

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 10. COMMUNITY DEVELOPMENT

PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM OFFICE

CHAPTER 201. TEXAS MICRO-BUSINESS DISASTER RECOVERY LOAN PROGRAM

10 TAC §§201.1 - 201.8

The Office of the Governor, Texas Economic Development and Tourism Office ("Office") adopts, on an emergency basis, new 10 TAC §§201.1 - 201.8, relating to the Texas Micro-Business Disaster Recovery Loan program.

EXPLANATION AND JUSTIFICATION OF THE RULES

These rules relate to the establishment and administration of the new Texas Micro-Business Disaster Recovery Loan Program ("Program") established by subchapter CC, chapter 481, Texas Government Code. The Program expands access to capital for qualifying micro-businesses following a declared disaster to create jobs in this state. Under the Program, the Office will make zero-interest loans to community development financial institutions ("CDFIs") to support interest-bearing disaster recovery loans from the CDFIs to qualifying micro-businesses following a declared disaster.

These rules are adopted on an emergency basis due to the imminent peril to public welfare represented by disasters. Disasters are unpredictable by their nature, occurring suddenly and without warning and putting the health, happiness, and fortunes of Texans at peril. Four state disaster declarations are currently active. Fiscal year 2024 saw hurricanes, tropical storms, winter weather, and wildfires. Adopting these rules on an emergency basis ensures timely implementation of the Program to protect the public welfare for the currently active disaster declarations and in the event a new disaster is declared in the near future.

The Office has determined it is necessary to adopt emergency rules that provide for how a CDFI can participate in the Program and obtain a zero-interest loan to support a disaster recovery loan to a qualifying micro-business. The emergency rules will be effective for 120 days from the date of filing with the Office of the Secretary of State and may be extended once by the Office for not longer than 60 days as necessary to protect public welfare.

SECTION BY SECTION SUMMARY

Emergency rule §201.1 states the authority and purpose of the new chapter. It references the statutory authorization and sets forth the purpose for the Program as described in statute.

Emergency rule §201.2 provides definitions used throughout the new chapter for words and terms with specific meanings.

Emergency rule §201.3 establishes the process for a CDFI to enter into a participation agreement with the Office. Entering into a participation agreement is required before a CDFI can apply for a zero-interest loan from the Office.

Emergency rule §201.4 describes how a participating CDFI can submit a loan application to the Office. Once a CDFI has entered into a participation agreement, it may submit an application to the Office for a zero-interest loan to support one or more disaster recovery loans to one or more qualifying micro-businesses.

Emergency rule §201.5 states the requirements for a disaster recovery loan from the CDFI to a qualifying micro-business.

Emergency rule §201.6 lists general terms for a loan agreement from the Office to the CDFI. If the Office approves a loan application from a CDFI, the Office and the CDFI will enter into a loan agreement that contains certain minimum requirements. The loan agreement will specify, among other things, that the loan is a zero-interest loan upon which quarterly payments must be made over seven years.

Emergency rule §201.7 details monitoring and reporting requirements for a CDFI under a loan agreement. Certain information must be reported on a quarterly basis, and audited financial statements must be submitted annually. The Office must also be permitted to inspect financial records related to the Program.

Emergency rule §201.8 provides the ability for the Chief of Staff or designee to waive any rules not required under statute upon a showing of good cause or when facts or circumstances make a waiver appropriate.

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES.

Ms. Cruz has determined that the emergency rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities; rather, micro-businesses will be benefited. Thus, the Office is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

TAKINGS IMPACT ASSESSMENT

Ms. Cruz has determined that there are no private real property interests affected by the emergency rules. Thus, the Office is not required to prepare a takings impact assessment pursuant to Section 2007.043, Texas Government Code.

STATUTORY AUTHORITY.

The emergency rules are adopted under Section 481.456, Texas Government Code, which authorize the Office to adopt rules relating to the implementation of the Program and any other rules necessary to accomplish the purposes of the relevant subchapter, including rules that provide criteria under which CDFIs may qualify for the Program. The emergency rules are also adopted under Section 2001.034, Texas Government Code, which autho-

rizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety, or welfare.

CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by the proposed rules.

§201.1. Authority and Purpose.

(a) Authority. Pursuant to the authority granted by the Texas Government Code, Chapter 481, Subchapter CC, concerning a Micro-Business Disaster Recovery Loan Program, and Texas Government Code, Chapter 2001, Subchapter B, concerning Rulemaking, the Texas Economic Development and Tourism Office in the Office of the Governor prescribes the following rules to provide definitions, procedures, and eligibility standards and criteria for the Texas Micro-Business Disaster Recovery Loan Program.

(b) Purpose. The purpose of this Program is to expand access to capital for qualifying micro-businesses following a declared disaster.

§201.2. Definitions.

The following words and terms, when used in this Subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--A CDFI that submits an application to the Program.

(2) CDFI--A Community Development Financial Institution, as that term is defined in 12 U.S.C. § 4702, that has received its CDFI Certification from the United States Department of the Treasury.

(3) Declared Disaster--A declaration of a state of disaster under Texas Government Code §§ 418.014 or 418.108, or a disaster declared by the president of the United States, if any part of the State is named in the federally designated disaster area.

(4) Default rate--The percentage of Disaster Recovery Loans made by a Participant that did not meet the payment terms during a period specified by the Office.

(5) Disaster Recovery Loan--An interest-bearing loan made by a Participant to a Micro-Business that is supported by a Zero-Interest Loan from the Office to the Participant under the Program.

(6) Fiscal Year--The period beginning September 1 and ending August 31.

(7) Fund--The micro-business recovery fund established under Texas Government Code § 481.452.

(8) Loan Agreement--An agreement under the Program made between a Participant and the Office for a Zero-Interest Loan.

(9) Micro-Business--A corporation, partnership, sole proprietorship, or other legal entity that:

(A) is domiciled in this state and has at least 95 percent of its employees located in this state;

(B) is formed to make a profit; and

(C) employs not more than 20 employees.

(10) Office--The Texas Economic Development and Tourism Office in the Office of the Governor, which is authorized to exercise any power necessary to carry out Texas Government Code, Chapter 481, and has established the Texas Economic Development Bank under Texas Government Code, Chapter 489 for the purpose of:

(A) providing globally competitive, cost-effective state incentives to expanding businesses operating in this state and businesses relocating to this state; and

(B) ensuring that communities and businesses in this state have access to capital for economic development purposes.

(11) Participant--A CDFI that is authorized to conduct business in the State, has submitted an application to the Program, been approved by the Office to participate in the Program, and entered into a Participation Agreement with the Office.

(12) Participation Agreement--An agreement under the Program made between a Participant and the Office that must be entered before a Participant may apply to obtain a Zero-Interest Loan.

(13) Program--The Texas Micro-Business Disaster Recovery Loan program.

(14) State--The State of Texas.

(15) Zero-Interest Loan--A zero-interest loan made by the Office to a Participant to support one or more Disaster Recovery Loans.

§201.3. Participation Agreement.

(a) A CDFI seeking to participate in the Program must enter a Participation Agreement with the Office.

(b) The Office shall make the Participation Agreement available through the Program website.

(c) Before entering the Participation Agreement, the Applicant must provide the Office:

(1) the Applicant's official name and primary business address, including the county;

(2) the Applicant's federal tax identification and Comptroller of Public Accounts numbers;

(3) documents from the Texas Secretary of State demonstrating the Applicant's authority to do business in Texas;

(4) a letter from the Texas Comptroller of Public Accounts confirming the Applicant is in good standing;

(5) an incumbency certificate from the Applicant; and

(6) the Applicant's audited financial statements from the past three years.

(d) Upon request, an Applicant must provide to the Office any additional information the Office determines is necessary.

(e) The Applicant must identify all information it submits to the Office that the Applicant considers to be confidential or proprietary.

(f) The Office may decline to enter into a Participation Agreement if an Applicant fails to provide the additional information requested under this Section.

(g) The Office shall determine the Applicant's eligibility to participate in the Program based on the information submitted under subsection (c) of this section and any other information the Office determines is necessary and requests pursuant to subsection (d) of this section. The Office has no obligation to enter into a Participation Agreement with an Applicant.

