

**Title 15. Natural Resources and Economic Development**  
**Chapter VII. Arkansas Development Finance Authority, Department of Commerce**  
**Subchapter B. Development Finance and Bond Finance**  
**Part 71. Disadvantaged Business Enterprise Contractor Loan Insurance Program**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"ARKANSAS DEVELOPMENT FINANCE AUTHORITY RESOLUTION

WHEREAS, Act 623 of 1989 of the Arkansas General Assembly (the "Act") addresses the need for affordable financing for small business enterprises in Arkansas in order to enhance the economic well-being of the citizens of the State of Arkansas; and

WHEREAS, the Legislature further declared an immediate and urgent need to provide the means and methods for providing financing and enhancing and supporting the credit of such financing to target resources of the state toward the development and expansion of, among others, minority-owned small business enterprises; and

WHEREAS, the Act requires the Arkansas Development Finance Authority (the "Authority") to promulgate rules and regulations implementing the Act and setting forth the procedures to be utilized by the Authority in providing financing or enhancing and supporting the credit of such financing; and

WHEREAS, the Act requires that such rules and regulations be promulgated by the Authority pursuant to Act 434 of 1967, the Arkansas Administrative Procedures Act (the "APA"); and

WHEREAS, the Authority finds that, the requirements for promulgation of Regulations under the APA having been fulfilled, the Regulations required by the Act are contained hereinafter and are appropriate for accomplishing the purposes of the Act as relates to the program created under the Act for which the Authority's Board of Directors approved a Resolution on January 20, 1994.

NOW, THEREFORE, BE IT RESOLVED, that the following Regulations implementing Title 15, Chapter 5, Subchapter 7 of the Arkansas Code of 1987 Annotated is hereby adopted and shall be in full force and effect from the date of this Resolution.

REGULATIONS IMPLEMENTING SUBCHAPTER 7 OF CHAPTER 5 OF TITLE 15 OF THE ARKANSAS CODE OF 1987 ANNOTATED- ARKANSAS DEVELOPMENT FINANCE AUTHORITY SMALL BUSINESS ACT OF 1989

Approved this        day of        , 2008.

Art Morris, Chair

Mac Dodson, President"

### **Subpart 1. Generally**

#### **15 CAR § 71-101. Purpose.**

The purpose of this part is to provide procedures, standards, and criteria for making loan guarantees or other forms of credit guarantees for the Disadvantaged Business Enterprise Contractor Loan Insurance Program under the Arkansas Development Finance Authority Small Business Revolving Loan Fund (the "fund").

**Authority.** Arkansas Code § 15-5-207.

#### **15 CAR § 71-102. Operation of fund.**

(a) Authority for the day-to-day operation of the Small Business Revolving Loan Fund, excluding the approval of loan guarantees or other forms of credit guarantees, is delegated by the Board of Directors of the Arkansas Development Finance Authority ("authority board") to the Vice President of Development Finance or his or her designee.

(b) With the exception of appeals, the Small Business Loan Committee of the Board of Directors of the Arkansas Development Finance Authority (the "committee") is authorized to:

- (1) Approve loan guarantees or other forms of credit guarantees; and
- (2) Execute any document necessary or convenient to make effective such guarantees.

(c) The board shall have the authority to review appeals from the committee's decision as provided in 15 CAR § 71-108.

**Authority.** Arkansas Code § 15-5-207.

**15 CAR § 71-103. Definitions.**

As used in this part:

- (1) "Applicant" means a financial institution;
- (2) "Application" means a request for a loan or other credit guarantee submitted to the Arkansas Development Finance Authority by a financial institution;
- (3) "Authority" means the Arkansas Development Finance Authority established by Acts 1985, No. 1062;
- (4) "Board" means the Board of Directors of the Arkansas Development Finance Authority;
- (5) "Borrower" means an:
  - (A) Eligible disadvantaged business enterprise that is seeking the loan for its own purpose in fulfilling a contract; or

(B) Individual or individuals who are building a single-family residence for their own habitation who in turn are obtaining the services of an eligible disadvantaged business enterprise entity to build their single-family residence;

