

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Commerce

Department Arkansas Economic Development Commission

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Statutory Authority for Promulgating Rules Ark. Code Ann. § 15-4-209(a)(1) and 15-4-209(b)(5)

Rule Title: Business Interruption Grant Program

Intended Effective Date

(Check One)

☒ Emergency (ACA 25-15-204)	Legal Notice Published	<u>N/A</u>
☐ 10 Days After Filing (ACA 25-15-204)	Final Date for Public Comment	<u>N/A</u>
☐ Other _____ (Must be more than 10 days after filing date.)	Reviewed by Legislative Council	<u>October 16, 2020</u>
	Adopted by State Agency	<u>October 16, 2020</u>

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Jim Andrews

jim.andrews@arkansas.gov

October 16, 2020

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Jim F. Andrews Jr.
Signature

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Phone Number E-mail Address

General Counsel, ADEPT
Title

October 16, 2020
Date

BUSINESS INTERRUPTION GRANT PROGRAM
for the
ARKANSAS SERVICE AND HOSPITALITY INDUSTRIES

ARKANSAS DEPARTMENT OF PARKS, HERITAGE AND TOURISM
ARKANSAS DEPARTMENT OF COMMERCE, ARKANSAS ECONOMIC
DEVELOPMENT COMMISSION

ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION

BUSINESS INTERRUPTION GRANT PROGRAM FOR THE ARKANSAS SERVICE AND HOSPITALITY INDUSTRIES EMERGENCY RULES

STATUTORY AUTHORITY

Governor Asa Hutchinson issued Executive Order 20-03 on March 11, 2020 declaring a public health emergency due to the Coronavirus 2019 (COVID-19) pandemic and directing the Arkansas Department of Health (ADH) to adopt necessary public health measures for mitigation of the public health emergency. These measures resulted in the temporary closure of, as well as reduced operating capacity for, certain Arkansas businesses. While a variety of economic assistance programs through federal and state programs have been available to affected businesses, certain Arkansas businesses in the personal care, tourism, travel, recreation, and hospitality industries require additional economic assistance to help maintain their economic viability and their vital support for the overall Arkansas economy.

Based on the forgoing economic development need, and pursuant to the authority granted under Ark. Code Ann. § 15-4-209(a)(1) and § 15-4-209(b)(5), the Arkansas Economic Development Commission (AEDC) is promulgating this emergency rule in collaboration with the Arkansas Department of Parks, Heritage and Tourism (ADPHT) and the Arkansas Department of Finance and Administration (DFA).

PROGRAM OBJECTIVE

The program will provide a direct grant opportunity to Arkansas small businesses having 250, or fewer, full time employees located in Arkansas for expenses associated with COVID-19 mitigation and for certain listed business interruption expenses due directly to local, state, or federal government COVID-19 directives and arising through no fault of the business. The grant program will provide first-time, or otherwise supplemental, financial assistance for certain eligible cash business expenses incurred as a direct result of COVID-19 mitigation or for certain listed ordinary business expenses incurred by an eligible business as a direct result of a government-mandated business closure or restriction. The program will utilize funds provided to the state of Arkansas through the federal CARES Act.

DEFINITIONS

"Applicant" for purposes of this program, is defined as an Eligible Business or a representative of an Eligible Business that completes and submits an Application for the program.

"Application" for purposes of this grant program, is defined as the online application form which must be completed in its entirety with all required attachments by an Eligible Business to be considered for this program.

"Business Interruption" for purposes of this grant program, is defined as disruptions of regular business operations resulting from required or voluntary closure related to or mitigation

measures taken in response to COVID-19 which occurred on March 1, 2020 through September 30, 2020.

“Consultants” for purposes of this grant program, are defined as a private company engaged by the Arkansas Department of Parks, Heritage and Tourism, Arkansas Department of Commerce’s Arkansas Economic Development Commission or the Arkansas Department of Finance and Administration for the purpose of developing an online grant application including the transaction administration, design, development, data access, and program guidance to the above referenced state agencies.

“CARES Act” for purposes of this grant program, means the federal Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136).

“COVID-19” for purposes of this grant program, is defined as the Coronavirus disease of 2019 and the resulting pandemic.

“Economic Uncertainty” for purposes of this grant program, economic uncertainty is defined as conditions, due to the impact of COVID-19, where the reasonable financial basis upon which the continuing long-term operations of the business are uncertain if grant program assistance is not provided.

