial assistance in the form of such a grant; and
(d) has local support, all as demonstrated by the proponent of such project.

Preference may be given to projects that have suffered partial or complete damage to an Eligible Facility from a natural or man-made disaster.

15.04: Type of Grants, Grant Terms, Grant Conditions

(1) Grant Types. Eligible Projects may receive EEOST Grants for five uses: acquisition, design, construction, repair, and renovation of an Eligible Facility. Eligible Organizations shall complete the application process in accordance with the EEOST Fund Guidelines.

(2) Grant Terms. All grants under the EEOST Capital Fund program shall be made upon the terms included in the EEOST Fund Guidelines and/or the EEOST Grant documents, including but not limited to the Financing Commitment, as well as the following terms:

(a) Grant Proceeds. The proceeds of the EEOST Grant shall be used solely for the development of the Eligible Project, as approved by EEC or its Financial Intermediary, and as set forth in the Financing Commitment.

15.04: continued

(b) Grant Amount. The amount of an EEOST Capital Grant Program shall be established by EEC according to the EEOST Fund Guidelines. EEC may establish a maximum percentage of the Total Development Cost and dollar limits, both by total or by category or both, to which the Grant would also be subject.

(c) Grant Period. The original term of an EEOST Grant shall be at least a minimum of 25 years for grantee-owned Eligible Facilities. The original term of an EEOST Grant shall be at least a minimum of 15 years for grantee-leased facilities.

(d) Grant Recapture. If for any reason the Eligible Organization does not comply with EEC commitments and requirements, EEC or its Financial Intermediary may recapture the grant funds according to the schedules in 606 CMR 15.04(2)(d)1. and 2.

1. For properties owned by the Eligible Organization (25 year grant term):
   a. if the noncompliance occurs within nine years of the making of the EEOST Grant, repayment of 100% is due;
   b. if the noncompliance occurs between nine years and 16 years after the making of the EEOST Grant, repayment of 67% is due;
   c. if the noncompliance occurs between 16 years and 25 years after the making of the EEOST Grant, repayment of 33% is due;
   d. if the noncompliance occurs more than 25 years after the making of the EEOST Grant, the grant funds will no longer be subject to recapture.
2. For properties leased by the Eligible Organization (15 year grant term):
   a. if the noncompliance occurs within five years of the making of the EEOST Grant, repayment of 100% is due;
   b. if the noncompliance occurs between five years and ten years after the making of the EEOST Grant, repayment of 67% is due;
   c. if the noncompliance occurs between ten years and 15 years after the making of the EEOST Grant, repayment of 33% is due;
   d. if the noncompliance occurs more than 15 years after the making of the EEOST Grant, the grant funds will no longer be subject to recapture.

(e) Land Use Restriction. The Eligible Organization shall record at the appropriate Registry of Deeds or Registry District of the Land Court, or both, a Land Use Restriction. The Land Use Restriction, and the mortgage referred to in 606 CMR 15.04(2)(e)2., shall only be released:

1. upon repayment in full of all amounts due under the Grant terms or at the end of the term of the Grant if all terms and conditions of the Grant have been fulfilled; or
2. upon foreclosure of a *bona fide* first priority mortgage on the Eligible Facility by the holder thereof, or with EEC's consent a *bona fide* mortgage that was senior to the lien of the recorded Land Use Restriction and mortgage at the time of the closing, or to which the EEOST Land Use Restriction has been duly subordinated.

(f) Mortgage Lien. The EEOST Grant shall be secured by a mortgage lien in favor of EEC and/or its Financial Intermediary on the fee simple title to the Eligible Facility, if owned by the Eligible Organization, or on the Eligible Organization's leasehold interest, if the Eligible Facility is leased. The mortgage shall be junior only to a *bona fide* first priority mortgage or such senior mortgage liens as are permitted by EEC or its Financial Intermediary.

(g) Refinancing. Refinancing of Eligible Projects completed under the EEOST Capital Fund program will be allowed if such refinancing protects the interests of the Commonwealth and either is necessary to effect extraordinary repairs or maintenance which have been approved by EEC or its Financial Intermediary or stabilizes or benefits the Eligible Project that is being refinanced, as determined by EEC or its Financial Intermediary. Any new loan must be due and payable on or after the maturity date of the EEOST Grant. All refinancing is subject to the prior written approval of EEC and/or its Financial Intermediary.

(h) Application Process. Application procedures for EEOST Grants are specified in the EEOST Fund Guidelines. EEC reserves the right to hold competitive grant award funding rounds for EEOST Grants.

(i) Good Standing. All EEOST Grant awards will require that each Eligible Organization receiving an EEOST Grant and all programs and facilities that it operates must be licensed by and in good standing with EEC and be free of any pending investigations or any pending or past legal actions, including but not limited to Deficiency Correction Orders, Sanctions Orders, Suspension Orders, Revocation Orders, Fines or other actions that call into question the Eligible Organization's capacity to care for children in a manner that ensures their safety.

15.05: Waiver Provisions

If any provisions of 606 CMR 15.00 would preclude use of federal or other funds that would assist in meeting the goals of the EEOST Fund, the Board of Early Education and Care authorizes the EEC Commissioner to modify, waive, or negotiate such modifications to 606 CMR 15.00 as may be required to allow the use of such funds; provided, however, that the interests of the Commonwealth shall remain protected.

REGULATORY AUTHORITY

606 CMR 15.00: St. 2013, c.129, § 2 (budget line item 3000-0400) and § 3; M.G.L. c. 15D, § 18.