

ARKANSAS REGISTER

Proposed Rule Cover Sheet



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Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____



Michael Preston
Secretary of Commerce,
Executive Director
Arkansas Economic
Development Commission

Ready for Business Grant Program Rule

The Arkansas Economic Development Commission (AEDC) has determined that a change to the terms and conditions of the Ready for Business Grant Program is necessary because of changes to federal law directly impacting the program.

The proposed permanent rule will allow AEDC to extend the deadlines for recipients to incur expenses and submit receipts to September 30, 2021 and October 31, 2021, respectively. The rule is necessary due to the deadlines under the program that have been directly affected by a change in federal law.

RULE SUMMARY

- The Ready for Business Grant Program is funded entirely through federal CARES Act appropriation.
- The current Ready for Business Grant Program terms and conditions state that covered expenses under the program must be incurred no later than December 30, 2020, the deadline specified under the original CARES Act.
- On December 21, 2020, Congress amended the CARES Act to extend the deadline for eligible expenses to December 31, 2021.
- The proposed rule changes the deadline for expenses to be incurred from December 20, 2020, to September 30, 2021.
- Similarly, the deadline for submitting receipts to AEDC is extended from January 31, 2021 to October 31, 2021.

RULEMAKING AUTHORITY

The Arkansas Economic Development Commission has grant making and rulemaking authority under A.C.A. § 15-4-209(a)(1) and § 15-4-209(b)(5).

Arkansas Ready for Business Grant Program Terms & Conditions
(Updated December 28, 2020)

1. **Grant Program.**

- A. Any applicant (“Applicant”) requesting grant funds (“Grant Funds”) from the Arkansas Economic Development Commission (“AEDC”) agrees to use such funds only as set forth in these terms and conditions. Applicant acknowledges and agrees that any grant made by AEDC is discretionary and that Applicant may not be awarded any Grant Funds or a lesser amount of Grant Funds than requested.
- B. Applicant acknowledges that it is responsible for correctly completing its application for Grant Funds and that AEDC will not consider incomplete applications.
- C. The provisions of the Arkansas Ready for Business Grant Program Summary are incorporated into these terms and conditions by reference.
- D. Fifteen percent (15%) of approved eligible applicants must be minority, women, or disabled veteran owned businesses as defined in Ark. Code § 15-4-303.
- E. Only one grant will be approved per applicant. If multiple applicants are affiliated under common shareholder or management control, only one grant will be approved per controlled group of affiliates.

2. **Purpose.** The purpose of the Grant Funds is to provide economic support pursuant to section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) to businesses impacted by COVID-19. The Grant Funds may only be utilized for Qualifying Costs (as defined below). In consideration for receiving Grant Funds, Applicant agrees to use commercially reasonable best efforts to continue to employ the number of full-time and part-time employees set forth in its application for Grant Funds for the twelve-month period following receipt of Grant Funds.

3. **Use of Grant Funds.**

- A. **Political Activity.** No portion of the Grant Funds will be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.
- B. **Prohibition Against Payment of Bonus.** No portion of the Grant Funds will be used by Applicant to pay any bonus or commission in return for obtaining the Grant Funds.
- C. **Qualifying Costs.** Grant Funds will be used only towards the following Qualifying Costs:
 - i. Personal Protective Equipment (PPE) and no contact thermometers for Applicant’s employees and customers;
 - ii. Expenses related to reconfiguring Applicant’s business premises to meet recommended health and safety guidelines;
 - iii. No-contact Point of Sale (POS) payment equipment;
 - iv. Supplies and disinfectants to initially deep clean premises and for use on an ongoing basis; also included are expenses associated with hiring a third party to perform periodic deep cleaning services;
 - v. Hand sanitizer and other personal sanitary supplies for employees and customers;
 - vi. Signage;
 - vii. Marketing and advertising related to reopening the business or resuming normal operations;
 - viii. Supplies necessary for restocking;
 - ix. Other one-time expenses necessary to reopen a business or to resume normal operations.
 - x. Payroll and benefits costs are not eligible expenses.
 - xi. Applicant must expend Grant Funds between March 1, 2020 and September 30, 2021.
 - xii. Businesses with no employees must have a) customers physically coming to their business premises, or b) must conduct their business on customer premises.
 - xiii. Applicant may not use the Grant Funds for any expense for which Applicant has previously received reimbursement or payment from another program administered or funded by the federal government.