(6) "Committee" means the Small Business Loan Committee of the Board of Directors of the Arkansas Development Finance Authority appointed by the board to approve guarantees under this program with requirement that all such actions taken by the committee shall be reported at the next meeting of the board;

(7) "Eligible disadvantaged business enterprise" means businesses qualified either by the Arkansas Department of Transportation as a disadvantaged business enterprise and/or by the United States Small Business Administration as an 8(a) contractor, or such other categories as the Board of Directors of the Arkansas Development Finance Authority may designate;

(8)(A)(i) "Eligible purposes" means working capital necessary to secure a performance bond from a surety to complete contract work.

(ii) Performance bonds shall be specific to particular contracts.

(B) In the case of homebuilders, "eligible purpose" means construction of a low-to-moderate-income, single-family, owner-occupied home.

(C) "Eligible purposes" does not include an insured loan made primarily to pay off or refinance an existing debt to a creditor:

(i) Whose loan is inadequately secured; or

(ii) Who is in danger of sustaining a loss;

(9) "Escrow agent" means a company:

(A) Qualified as a funds management service; and

(B) Approved by surety companies to administer payments on a contract in a manner to ensure cost accountability;

(10) "Financial institution" means a financial institution defined in Arkansas Code § 23-30-101 et seq. [repealed], or institutions created under Acts 1957, No. 567, of the General Assembly, which provided for development finance corporations, and all subsequent amendments;

(11) "Fund" means five hundred thousand dollars (\$500,000) of unrestricted reserves of the Arkansas Development Finance Authority that was allocated by the Board of Directors of the Arkansas Development Finance Authority to establish a fund to provide guarantees for loans made to disadvantaged business enterprises by resolution adopted January 20, 1994, or such other funds as may be made available for the purposes of the program;

(12) "Loan authorization" means a letter from the President of the Arkansas Development Finance Authority or Vice President of Development Finance or their designees to a financial institution agreeing to insure a loan to a borrower on the terms and conditions and subject to the requirements stated therein;

(13) "Loan insurance agreement" means the agreement between the financial institution and the Arkansas Development Finance Authority required by 15 CAR § 71-111;

(14) "Low-to-moderate income" means eighty percent (80%) to one hundred forty percent (140%) of the adjusted median household income as determined by the United States Department of Housing and Urban Development;

(15) "Preapproved borrower" means a borrower with a firm take-out commitment for a specific amount and specific term issued by a bona fide financial institution;

(16) "State" means the State of Arkansas;

(17) "Surety" means a surety agent of a licensed surety company listed by the United States Small Business Administration as qualified to participate in the United States Small Business Administration Surety Bond Guarantee Program, other sureties, and/or insurance agencies as may be approved by the Arkansas Development Finance Authority; and

(18) "Working capital loan" means any loan the proceeds of which are to be used for operating, maintenance, and other costs and expenses.

**Authority.** Arkansas Code § 15-5-207.

**15 CAR § 71-104. Eligibility.**

- (a) Eligible purposes are defined in 15 CAR § 403-103(8).
- (b) Eligible borrowers are defined in 15 CAR § 403-103(5).
- (c) Eligible financial institutions are defined in 15 CAR § 403-103(10).

**Authority.** Arkansas Code § 15-5-207.

**15 CAR § 71-105. Application contents.**

(a) **Required contents.** Unless waived by the Arkansas Development Finance Authority, the financial institution shall submit to the authority an application containing the following:

- (1) A completed General Information Sheet form provided by the authority;
- (2) A written narrative by the lender analyzing the borrower's application (i.e., credit analysis), including:
  - (A) An identification of the proposed amount of the loan;
  - (B) The requested percentage of insurance;
  - (C) The purpose, terms, and conditions of the loan;
  - (D) A description of the collateral and basis for its valuation;
  - (E) A summary of the borrower's and business's credit standing; and
  - (F) A description of other sources of financing, if more than one (1) source, for the proposed contract constituting an eligible purpose under this part;
- (3) Complete resumes of the borrower, all partners, owners, officers, and guarantors, as applicable;
- (4)(A) Historical business financial statements for the prior three (3) years, including income statements and balance sheets (income tax returns may also be required, as applicable, if an existing business).
  - (B) Income tax returns may be sufficient if accountant prepared statements are unavailable.
  - (C) Interim financial statements must also be included if the most recent statements are beyond ninety (90) days;

(5)(A) Signed current personal financial statement or statements of borrower or borrowers with a minimum twenty percent (20%) ownership in the business.

