

Subpart D. MINORITY LENDING

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CHAPTER 81. MINORITY BUSINESS DEVELOPMENT AUTHORITY

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Authority

The provisions of this Chapter 81 issued under the Pennsylvania Minority Business Development Authority Act (73 P. S. §§ 390.1—390.18), unless otherwise noted.

Source

The provisions of this Chapter 81 adopted July 11, 1975, effective July 12, 1975, 5 Pa.B. 1781; renumbered from 13 Pa. Code Part II, May 16, 1997, effective May 17, 1997, 27 Pa.B. 2415. Immediately preceding text appears at serial pages (116981) to (116983), (209859) to (209873) and (209825) to (209829).

Subchapter A. GENERAL PROVISIONS

Sec.	
81.1.	Definitions.

Source

The provisions of this Subchapter A renumbered from 13 Pa. Code Chapter 101, May 16, 1997, effective May 17, 1997, 27 Pa.B. 2415. Immediately preceding text appears at serial pages (116981) to (116983).

§ 81.1. Definitions.

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

Act—The Pennsylvania Minority Business Development Authority Act (73 P. S. §§ 390.1—390.18) which creates and sets forth the powers of the Authority.

Advanced technology project—A project which has been deemed as such by the Department because it conceives of and develops new technology, improves existing technology by incorporating innovations or applies technology to the manufacture of what is generally considered a nontechnical product.

Authority—The public body corporate and politic created under the act.

Bid bond—The type of bond required in public construction projects which shall be filed at the time of the bid and which protects the Commonwealth agency or contractor if the bidder refuses to enter into a contract after the award of the contract to the bidder, or the bidder withdraws the bid before the award.

Board or board of directors—The governing body of the authority.

Business Development Center—An organization that is under contract to the Department to provide technical assistance to applicants for or recipients of loans and bond guarantees.

Federal agency—The United States of America, the President of the United States and a department or corporation, agency or instrumentality created, designated or established by the United States.

Industrial enterprise—An enterprise other than a mercantile, commercial or retail enterprise, which by virtue of its size requires substantial capital and when by its nature and size has created or will create substantial employment opportunities.

Manufacturing enterprise—An enterprise which is engaged in the giving of new shapes, new qualities or new combinations to matter by the application of skill and labor thereto.

Minority business enterprise—A business enterprise that is an eligible project for loan, loan guarantee or other type of assistance and that is owned or controlled by one or more socially or economically disadvantaged persons who are residents of this Commonwealth. The disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. The persons include, but are not limited to, Negroes, Puerto Ricans, Spanish-speaking Americans, American Indians, Eskimos and Aleuts.

Minority contractor—A minority business enterprise which has entered into a contract, purchase order or other procurement arrangement with an agency or a contractor of the Commonwealth, and has received, is to receive or is receiving public funds from the Commonwealth under this contract, purchase order or other procurement arrangement, including, but not limited to, subcontractors under a Commonwealth contract.

Performance bond—The type of bond given to ensure a Commonwealth agency or contractor that a contract once awarded will be completed as awarded within a fixed period of time.

Redevelopment area—An area located in this Commonwealth that is one of the following:

- (i) Designated as a redevelopment area by a Federal agency in the manner provided by Federal statutes.
- (ii) Designated as an Enterprise Zone by the Department.
- (iii) Found to be blighted by a planning commission under the Urban Redevelopment Law (35 P. S. §§ 1701—1719.1), and for which there exists a plan regarding the improvement of the area with respect to land use, traf-

fic, public utilities, recreation and community facilities and its economic base, whether improved or unimproved. The area may suffer from persistent and substantial unemployment or underemployment.

Resident—One of the following:

(i) A natural person who occupies a dwelling within this Commonwealth with the intention of making this Commonwealth his true, fixed and permanent home.

(ii) A corporation or other business enterprise:

(A) For which the Commonwealth is the center of all corporate or business affairs, that is, the Commonwealth is its principal place of business.

(B) That substantially discharges its functions from within this Commonwealth.

(C) That is subject to the jurisdiction of taxing authorities within this Commonwealth.

(D) That is owned, managed and controlled by natural persons who are residents of this Commonwealth.

Socially or economically disadvantaged persons—Persons, regardless of sex or marital status, who are members of groups whose disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. The persons include, but are not limited to, Negroes, Puerto Ricans, Spanish-speaking Americans, American Indians, Eskimos and Aleuts.

Authority

The provisions of this § 81.1 issued under section 9 of the Pennsylvania Minority Business Development Authority Act (73 P. S. § 390.9).

Source

The provisions of this § 81.1 adopted July 11, 1975, effective July 12, 1975, 5 Pa.B. 1781; amended February 6, 1987, effective February 7, 1987, 17 Pa.B. 634. Immediately preceding text appears at serial pages (37002) to (37003).

Subchapter B. LOAN PROGRAM ADMINISTRATION

GENERAL PROVISIONS

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Source

The provisions of this Subchapter B renumbered from 13 Pa. Code Chapter 103, May 16, 1997, effective May 17, 1997, 27 Pa.B. 2415. Immediately preceding text appears at serial pages (209859) to (209873).

GENERAL PROVISIONS

§ 81.101. Authority for loans and guarantees.

Section 7 of the act (73 P. S. § 390.7) authorizes the Authority to lend money to and guarantee, endorse or act as surety on the bonds, notes, contracts or other obligations of a minority business enterprise.

Source

The provisions of this § 81.101 adopted July 11, 1975, effective July 12, 1975, 5 Pa.B. 1781.

