

# PROPOSED RULEMAKING

## PENNSYLVANIA MINORITY BUSINESS DEVELOPMENT AUTHORITY

[ 12 PA. CODE CH. 81 ]

### General Provisions

The Pennsylvania Minority Business Development Authority (Authority), under the authority of section 9 of the Pennsylvania Minority Business Development Authority Act (act) (73 P.S. § 390.9), proposes to amend §§ 81.111, 81.112, 81.122, 81.124, 81.131, 81.143 and 81.144 to read as set forth in Annex A.

#### *Introduction*

The act was promulgated for the express purposes of: (1) alleviating and overcoming the many barriers to business opportunity that have too long handicapped socially and economically disadvantaged persons; and (2) providing assistance, financial and otherwise, which will contribute to well-balanced National and State economies by facilitating the acquisition or maintenance of ownership of business enterprises by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages. See section 2 of the act (73 P.S. § 390.2). The act created the Authority, a body corporate and politic with a 16-member board of directors composed of 4 cabinet officers, 8 persons appointed by the Governor and 4 persons appointed by the General Assembly. In 1975 the Authority promulgated regulations which describe in detail the Authority's lending and financial assistance programs, covering topics such as purpose of the program, eligible applicants and projects, application procedures, amount and terms of loans and other financial assistance, loan closing procedures, default procedures, late charges and the procedures to be used for examinations and investigations conducted by the Authority.

#### *Analysis*

This rulemaking proposes to amend the regulations that impede the Authority's ability to be responsive and flexible to its target market.

Proposed amendments to § 81.111(a)(6) (relating to eligible applicants) delete the requirement that the applicant shall commit to full time management of the company. Instead, the applicant will be required to maintain complete control of the enterprise. This will allow the Authority to fund start-up businesses when the applicant will have another job until the new enterprise can financially support a full-time manager.

Proposed amendments to § 81.111(a)(7) delete the requirement that to be eligible, the applicant shall commit to work full-time in the enterprise for which he is seeking a loan, and if he is otherwise employed shall terminate employment prior to or at the time of closing. This will also allow the Authority to fund start-up businesses when the applicant will have another job until the new enterprise can financially support a full-time manager.

Proposed amendments to § 81.112(a)(3) (relating to eligible projects) delete the requirement of an escrow account for project funds provided by other sources.

Proposed amendments to § 81.122 (relating to applications, review and requirements) delete the requirement that applications be submitted through the regional offices, which no longer exist.

Proposed amendments to § 81.124 (relating to additional conditions) delete the requirement of credit life insurance and assignments of life insurance policies as loan collateral. Life insurance can be difficult or very expensive to obtain, or both.

Proposed amendments to § 81.131 (relating to amount and terms of loans) delete detailed requirements as to loan amounts, interest rates and job creation criteria. The proposed amendment allows the Authority to establish these parameters through policies to be published from time to time in the *Pennsylvania Bulletin*.

Proposed amendments to § 81.143 (relating to late charges) delete the requirement of a 6.00% monthly late charge.

Proposed amendments to § 81.144 (relating to loan closing) delete the requirement of the use of an escrow fund for loan closings.

The proposed amendments will allow the Authority to quickly adapt to changing markets by modifying interest rates, loan terms, minimum and maximum loan amounts, job creation requirement and making changes to program delivery options. By embedding these fundamental elements of financing in regulations, the Authority program is frozen in its efforts to flex to changing economic conditions and thus unable to be responsive to its target market (businesses owned by socially and economically disadvantaged persons). Viable nonregulatory alternatives exist to deal with these matters, namely guidelines and descriptive application materials.

#### *Fiscal Impact*

There will be no fiscal impact on the Commonwealth, political subdivisions or the public.

#### *Paperwork*

This proposed rulemaking will allow the Authority to set forth procedures and loan parameters in written guidelines and application materials, which can be modified as market forces dictate. The Authority does not foresee new or different paperwork requirements emerging because of this proposed rulemaking.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 2, 2016, the Authority submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Commerce Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior

to final publication of the rulemaking by the Authority, the General Assembly and the Governor.