4. **Disbursement of Grant Funds.**
- A. **Application for Grant Funds.** The Grant Funds shall be disbursed to Applicant upon it demonstrating to AEDC's reasonable satisfaction that it is a bona fide business eligible for the program. AEDC's approval of the completed electronic application is conditioned upon its receipt of each of the following:
- i. Applicant's electronic acknowledgment agreeing to be bound by these terms and conditions;
 - ii. A Certificate of Good Standing of Applicant from the Arkansas Secretary of State (or, in the case of a sole proprietor, a copy of Applicant's business license, state sales tax permit or such other evidence reasonably satisfactory to AEDC demonstrating that Applicant is a legitimate business enterprise or nonprofit); AEDC may waive this requirement in the event information provided by the Department of Finance and Administration independently confirms that applicant is a bona fide business in Arkansas.
 - iii. A completed IRS Form W-9;
 - iv. A copy of the majority shareholder's current driver's license; and
 - v. Applicant's voided check with bank routing number and bank account number.
- B. **Disbursement of Grant Funds.** Within ten (10) business days following AEDC's approval of Applicant's application for Grant Funds, AEDC shall disburse Grant Funds via direct deposit to the bank account provided by Applicant in its application. AEDC will disburse Grant Funds only to the extent funds have been released to AEDC, as required by the General Accounting and Budgetary Procedures Law, the Revenue Stabilization Law and any other applicable fiscal control laws and regulations promulgated by the Arkansas Department of Finance and Administration.
5. **Close-out.** By no later than October 31, 2021, Applicant shall provide AEDC with a certification that it has fully expended the Grant Funds and provide an accounting for the expenditures for each category of Qualifying Costs listed in Section 3(C). Applicant must also submit with its certification to AEDC receipts evidencing the expenditures. **It is the responsibility of Applicant to maintain copies of receipts for all Qualifying Costs.** Prior to January 1, 2021, AEDC will provide Applicant with an electronic portal for submitting its certification and receipts. Applicant agrees to promptly return to AEDC any unexpended or improperly expended Grant Funds. All expenditures will be subject to audit by the State of Arkansas.
6. **Representations and Warranties of the Applicant.** Applicant represents and warrants that:
- i. It is authorized to do business in the State of Arkansas;
 - ii. Each and every undertaking by Applicant in accordance with the terms and conditions hereunder are within the Applicant's powers, have been duly authorized by all necessary corporate action, have received all necessary approvals, and do not contravene any law, regulation or decree or any contractual restriction;
 - iii. To the best of the Applicant's knowledge, it owes no tax to any governmental body within the State of Arkansas, excepting any tax attributable to a period in which a tax is not presently due; and
 - iv. All information provide by Applicant to AEDC is true and complete in all material respects.

WARNING: MAKING ANY INTENTIONAL MISREPRESENTATION ON YOUR APPLICATION FOR GRANT FUNDS CONSTITUTES FRAUD AND IS SUBJECT TO CRIMINAL PROSECUTION UNDER STATE AND FEDERAL LAWS!

7. **Other Terms and Conditions**
- A. **Governing Law.** These terms and conditions shall be governed under the laws of the State of Arkansas. AEDC, as an agency of the State of Arkansas is protected from suit by sovereign immunity. Nothing in these terms and conditions is intended to nor shall waive the sovereign immunity of AEDC.
- B. **Severability.** If any provision of these terms and conditions or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalid part shall not affect the enforceability of any other provision.

- C. **Waivers.** No conditions or provisions of these terms and conditions may be waived unless approved by AEDC in writing.
- D. **Freedom of Information Act.** Applicant acknowledges that AEDC is a public entity of the State of Arkansas and is subject to the requirements of the Arkansas Freedom of Information Act, A.C.A. § 25-19-101 et. seq. ("FOIA"). AEDC must disclose to an FOIA requestor information concerning Applicant when, in the opinion of AEDC's legal counsel, AEDC is legally required to disclose the requested information. Information concerning Applicant that may be disclosed under FOIA includes the identity of Applicant and the amount of Grant Funds it may have received.

Notice of Rule Making and Public Hearing

The Arkansas Economic Development Commission (AEDC) is promulgating a proposed permanent rule for administering the Arkansas Ready for Business Grant Program. The proposed rule extends the deadline for recipients to incur expenses and submit receipts to September 30, 2021 and October 31, 2021. AEDC has authority to promulgate rules for this program granted at A.C.A. §15-4-209(a)(1) and §15-4-209(b)(5).

The Arkansas Economic Development Commission is soliciting comments on the proposed rule filed with the Secretary of State on March 8, 2021. A virtual public hearing for the proposed rule will be held from 8:30am - 9:30am on April 9, 2021 via ZOOM.

The proposed rule is available for review on AEDC's website at www.arkansasedc.com/rules or may be obtained by contacting AEDC at (501) 682-2460. Written comments may be submitted through April 9, 2021, by mailing to the Arkansas Economic Development Commission, Attn: Division of Policy and Legislative Affairs, 1 Commerce Way, Suite 601, Little Rock, Arkansas 72202 or by email to AEDC.Digital.Rules@Arkansas.gov.

Participants can join the virtual public hearing at:

<https://arkansas-gov.zoom.us/j/87494986126?pwd=ekJuSnZ3L29KRmwrbnZmanpjYVdSUT09>

Meeting ID: 874 9498 6126

Passcode: 166749

Telephone Toll Free: 888-475-4499 or 877-853-5257

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT _____
DIVISION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ FAX NO. _____ EMAIL: _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two (2) copies with the Questionnaire and proposed rules.

SHORT TITLE OF THIS RULE

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes No
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

- a) How the additional benefits of the more costly rule justify its additional cost;
- b) The reason for adoption of the more costly rule;
- c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
- d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Total _____

b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.