

**CHAPTER 115. FINANCIALLY DISTRESSED
MUNICIPALITIES PROGRAM**

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Authority

The provisions of this Chapter 115 issued under section 121 of the Municipalities Financial Recovery Act (53 P. S. § 11701.121), unless otherwise noted.

Source

The provisions of this Chapter 115 adopted July 7, 1989, effective July 8, 1989, 19 Pa.B. 2948; renumbered from 16 Pa. Code Chapter 36, May 16, 1997, effective May 17, 1997, 27 Pa.B. 2415. Immediately preceding text appears at serial pages (138237) to (138242) and (158559) to (158560).

§ 115.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the content clearly indicates otherwise:

Act—The Financially Distressed Municipalities Act (53 P. S. §§ 11701.101—11701.501).

Secretary—The Secretary of the Department.

§ 115.2. Annual survey of financial condition.

By March 15 of each year, each municipality within this Commonwealth shall file with the Department a completed survey of its financial condition covering the preceding year. A municipality which has failed to file its annual survey of financial condition is prohibited from receiving payments to which the municipality may otherwise be entitled to receive under The Liquid Fuels Tax Act (72 P. S. §§ 2611a—2611z).

§ 115.3. Determination of municipal financial distress.

(a) The criteria used in the determination of municipal financial distress will be the criteria in section 201 of the act (53 P. S. § 11701.201). The criteria are:

(1) The municipality has maintained a deficit over a 3-year period, with a deficit of at least 1% in each of the previous fiscal years.

(2) The municipality's expenditures have exceeded revenues for a period of at least 3 years.

- (3) The municipality has defaulted in payment of principal or interest on a bond or note, or in payment of rentals due an authority.
 - (4) The municipality has missed a payroll for 30 days.
 - (5) The municipality has failed to make required payments to judgment creditors for 30 days beyond the date of the recording of the judgment.
 - (6) The municipality, for a period of at least 30 days beyond the due date, has failed to forward taxes withheld on the income of employees, or has failed to transfer employer or employee contributions for Social Security.
 - (7) The municipality has accumulated and has operated for each of 2 successive years a deficit equal to at least 5% of its revenues.
 - (8) The municipality has failed to make the budgeted payment of its minimum municipal obligation as required by section 302 of the Municipal Pension Plan Funding Standard and Recovery Act (53 P. S. § 895.302), with respect to a pension fund during the fiscal year for which the payment was budgeted, and has failed to take action within that time period to make required payments.
 - (9) A municipality has sought to negotiate resolution or adjustment of a claim in excess of 30% against a fund or budget, and has failed to reach an agreement with creditors.
 - (10) A municipality has filed a Municipal Debt Readjustment Plan, under 11 U.S.C.A. §§ 901—946 (relating to adjustment of debts of a municipality).
 - (11) The municipality has experienced a decrease in a quantified level of municipal service from the preceding fiscal year, which has resulted from the municipality reaching its legal limit in levying real estate taxes for general purposes. For determining levels of municipal service for the year 1987, the Department will utilize annual statistical data since the year 1982 to determine a pattern of decrease in delivery of municipal services since 1982.
- (b) The Department may review and assess relevant information on the municipality's financial condition to determine whether the existence of section 201 factors validly indicate the fiscal distress of the municipality.
- (c) The procedures for securing municipal distress determination are as follows:
- (1) A municipal financial distress determination may be initiated by one or more of the following:
 - (i) The Department, under section 202(1) of the act.
 - (ii) A creditor with matured claim to whom the municipality owes at least \$10,000 if the creditor agrees to forbear legal action under section 202(3) of the act.
 - (iii) Ten percent of the number of electors of the municipality who voted at the last municipal election, under section 202(4) of the act (53 P. S. § 11701.202(4)).
 - (iv) A trustee of a municipal pension fund, an actuary for a pension fund or at least 10% of the beneficiaries of a pension fund, under section 202(5) of the act.