*Effective Date*

This proposed rulemaking will be effective 90 days after final-form publication in the *Pennsylvania Bulletin*.

*Sunset Date*

The regulations will be monitored on a regular basis and updated as needed.

*Contact Person*

Interested persons are invited to submit in writing, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*, comments, suggestions or objections to Timothy M. Anstine, Deputy Chief Counsel, Department of Community and Economic Development, 400 North Street, Plaza Level, Harrisburg, PA 17120, (717) 720-7312.

CATHY ONYEAKA,  
*Executive Director*

**Fiscal Note:** 4-99. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT**

**PART III. BUSINESS FINANCING**

**Subpart D. MINORITY LENDING**

**CHAPTER 81. MINORITY BUSINESS DEVELOPMENT AUTHORITY**

**Subchapter B. LOAN PROGRAM ADMINISTRATION**

**ELIGIBILITY**

**§ 81.111. Eligible applicants.**

(a) To be eligible to apply for a loan, a loan guarantee or another form of assistance under the program established by the act, an applicant shall meet the following criteria, by submitting the information in the form that the Authority requires:

\* \* \* \* \*

(6) The applicant shall **[ commit to full time management and control of the enterprise ] maintain complete control over the management of the enterprise.**

**[ (7) The applicant, if he is a natural person, shall commit to work full-time in the enterprise for which he is seeking a loan, and if he is otherwise employed shall terminate employment prior to or at the time of closing.**

(8) **[ (7) The applicant shall pledge and maintain real and personal property as collateral, in the form and amount necessary to reasonably assure payment of the loan in the event of default or bankruptcy.**

**[ (9) (8) The applicant shall demonstrate that he and the enterprise to receive the loan have the ability to meet existing and projected debt service, including the debt service required to repay the loan of the Authority.**

**[ (10) (9) The applicant, if he is a natural person, shall be at least 18 years of age.**

**[ (11) (10) The applicant, if he has received prior loans from the Authority, shall be current with respect to amounts due under the loans.**

**[ (12) (11) The applicant shall show, through experience, training or education, or a combination thereof, that he is capable of performing the responsibilities in connection with the ownership, management or control of the enterprise.**

**[ (13) (12) The applicant and the enterprise may not be involved as a debtor in a bankruptcy proceeding.**

(b) The Board may consider the financial net worth of an individual applicant in making its decision to approve or disapprove an application.

**§ 81.112. Eligible projects.**

(a) To be eligible for a loan, loan guarantee or another form of assistance under the program established by the act, a project **[ shall ] must** meet the following criteria, based upon information that the Authority may require:

\* \* \* \* \*

(3) At least 25% of the eligible project costs shall be contributed in cash from sources other than the Authority **[ , and funds from sources other than commercial lenders or public lending bodies shall be placed in an escrow account along with Authority funds ].**

\* \* \* \* \*

**APPLICATION PROCEDURE**

**§ 81.122. Applications, review and requirements.**

(a) *Submission of application.* An application shall be submitted to the **[ designated regional office of the Authority. Regional office representatives shall determine whether an application is completed and shall forward completed applications to the ]** Authority's central office in Harrisburg. An application shall be deemed to be filed on the day it is received in Harrisburg, as evidenced by a date affixed on the face of the application. **[ If Harrisburg is the designated regional office, an application shall be deemed to be complete, as evidenced by a date affixed on the face of the application. ]**

\* \* \* \* \*

**§ 81.124. Additional conditions.**

In addition to the other requirements in this chapter, the following criteria shall also be met:

(1) The applicant shall remain an eligible applicant as set forth in § 81.111 (relating to eligible applicants) for the entire term of the loan. Failure to do so constitutes a default, which may result in acceleration of payments under the loan, or other penalties that the Authority may impose.

(2) The project shall remain an eligible project as set forth in § 81.112 (relating to eligible projects) for the entire term of the loan. Failure to do so constitutes a default, which may result in acceleration of payments under the loan, or other penalties that the Authority may impose.

(3) The borrower shall accept technical assistance as determined by the Authority.

