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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 123
OREGON BUSINESS DEVELOPMENT DEPARTMENT

FILED
05/04/2021 11:51 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: These rules relate to the Entrepreneurial Development Loan Fund.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/24/2021 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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NEED FOR THE RULE(S):

During the 2nd Special Session of the 2020 Oregon Legislature, through HB 4304, Business Oregon was awarded funding from the United States Economic Development Administration (EDA) to deploy through the EDLF program. The EDA guidance permitted for more flexible lending terms that allow for higher risk loans. Failure to immediately amend these rules will delay funding to those intended to be served by the United States Economic Development Administrations (EDA) award to the State of Oregon

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

HB 4304 2020 2nd Special Session (OL 2020 2nd SS, Ch 10, Sec 26 and 27)

FISCAL AND ECONOMIC IMPACT:

The rule changes are not regulatory in nature. Program enhancements increase accessibility of capital. The program changes were implemented to improve the Department's ability to successfully draw down federal funds by making qualified loans to eligible borrowers. These changes will result in \$10 million in federal funding being deployed to Oregon's small business through this program and other business finance programs administered by the Department. The federal funding also come with up to \$1 million in federal funds to cover the Departments administrative costs.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. No fiscal impact on other state agencies, local government. Qualified small businesses will receive benefit by accessing capital that otherwise would not have been available to them.

2. Creates funding opportunities for 50-100 qualified businesses that agree to the terms of the loans. No additional costs of administration required to comply. No additional costs for professional, services, equipment, labor and administration required.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Rules were developed in consultation with the Oregon Business Development Commission's Finance Committee which has private businesses representatives from the accounting, investing, business operations and banking industries.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

An advisory committee was not consulted. The department's Finance Committee was consulted to review these rule amendments.

RULES PROPOSED:

123-019-0010, 123-019-0020, 123-019-0030, 123-019-0040, 123-019-0050, 123-019-0060

AMEND: 123-019-0010

RULE SUMMARY: This rule is amended to add three new definitions; Business plan, Collateral coverage ratio, and Loan to value .

CHANGES TO RULE:

123-019-0010

Definitions ¶¶

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. For purposes of this division of administrative rules, unless the context demands otherwise:¶¶

- (1) "Applicant" means any individual, association of individuals, joint venture, partnership or corporation, person or any combination of persons applying for a loan from the Oregon Entrepreneurial Development Fund.¶¶
- (2) "~~Certified Entity" means any entity certified by the Director of the Business Development Department under OAR 123-019-0100.¶¶~~
- (3) "~~Business plan" means a plan:¶¶~~
 - (a) For start-up entities, including but not limited to businesses with less than 24 months of operations, using the standard format set forth in Your Business Plan by Dennis J. Sargent or other such format at may be acceptable to the Certified Entity and the Department, or,¶¶
 - (b) For businesses with 24 or more months of operations an executive summary of business operations including projections and supporting narrative as may be acceptable to the Certified Entity and the Department.¶¶
- (3) "~~Certified Entity" means any entity certified by the Director of the Business Development Department under OAR 123-019-0100 including Small Business Development Centers (SBDCs).¶¶~~
- (4) "Collateral coverage ratio" means the number of times that the collateral could repay the loan principal. The ratio is usually expressed as "X:1" (or "X to 1"), where "X" is the collateral liquidation value (the net funds expected to be received from the sale of collateral, after expenses) divided by the amount of the loan.¶¶
- (5) "Equity" means cash, and real and personal property that is owned or controlled by an Applicant and committed to use in the project for which a loan from the Fund is being sought. Property other than cash will be conservatively valued by the Department.¶¶
- (46) "Fund" or "EDLF" means the Oregon Entrepreneurial Development Loan Fund as defined and set forth in Section 13, Chapter 688, Oregon Laws 1991.¶¶
- (57) "Loan Committee" means any loan committee selected by the Director from the Finance Committee or

otherwise appointed by the Director. The Loan Committee shall consist of at least three members, and the Director shall select one of its members to be chair. The Loan Committee shall meet at the call of the chair. Two members of the Loan Committee shall constitute a quorum to transact the business of the Loan Committee.¶¶

~~(68)~~ "Loan to value" or "LTV" means the amount of the loan, expressed as a percentage of the value of the collateral. The formula is the loan amount divided by the value of the subject collateral.¶¶

~~(9)~~ "Project" means the acquisition, improvement, rehabilitation, construction, operation or maintenance of any property, real or personal, that is or will be used or is suitable for use by an economic enterprise, but not including:¶¶

