

# DECLARATION OF EMERGENCY

## Department of Economic Development Economic Development Corporation

### Small Business Loan Program (LAC 19:VII.Chapter 1)

The Department of Economic Development, Economic Development Corporation, is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), to promulgate emergency rules of the Small Business Loan Program effective May 31, 1996. This rule prescribes procedures for administering the Louisiana Small Business Loan Program in accordance with Title 19, Chapter 1. This emergency rule shall remain in effect for a period of 120 days or until a final rule is promulgated, whichever occurs first.

This rule is necessary because of a recognized immediate need to assist small- and medium-sized businesses with financial assistance in the form of low interest rate loans and loan guarantees. Without these emergency rules, the public welfare is likely to be harmed as a result of likely disruptions in the efficient operation of Louisiana's capital markets, particularly for economically disadvantaged business owners and entrepreneurs who are most at risk of exclusion from the capital markets. Such market disruption would likely result from regulation-imposed bank capital constraints, as well as from the inherent risk aversion of banks, both of which will result in reduced capital investment, lower capital productivity, diminished job creation and increased risk of higher unemployment.

The proposed emergency rule is intended to mitigate the disruptions described above.

#### **Title 19**

#### **CORPORATIONS AND BUSINESS**

#### **Part VII. Economic Development Corporation**

#### **Subpart 1. Louisiana Small Business Loan Program**

#### **Chapter 1. Loan Policies**

#### **§101. Purpose**

A. The Louisiana Economic Development Corporation (LEDC) wishes to stimulate the flow of private capital, longterm loans, and other financial assistance for the sound financing of the development, expansion, and retention of small business concerns in Louisiana, as a means of providing high levels of employment, income growth, and expanded economic opportunities, especially to disadvantaged persons and within distressed and rural areas.

B. The corporation will consider sound loans so long as resources permit. The board of the corporation recognizes that guaranteeing, participating, or lending money carries certain risks and is willing to undertake reasonable exposure.

AUTHORITY NOTE: R.S. 51:2341-51:2344 as amended in Acts 1992, No. 1092.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:445 (June 1989), amended LR 22:

#### **§103. Definitions**

*Disabled Person's Business Enterprise*—a small business concern which is at least 51 percent owned and controlled by a disabled person as defined by the federal Americans with Disabilities Act of 1990.

*Minority or Women-Owned Business Enterprise*—must be owned or controlled by a socially or economically disadvantaged person which is defined by the SBA as a person(s), regardless of sex or marital status, who is(are) member(s) of groups whose disadvantage may arise from cultural, racial, chronic economic circumstances or background as stated in R.S. 51:2347 et seq., and must be certified as a minority business enterprise or women's business enterprise as defined in R.S. 51:2347 B:1-6.

*Small Business Concerns*—as defined by SBA for purposes of size eligibility as set forth by 13 CFR 121.

AUTHORITY NOTE: R.S. 51:2341-51:2344 as amended in Acts 1992, No. 1092.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:456 (June 1989), amended LR 22:

#### **§105. Application Process**

A. An applicant(s) applying for either a loan guaranty or a loan participation will be required first to contact a financial lending institution that is willing to entertain such a loan with the prospect of a guaranty or a participation.

B. Information submitted to LEDC with the application representing the applicant's business plan, financial position, financial projections, personal financial statements and background checks will be kept confidential to the extent allowed under the Public Records Law, LA R.S. 44:1 et seq. Confidential information in the files of LEDC and its accounts acquired in the course of duty will be used solely by and for LEDC.

#### **C. Submission and Review Policy**

1. A completed Louisiana Economic Development Corporation application form, along with a complete

business plan which shall contain but not be limited to the information in Appendix A, must be submitted no later than four weeks prior to the next scheduled screening committee meeting for consideration at the next scheduled board meeting of the corporation following the screening committee meeting.

2. Minority and women owned businesses applying for assistance under that provision will have to submit certification from the Minority and Women's Business Enterprise, Office of the Department of Economic Development, along with the request for financial assistance.

3. Businesses applying for consideration under the disabled person's provision shall submit adequate information to support the disabled status.