- (v) Ten percent of the employees of the municipality who have not been paid in over 30 days from the time of a missed payroll, under section 202(6) of the act.
 - (vi) The trustees or paying agents of a municipal bond indenture.
 - (vii) The elected auditors, appointed independent auditors or elected controllers of a municipality, under section 202(8) of the act.
 - (viii) The governing body of the municipality, upon passing a resolution by a majority vote of the governing body after special public meeting advertised as provided by law.
- (2) A party with standing may petition the Secretary for a determination that the municipality involved is a financially distressed municipality. The petition shall be signed by a party with standing, and it shall be sealed and notarized. The petition shall:
- (i) Allege the petitioner has standing.
 - (ii) State why the petitioner believes the municipality is distressed under section 201 of the act. If the petitioner is a municipality, the petition may state why manifestation of section 201 criteria is imminent and inevitable, instead of why the petitioner believes the municipality is distressed under section 201 of the act.
 - (iii) Include a listing of judgments recorded against the municipality.
 - (iv) Include material allegations justifying the relief afforded by the act.
- (d) The Department will use a standardized form reflecting criteria in section 201 of the act to allow filing for a determination of distress by those parties with standing to seek the determination.
- (e) The Department may conduct a consultative investigation and hold public hearings to determine whether a municipality meets the criteria for a determination of distress under the act.
- (f) A municipality will not be deemed to be distressed for circumstances from the Commonwealth's failure to make a payment of money due the municipality, including Federal money which passes through the Commonwealth, due the municipality when the payment is due.
- (g) If a determination of distress is made, the Department will appoint a coordinator within 30 days of the determination.
- (h) A distress determination will remain in effect until rescinded by the Secretary.
- (i) If a municipal debt adjustment under 11 U.S.C.A. §§ 901—946 has occurred, the municipality will be deemed to be distressed under the act and a coordinator will be appointed.
- (j) It is the policy of the Department to encourage the development of recovery plans and to provide emergency grants and loans to restore basic municipal services to minimal levels consistent with public health and safety.
- (k) This determination is subject to appeal by the municipality under 2 Pa.C.S. §§ 101—754 (relating to administrative law and procedure).

Source

The provisions of this § 115.3 adopted July 7, 1989, effective July 8, 1989, 19 Pa.B. 2948; corrected July 21, 1989, effective July 8, 1989, 19 Pa.B. 3104.

§ 115.4. Municipal distress coordinator.

(a) The coordinator is responsible for developing and filing a plan for the financial recovery of the municipality.

(b) The coordinator shall be an individual or firm experienced in municipal finance and administration.

(c) The coordinator may be an employe of the Department, a consultant or a firm. The coordinator may not be an elected official or an employe of the municipality.

(1) A coordinator will be selected by the Secretary.

(2) The Secretary may consider the municipality's preference in the selection of the coordinator.

(3) The Department will maintain a list of eligible, qualified coordinators.

(4) The salary and expenses of the coordinator will be paid by the Department.

(d) The coordinator may not seek elective office within the municipality for 2 years after final adoption of the distressed municipality's financial recovery plan.

§ 115.5. Municipal recovery plans.

(a) The coordinator's plan will be subject to a public hearing. The coordinator may revise the plan as necessary to address comments or meet objections.

(b) The municipality may adopt or reject the coordinator's plan.

(c) If the coordinator's plan is rejected by the municipality, the municipality shall develop its own plan which will be subject to approval by the Secretary.

(d) If the Secretary rejects the municipal plan, Commonwealth funds will be withheld from the municipality under sections 251 and 264(d) of the act (53 P. S. §§ 11701.251 and 11701.264(d)).

(e) If the municipality's plan is adopted, a person designated by the governing body or by the chief executive officer in a home rule municipality, will assume the duties of plan coordinator.

§ 115.6. Emergency loans.

(a) After a determination of distress, but prior to the adoption of a recovery plan, the distressed municipality or the coordinator may apply for an interest-free short-term loan to assist with immediate cash shortfalls. Prior to issuing an emergency loan, the Department may conduct a consultative investigation to determine whether emergency funds are warranted and the amount of emergency funds needed. Short-term loans will be available if the applicant verifies that one of the following conditions exists:

- (1) The municipality is in imminent danger of insolvency.
 - (2) There is a clear and present danger to the health and safety of the residents.
- (b) An emergency loan shall come due within 9 months from the date of the loan. Based upon a detailed analysis of the municipality's financial condition, the coordinator's recovery plan may recommend conversion of all or part of an emergency loan to long-term loan.
- (c) A distressed municipality or a coordinator on behalf of the municipality may apply to the Department for a long-term loan under the coordinator's or municipality's adopted recovery plan. An application for a long-term loan will be considered based upon the following criteria:
- (1) The erosion of the municipal tax base measured over a 3-year period.
 - (2) A measurement of the change in locally generated municipal revenue over the 3-year period immediately preceding the filing of a financial distress petition.
 - (3) Measurable efforts of the municipality to raise revenue and cut expenditures prior to filing a petition for a determination of distress.
 - (4) Detailed financial analysis reported by the appointed municipal distress coordinator, that the municipality is clearly unable to repay a short-term loan.
- (d) When municipal distress can be traced to a particular event, such as a major plant closing or a natural disaster, the difference between locally generated revenues before and after the event will be measured.
- (e) When municipal distress cannot be traced to a particular event, locally generated revenues will be measured for a period of at least 3 years prior to the date of the petition for determination of distress was filed.
- (f) The revenue sources to be used for the measurement made in this section will include real estate tax revenues, total real estate assessments, earned income tax revenue and occupational privilege tax revenue and other measurements that reflect specific conditions and employment trends within the municipality. Measurements will be adjusted for changes in tax rates, assessment valuations, changes of accounting bases or other factors affecting tax valuation.
- (g) A public hearing will be held by the Department within 30 days after it receives an application for a long-term loan. The public hearing will provide a forum for considering the merits of the application and other relevant matters pertaining to the applicant's financial status.
- (h) If the Department determines that a long-term loan is in order, the maximum loan amount will be set and the applicant will be notified.
- (i) The following procedures apply to the receipt of loans:
- (1) A loan will be awarded only under a fully executed loan agreement and note between the Department and the applying municipality.
 - (2) The application for emergency and long-term loans shall be made in accordance with a resolution properly adopted by the governing body of the applicant municipality.