(a) A loan for the purchase or construction of residential housing;¶¶

(b) A loan for the purchase of property that will not be used for the business operation of the Applicant or is a passive real property investment not used to house the operations of a related company;¶¶

(c) A loan for the refinancing of an existing loan; the loan request may be considered for approval if such existing loan was for a business purpose and the refinance is necessary to secure collateral for the loan or improve the collateral coverage, and is a minor part of the new loan.¶¶

~~(710)~~ "Severely Disabled Individuals" means individuals certified as severely disabled by the Vocational Rehabilitation Division of the Department of Human Resources or the Commission for the Blind.¶¶

~~(811)~~ "Small Business Development Center" or "SBDC" means any small business development center described in the Small Business Training Assistance Act of 1983.¶¶

~~(912)~~ "Small Business Management Program" means any of the following:¶¶

(a) A going into business class;¶¶

(b) A Small Business Management Program offered by an Oregon SBDC;¶¶

(c) Any series of classes/seminars/workshops/counseling sessions that meet the approval of a Small Business Development Center or Certified Entity.

Statutory/Other Authority: ORS 285A.075, OL 2020 2nd SS Ch 10 Sec 26 and 27

Statutes/Other Implemented: ~~ORS 285B.740-285B.758~~, Ch. 688, OL 1991, Ch. 765, OL 1993, OL 2020 2nd SS Ch 10 Sec 26 and 27, ORS 285B 740, ORS 285B 743, ORS 285B 746, ORS 285B 749, ORS 285B 758

AMEND: 123-019-0020

RULE SUMMARY: This rule is being amended to allow applicants to have total revenues of \$1,500,000 or less in the 12 months immediately preceding the date of application for a loan to the Fund.

CHANGES TO RULE:

123-019-0020

Eligibility ¶

(1) To be eligible for a loan from the Fund, each Applicant must meet at least one of the criteria in this section:¶

(a) The Applicant must have had total revenues of \$1,500,000 or less in the 12 calendar months immediately preceding the date application is made to the Fund for a loan;¶

(b) At least 50 percent of the Applicant business or proposed business must be owned by an individual or individuals classified as Severely Disabled.¶

(2) The Applicant may not be effectively owned or controlled by another business entity or other person or own or control another business entity that, either by itself or when combined with the Applicant, is not eligible for a loan under this rule. Ownership of 50 percent or more of the Applicant would constitute, or a subsidiary which sells a majority of its goods or services to the parent may constitute, effective ownership or control. The Director may, however, make this determination based on the facts of an individual case.

Statutory/Other Authority: ORS 285A.075, OL 2020 2nd SS Ch 10 Sec 26 and 27

Statutes/Other Implemented: OL 2020 2nd SS Ch 10 Sec 26 and 27, ~~ORS 285B:740-~~, ORS 285B 743, ORS 285B 746, ORS 285B 749, ORS 285B:758

AMEND: 123-019-0030

RULE SUMMARY: This rule is amended by removing the SBDC, adding language regarding the inclusion of a business plan. This rule raises the aggregate amount that a borrower may receive to no more than \$250,000.

CHANGES TO RULE:

123-019-0030

Application Procedure ¶

(1) Each Applicant shall certify to ~~SBDC or other~~ Certified Entity and the Department that it is an eligible Applicant for the Fund under OAR 123-019-0020(1) and shall specify which of the criteria outlined in 123-019-0020(1) it meets. ¶

(2) The ~~SBDC or~~ Certified Entity may enroll the Applicant in an appropriate Small Business Management Program. Each Applicant shall ~~h~~: ¶

(a) Have completed a Small Business Management Program or shall b: ¶

(b) Be enrolled in a Small Business Management Program prior to Department action on such Applicant's loan request; or ¶

(c) Satisfactorily document to the Certified Entity and Department, a business plan that adequately demonstrates the ability of the Applicant to repay the proposed loan. ¶

(3) Each Applicant shall certify to the Department ~~they are at the applicant is~~ enrolled in or ~~have~~s completed a Small Business Management Program. ¶

~~(3) Each Applicant must complete a business plan p as applicable or has prepared a business plan that has been reviewed by the Certified Entity.~~ ¶

(4) Prior to applying for a loan from the Fund. Such business plan shall use the standard format set forth in Your B, each Applicant will provide a business Pplan by Dennis J. Sargent or other such format as may be acceptable to the ~~SBDC or~~ Certified Entity and the Department. ¶

(45) The business plan must be reviewed by the Director or counseling staff of the ~~SBDC or~~ Certified Entity where the Applicant is enrolled in a Small Business Management Program or where the Applicant is receiving assistance with the preparation of the business plan. Review of the business plan by the ~~SBDC or~~ Certified Entity does not imply any judgment by the ~~SBDC or~~ Certified Entity as to the accuracy or validity of the plan. ¶