4. The bank will submit to LEDC the complete analysis, proposed structure, and commitment letter at least two weeks prior to the next scheduled screening committee meeting for consideration at the next scheduled board meeting following the screening committee meeting. The LEDC staff may do analysis, independent of bank analysis.

5. The bank will submit to LEDC the same pertinent data that it did to the bank's loan committee, whatever pertinent data the bank can legally supply.

6. LEDC staff will review the application and analysis, then make recommendations. The staff will work with the bank on terms of the loan and LEDC loan stipulations.

7. The screening committee will review only the completed applications submitted by staff and will make recommendations to the board.

8. The applicant(s) or their designated representative, and the loan officer or a representative of the bank are encouraged to attend the screening meeting.

9. The board of directors will review all recommendations and will approve or reject the proposal.

10. The applicant will be notified within five working days by mail of the outcome of the application.

11. A LEDC commitment letter will be mailed to the bank within five working days of approval by the board.

AUTHORITY NOTE: R.S. 51:2341-51:2344 as amended in Acts 1992, No. 1092.

HISTORICAL NOTE: Promulgated by the Department Economic Development, Economic Development Corporation, LR 15:446 (June 1989), amended LR 22:

#### **§107. Eligibility**

A. Small business concerns as defined by SBA for purposes of size eligibility as set forth by 13 CFR 121.

B. Small businesses whose owner(s) or principal stockholder(s) shall be a resident of Louisiana and the business is domiciled in Louisiana with preference given to certified minority businesses, women owned businesses, or businesses owned by disabled persons.

C. Funding request for all but the following may be considered:

1. restaurants, except for regional or national franchises;

2. bars;

3. any project established for the principal purpose of dispensing alcoholic beverages;

4. any establishment which has gaming or gambling as its principal business;

5. any establishment which has consumer or commercial financing as its business;

6. funding for the acquisition, renovation, or alteration of a building or property for the principal purpose of real estate speculation;

7. funding for the principal purpose of refinancing existing debt;

8. funding for the purpose of buying out any stockholder or equity holder by another stockholder or equity holder in a business;

9. funding for the purpose of establishing a park, theme park, amusement park, or camping facility.

AUTHORITY NOTE: R.S. 51:2341-51:2344 as amended in Acts 1992, No. 1092.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:447 (June 1989), amended LR 22:

#### **§109. General Loan Provisions**

A. The Louisiana Economic Development Corporation will be guided by the following general principles in making loans:

1. The corporation shall not knowingly approve any loan guarantee, loan participation or loan if the applicant has presently pending or outstanding any claim or liability relating to failure or inability to pay promissory notes or other evidence of indebtedness, including state or federal taxes, or bankruptcy proceeding; nor shall the corporation approve any loan or guarantee if the applicant has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit.

2. The terms or conditions imposed and made part of any loan or loan guaranty authorized by vote of the corporation board shall not be amended or altered by any member of the board or employee of the Department of Economic Development except by subsequent vote of approval by the board at the next meeting of the board in open session with full explanation for such action.

3. The corporation shall not subordinate its position.

B. Interest Rates

1. On all loan guarantees, the interest rate is to be negotiated between the borrower and the bank but

may not exceed two and one half percent above New York prime as published in the *Wall Street Journal* at either a fixed or variable rate.

2. On all participation loans, the rate shall be determined by utilizing the rate for a U.S. Government Treasury security for the time period that coincides with the term of the participation and adding one percent.

3. The bank may apply for a linked deposit under the Small Business Linked Deposit Program on the term portion of either a guaranteed loan or a participated loan.

C. Collateral

1. Collateral-to-loan ratio will be no less than one-to-one.

2. Collateral position may be negotiated, but will be no less than a sole second position.

3. Collateral value determination:

a. the appraiser must be certified by recognized organization in area of collateral;

b. the appraisal cannot be over 90 days old.

4. Acceptable collateral may include, but not be limited to, the following:

a. fixed assets: business real estate, buildings, fixtures;

b. equipment, machinery, inventory;

c. personal guarantees are open for negotiation; if

used, there must be signed and dated personal financial statements;

d. accounts receivable with supporting aging schedule. Not to exceed 90 percent of receivable value (used with guarantee only).