“Eligible Business” under this grant program, means a for-profit corporation, partnership, sole proprietorship (including independent contractors), limited liability company, joint venture or non-profit 501(c)(3) organization that meets the following criteria:

- A. Operates primarily within the Arkansas personal care, tourism, travel, recreation, hospitality or related industries;
- B. Was established on or before March 1, 2020;
- C. Has an established tax identification number in the state of Arkansas;
- D. Current Economic Uncertainty makes this assistance necessary to support the ongoing operations of the Applicant;
- E. If formally organized, is incorporated under the laws of Arkansas or is registered to do business in Arkansas with the Arkansas Secretary of State and, in any case, is listed as being in “Good Standing.” If not incorporated, a business/professional license, sales tax permit, utility bill or bank statement in the name of the business is required as supporting documentation that the business is a bona fide business;
- F. Is headquartered in Arkansas or has employees working in Arkansas;
- G. Employed an average of two hundred fifty (250), or fewer, Full Time Arkansas Employees per Eligible Business as of September 30, 2020;
- H. Must either have:
 - a. Customers and/or employees physically coming to their Arkansas business premises; or
 - b. Must conduct business on customer premises in Arkansas;
- I. Is not under a bankruptcy order and does not have a pending bankruptcy filing at the time the Application is submitted. An Applicant that files for bankruptcy while the Application is pending shall notify the grant program and withdraw its Application under the program.

- J. Does not presently have any tax liens with respect to any unpaid tax owing to the State of Arkansas except for those businesses that have applied for and received a repayment plan from the State of Arkansas and are not in default of that payment plan; and
- K. Eligible Businesses shall not include, without limitation, the following:
 - a. Government entities and quasi-governmental entities such as Government-owned non-profits; and
 - b. Annual and seasonal indoor and outdoor festivals such as county fairs and carnivals

“Eligible Expenses” under this grant program are defined as costs incurred by an Eligible Business, as defined in this rule, due to public health measures or Business Interruption. These expenses may consist of the following:

- A. Business expenses incurred as a direct result of COVID-19 mitigation; or
- B. Certain ordinary business expenses incurred by an Eligible Business as a direct result of a government mandated business closure or restriction due to COVID-19; or
- C. Business expenses incurred due to diminished capacity of operations that are likely to continue until health conditions allow functioning at full capacity.

Eligible Expenses covered under this grant include the following:

- A. Personal Protective Equipment (PPE) and other related expenses for purchases between March 1, 2020 and September 30, 2020 reasonably necessary to comply with Centers for Disease Control and Prevention (CDC) guidelines or Arkansas Department of Health (ADH) guidelines with proof of purchase via a receipt, paid invoice, or payroll record. See Exhibit A for pre-approved list.
- B. Rent or mortgage interest payments on real property incurred between March 1, 2020 and September 30, 2020 with a proof of payment via receipt or cancelled check.
- C. Other expenses reasonably necessary to keep the Eligible Business operational, and to safely meet local, state, and federal COVID-19 mitigation requirement with proof of payment via receipt, paid invoice, cancelled check, or proof of incurred expense subject to an established payment plan or other written payment agreement, without limitation:
 - a. Utility expenses (e.g., water, sewer, gas, electricity)
 - b. Telephone and internet service (and other costs to redeploy operations to telework)
 - c. Transportation costs
 - d. Operating and professional licenses
 - e. Franchise fees
 - f. Business insurance (e.g., business general liability insurance, business auto insurance)
 - g. Maintenance and sanitation expenses
 - h. Remarketing the resumption of activities and steps taken to ensure a safe experience
 - i. Payroll costs and expenses
 - j. Expenses associated with COVID-19 mitigation by workforce realignment (e.g., staggered shifts or staggered office days, etc.)
 - k. Technology costs necessary to shift to virtual operations (e.g., virtual meetings, e-commerce sales, telework etc.)

