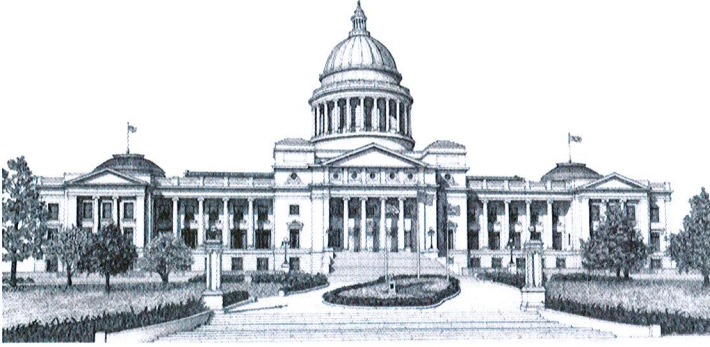


ARKANSAS REGISTER

Transmittal Sheet

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



Secretary of State
Mark Martin
500 Woodlane, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



For Office Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Economic Development Commission

Department Strategic Planning and Research

Contact Kurt Naumann E-mail knaumann@arkansasedc.com Phone 501-529-0175

Statutory Authority for Promulgating Rules 15-4-306 and 19-5-1240

Rule Title: _____

Intended Effective Date
(Check One)

Date

- | | | |
|--|---------------------------------------|------------------|
| <input type="checkbox"/> Emergency (ACA 25-15-204) | Legal Notice Published | <u>2/21/2016</u> |
| <input checked="" type="checkbox"/> 10 Days After Filing (ACA 25-15-204) | Final Date for Public Comment | <u>3/23/2016</u> |
| <input type="checkbox"/> Other _____
(Must be more than 10 days after filing date.) | Reviewed by Legislative Council | <u>5/17/2016</u> |
| | Adopted by State Agency | <u>5/28/2016</u> |

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

Kurt Naumann knaumann@arkansasedc.com 5/18/2016
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.)

Signature

501-682-7308

knaumann@arkansasedc.com

Phone Number

E-mail Address

Director of Strategic Planning and Research

Title

5/18/2016

Date

Minority Business Loan Mobilization Program Rules

I. Introduction

Overview

Pursuant to authority granted under § 15-4-306 of the Minority Business Economic Development Act and § 19-5-1240, which established the Minority Business Loan Mobilization Revolving Fund, the Small and Minority Business Division of the Arkansas Economic Development Commission (AEDC) has established a Minority Business Loan Mobilization Program that may guarantee loans that:

1. Are made by a lender to a borrower who:
 - A. Meets the definitions of “minority” and “minority business enterprise” as defined in § 15-4-303;
 - B. Has been certified by the Small and Minority Business Division of the AEDC as a minority business enterprise in accordance with § 15-4-314 and rules developed pursuant to § 15-4-314(a); and
 - C. Has done or is currently doing business with a Federal, state, or local Arkansas governmental entity;
2. Are made for purposes consistent with § 19-5-1240(d), which identifies three goals of the Minority Business Loan Mobilization Revolving Fund:
 - A. Promote the development of minority business enterprises in the state;
 - B. Increase the ability of minority business enterprises to compete for state contracts; and
 - C. Sustain the economic growth of minority business enterprises in the state;
3. Are made by an approved lender to a borrower for an amount, purpose and term approved in a written loan guaranty authorization (authorization) signed by the AEDC Executive Director and the Director of the Small and Minority Business Division of the AEDC; and,
4. Are made with respect to lender compliance with the terms and conditions of an executed Loan Guaranty Lender Participation Agreement (agreement).

II. Definitions

1. “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 or Economic Development District; or
 - F. Any other form of financial institution regulated by the State of Arkansas or the Federal government;
2. "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;
 3. "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;
 4. "Small and Minority Business Division of the Arkansas Economic Development Commission" means the division of the Arkansas Economic Development Commission responsible for administering the Minority Business Loan Mobilization Program.

III. Lender Requirements and Responsibilities

1. To be eligible to serve as a lender for a loan that is guaranteed by the Small and Minority Business Division of the AEDC, the lender shall be one of the following financial institutions:
 - 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 or Economic Development District; or
 - F. Any other form of financial institution regulated by the State of Arkansas or the Federal government.
2. 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 Loan Mobilization Program.
3. 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 note, mortgage or trust deed, security agreement, financing statement, continuation statement, and such other instruments, documents and agreements as may be applicable. The lender shall take such other actions as required to assure that the borrower and any guarantor(s) are obligated to repay the loan.