(3) If the Department approves a loan application, it will notify the applying municipality of the amount which may be awarded. The municipality shall then enact an ordinance authorizing the governing body to incur the indebtedness specified therein. The ordinance shall be enacted in compliance with notice requirements in the municipal code governing the municipality at the time of enactment.

(4) The ordinance authorizing the incurrence of indebtedness shall pledge the municipality's full faith, credit and taxing power to satisfy the obligation incurred under the ordinance.

(5) The ordinance, along with the municipality's final application for the loan, shall be submitted to the Department for approval.

(6) Upon approval of the documents specified in paragraph (5), the municipality shall execute a loan agreement and note with the Department for the amount approved by the Department.

(7) Upon execution of the loan agreement and note, the municipality shall file a financing statement for the loan amount, under 3 Pa.C.S. §§ 1101—9507 (relating to the Uniform Commercial Code), further securing its indebtedness.

(8) The financing statement shall be filed once in the Office of the Prothonotary of the county in which the municipality is located, and once in the Office of the Secretary of the Commonwealth.

(j) The coordinator shall set forth a proposed payback schedule for long-term loans required to be addressed in the coordinator's recovery plan. The payback schedule is subject to approval by the Department. There should be a multi-year "phase-in" process of loan repayment, and other adjustments as needed, such as tax increases, service cutbacks, employe reductions and negotiated creditor and debt adjustments.

§ 115.7. Grants.

(a) A grant will be awarded only after a complete financial analysis of the municipality has been performed. The Department will give priority to grant applications which include plans for activities which are intended to accomplish the following:

- (1) Reduce municipal costs.
- (2) Share municipal services.
- (3) Improve municipal productivity.
- (4) Increase municipal revenues.
- (5) Ease and assist the municipality through consolidation or merger.

(b) Grant eligibility and grant amounts will be determined using the set of criteria used for long-term loans—measured loss of revenue. In addition to the measured loss of revenue, the financial analysis will consider the following:

- (1) The municipality's borrowing ability or capacity.
- (2) The municipality's revenue raising capacity.
- (3) The level of reduction of municipal services.

(c) A municipality may apply for a grant under section 302 of the act (53 P. S. § 11701.302) by adopting a resolution authorizing the governing body to apply for the grant.

§ 115.8. Consolidation or merger of economically nonviable municipalities.

The coordinator, as part of the fiscal solvency plan, may recommend that a distressed municipality consolidate or merge with adjacent local governments. If a municipality is declared distressed, either the electors of the affected municipality by initiative, or by passage of an ordinance by the governing bodies of the municipalities proposed for consolidation or merger, may place the question of consolidation or merger on a referendum as provided in Chapter 4 of the act (53 P. S. §§ 11701.401—11701.423). In either situation a referendum shall be held at the next primary or general election. A consolidation or merger may not become effective unless the referendum is approved by majority vote in each affected municipality. It is the policy of the Commonwealth to give priority to consolidated or merged municipalities in economic and community development programs funded by the Commonwealth. The Secretary will notify Commonwealth agencies of this priority.

§ 115.9. Termination of municipal distress status.

Following the adoption of a municipal recovery plan, the Secretary may, either by the exercise of discretion or at the request of the governing body, convene a hearing to consider termination of the municipality's distress status. Prior to the hearing, the Secretary may direct that a financial analysis be undertaken to determine the extent of the municipality's actual financial recovery. If the Secretary is satisfied that the conditions which led to the earlier determination of municipal distress are no longer present and the objectives of the municipal recovery plan have been achieved, the Secretary will order the distress status terminated.

§ 115.10. Public hearings conducted by the Department.

(a) Under sections 203, 242(e), 253 and 302(c)(1) of the act, the Department will hold public hearings in accordance with the Sunshine Act (65 P. S. §§ 271—286). Notice of public hearings shall be published once in a newspaper of general circulation in the municipality, at least 3 days prior to the scheduled date of the hearing.

(b) A hearing will be conducted under 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

(c) The Secretary will designate presiding officers for public hearings under the act by giving notice of the appointment of them in the *Pennsylvania Bulletin*. The presiding officer shall produce a report identifying separately the issues, facts and findings pertaining to the financial distress determination of the applying municipality. The final report of the presiding officer shall, at its conclusion, recommend whether or not the municipality involved should be declared distressed.

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(230986) No. 273 Aug. 97

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