**[ (4) Applicants, or their principals, shall have credit life insurance in the full amount of the loan or loan guarantee, or shall execute a collateral assignment of a life insurance policy in the full amount of the loan or loan guarantee, naming the Authority as assignee.**

(5) (4) An applicant shall have business insurance in an amount sufficient to safeguard business assets and to provide adequate financial protection to the Authority if the applicant suffers a loss due to certain insurable calamities. The Authority shall be named loss payee on the policies.

(6) (5) The sureties and guarantees of the principal and anyone else shall remain in effect for the entire period of the loan.

(7) (6) The applicant shall submit reports and provide information required by the Authority.

(8) (7) There may be no changes of expenditures of loan funds among categories without the prior written approval of the Authority.

**LIMITATIONS ON LOANS AND GUARANTEES**

**§ 81.131. Amount and terms of loans.**

(a) *Maximum amount of loan.*

(1) The maximum amount of a loan for a project may not exceed \$250,000, except as otherwise provided in paragraphs (2)–(4).

(2) If a project is located within an Enterprise Zone as designated by the Department or is located within a redevelopment area, the maximum amount of a loan may not exceed \$350,000, except as otherwise provided in paragraphs (3) and (4).

(3) If a project involves an industrial enterprise, a manufacturing enterprise, advanced technology, a regional or National franchise, international trade, or business acquisitions, and meets the requirements of § 81.125 (relating to additional conditions for certain loans), the maximum amount of a loan may not exceed \$500,000, except as otherwise provided in paragraph (4).

(4) If a project, which meets the criteria in paragraph (3), is located within an Enterprise Zone as designated by the Department or is located within a redevelopment area, the maximum amount of a loan may not exceed \$750,000.

(b) *Interest rate.* The loan shall be at an interest rate to be determined by the Board, but the interest rate may not be more than one-half of the prevailing prime rate on the date of loan approval and not less than 4%.

(c) *Creation or preservation of jobs.*

(1) For every \$15,000 in loan proceeds of \$100,000 or less, a project shall create or preserve at least one permanent full-time job, or the equivalent in part-time jobs. The jobs shall be created or preserved, without exception, within 3 years of the date that any amount of the proceeds from the loan are first disbursed to the loan recipient.

(2) For every \$15,000 in loan proceeds over \$100,000, a project shall create at least one permanent full-time job or the equivalent in part-time jobs. The jobs shall be created, without exception, within 3 years of the date that any amount of the proceeds from the loan are first disbursed to the loan recipient.

(3) If a project fails to meet its job projections within 3 years from the date of closing due to factors within the control of the enterprise, the Board may reset the interest charged on the loan at a rate not to exceed double the amount of the original interest rate.

(4) For purposes of this section, the phrase “the equivalent in part-time jobs” means at least 35 total hours per week of part-time labor.

(d) *Limitation on loans.* An applicant may not request nor receive more than the maximum loan amount set forth in subsection (a)(1) and (2) within 1 year of the date of the loan closing. ]

The Authority will from time to time establish the terms of its loans, to include matters such as the interest rate, length of loan term, maximum amount of loans and requirements for creation or preservation of jobs, which will be published as a notice in the *Pennsylvania Bulletin*.

**LOAN PAYMENT, REPAYMENT, PENALTIES AND ADMINISTRATION**

**§ 81.143. Late charges.**

The Authority will assess late charges when payments under the loans are delinquent. [ These charges will be assessed on a monthly basis and accrue at a rate of not less than 6.0% of each monthly payment which is in default. ]

**§ 81.144. Loan closing.**

(a) *Loan closing.* ] The Authority will allow a 90-day period from the date of the commitment letter for borrowers to meet the conditions and requirements of the commitment letter for closing. One 90-day extension may be granted by the Executive Director beyond this period [ but shall ] and will be reported to the Board at its next meeting following the action with an explanation of the extension.

(b) *Escrow.* Loan proceeds shall be placed in an escrow account under terms and conditions established by the Authority. The Authority will arrange for loan closings to be held at, and escrow accounts to be held by, financial institutions controlled by minority groups, whenever feasible and consistent with good lending practices. ]

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