

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
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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 _____

Proposed Rulemaking

Title

Promulgated by:
Department of Commerce
Arkansas Economic Development Commission

~~Title 15. Natural Resources and Economic Development~~

~~Chapter VIII. Arkansas Economic Development Commission, Department of Commerce~~

~~Subchapter B. Economic Development Incentives~~

~~Part 149. Minority Business Enterprise and Women-Owned Business~~

~~Enterprise Loan Mobilization Program Rules~~

~~Subpart 1. Generally~~

~~— 15 CAR § 149-101. Introduction.~~

~~— The Minority Business Enterprise and Women-Owned Business Enterprise Loan Mobilization Program may guarantee loans that are made:~~

~~—— (1) By a lender to a borrower who:~~

~~—— (A) Meets the definitions of Arkansas Code § 15-4-303 as a:~~

~~—— (i) "Minority" and "minority business enterprise"; or~~

~~—— (ii) "Women-owned business enterprise";~~

~~—— (B) Has been certified by the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission as a minority business enterprise or women-owned business enterprise in accordance with Arkansas Code § 15-4-314 and rules developed pursuant to Arkansas Code § 15-4-314(a); and~~

~~—— (C) Has done or is currently doing business with a federal, state, or local Arkansas governmental entity;~~

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- ~~—————(2) For purposes consistent with:~~
 - ~~—————(A) Arkansas Code § 19-5-1240(d); or~~
 - ~~—————(B) Other funding source criteria whenever loans are not guaranteed by the Minority and Women-Owned Business Loan Mobilization Revolving Fund or its successor fund or other designated fund accounts;~~
- ~~—————(3) By an approved lender to a borrower for an amount, purpose, and term approved in a written loan guaranty authorization (authorization) signed by the Director of the Arkansas Economic Development Commission and the Director of the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission; and~~
- ~~—————(4) With respect to lender compliance with the terms and conditions of an executed loan guaranty lender participation agreement (agreement).~~

~~—————15 CAR § 149-102. Definitions.~~

~~—————As used in this part:~~

- ~~—————(1) "Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission" means the division of the Arkansas Economic Development Commission responsible for administering the Minority Business Enterprise and Women-Owned Business Enterprise Loan Mobilization Program;~~
- ~~—————(2) "Lender" means:~~
 - ~~—————(A) A federally chartered bank;~~
 - ~~—————(B) A state chartered bank;~~
 - ~~—————(C) A savings and loan association;~~
 - ~~—————(D) A credit union;~~
 - ~~—————(E) An Arkansas planning and development district or economic development district; or~~
 - ~~—————(F) Any other form of financial institution regulated by the State of Arkansas or the federal government;~~
- ~~—————(3) "Minority" means a lawful permanent resident of this state who is:~~
 - ~~—————(A) African American;~~

~~—————(B) Hispanic American;~~
~~—————(C) American Indian;~~
~~—————(D) Asian American;~~
~~—————(E) Pacific Islander American; or~~
~~—————(F) A service-disabled veteran as designated by the United States Department of Veterans Affairs;~~

~~—————(4) "Minority business enterprise" means a business that is at least fifty-one percent (51%) owned by one (1) or more minority persons as defined in this section; and~~

~~—————(5) "Women-owned business enterprise" means a business that is at least fifty-one percent (51%) owned by one (1) or more women who are lawful permanent residents of this state.~~

~~—————15 CAR § 149-103. Lender requirements and responsibilities.~~

~~———(a) To be eligible to serve as a lender for a loan that is guaranteed by the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission, the lender shall be one (1) of the following financial institutions:~~

~~—————(1) A federally chartered bank;~~
~~—————(2) A state-chartered bank;~~
~~—————(3) A savings and loan association;~~
~~—————(4) A credit union;~~
~~—————(5) An Arkansas planning and development district or economic development district; or~~
~~—————(6) Any other form of financial institution regulated by the State of Arkansas or the federal government.~~

~~———(b) The lender will only approve deals that are consistent with prudent lending practices through review of personal and business financial statements and other documents, the credit standing, repayment capacity, existence of title to and value of collateral pledged to the loan (if any), earnings prospects, and business acumen of the~~

