

DECLARATION OF EMERGENCY

Department of Economic Development Economic Development Corporation

Small Business Linked Deposit Program (LAC 19:VII.Chapter 71)

The Department of Economic Development, Economic Development Corporation, is exercising the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), to implement the rules of the Louisiana Small Business Linked Deposit Loan Program. This rule outlines procedures for administering the Louisiana Small Business Linked Deposit Loan Program as authorized by Act 633 of the 1989 Legislature. This emergency rule is effective May 31, 1996 and 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 this emergency rule, 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 6. Louisiana Small Business Linked Deposit Loan Program

Chapter 71. Procedures for Authorization and Administration

§7101. Definitions

Corporation—the Louisiana Economic Development Corporation of the Department of Economic Development.

Eligible Lending Institution—any bank located in this state and organized under the laws of this state and any national bank having its principal office in this state which is authorized to make commercial loans and which agrees to participate in the linked deposit program as defined herein.

Eligible Small Business—any person, or business, that has all of the following characteristics:

1. is headquartered in this state;
2. maintains offices and operating facilities in this state and transacts business in this state;
3. employs fewer than 150 employees, the majority of whom are residents of this state;
4. is organized for profit;
5. is not a federally chartered or state chartered bank or savings and loan institution;
6. is not engaged in real estate purchasing, holding, renting, or leasing;
7. is not a professional business of doctors, dentists, chiropractors, certified public accountants, or attorneys.

Linked Deposit—a certificate of deposit placed by the treasurer (as defined herein) with an eligible lending institution at three percent below existing investment rates, as determined and calculated by the treasurer, provided the institution agrees to lend the value of such deposit, according to the deposit agreement required by this Section, to eligible small businesses at three percent below the existing borrowing rate applicable to each specific business at the time of the deposit of state funds in the lending institution.

Person—any individual, firm, corporation, partnership or association domiciled in this state.

Substantial Stockholders—any person who owns more than 20 percent of a business applying for or currently participating in the Link Deposit Loan Program as outlined in this Chapter.

Treasurer—the treasurer of the State of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(A)(7).

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

§7102. Priorities

A. The corporation and treasurer shall give priority to those persons who utilize Louisiana products to the maximum extent possible.

B. The lending institution shall give priority to the:

1. economic needs of the area of the state in which the business is located;

2. the number of jobs created or preserved in the state;
3. no linked deposit shall be issued for other than a term loan and shall not be for more than the outstanding loan balance;
4. the order in which the linked deposit loan packages were received and whenever possible give priority based on this chronological order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(A)(7).

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

§7103. Linked deposit Loan Program Authorization Lending Institution requirements; Applicants Requirements and Conditions for Approval

A. The treasurer may invest in linked deposits, as provided and defined by R.S. 51:2312(A)(7), and, also defined herein, provided that at the time of placement of any linked deposit, the total amount of such investments at any one time shall not exceed, in the aggregate, \$25,000,000. When deciding whether to invest in linked deposits, the treasurer shall give priority to the investment, liquidity, and cash flow needs of the state and a determination of the financial soundness of the eligible lending institution.

B. An eligible lending institution that desires to receive a linked deposit shall accept and review applications for loans from eligible small business. The eligible lending institution shall apply all usual lending standards to determine the creditworthiness of each eligible small business. The eligible lending institution shall not charge, levy or collect any loan application fee, processing fee, or other charges other than its normal loan application fee, processing fee, or other charges when handling a Link Deposit application.

C. 1. Only one loan through the linked deposit program shall be made and shall be outstanding at any one time to any eligible small business.

2. The maximum amount of a linked deposit which may be made to any eligible small business at any one time shall be \$200,000.

3. No loan shall be made to any officer or director of the lending institution making the loan.

4. No loan shall be made for the sole purpose of refinancing previous debt held either by the lending institution or another lending institution. The maximum debt refinance allowed is 25 percent of the total loan amount for any eligible small business.

5. There shall be at least a one year moratorium from the time one linked deposit matures to any new linked deposit for any eligible person or small business.

D. An eligible small business shall certify on its loan application that the reduced rate loan will be used exclusively to create new jobs or preserve existing jobs and employment opportunities in the state. Job titles of all existing employees as well as job titles of new jobs created shall be forwarded with each application and reapplication. Whoever, knowingly files a false statement concerning such application shall be guilty of the offense of filing false public records and shall be subject to the penalty provided for in LA R.S. 14:133.