5. Unacceptable collateral may include, but not be limited to the following:

a. stock in applicant company and/or related companies;

b. personal items;

c. intangibles.

D. Equity

1. Will be no less than 20 percent of the loan amount for a start-up operation or acquisition and no less than 15 percent for an expansion.

2. Equity is defined to be:

a. cash;

b. paid-in capital;

c. paid-in surplus and retained earnings;

d. partnership capital and retained earnings.

3. No research, development expense nor intangibles of any kind will be considered equity.

E. Amount

1. For small businesses, the corporation's guarantee shall be:

a. no greater than 75 percent of a loan up to \$650,000; or

b. no greater than 70 percent of a loan up to \$1,100,000; or

c. no greater than 65 percent of a loan up to \$1,500,000;

d. if the loan request exceeds \$1,500,000 the guaranty shall not exceed \$1,000,000.

2. For certified minority-owned, women-owned, or owned by disabled persons, the corporation's guarantee shall be:

a. no greater than 90 percent of a loan up to \$560,000; or

b. no greater than 85 percent of a loan up to \$875,000; or

c. no greater than 75 percent of a loan up to \$1,300,000;

d. if the loan request exceeds \$1,300,000 the guaranty shall not exceed \$1,000,000.

3. For small businesses, the corporation's participation shall be no greater than 40 percent, but in no case shall it exceed \$1,000,000.

4. For certified minority-owned, women-owned, or owned by disabled persons, the corporation's participation shall be no greater than 50 percent, but in no case shall it exceed \$1,000,000.

F. Terms. Terms may be negotiated with the bank, but in no case shall the terms exceed 20 years.

G. Fees

1. LEDC will charge a minimum guaranty fee of .5 percent of the guaranty amount up to a maximum amount of 2 percent of the guaranty amount.

2. LEDC will charge a \$100 application fee.

H. Use of Funds

1. Purchase of fixed assets, including buildings that will be occupied by the applicant to the extent of at least 51 percent.

2. Purchase of equipment, machinery, or inventory.

3. Line of credit for accounts receivable or inventory.

4. Debt restructure may be considered by LEDC but will not be considered when the debt:

a. exceeds 25 percent of total loan; and/or

b. pays off a creditor or creditors who are inadequately secured; and/or

c. provides funds to payoff debt to principals of the business; and/or

d. provides funds to payoff family members.

5. Funds may not be used to buy out stockholders or equity holders of any kind, by any other stockholder or equity holder.

6. Funds may not be used to purchase any speculative investment or real estate development.

AUTHORITY NOTE: R.S. 51:2341-51:2344 as amended in Acts 1992, No. 1092.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:448 (June 1989), amended LR 22:

### **§111. General Agreement Provisions**

#### **A. Guaranty Agreement**

1. The bank is responsible for proper administration and monitoring of loan and proper liquidation of collateral in case of default.

2. The loan shall not be sold, assigned, participated out, or otherwise transferred without prior written consent of the LEDC Board.

3. If liquidation through foreclosure occurs, the bank will sell collateral and handle the legal proceedings.

4. There will be a reduction of the guarantee:

a. in proportion to the principal reduction of the amortized portion of the loan;

b. if no principal reduction has occurred in any annual period of the loan, a reduction in the guarantee amount will be made proportional to the remaining guarantee life.

5. The guarantee will cover the unpaid principal amount owed only.

6. Delinquency will be defined according to the bank's normal lending policy and all remedies will be outlined in the guaranty agreement. Notification of delinquency will be made to the corporation in writing and verbally in a time satisfactory to the bank and the corporation as stated in the guaranty agreement.

#### **B. Participation Agreement**

1. The bank is responsible for administration and monitoring of the loan.

2. The lead bank will hold no less participation in the loan than that equal to LEDC's, but not to exceed its legal lending limit.

3. The lead bank may sell other participation with LEDC's consent.

4. Should liquidation through foreclosure occur, the bank will sell the collateral and handle the legal proceedings.

5. The bank is able to set its rate according to risk, and may blend its rate with the LEDC rate to yield a lower overall rate to a project.