- l. Professional services procured (e.g., design & construction) of work environments necessary to mitigate the threat of COVID-19 (e.g., installation of HVAC filtration systems, partition installation, redesign of workspaces, etc.)
 - m. Interest on any business debts that were incurred from March 1, 2020 to September 30, 2020
- D. Expenses that are not considered Eligible Expenses for reimbursement under this grant program include, without limitation:
- a. Taxes
 - b. Non-cash expenses (e.g., depreciation expense)
 - c. Lost profits
 - d. Lost Revenue
 - e. Entertainment and lobbying expenses
 - f. Goods and services not used for business purposes
 - g. Damages that have been, or are expected to be, covered by insurance
 - h. Costs that have been, or are expected to be, reimbursed by any other local, state, or federal government program or by any private programs
 - i. Value of any products or services that were donated to, or by, the Applicant
 - j. Bonuses for highly compensated employees earning in excess of \$100,000 annually, other than that payable for hazard pay or overtime pursuant to COVID-19 mitigation
 - k. Severance pay and benefits
 - l. Payments to shareholders except for regular compensation payments consistent with the historical practices of business.
 - m. Legal expenses or settlements, fines, and penalties
 - n. Other expenses as may be deemed ineligible under guidance, guidelines, rules, regulations, or other criteria, all as may be amended from time to time from the U.S. Department of Treasury regarding the use of funds appropriated under the CARES Act
 - o. Other expenses as may be deemed ineligible in accordance with program rules in the sole combined judgment of the grant program's Review Committee
- E. All Eligible Expenses must be utilized to cover expenses incurred by the Eligible Business in the state of Arkansas.
- F. Any grant award received must be used in Arkansas.
- G. To the extent a business has received, or may receive, insurance proceeds covering any of these Eligible Expenses under a Business Interruption insurance policy, such payments, or expected payments, must be deducted from the Eligible Expenses claimed by the Applicant.

"Full Time Arkansas Employee" for purposes of this grant program, is defined as an employee of the business that works an average of at least 30 hours per week at a business location in Arkansas.

"Minority Business Enterprise" for purposes of this grant program, is defined as a business where at least 51 percent of the business owners are a minority as defined in Ark. Code Ann. § 15-4-303 (2).

"Review Committee" for purposes of this grant program, is defined as the Secretaries from the Arkansas Department of Parks, Heritage and Tourism, Arkansas Department of Commerce's

Arkansas Economic Development Commission, and the Arkansas Department of Finance and Administration plus one additional designee from each Department who will make the final grant decisions based on quantitative and qualitative data prepared by the Consultants.

“Women-owned Business Enterprise” for purposes of this grant program, is defined as a business where at least 51 percent of the business owners are women.

APPLICATION FOR GRANT FUNDS

- A. Required Application documentation includes, without limitation.
 - 1. Driver’s license of authorized business representative completing the Application;
 - 2. Completed and signed W9 for the Eligible Business;
 - 3. Taxpayer identification number of the business
 - 4. Certificate of good standing from the Arkansas Secretary of State (dated within last 30 days) or other documentation for unincorporated businesses as noted above; and
 - 5. Documentation of sales tax paid to the state of Arkansas by Eligible Business for March 1 through September 30 of the years 2019 and 2020. The online Application requires the Eligible Business to authorize the Arkansas Department of Finance and Administration to release those tax records for review for purposes of this Application. For new Eligible Businesses that existed prior to March 1, 2020, but do not have requested 2019 sales tax data, other financial information may be requested and reviewed such as remittance of sales tax per month since in operation will be considered in determining economic impact. If the business does not collect sales tax, other data may be requested by the Review Committee for consideration of grant awards.
- B. Eligible Businesses will be asked to provide North American Industry Classification System (NAICS) code in the online Application. This information will assist in the analysis and review of the grant Applications.
- C. Only one Application per Eligible Business is allowed under this grant program.
- D. If the Applicant has previously received any local, state, or federal government assistance or any private or charitable assistance for these types of expenses, such amounts must be deducted from the Applicant’s claim because the eligible expense for these items is strictly limited to unreimbursed amounts.
- E. This application period will be open for ten calendar days and notification of the grant program will be advertised statewide in advance and during the application period.
- F. This is not a first come, first served grant program. Once the grant Application deadline has passed, available funds will be awarded to approved Applicants in accordance with these rules.
- G. Once the grant Application deadline has passed, available funds will be apportioned to approved Applicants on an equitable basis.
- H. All Applications will be accepted online. Paper Applications cannot be accepted, and Applications via telephone cannot be accepted.
- I. As a part of the Application submission process, all Applicants must electronically agree to be bound by all of the legal terms and conditions of the grant program.