(B) Federal tax returns may be required.

(C) This information may also be required of guarantors;

(6) Contract budget with supporting assumptions and a cash flow statement for the term of the contract;

(7) Evidence from surety that appropriate surety bond or builder's risk policy will be issued upon funding of loan; and

(8) Other information as the authority may require, e.g., jobs created or retained by proposed project.

(b) **Supplemental information.** The authority may require at its discretion:

(1) Where applicable, appraisals of collateral or the lender's basis for determining collateral value;

(2) A business or marketing plan, including an analysis of competition;

(3) Copies of leases or purchase agreements, as applicable;

(4) Repayment history (if financing an existing borrower);

(5) Any other information or certification from the borrower or lender deemed by the authority to be necessary or desirable in connection with an insured loan application; and

(6) Any other information or certifications from the borrower or lender deemed by the authority to be necessary or desirable in connection with an insured loan application.

**Authority.** Arkansas Code § 15-5-207.

**15 CAR § 71-106. Application procedure.**

(a) The Arkansas Development Finance Authority in its sole and absolute discretion shall determine when an application is complete.

(b) It shall be the responsibility of the lender to submit a complete application.

(c) The Small Business Loan Committee of the Board of Directors of the Arkansas Development Finance Authority shall consider the application as expeditiously as possible after a complete application is received with the goal of processing applications within five (5) business days.

(d) The committee will review an application based on the following criteria and considerations:

(1) An application will not be approved unless the committee determines that there is a reasonable prospect that the borrower will repay a loan according to its terms;

(2) An application will only be approved to the extent, in terms of amount, percentage, and period of insurance, that it is prudent for the authority to provide such amount, percentage, and period of insurance and that such amount, percentage, and period of insurance is necessary to complete the financing;

(3) No application will be approved unless the committee determines that the insured loan will be serviced by a financial institution as required by the loan agreement;

(4) No application will be approved unless the authority determines that the:

- (A) Borrower is eligible; and
- (B) Insured loan proceeds will be used in connection with an eligible purpose;

(5) No application will be approved unless the committee determines that:

- (A) The application is complete; and
- (B) Information sufficient to make an informed decision on the application has been received; and

(6) In reviewing applications, the committee will consider the following, as applicable:

- (A) The extent to which the borrower demonstrates need for an insured loan;

- (B) The economic feasibility of the business endeavor as evidenced by the:

- (i) Borrower's present and past financial situation and business experience; and
- (ii) General reasonableness of the business proposal (contract) and financial projections for the future;
- (C) Whether the borrower and any guarantors have satisfactory credit histories;
- (D) Whether the borrower has sufficient capital and other resources to complete the contract as planned, and the amount and source of equity contributed;
- (E) The adequacy of the security offered for the loan; and
- (F) The extent to which the business contributes to local economic development and employment.

**Authority.** Arkansas Code § 15-5-207.

**15 CAR § 71-107. Application approval or rejection.**

(a) Upon approval of an application by the Small Business Loan Committee of the Board of Directors of the Arkansas Development Finance Authority, the President of the Arkansas Development Finance Authority, Vice President of Development Finance, or their designees or members of the Board of Directors of the Arkansas Development Finance Authority, a loan authorization agreement will be issued setting forth the terms and conditions upon which the loan will be insured.

(b)(1) No loan authorization shall become effective until the lender has paid the initial insurance premium required in 15 CAR § 71-112.

(2) Such payment, along with an executed loan authorization, shall indicate the lender's acceptance of the loan authorization.

(c) No loan authorization shall be effective unless a loan insurance agreement as provided in 15 CAR § 71-111:

(1) Has been executed by the lender and the Arkansas Development Finance Authority; and

(2) Remains in effect.