(56) Upon completion and review of the business plan as provided in sections (34) and (45) of this rule, the business plan, together with a credit application on the form provided by the Department, along with all supporting financial documents, shall be forwarded to the Department for consideration. The credit application shall contain a detailed list of the proposed uses of the proceeds of the loan being sought from the Fund. ¶

(67) The Department may require such additional information from an Applicant as the Department determines is necessary for a thorough review and analysis of the application. ¶

(78) Upon completion of its review the Department shall forward the application to the Director, with a recommendation for action. The Department may submit the application to the Loan Committee for its recommendation. The Director may: ¶

(a) Approve the application; or ¶

(b) Deny the application; or ¶

(c) Return the application to the Applicant for further information. ¶

(89) If a loan request is approved, the Department shall prepare such documents as are necessary to close the loan transaction. Such documents shall reflect all terms and conditions upon which the Director may have conditioned his or her approval of the loan. ¶

(910) A Borrower may apply for and the Director may approve subsequent loans from the Fund. No borrower may receive more than an aggregate amount of ~~\$10250,000~~ \$250,000 in loan proceeds from the Fund. Applicants for subsequent loans must meet the eligibility requirements outlined in 123-019-0020. ¶

(101) The Department may notify the ~~SBDC or~~ Certified Entity if any Borrower with which the ~~SBDC or~~ Certified Entity has worked becomes delinquent in its payment or otherwise acts in such a manner as to jeopardize the

repayment of the loan.¶

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 285A.075, OL 2020 2nd SS Ch 10 Sec 26 and 27

Statutes/Other Implemented: ~~ORS 285B.240-285B.758~~, Ch. 688, OL 1991, Ch. 765, OL 1993, OL 2020 2nd SS Ch 10 Sec 26 and 27, ORS 285B 740, ORS 285B 743, ORS 285B 746, ORS 285B 749, ORS 285B 758

AMEND: 123-019-0040

RULE SUMMARY: Business Oregon was awarded funding from the United States Economic Development Administration (EDA) to deploy through the EDLF program. The EDA guidance permitted for more flexible lending terms that allow for higher risk loans. One specific provision that latitude was granted was related to the overall collateral and security required for eligible loans.

The first time that these EDA funds are deployed, the EDA is permitting partially unsecured loans. OAR 123-019-0040 establishes, as a condition of the loan, a minimum loan to value of 200% which equates to a corresponding collateral coverage ratio of 1:2. Section 0040 further increases the maximum amount that any one borrower can receive from the program from \$100,000 to \$250,000 as authorized by HB 4304 from the August 2020 Special Session.

CHANGES TO RULE:

123-019-0040

Loan Conditions ¶¶

The Director may approve a loan request if the Director finds that:¶¶

(1) The Applicant and the project are eligible for a loan from the Fund according to the criteria set forth in OAR 123-019-0020 and 123-019-0030.¶¶

(2) The Applicant has available, and has irrevocably committed to the project, Equity funds in the form of cash or property in an amount equal to or greater than 20 percent of the amount of the loan from the Fund.¶¶

(3) The proposed project is feasible and a reasonable risk from practical and economic standpoints, and the loan has a reasonable prospect of repayment from cash flow and collateral.¶¶

(4) The Applicant will provide good and sufficient collateral for the loan. ~~The collateral coverage ratio for the loan should be~~ department reserves the right to require liens on all business assets and personal assets necessary to secure the loan at a "loan to value" ratio ("LTV") of 100% or provide for a collateral coverage ratio of 1:1. In the event of a collateral shortfall, the LTV of the proposed loan may be no more than 200% or provide for a collateral coverage ratio of at least 1:1 ratio ~~2~~ applying the following advance rates:¶¶

(a) Real property will generally be valued for collateral purposes at 80 percent of the tax assessed value or 90 percent of appraised value;¶¶

(b) New construction will generally be valued for collateral purposes at no more than 90 percent of cost;¶¶

(c) Existing machinery will generally be valued for collateral purposes at 70 percent of depreciated book value;¶¶

(d) Newly acquired machinery will generally be valued for collateral purposes at 60 percent of acquisition cost for new equipment and 75% of acquisition cost for used equipment.¶¶

(5) The Department may, in its sole discretion, assign a value of more or less than the above percentages.