§201.4. Loan Application.

(a) After entering a Participation Agreement, a Participant seeking to obtain a Zero-Interest Loan from the Office to support one or more Disaster Recovery Loans must submit a completed Loan Application to the Office through the Program website.

(b) All confidential and proprietary information must be identified by the Participant.

(c) The Loan Application must provide, at a minimum:

(1) the following information for each Micro-Business that will receive a Disaster Recovery Loan pursuant to the Loan Application:

(A) the official business name and primary business address, including the county;

(B) the federal tax identification and Comptroller of Public Accounts numbers;

(C) certification of Micro-Business eligibility and Disaster Recovery Loan eligibility under the Program;

(D) documents from the Texas Secretary of State demonstrating the Micro-Business's authority to do business in Texas; and

(E) a letter from the Comptroller of Public Accounts confirming the Micro-Business is in good standing;

(2) the total loan amount requested by the Participant from the Office;

(3) a certification of the Loan Application from an authorized Participant representative; and

(4) a resolution by the Participant's governing body authorizing the Loan Application.

(d) The Office, in its sole discretion, may deny a Loan Application in full or in part for any reason.

§201.5. Disaster Recovery Loan Requirements.

(a) A Disaster Recovery Loan may only be made to a Micro-Business that:

(1) is in good standing under the laws of this state; and

(2) did not owe delinquent taxes to a taxing unit of this state before the date of the initial issuance of the Declared Disaster.

(b) A Disaster Recovery Loan may not be made to a Micro-Business that:

(1) has total revenue that exceeds the amount for which no franchise tax is due under Tax Code § 171.002(d)(2);

(2) is a franchise;

(3) is a national chain with operations in this state;

(4) is a lobbying firm; or

(5) is a private equity firm or backed by a private equity firm.

§201.6. Loan Agreement.

(a) Before the Office may provide a Zero-Interest Loan to a Participant, the Office and the Participant must enter a Loan Agreement that will set forth the terms and conditions of the Zero-Interest Loan. The Loan Agreement shall ensure the proper use of funds and will include, but is not limited to, provisions with respect to the following:

(1) Interest Rate--The Office shall provide a loan at a zero-percent interest rate to an applicant;

(2) Amortization--Each loan shall be repaid on a quarterly basis;

(3) Maturity--Each loan shall mature seven years after loan origination;

(4) Security--The Office shall not take security interest; and

(5) Income--All income received on a Disaster Recovery Loan made by a Participant, including the payment of interest by a Micro-Business and the administrative fees assessed by the Participant, remains the property of the Participant.

(b) The Office shall specify any other terms and conditions that are reasonable, appropriate, and consistent with the purposes and objectives of the Program.

§201.7. Monitoring and Reporting Requirements.

(a) A Participant must meet reporting and compliance requirements set out in the Loan Agreement, including, but not limited to providing:

(1) annual audited financial statements, including income statement, balance sheet, cash flow, and aging accounts receivables, on or before the one hundred and twentieth day after the end of each Fiscal Year during the term of the Loan Agreement;

(2) quarterly unaudited financial statements, including income statement, balance sheet, cash flow, and aging accounts receivables, on or before the thirtieth day after the end of each quarter during the term of the Loan Agreement;

(3) quarterly report of the Participant's portfolio of Disaster Recovery Loans under the Program on or before the thirtieth day after the end of each quarter during the term of the Loan Agreement, which includes:

(A) the name of the Micro-Businesses that have received a Disaster Recovery Loan;

(B) the current balance of all outstanding Disaster Recovery Loans; and

(C) the default rate of on existing Disaster Recovery Loans.

(b) A Participant shall allow the Office to inspect the Participant's financial records on request for purposes that relate to one or more Disaster Recovery Loans under the Program.

§201.8. Waiver.

The Chief of Staff or designee may suspend or waive any provision not statutorily imposed, in whole or in part, upon the showing of good cause or when, at the discretion of the Chief of Staff or designee, the particular facts or circumstances render such waiver of the Section appropriate in each instance.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

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