~~borrower requesting a loan guaranty through the Minority Business Enterprise and Women-Owned Business Enterprise Loan Mobilization Program.~~

~~—(c)(1) Upon and after closing the loan and disbursing the loan proceeds, the lender shall cause to be executed, delivered, and, where necessary, filed or recorded with the proper authorities:~~

~~—(A) A note;~~

~~—(B) A mortgage or trust deed;~~

~~—(C) A security agreement;~~

~~—(D) A financing statement;~~

~~—(E) A continuation statement; and~~

~~—(F) Such other instruments, documents, and agreements as may be applicable.~~

~~—(2) The lender shall take such other actions as required to ensure that the borrower and any guarantors are obligated to repay the loan.~~

~~—(d) The lender shall have valid and enforceable security interest in any collateral and ensure that the collateral is adequately maintained and insured and that the interests of the lender and the Arkansas Economic Development Commission are fully protected, consistent with prudent lending practices.~~

~~—(e)(1) The lender shall cause all loan documents, including any guaranty agreements, to be properly authorized and executed as required in the authorization.~~

~~—(2) The lender shall take any further action necessary to ensure that all guarantors have a binding and enforceable obligation to repay the loan.~~

~~—(f) The lender shall exercise supervision over any collateral and ensure that any collateral is disposed of in a commercially reasonable sale.~~

~~—(g) Services of an escrow agent may be required at the request of the commission to discuss issues regarding use of proceeds for authorized purposes.~~

~~—(h) Upon request, the lender shall provide to the division all documents executed in connection with the:~~

~~—(1) Loan;~~

~~—(2) Loan disbursements; and~~

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~~————(3) Loan records.~~

~~——(i) The lender will impose no charges on the borrower of a loan guaranteed hereunder that would not normally be imposed had the loan not been guaranteed.~~

~~——(j) The lender will provide the division with such financial information on guaranteed loans as the division may reasonably require.~~

~~——**15 CAR § 149-104. Loan guaranty application process.**~~

~~——(a) To apply for a loan guaranty under the Minority Business Enterprise and Women-Owned Business Enterprise Loan Mobilization Program, a minority business enterprise or women-owned business enterprise shall submit an application and any supporting documentation required to the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission.~~

~~——(b) The division shall:~~

~~————(1) Evaluate each application and any supporting documentation to determine whether the minority business enterprise or women-owned business enterprise is eligible for a loan guaranty in accordance with the requirements of the:~~

~~————(A) Minority and Women-Owned Business Economic Development Act, Arkansas Code § 15-4-301 et seq.; and~~

~~————(B) Minority and Women-Owned Business Loan Mobilization Revolving Fund, Arkansas Code § 19-5-1240(d), or its successor fund or fund accounts;~~

~~————(2) Recommend approval of the minority business enterprise or women-owned business enterprise meeting eligibility requirements to the Director of the Arkansas Economic Development Commission; and~~

~~————(3) Notify the minority business enterprise or women-owned business enterprise of approval or denial of the application within seven (7) business days of receipt of the application by the division.~~

~~——(c) Upon notification of approval by the division, the approved minority business enterprise or women-owned business enterprise will be informed about the next steps including selection of a lender to begin the lender's loan application process.~~

~~—(d) The lender selected by the approved minority business enterprise or women-owned business enterprise shall:~~

~~—(1) Notify the minority business enterprise or women-owned business enterprise of the lender's determination to approve or deny the minority business enterprise's or women-owned business enterprise's loan application; and~~

~~—(2) Send written notification of the lender's determination to approve or deny the loan with application documents to the division within seven (7) business days after making the determination.~~

~~—(e) If the lender approves the loan application, the division will:~~

~~—(1) Review the approved lender application documents; and~~

~~—(2) Execute a written loan guaranty authorization between the lender and the Arkansas Economic Development Commission.~~

~~—(f) After a loan application has been approved by a lender, the minority business enterprise or women-owned business enterprise shall close the loan.~~

~~—(g) The division will retain a copy of the loan package and monitor the project for compliance with program requirements.~~

~~**—15 CAR § 149-105. Administration and servicing of loans.**~~

~~—(a) The lender shall:~~

~~—(1) Maintain the loan instruments;~~

~~—(2) Receive all payments, including but not limited to principal and interest; and~~