E. In considering which eligible small business to include in the linked deposit loan package for reduced rate loans, the eligible lending institution shall give priority to the economic needs of the area of the state in which the business is located, the number of jobs to be created or preserved in the state by the receipt of such loans, and such other factors as the eligible lending institution considers appropriate to determine the relative financial need of the eligible small business.

F. The eligible lending institution shall forward to the corporation and the treasurer for review, a linked deposit loan package in the form and manner prescribed by the corporation. The package shall include such information as required by the corporation including, the amount of the loan requested, the number of jobs to be created or sustained in the state by each eligible small business, the ratio of state funds to be deposited to jobs sustained or created, and any reports, statements, or plans applicable to the business, the overall financial need of the business, and such other factors as the corporation considers appropriate. The eligible financial institution shall certify that each applicant is an eligible small business as defined herein and shall, for each eligible small business, certify the present borrowing rate applicable to each specific eligible small business. Within 45 days after receipt, the corporation shall provide written recommendations to the treasurer on each linked deposit loan package received from eligible financial institutions.

G. The treasurer may accept or reject a linked deposit loan package or any portion thereof, based on the treasurer's review of the recommendations of the corporation, the availability and amount of state funds to be deposited, and a determination of the financial soundness of the financial institution in which the deposit is to be made. The treasurer shall notify the corporation and the eligible lending institution of acceptance or rejection of a linked deposit loan package within 15 days of receipt by the treasurer of the recommendations of the corporation.

H. Upon acceptance of the linked deposit loan package or any portion thereof, the treasurer may place certificates of deposit with the eligible lending institution at three percent below the current investment rates, as determined and calculated by the treasurer. When necessary, the treasurer may place certificates of deposit prior to acceptance of a linked deposit loan package.

I. The eligible lending institution shall enter into a deposit agreement with the treasurer, which shall

include the requirements necessary to carry out the purposes of this Chapter. The requirements shall reflect the market conditions prevailing in the eligible lending institution's lending area. The agreement shall specify the period of time in which the lending institution is to lend funds upon the placement of a linked deposit, and shall include provisions for the certificates of deposit to mature within a period not to exceed one year. The treasurer may renew a certificate of deposit in one-year increments, but in no event shall the total period of time that a certificate of deposit is placed with any lending institution exceed three consecutive years. Interest shall be paid at the times determined by the treasurer. However, upon placement of a linked deposit, the treasurer will give priority to renewal of existing linked deposits prior to placement of new linked deposits. Prior to renewal of linked deposits, the treasurer shall continue to give priority to the investment, liquidity cash flow needs of the state and a determination of the financial soundness of the eligible lending institution.

J. The period of time for which each certificate of deposit is placed with an eligible lending institution shall be neither longer nor shorter than the period of time for which the linked deposit shall be used to provide loans at reduced interest rates. The agreement shall further provide that the state shall receive investment interest rates on any certificate of deposit or any portion thereof for any period of time for which there shall be no corresponding linked deposit loan outstanding to an eligible small business.

K. Upon placement of a linked deposit with an eligible lending institution, the institution shall lend such funds to each approved eligible small business listed in the linked deposit loan package. Each loan shall be at a fixed rate of interest for a period of one year which shall be three percent below the current borrowing rate applicable to each eligible small business. All records and documents pertaining to the linked deposit program shall be segregated by each lending institution for ease of identification and examination. A certification of compliance with this Section in the form and manner prescribed by the treasurer shall be completed by the lending institution and filed with the treasurer and the corporation.

L. If it is discovered that there is a linked deposit made for any purpose not authorized, the certificate may be matured and/or rewritten, if appropriate, without penalty to the state treasurer. If this situation occurs, the eligible lending institution will pay the state treasury the same terms and interest rate as if the deposit were placed without benefit of a linked deposit. If the eligible lending institution fails to pledge securities to the treasurer or if such securities shall be unsatisfactory to secure the deposit, in his sole discretion, the treasurer may declare the deposit and interest earned thereon, or any part thereof, to become immediately due and payable, notwithstanding any agreement or contract to the contrary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(A)(7)

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

§7104. Liability

Neither the State, the corporation, nor the treasurer shall be liable to any lending institution in any manner for payment of the principal or interest on any loan to an eligible small business under this Section. Any delay in payments or default on the part of a small business shall not in any manner affect the deposit agreement between the eligible lending institution in the event of a loan default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(A)(7)

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

Brett Crawford
Executive Director