(d)(1) In the event the president or vice president or their designees reject an application, they will promptly send the lender and prospective borrower a notice, including reasons for the rejection.

(2) The notice shall include a statement of the borrower's right to appeal the president's or vice president's or their designees' decision to the board.

**Authority.** Arkansas Code § 15-5-207.

**15 CAR § 71-108. Appeal to the Board of Directors of the Arkansas Development Finance Authority.**

(a)(1) In the event that an application is rejected by the President of the Arkansas Development Finance Authority or Vice President of Development Finance or their designees, the borrower shall have the right to appeal the decision to the Arkansas Development Finance Authority.

(2) Notice of the appeal, together with a statement of the reasons why the president's or vice president's or their designees' decision should be reversed or modified, shall be given to the Small Business Loan Committee of the Board of Directors of the Arkansas Development Finance Authority in writing within twenty (20) calendar days after the date the president or vice president or their designees mailed notice of rejection to the financial institution.

(3) The committee shall inform the lender of any such appeals.

(b)(1) The appeal shall be heard at the next meeting of the Board of Directors of the Arkansas Development Finance Authority at which there is room on the agenda, and the borrower must be present to support the appeal.

(2) The board ordinarily meets the third Thursday of each month.

(c) The appeal shall be based on the record before the president or vice president or their designees on the date of the rejection.

(d) The decision of the president or vice president or their designees to reject an application shall be final unless the authority determines that the rejection was arbitrary, capricious, or an abuse of discretion, in which event the board may:

(1) Overturn or modify the decision of the president or vice president or their designees; and

(2) Direct the president or vice president or their designees to take further action with respect to the application.

**Authority.** Arkansas Code § 15-5-207.

**15 CAR § 71-109. Loan and insurance terms and conditions.**

(a) **Interest rate and term.** The rate of interest on the insured loan and the term of the loan shall be agreed between the lender and borrower, subject to the approval of the Arkansas Development Finance Authority, provided that loans are at market rate for a term of no longer than one hundred eighty (180) days.

(b) **Collateral.**

(1) Repayment of an insured loan shall be secured by such collateral as the authority deems prudent.

(2) Insured loans may, at the discretion of the authority, be secured by collateral valued for collateral purposes at less than the amount of the insured loan, provided the borrower, its principals, and any guarantors are of good character and have good credit histories.

(3)(A) Real estate or unmovable machinery or equipment constituting a significant portion of collateral for repayment of an insured loan shall be located within the state.

(B) Mobile machinery or equipment constituting a significant portion of collateral for repayment of an insured loan shall be:

(i) Registered with and taxed by the state or municipal authorities, if the state or municipal authorities register or tax machinery or equipment of a type similar to the collateral; and

(ii) Stored in the state when not in use.

(c) **Covenants.**

(1) The covenants and requirements of the loan shall be established by the lender in accordance with prudent lending practices.

(2) The authority may require such additional covenants and requirements as may be:

(A) Necessary;

(B) Prudent; or

(C) Desirable.

(3) At a minimum, the documents should ordinarily require the borrower to:

(A) Make periodic interest payments with a balloon principal payment at receipt of final contract payment or due date of the loan;

(B) Assign progress payments to an escrow agent that will be responsible for payment of appropriate charges against the contract;

(C) Maintain adequate insurance on collateral and maintain books and records on the business;

(D) Pay any taxes or governmental charges assessed against the collateral and comply with all applicable laws and regulations;

(E) Keep the collateral free of liens and encumbrances except for as may be expressly accepted by the lender and the authority;

(F) Provide for periodic financial reports; and

(G) Repay advances necessary to protect the collateral and all expenses of protecting or enforcing the rights of the lender and the authority.

**Authority.** Arkansas Code § 15-5-207.

**15 CAR § 71-110. Loan insurance.**

(a) The Arkansas Development Finance Authority may insure up to ninety percent (90%) of a loan, with a not to exceed maximum loan insurance amount of fifty thousand dollars (\$50,000).

(b)(1) Should a business that is the subject of an insured loan default or otherwise be unable to make loan payments, the authority would pay the lender up to ninety percent (90%) of the deficiency.