Applicants should be aware that the collateral value of ~~out-of-state real property~~ property located or housed out-of-state will be significantly discounted from nominal assessed or appraised value.¶¶

(6) Monies in the Fund are or will be available for the proposed project.¶¶

(7) The Applicant's financial resources and management capability appear adequate to assure success of the project and repayment of the loan.¶¶

(8) The amount borrowed from the Fund by any borrower ~~at any one time~~ does not exceed \$75,000 ~~and the total amount borrowed does not exceed \$100,000.~~¶¶

(9) ~~The Director may, in his or her sole discretion, permit the assumption of an outstanding EDLF loan, if the assuming obligor satisfies the Director as to its willingness and ability to service the loan, and if the State's collateral position is not diminished. The Director may require the obligor to meet all eligibility requirements set out in OAR 123-019-0020 and 123-019-0030. EDLF loans are not necessarily or automatically assumable.~~¶¶

(10) The Applicant agrees to abide by all laws and regulations applicable to the Applicant's project 250,000.¶¶

(9) The Applicant agrees to abide by all local, state and federal laws and regulations and will receive ~~obtain~~ all

applicable federal, state and local permits and licenses before the disbursement of any proceeds from the Fund.
Statutory/Other Authority: ORS 285A.075, OL 2020 2nd SS Ch 10 Sec 26 and 27
Statutes/Other Implemented: OL 2020 2nd SS Ch 10 Sec 26 and 27, ORS 285B:740-, ORS 285B 743, ORS 285B 746, ORS 285B 749, ORS 285B:758

AMEND: 123-019-0050

RULE SUMMARY: Business Oregon was awarded funding from the United States Economic Development Administration (EDA) to deploy through the EDLF program. The EDA guidance permitted for more flexible lending terms that allow for higher risk loans. One specific provision that latitude was granted was related to the overall collateral and security required for eligible loans.

The revisions to OAR 123-019-0050 incorporate the loan to value ratio and an increased interest rate based on the final collateral value.

CHANGES TO RULE:

123-019-0050

Loan Agreement ¶¶

If the Director approves the loan, the Director, on behalf of the state, and the borrower may enter into a loan contract of not more than ~~\$75250,000~~, secured by Collateral, which shall set forth, among other matters:¶¶

(1) A plan for repayment by the Borrower to the Fund of monies borrowed from the Fund used for the Project, with interest charged on those monies at a fixed rate of at least two percentage points (2%) more than the prevailing bank prime interest rate. For the purposes of this section, the prevailing bank prime interest rate shall be the rate set forth in the most recent Federal Reserve Statistical Release H.15(519) which the Department has received at the time the loan is approved. Loans secured by collateral with more than a 100% loan to value ratio, or collateral coverage ratio of less than 1:1, may be subject to a higher interest rate established at the sole discretion of the Department, based on the final collateral value established by the Department. The loan interest rate may be increased by no more than 1% for every 10% of collateral deficiency. Notwithstanding the foregoing, the interest shall not exceed 18 percent per annum. The repayment plan, among other matters:¶¶

(a) Shall provide for commencement of repayment by the Applicant of monies used for the Project and interest thereon no later than six months after the date of the loan contract or at such other time as the Director may provide;¶¶

(b) May provide for reasonable extension of the time for making any repayment, not to exceed six months, in emergency or hardship circumstances if approved by the Director;¶¶

(c) Shall provide for such evidence of debt, assurance of and security for, repayment of the loan as is considered necessary by the Director;¶¶

(d) Shall set forth a schedule of payments and the period of the loan which shall not exceed the usable life of the assets financed or ten years from the date of the contract, whichever is less. The payment schedule shall include payment of interest which accrues during any period of delay in repayment authorized by subsection (b) of this section, and the payment schedule may require payments of varying amounts for collection of accrued interest;¶¶

(e) Shall set forth a procedure for formal declaration of delinquency or default of payment by the Department. Loans shall be declared delinquent when any payment is more than ten days late. Borrower shall be notified in writing of declaration of delinquency, and shall have 31 days from the original payment date to bring the loan current. If the loan is not brought current, or arrangements satisfactory to the Department for bringing the loan current have not been made, the Department may declare the loan in default, may declare the entire outstanding indebtedness to be forthwith due and payable and may assign the loan to the Attorney General for collection. The Department shall inform the borrower of each default and action taken in connection therewith. The Director may in his or her sole discretion waive or delay such assignment.¶¶

(2) Provisions satisfactory to the Department for field engineering and inspection, the Department to be the final judge of completion of the Project;¶¶

(3) That the liability of the state under the contract is contingent upon the availability of monies in the Fund for use in the Project;¶¶