~~—(3) Take other such action as may be required or advisable to administer and service the loan consistent with prudent lending practices.~~

~~—(b) The lender shall not, without prior written consent of the Arkansas Economic Development Commission, engage in any of the following:~~

~~—(1) Make or consent to any transfer or assignment of any note or interest therein or any material alteration in the terms of any loan instrument;~~

~~—(2) Make or consent to any release, conveyance, lease, substitution, or exchange of any collateral;~~

~~—————(3) Extend or postpone any repayment terms except those authorized in the executed loan guaranty lender participation agreement; and~~

~~—————(4) Waive or release any claim against the borrower, surety, guarantor, or other obligor, or any other creditor or trustee in bankruptcy, arising out of any loan instrument.~~

~~————(c) The Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission will respond to written requests regarding administration and servicing of loans from lenders within fifteen (15) days of receipt or such requests will be deemed not to require the written consent of the division.~~

~~————15 CAR § 149-106. Default and notice of default.~~

~~————(a) The lender agrees to notify the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission, in writing, within fifteen (15) business days of notice of actual default.~~

~~————(b) Within fifteen (15) business days after receipt of notice of actual default, the division will notify the lender, in writing, which of the following options the Arkansas Economic Development Commission elects:~~

~~————(1) Liquidation.~~

~~————(A) The division may direct the lender to accelerate the maturity of the loan and proceed to enforce all loan documents to liquidate any security for the loan including proceeding against any guarantors in a commercially reasonable, expeditious manner and in accordance with prudent lending practices.~~

~~————(B) In such an event, the commission shall pay the lesser of ninety percent (90%) of the remaining unpaid loan balance or the guaranty percentage specified in the loan authorization agreement, with a maximum payment not to exceed one hundred thousand dollars (\$100,000); or~~

~~————(2) Payment. The division shall pay the lesser of ninety percent (90%) of the remaining unpaid loan balance or the guaranty percentage specified in the loan authorization agreement, with a maximum payment not to exceed one hundred thousand dollars (\$100,000), in payments of equal value, but for the acceleration, on~~

~~the due dates defined in loan documents and may direct the lender to assign all loan documents and rights to the commission.~~

~~—(c)(1) The division and lender may take such other action, upon default, as they may agree to in writing.~~

~~—(2) At any time after electing to direct the lender to liquidate, the commission may elect the above payment option in subdivision (b)(2) of this section.~~

~~—(d) All proceeds of any collateral or guaranties of any nature (other than guaranties received pursuant to the commission's guaranty agreement), including without limitation, right of setoff and counterclaim, shall be used to repay and secure the interests of the lender and the commission.~~

~~**15 CAR § 149-107. Requests for payment of guaranty.**~~

~~—In the event that the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission has directed the lender to liquidate any collateral, the lender's request for the payment of guaranty shall be accompanied by the lender's written certification that the lender has:~~

~~—(1) Liquidated any collateral and all guaranties for the loan and has diligently pursued and exhausted all sources of repayment, unless by mutual consent such pursuit has not been deemed cost effective; and~~

~~—(2) Allocated repayments, proceeds of any collateral, and any guarantees to the respective interest of the parties, as required by this part or a specific authorization agreed to by both parties, including the remaining unpaid principal and interest.~~

~~**15 CAR § 149-108. Sources of funds.**~~

~~—(a) Any guaranties by the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission have been entered into under the provisions of Acts 2009, No. 1428, §§ 10 and 11, codified at Arkansas Code § 19-5-1240, or all provisions stipulated by funding sources other than the Minority and Women-Owned Business Loan Mobilization Revolving Fund, or its successor fund or other designated fund accounts, for loan guarantees not secured under Arkansas Code~~

~~§ 19-5-1240, and are subject to all terms, restrictions, and commitments contained therein.~~

~~—(b) Neither the full faith nor credit of the State of Arkansas or any of its revenues is pledged to meet the obligations of the Arkansas Economic Development Commission under any guaranty agreement.~~