4. The lender shall have valid and enforceable security interest in any collateral and insure that the collateral is adequately maintained and insured and that the interest of the lender and AEDC are fully protected, consistent with prudent lending practices.
5. The lender shall cause all loan documents, including any guaranty agreements, to be properly authorized and executed as required in the authorization. The lender shall take any further action necessary to assure that all guarantor(s) have a binding and enforceable obligation to repay the loan.
6. The lender shall exercise supervision over any collateral and ensure that any collateral is disposed of in a commercially reasonable sale.
7. Services of an escrow agent may be required at the request of AEDC to discuss issues regarding use of proceeds for authorized purposes.
8. Upon request, the lender shall provide to the Small and Minority Business Division of the AEDC all documents executed in connection with the loan, loan disbursements and loan records.
9. 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.
10. The lender will provide the Small and Minority Business Division of the AEDC with such financial information on guaranteed loans as the Small and Minority Business Division of the AEDC may reasonably require.

IV. Loan Guaranty Application Process

1. To apply for a loan guaranty under the Minority Business Loan Mobilization Program, a minority business enterprise shall submit an application and any supporting documentation required to the Small and Minority Business Division of the AEDC.
2. The Small and Minority Business Division of the AEDC shall:
 - A. Evaluate each application and any supporting documentation to determine whether the minority business enterprise is eligible for a loan guaranty in accordance with the requirements of § 15-4-301 et seq. (Minority Business Economic Development Act) and § 19-5-1240(d) (Minority Business Loan Mobilization Revolving Fund).
 - B. Recommend approval of the minority business enterprise meeting eligibility requirements to the AEDC Executive Director.

- C. Notify the minority business enterprise of approval or denial of the application within seven (7) business days of receipt of the application by the Small and Minority Business Division of the AEDC.
3. Upon notification of approval by the Small and Minority Business Division of the AEDC, the approved minority business enterprise will be informed about the next steps including selection of a lender to begin the lender's loan application process.
4. The lender selected by the approved minority business enterprise shall:
 - A. Notify the minority business enterprise of the lender's determination to approve or deny the minority business enterprise's loan application.
 - B. Send written notification of the lender's determination to approve or deny the loan application to the Small and Minority Business Division of the AEDC within seven (7) business days after making the determination.
5. The Small and Minority Business Division of the AEDC will review the approved lender application package and execute a written loan guaranty authorization between the lender and the AEDC.
6. After a loan application has been approved by a lender, the minority business enterprise shall close the loan.
7. The Small and Minority Business Division of the AEDC will retain a copy of the loan package and monitor the project for compliance with program requirements.

V. Administration and Servicing of Loans

The lender shall maintain the loan instruments, receive all payments, including but not limited to principal and interest, and take other such action as may be required or advisable to administer and service the loan consistent with prudent lending practices. The lender shall not, without prior written consent of the AEDC, 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 of trustee in bankruptcy, arising out of any loan instrument.

The Small and Minority Business Division of the AEDC 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 Small and Minority Business Division of the AEDC.

VI. Default and Notice of Default

The lender agrees to notify the Small and Minority Business Division of the AEDC, in writing, within fifteen (15) business days of notice of actual default. Within fifteen (15) business days after receipt of notice of actual default, the Small and Minority Business Division of the AEDC will notify the lender, in writing, which of the following options the AEDC elects:

1. **LIQUIDATION:** The Small and Minority Business Division of the AEDC 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 guarantor(s), in a commercially reasonable, expeditious manner and in accordance with prudent lending practices. In such an event, the AEDC 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 \$100,000.
2. **PAYMENT:** The Small and Minority Business Division of the AEDC 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 \$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 AEDC.

The Small and Minority Business Division of the AEDC and lender may take such other action, upon default, as they may agree to in writing. At any time after electing to direct the lender to liquidate, the AEDC may elect the above payment option VI. 2.

All proceeds of any collateral or guaranties of any nature (other than guaranties received pursuant to the AEDC guaranty agreement), including, without limitation, right of setoff and counter claim, shall be used to repay and secure the interests of the lender and the AEDC.

