

ARKANSAS REGISTER

Transmittal Sheet

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Economic Development Commission

Department Strategic Planning and Research

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Statutory Authority for Promulgating Rules 15-4-306 and 15-4-209(b)(5)

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Kurt Naumann knaumann@arkansasedc.com

April 20, 2018

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.)

Kurt Naumann

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April 20, 2018

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FILED
APR 19 2018
MARK MARTIN
SECRETARY OF STATE
STATE OF ARKANSAS

Minority Business Enterprise and Women-Owned Business Enterprise Loan Mobilization Program Rules

I. Introduction

Overview

The Minority Business Loan Mobilization Program was created by the Arkansas Economic Development Commission (AEDC) 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.

Act 1080 of 2017, amended the Minority Business Economic Development Act by expanding eligibility regarding programs and services under the Act to include women-owned business enterprises.

Expanding the Minority Business Loan Mobilization Program, renamed the Minority Business Enterprise and Women-Owned Business Enterprise Loan Mobilization Program, by extending eligibility and funding for loan guarantees to women-owned businesses, will help further effectuate the objectives of Act 1080 of 2017.

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

1. Are made by a lender to a borrower who:
 - A. Meets the definitions of § 15-4-303 as a:
 - i. “Minority” and “minority business enterprise” or
 - ii. “Women-owned business enterprise”.
 - B. Has been certified by the Minority and Women-Owned Business Enterprise Division of the AEDC as a minority business enterprise or women-owned 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) or purposes consistent with other funding source criteria whenever loans are not guaranteed by the Minority Business Loan Mobilization Revolving Fund, or its successor fund or other designated fund accounts;
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 Minority and Women-Owned Business Enterprise 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 and Women-Owned Business Enterprise Division 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;
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.

III. Lender Requirements and Responsibilities

1. To be eligible to serve as a lender for a loan that is guaranteed by the Minority and Women-Owned Business Enterprise 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 Enterprise and Women-Owned Business Enterprise 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 interests 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 Minority and Women-Owned Business Enterprise 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 Minority and Women-Owned Business Enterprise Division of the AEDC with such financial information on guaranteed loans as the Minority and Women-Owned Business Enterprise Division of the AEDC may reasonably require.

IV. Loan Guaranty Application Process

1. 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 Minority and Women-Owned Business Enterprise Division of the AEDC.
2. The Minority and Women-Owned Business Enterprise Division of the AEDC shall:
 - A. 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 § 15-4-301 et seq. (Minority and Women-Owned Business Economic Development Act) and § 19-5-1240(d) (Minority Business Loan Mobilization Revolving Fund), or its successor fund or fund accounts.
 - B. Recommend approval of the minority business enterprise or women-owned business enterprise meeting eligibility requirements to the AEDC Executive Director.
 - C. 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 Minority and Women-Owned Business Enterprise Division of the AEDC.
3. Upon notification of approval by the Minority and Women-Owned Business Enterprise Division of the AEDC, 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.
4. The lender selected by the approved minority business enterprise or women-owned business enterprise shall:
 - A. 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.

- B. Send written notification of the lender's determination to approve or deny the loan with application documents to the Minority and Women-Owned Business Enterprise Division of the AEDC within seven (7) business days after making the determination.
5. If the lender approves the loan application, the Minority and Women-Owned Business Enterprise Division of the AEDC will review the approved lender application documents 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 or women-owned business enterprise shall close the loan.
7. The Minority and Women-Owned Business Enterprise 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 Minority and Women-Owned Business Enterprise 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 Minority and Women-Owned Business Enterprise Division of the AEDC.

VI. Default and Notice of Default

The lender agrees to notify the Minority and Women-Owned Business Enterprise 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 Minority and Women-Owned Business Enterprise Division of the AEDC will notify the lender, in writing, which of the following options the AEDC elects:

1. **LIQUIDATION:** The Minority and Women-Owned Business Enterprise 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 Minority and Women-Owned Business Enterprise 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 Minority and Women-Owned Business Enterprise 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 counterclaim, 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 Minority and Women-Owned Business Enterprise 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. Sources of Funds

Any guaranties by the Minority and Women-Owned Business Enterprise Division of the AEDC have been entered into under the provisions of Act 1428 of 2009, Sections 10 and 11, codified at § 19-5-1240, or all provisions stipulated by funding sources other than the Minority Business Loan Mobilization Revolving Fund, or its successor fund or other designated fund accounts, for loan guaranties not secured under § 19-5-1240, 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 Enterprise and Women-Owned Business Enterprise Loan Mobilization Program guaranty agreements are limited to the funds available in the Minority Business Loan Mobilization Revolving Fund, or its successor fund or other designated fund accounts, as provided for in Act 1428 of 2009, and any other appropriation for similar purposes.