~~—(c) The obligations of the commission under Minority Business Enterprise and Women-Owned Business Enterprise Loan Mobilization Program guaranty agreements are limited to the funds available in the Minority and Women-Owned Business Loan Mobilization Revolving Fund, or its successor fund or other designated fund accounts, as provided for in Acts 2009, No. 1428, and any other appropriation for similar purposes.~~

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT _____
BOARD/COMMISSION _____
BOARD/COMMISSION DIRECTOR _____
CONTACT PERSON _____
ADDRESS _____
PHONE NO. _____ EMAIL _____
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING _____
PRESENTER EMAIL(S) _____

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

1. What is the official title of this rule?

2. What is the subject of the proposed rule? _____
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes No

4. Is this rule being filed for permanent promulgation? Yes No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire? _____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes No

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes No

If yes, please provide the state statute and/or rule citation.

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes No

If yes, please list the rules being repealed.

If no, please explain.

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes No

If yes, please provide the year of the act(s) and act number(s).

11. What is the reason for this proposed rule? Why is it necessary?

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

13. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. _____

15. What is the proposed effective date for this rule? _____

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes No

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT _____
BOARD/COMMISSION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ **EMAIL** _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

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 no, please explain:

(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 reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

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

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

Total _____

Next Fiscal Year

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

Total _____

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

Current Fiscal Year

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

Total _____

Next Fiscal Year

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

Total _____

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

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to a state, county, or 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.



Hugh McDonald
SECRETARY OF COMMERCE
Clint O'Neal
EXECUTIVE DIRECTOR,
ARKANSAS ECONOMIC
DEVELOPMENT COMMISSION

Executive Summary

The Arkansas Economic Development Commission (the “AEDC”) is proposing to repeal its existing Minority Business Enterprise and Women-Owned Business Enterprise Loan Mobilization Program Rules. AEDC maintains that the proposed repeal is necessary to maintain compliance with Act 116, enacted during the 2025 Regular Session. Specifically, the rule repeal is necessary to maintain compliance with Ark. Code Ann. § 25-1-130, which prohibits the state from engaging in discrimination or preferential treatment on the basis of sex, race, ethnicity, or national origin. The repeal of this rule serves to maintain statutory compliance and limit AEDC’s liability.



Hugh McDonald
SECRETARY OF COMMERCE
Clint O'Neal
EXECUTIVE DIRECTOR,
ARKANSAS ECONOMIC
DEVELOPMENT COMMISSION

DATE: September 26, 2025
TO: All Interested Persons
FROM: Arkansas Economic Development Commission
SUBJECT: Proposed Repeal of the Minority Business Enterprise and Women-Owned Business Enterprise Loan Mobilization Program Rules

NOTICE OF PUBLIC HEARING

Please find attached or available by electronic publication by the Arkansas Economic Development Commission's (the "AEDC") proposed repeal of its Minority Business Enterprise and Women-Owned Business Enterprise Loan Mobilization Program Rules.

Pursuant to the Arkansas Administrative Procedures Act, and all other applicable statutes or rules, NOTICE is hereby given that a PUBLIC HEARING will be held on October 7th, 2025, at 10 a.m. in the Diamond Mine Room on the second floor of the offices of the Arkansas Department of Commerce, 1 Commerce Way, Little Rock, AR 72202.

The purpose of the Public Hearing will be to determine whether the AEDC should repeal the existing program rules. AEDC is proposing the repeal in order to maintain compliance with Act 116, which was enacted during the 2025 Regular Session.

All interested persons are encouraged to send their comments, statements, or opinions to the address below or to attend the Public Hearing and present, orally or in writing, statements, arguments, or opinions on the proposed amendments. The record will remain open for public comment until the close of the 30-day period outlined in the Arkansas Administrative Procedures Act; in this instance, October 28th, 2025.

Persons who wish to testify or make comments are requested to submit intended statements in writing in advance of the Public Hearing. Inquiries should be directed to: Jake Windley, Director of Legislative Affairs & Policies, Arkansas Department of Commerce, 501-682-5355, email: jake.windley@arkansas.gov. A copy of the proposed amendments may be obtained or viewed at <https://www.arkansasedc.com/data-reports/rules>.

Sincerely,

A handwritten signature in blue ink that reads "Jake G. Windley".

Jake G. Windley
Director of Legislative Affairs & Policies
Arkansas Department of Commerce