VII. Requests for Payment of Guaranty

In the event that the Small and Minority Business Division of the AEDC 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:

1. That the lender has 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. That the lender has allocated repayments, proceeds of any collateral and any guarantees to the respective interest of the parties, as required by these rules

or a specific authorization agreed to by both parties, including the remaining unpaid principal and interest.

VIII. Source of Funds

Any guaranties by the Small and Minority Business Division of the AEDC have been entered into under the provisions of Act 1428 of 2009, Sections 10 and 11, and are subject to all terms, restrictions and commitments contained therein. Neither the full faith nor credit of the State of Arkansas or any of its revenues is pledged to meet the obligations of the AEDC under any guaranty agreement. The obligations of the AEDC under Minority Business Loan Mobilization Program guaranty agreements are limited to the funds available in the Minority Business Loan Mobilization Revolving Fund as provided for in Act 1428 of 2009, and any subsequent appropriation for similar purposes.

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

DEPARTMENT/AGENCY Arkansas Economic Development Commission
DIVISION Small and Minority Business Division
DIVISION DIRECTOR Ms. Pat Nunn-Brown
CONTACT PERSON Kurt Naumann
ADDRESS 900 West Capitol; Little Rock, AR 72201
PHONE NO. 501-682-7308 **FAX NO.** 501-682-7499 **E-MAIL** knaumann@arkansasedc.com
NAME OF PRESENTER AT COMMITTEE MEETING Ms. Pat Nunn Brown, Anthony Armstrong, Kurt Naumann
PRESENTER E-MAIL pbrown@arkansasedc.com, aarmstrong@arkansasedc.com, knaumann@arkansasedc.com

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

**Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201**

1. What is the short title of this rule? Minority Business Loan Mobilization Program

2. What is the subject of the proposed rule? Administration of the Minority Business Loan Mobilization Program by the Small and Minority Business Division of the Arkansas Economic Development Commission

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
If yes, please provide the federal rule, regulation, and/or statute citation. _____

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No
If yes, what is the effective date of the emergency rule? N/A

When does the emergency rule expire? N/A

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes

No

5. Is this a new rule? Yes No

If yes, please provide a brief summary explaining the regulation. This new rule defines the administrative process by which the Small and Minority Business Division of the Arkansas Economic Development Commission administers the Minority Business Loan Mobilization Program. Legislation in 2009 created a state miscellaneous fund known as the "Minority Business Loan Mobilization Revolving Fund" which transferred unexpended fund balances remaining in AEDC's Small Business Loan Fund Account (and other funds as may be authorized) to this new fund. Loan guaranties were authorized beginning in 2012. This rule defines the process by which the Small and Minority Business Division of the Arkansas Economic Development Commission reviews and approves minority business enterprise loan guaranty applications and administers the guaranty program.

Does this repeal an existing rule? Yes No

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule?

Yes

No

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. § 15-4-209(b)(5) and § 15-4-306

7. What is the purpose of this proposed rule? Why is it necessary? Conform to Arkansas Administrative Procedures Act regarding the administration of the Minority Business Loan Mobilization Program

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.arkansasedc.com

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

If yes, please complete the following:

Date: March 23, 2016

Time: 9 am

Bessie Moore Conference Room, 2nd
Floor, 900 West Capitol; Little Rock,

Place: AR 72201

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

March 21, 2016

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

June 18, 2016

12. Do you expect this rule to be controversial? Yes No

If yes, please
explain.

The legislature may question the length of time between program initiation and rule promulgation.

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules?
Please provide their position (for or against) if known.

None anticipated at this time.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Economic Development Commission
DIVISION Small and Minority Business Division
PERSON COMPLETING THIS STATEMENT Kurt Naumann
TELEPHONE NO. 501-682-7308 **FAX NO.** 501-682-7499 **EMAIL:** knaumann@arkansasedc.com

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

SHORT TITLE OF THIS RULE Minority Business Loan Mobilization Program

- 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;
N/A

- (b) The reason for adoption of the more costly rule;
N/A

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;
N/A

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.
N/A

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 \$0 _____

Total \$0 _____

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

\$ 0 _____

\$ 0 _____

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

\$ 0 _____

\$ 0 _____

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.