6. Delinquency will be defined according to the bank's normal lending policy and all remedies will be outlined. Notification of delinquency will be made to the corporation in writing and verbally in a time satisfactory to the bank and the corporation.

#### **C. Borrower Agreement**

1. At the discretion of LEDC, the borrower will agree to strengthen management skills by participation in a form of continuing education acceptable to LEDC.

2. The borrower shall provide initial proof as well as an annual report of job creation, including the number of jobs, job titles and salaries.

AUTHORITY NOTE: R.S. 51:2341-51:2344 as amended in Acts 1992, No. 1092.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:448 (June 1989), amended LR 22:

### **§113. Confidentiality**

Confidential information in the files of the corporation and its accounts acquired in the course of duty is to be used solely for the corporation. The corporation is not obliged to give credit rating or confidential information regarding applicant. Also see Attorney General Opinion Number 82-860.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341-2344.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:449 (June 1989), amended LR 22:

### **§115. Conflict of Interest**

No member of the corporation, employee thereof, or employee of the Department of Economic Development, members of their immediate families shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: R.S. 51:2341-51:2344 as amended in Acts 1992, No. 1092.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:449 (June 1989), amended LR 22:

### **§117. Conditions for Disbursement of Loan Proceeds**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2301-2330.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation,

amended LR 15: (June 1989), repealed LR 22:

**§119. Compliance Requirements for all Programs Loans**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2301-2330.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, amended LR 15:(June 1989), repealed LR 22:

**§121. Bank Responsibility**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2301-2330.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, amended LR 15: (June 1989), repealed LR 22:

**Appendix A**

The application for financial assistance should consist of a completed LEDC application form and a comprehensive business plan/loan proposal which contains but is not limited to the following guidelines:

- A. A cover letter which contains:
  - 1. dollar amount requested;
  - 2. terms and timing of loan request;
  - 3. type and price of collateral;
  - 4. name, address, and phone number of contacted bank.
- B. Executive Summary:
  - 1. business description
    - a. name;
    - b. location and plant description;
    - c. product or service;
    - d. market and competition;
    - e. management expertise;
  - 2. business goals;
  - 3. summary of financial needs and application of funds (sources and uses);
  - 4. earnings projections and potential return to investors.
- C. Market analysis:
  - 1. description of total market;
  - 2. industry trends;
  - 3. target market;
  - 4. competition.
- D. Products or services:
  - 1. description of product line;
  - 2. proprietary position: patents, copyrights and legal and technical considerations;
  - 3. comparison to competitors' products.
- E. Manufacturing process (if applicable):
  - 1. materials;
  - 2. sources of supply;
  - 3. production methods.
- F. Marketing strategy:
  - 1. overall strategy;
  - 2. pricing policy;
  - 3. sales terms;
  - 4. method of selling, distributing and servicing products.
- G. Management plan:
  - 1. form of business organization;
  - 2. board of directors composition;
  - 3. officers: organization chart and responsibilities;
  - 4. list of stockholders with more than 15 percent ownership;
  - 5. resumes of key personnel;
  - 6. staffing plan/number of employees;
  - 7. facilities plan/planned capital improvements;
  - 8. operating plan/schedule of upcoming work for next one to two years;
  - 9. list of work backlog, if any.
- H. Financial data (See Note 1):
  - 1. financial history (five years to present, if applicable);
  - 2. three-year financial projections (first year by quarters remaining years annually);
    - a. profit and loss statements;
    - b. balance sheets;
    - c. cash flow chart;

- d. capital expenditure estimates;
3. explanation of projections;
4. key business ratios;
5. explanation of use and effect of new funds;
6. potential return to investors compared to competitors and industry in general;
7. current signed personal financial statements of owners.

**Note 1:** All financial statements must meet Generally Accepted Accounting Principals (GAAP).

Applicants that have already assembled an SBA 7A loan package may substitute it for the above outlined business plan. In both cases, the bank will be asked to share with LEDC any additional information deemed necessary by the bank for them to make a credit decision.

AUTHORITY NOTE: R.S. 51:2341-51:2344 as amended in Acts 1992, No. 1092.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 22:

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