- (4) Such further provisions as the Director considers necessary to insure expenditure of the funds for the purposes set forth in the approved application;¶
- (5) That the Department may institute appropriate action or suit to prevent use of the facilities of a Project financed by the Fund if the Borrower is delinquent in the repayment of any monies due the ~~Fund~~State of Oregon;¶
- (6) That the Borrower is responsible for payment of:¶
- (a) All of the expenses of the operation and maintenance of the Project, including adequate insurance;¶
- (b) All taxes and special assessments levied with respect to the business or the Project;¶
- (c) Insurance premiums and providing insurance in amount and coverage acceptable to the Department. Such insurance shall include, but shall not be limited to: ~~F~~fire and hazard insurance, liability insurance, and flood insurance if applicable at the sole discretion of the Department; and¶
- (d) All out-of-pocket costs associated with the loan closing including but not limited to filing and recording fees, title insurance and appraisals.¶
- (7) That the Borrower will provide to the Department on an annual basis, within 120 days of the end of each fiscal year, financial statements prepared in accordance with generally accepted accounting principles. In addition, copies of federal tax returns may be required to be submitted annually. The Department may require additional financial information or more frequent financial statements;¶
- (8) In the case of a loan made to an association, corporation or partnership, each partner and each owner of 20 percent or more of the corporation or association will provide a personal guaranty for the payment of all interest ~~and~~, repayment of the principal amount of the loan, and any other amount to come due under the loan agreement, unless the Director in his or her sole discretion, expressly waives such required guaranty. The Department, at its sole discretion, reserves the right to require any partner or owner of less than 20 percent of the company to provide a personal guarantee for the payment of all interest, repayment of the principal amount of the loan, and payment of any other amount to come due under the loan agreement;¶
- (9) The Department may, in its sole discretion, disburse the proceeds of an approved loan in such amounts and at such times as the Department feels necessary to ensure that loan proceeds are used for the stated purposes and to preserve the integrity of the Fund. If the Department in its sole discretion determines that the financial condition of the Borrower has deteriorated since the eligibility and application process was commenced, the Department shall be under no obligation to disburse any loan funds.¶

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ~~ORS285A.075, 285B.740–285B.758~~OL 2020 2nd SS Ch 10 Sec 26 and 27

Statutes/Other Implemented: OL 2020 2nd SS Ch 10 Sec 26 and 27, ORS 285B:740–, ORS 285B 743, ORS 285B 746, ORS 285B 749, ORS 285B:758

AMEND: 123-019-0060

RULE SUMMARY: Language has been updated for the appeal process when an applicant has been denied.

CHANGES TO RULE:

123-019-0060

Appeals, Monitoring, Amendments and Modifications ¶¶

(1) If the Director denies a loan request and if requested in writing by the Applicant within 30 days of the denial, the Department shall inform the Applicant in writing of the reasons for such denial.¶¶

(2) A denied Applicant has the right to appeal ~~in writing the Director's denial, whereupon~~ the denial in writing within 30 days of the Director's denial. Within 30 days of the appeal, the Applicant may submit whatever books, documents and data necessary to support the appeal. After reviewing the additional documentation, the Department shall schedule an appeal ~~hearing in front of~~ review by the Director, the Director's designee or the Loan Committee, as the Department may decide. ~~The Applicant may appear in person at the appeal hearing, and may introduce whatever books, documents and data it regards as necessary~~ If the Department elects to have the appeal reviewed by the Loan Committee, the Applicant may appear at the Loan Committee meeting to provide additional context to the information provided to support the appeal.¶¶

(3) An Applicant whose appeal has been denied must submit a new credit application to be eligible for consideration of a new loan request. This requirement may be waived by the Director, in his or her sole discretion.¶¶

(4) All loans shall be monitored by, and all loan repayments shall be made to, the Department or its assignee.¶¶

(5) It is the responsibility of the borrower to ensure that its payment arrives in the Department by the due date.¶¶

(6) Any request for modification or amendment to any loan condition shall be made in writing to the Department and approved by the Director. The Director may refer a request for modification or amendment to the Loan Committee for recommendation.¶¶

(7) If the Director consents to any requested modification or amendment, the borrower shall be responsible for all costs of modifying or amending any loan documents, filings, recordings or financing statements.

Statutory/Other Authority: ORS 285A.075, 285B.740–285B.758, OL 2020 2nd SS Ch 10 Sec 26 and 27

Statutes/Other Implemented: ORS 285A.075, Ch. 765, OL 1993, OL 2020 2nd SS Ch 10 Sec 26 and 27, ORS 285B.740–, ORS 285B.758, Ch. 765, OL 1993, OL 2020 2nd SS Ch 10 Sec 26 and 27, ORS 285B.746, ORS 285B.749, ORS 285B.758