- J. All grant fund recipients must enter into a written grant agreement contract with the Arkansas Economic Development Commission (AEDC) that will set forth all the legal terms and conditions of the grant award.
- K. Applicants will be required to certify, under penalty of perjury and other civil and criminal penalties, that the information contained in their Application package is truthful, complete, and accurate.
- L. Applications will only be considered when a complete Application is submitted with all required attachments. Completeness of an Application shall be determined in the sole discretion of AEDC or its designee.

GRANT AWARDS

- A. Grant amounts will be based on criteria established by the Review Committee that will consider the total amount of eligible reimbursable expenses, overall impact of COVID-19 to the industry of the business, and the differential in the sales tax paid by the business during the time periods of March 1 through September 30 in 2019 and 2020.
- B. One metric that will be considered by the Review Committee to determine economic impact to the Eligible Business will be sales tax data. For Eligible Businesses that do not collect and remit sales taxes or Eligible Businesses that have been in business as of March 1, 2020 for less than one year, other data provided by the Applicant such as remittance of sales tax per month since in operation will be considered in determining economic impact. If the business does not collect sales tax, other data may be requested by the committee for consideration of grant awards.
- C. Grant awards will not exceed \$250,000 per Application.
- D. Grant claims and awards are non-transferable to other individuals or entities and subject to state and federal tax laws.

ADDITIONAL CONDITIONS FOR THE GRANT PROGRAM

- A. In the event an audit reveals an improper payment was claimed and paid, a claw back provision will be triggered under which payment granted to a recipient must be promptly returned, either in full or in part, to the State of Arkansas.
- B. This program is contingent upon the availability of funds as directed by the CARES Act Steering Committee of Arkansas as federal funds are appropriated by the Arkansas General Assembly to the Arkansas Department of Commerce's AEDC.
- C. Applicability of the Arkansas Freedom of Information Act.
AEDC is a public entity of the State of Arkansas and is subject to the requirements of the Arkansas Freedom of Information Act, Ark. Code Ann. § 25-19-101 et. seq. (FOIA). AEDC must disclose to a FOIA requestor information concerning the Applicant when, in the opinion of AEDC's legal counsel, AEDC is legally required to disclose the requested information. Such may include, without limitation, any financial information, operational information, franchise fees, and vendor information. When submitting claims under this grant program, Applicants should carefully consider the risks associated with the information they provide becoming public information and may, accordingly, opt to claim reimbursement for only some certain Eligible Expenses.

- D. The threshold goal for this grant is to direct at least 15 percent of the funds to Minority Business Enterprises and Women-owned Business Enterprises. If there are not sufficient Applications from Minority Business Enterprises and Women-owned Business Enterprises, the surplus funds will be directed to the general fund of the grant for distribution.
- E. Not all who apply for a grant will be approved. The information provided in this document does not create any obligation by any department or agency of the state of Arkansas to provide any grant funding to any Applicant.
- F. All Applicants will be required to disclose information required by Executive Order 98-04 and the rules related thereto. Grant decisions may be affected by these types of disclosures.
- G. The grant program is a discretionary incentive program offered by a joint program administered through the ADPHT, Arkansas Department of Commerce's AEDC, and DFA.

EXHIBIT A
ITEMS APPROVED BY THE ARKANSAS CARES ACT STEERING COMMITTEE
FOR PURCHASE

- N95 Masks
- KN95 Masks
- Surgical Masks
- Cloth Masks
- Isolation Gowns
- Gloves
- Face Shields
- Goggles/Safety Glasses
- No Touch Thermometers
- Forehead Thermometers
- Ear Thermometers
- Thermometer Covers
- Wristbands (paper)
- Batteries
- Basic First Aid Kit
- Rubbing Alcohol
- Hand Sanitizer
- Siphon Pump (for Hand Sanitizer in drum or bucket)
- Plastic Bottles (for Hand Sanitizer in drum or bucket)
- Sanitizing Sprays
- Sanitizing Cleaners
- Sanitizing Soaps
- Sanitizing Wipes
- Bleach
- Mop Bucket
- Mop Handle
- Mop
- Trash Cans with Lids
- Garbage Bags
- Clear Shower Curtain (used to separate customer from employee)
- Shower Curtain Rods (used to separate customer from employee)