(2) The balance of any loss is absorbed by the lender.

(c) Loan payments and the proceeds of any collateral are applied pro rata to the insured and uninsured portion of the loan.

(d) The authority's obligation would be limited to a payment of the insured percentage of a loan times the amount of principal, accrued interest, and the lender's reasonable costs of collection, exclusive of costs attributed to environmental problems, remaining unpaid after liquidation of collateral up to the lesser of:

(1) Fifty thousand dollars (\$50,000); or

(2) An amount equal to the insured percentage of the original loan amount authorized in the loan authorization agreement.

(e) On a case-by-case basis the Board of Directors of the Arkansas Development Finance Authority may approve bank loan guarantees in excess of the aforementioned limits.

**Authority.** Arkansas Code § 15-5-207.

### **15 CAR § 71-111. Loan insurance agreement.**

(a) No loan authorization shall be effective unless the lender and the Arkansas Development Finance Authority have executed a loan insurance agreement in a form acceptable to the authority setting forth the relative rights and responsibilities of the lender and the authority for all insured loans.

(b) The loan insurance agreement shall include without limitation the following:

(1) General conditions and provisions incorporating the requirements of this section and the Arkansas Development Finance Authority Small Business Act of 1989, Arkansas Code § 15-5-701 et seq.;

(2) Provisions setting forth the responsibilities of the lender to prudently underwrite and service insured loans in such a manner as would be the normal and

customary practice of a prudent lender making or servicing a loan without relying on loan insurance;

(3)(A) A requirement that the lender notify the authority in writing within five (5) business days after knowledge of a default.

(B) Upon default, the lender and/or authority shall take such action as may be prudent, including without limitation repossessing and liquidating or foreclosing on collateral; and

(4) A description of the authority's insurance programs and the method for paying insurance claims.

**Authority.** Arkansas Code § 15-5-207.

**15 CAR § 71-112. Insurance premiums.**

(a) The Arkansas Development Finance Authority shall charge a one-time, up-front insurance premium.

(b) Premiums are due at the time a lender originates a loan and executes a loan authorization with the authority.

(c) The authority's insurance is not effective until premiums are paid.

(d) It is expected that the lender will pass along the cost of premiums to borrowers.

(e) Premiums shall be determined at the time the Small Business Loan Committee of the Board of Directors of the Arkansas Development Finance Authority approves the application, but in no event is the premium to exceed two percent (2%) per annum on an annualized basis.

**Authority.** Arkansas Code § 15-5-207.

**15 CAR § 71-113. Administrative costs of the program.**

The Arkansas Development Finance Authority may charge the Arkansas Development Finance Authority Small Business Revolving Loan Fund actual and necessary administrative expenses in operating the insurance program.

**Authority.** Arkansas Code § 15-5-207.

**15 CAR § 71-114. Confidential records.**

(a) The President of the Arkansas Development Finance Authority or his or her designee shall provide nonexempt program records for inspection in accordance with the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq.

(b) The person requesting inspection of the records may be charged a reasonable fee for copying and mailing the records.

(c) Except as otherwise provided in the Freedom of Information Act of 1967, records exempt from disclosure include files that, if disclosed, would give advantage to competitors or bidders, but are not limited to:

(1) Reports and analyses of reports obtained in confidence from creditors, employers, customers, suppliers, and others that bear on the applicant's character, finances, management ability, and reliability and that were obtained from persons or firms not required by law to submit them;

(2) Financial statements, tax returns, business records, employment history, and other personal data submitted by or for applicants, or analysis of such data;

(3) Consumer lists;

(4) Production, sales, or cost data; and

(5) Marketing strategy information that relates to a borrower's:

(A) Plan to address specific markets; and

(B) Strategy regarding specific competitors.

**Authority.** Arkansas Code § 15-5-207.

**15 CAR § 71-115. Amendment of rules.**

This part may be amended from time to time by resolution of the Board of Directors of the Arkansas Development Finance Authority in accordance with the requirements of the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

**Authority.** Arkansas Code § 15-5-207.