§ 81.102. Purpose of the program.

The purpose of the program is to financially assist businesses owned by socially and economically disadvantaged persons to allow for fuller participation within our free enterprise system.

Source

The provisions of this § 81.102 adopted July 11, 1975, effective July 12, 1975, 5 Pa.B. 1781.

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:

(1) The applicant shall be a resident of this Commonwealth or shall certify that residency will be established on or before closing of the loan.

(2) The applicant shall own or control a minority business enterprise.

(3) The applicant shall be financially and legally responsible, based upon criminal history, credit history and business history.

(4) The applicant and affiliates thereof shall have paid taxes due and owing to the United States, the Commonwealth or other level of government, or shall present evidence noting a satisfactory arrangement to make the payment which has been agreed to by the parties.

(5) The applicant may be a sole proprietorship, partnership or corporation. If the enterprise is a proprietorship, the applicant shall be otherwise eligible and shall manage and control the enterprise. If the enterprise is a partnership, at least 51% of the partners shall be socially or economically disadvantaged persons who own a majority interest that provides for management and control of the enterprise. If the enterprise is a corporation, its officers and at least 51% of the owners of the voting stock shall be socially or economically disadvantaged residents of this Commonwealth.

(6) The applicant shall commit to full time management and control 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) 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) 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) The applicant, if he is a natural person, shall be at least 18 years of age.

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

(12) 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) 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.

Authority

The provisions of this § 81.111 amended under section 9 of the Pennsylvania Minority Business Development Authority Act (73 P. S. § 390.9).

Source

The provisions of this § 81.111 adopted July 11, 1975, effective July 12, 1975, 5 Pa.B. 1781; amended April 9, 1976, effective April 10, 1976, 6 Pa.B. 881; amended February 6, 1987, effective February 7, 1987, 17 Pa.B. 634. Immediately preceding text appears at serial page (49504).

Cross References

This section cited in 12 Pa. Code § 81.121 (relating to application forms); and 12 Pa. Code § 81.124 (relating to additional conditions).

§ 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 meet the following criteria, based upon information that the Authority may require:

(1) Loans shall be made available primarily for the purpose of providing working capital, purchasing machinery and equipment and, where the need is determined by the Board, defraying the cost of acquiring or renovating land or buildings.

(2) The following types of projects are ineligible for a loan, loan guarantee or other type of assistance:

(i) A restaurant, except for regional or national franchises.

(ii) A bar, tavern or other project established for the principal purpose of dispensing alcoholic beverages.

(iii) A project for the acquisition, renovation or alteration of a building or property for the principal purpose of real estate speculation.

(iv) A project for the principal purpose of refinancing existing debt.

(v) Another type of project determined by the Board to be inappropriate for assistance.

(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 com-

mercial lenders or public lending bodies shall be placed in an escrow account along with Authority funds.

(4) A project that has been rejected by the Board may not be presented again to the Board within 1 year of the date of the Board's rejection, except by invitation of the Board.

(5) To be eligible for a loan, a project shall also comply with § 81.131 (relating to amount and terms of loans).

(6) To be eligible for a loan guarantee or other assistance, the project shall also comply with § 81.132 (relating to guarantee provisions).

(b) [Reserved].

Authority

The provisions of this § 81.112 amended under section 9 of the Pennsylvania Minority Business Development Authority Act (73 P. S. § 390.9).

Source

The provisions of this § 81.112 adopted July 11, 1975, effective July 12, 1975, 5 Pa.B. 1781; amended February 6, 1987, effective February 7, 1987, 17 Pa.B. 634. Immediately preceding text appears at serial pages (49504) to (49505).

Cross References

This section cited in 12 Pa. Code § 81.121 (relating to application forms); and 12 Pa. Code § 81.124 (relating to additional conditions).

APPLICATION PROCEDURE

§ 81.121. Application forms.

An application for a loan shall be in writing and shall be made on forms prescribed by the Authority. The Authority may require affidavits and may conduct investigations that are appropriate, including the issuance of subpoenas and the holding of hearings. At a minimum, the applicant shall show, to the satisfaction of the Authority, that he is an eligible applicant as set forth in § 81.111 (relating to eligible applicants), and that the project is an eligible project as set forth in § 81.112 (relating to eligible projects).

Authority

The provisions of this § 81.121 amended under section 9 of the Pennsylvania Minority Business Development Authority Act (73 P. S. § 390.9).

Source

The provisions of this § 81.121 adopted July 11, 1975, effective July 12, 1975, 5 Pa.B. 1781; amended February 6, 1987, effective February 7, 1987, 17 Pa.B. 634. Immediately preceding text appears at serial page (49505).

§ 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 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 filed on the day the application is determined to be complete, as evidenced by a date affixed on the face of the application.

(b) *Review of application.*

(1) No application will be reviewed until information requested has been submitted and the application is complete.

(2) Completed applications will be reviewed in chronological order, regardless of region, based upon the date a completed application was filed.

(3) An application filed will be reviewed by a designated financial officer of the Board and by designated legal counsel of the Board.

(c) *Board action.* The Board will meet monthly and will take action to approve or disapprove an application within 60 days of the date on which it was filed. In lieu of disapproving or approving an application, the Board may table an application pending receipt or review of additional information that may be material to a determination by the Board. If an application is tabled, the applicant will be notified of the tabling within 10 days after the Board's action. A tabled application will be considered by the Board at its next regularly scheduled meeting at which a quorum is present.

Authority

The provisions of this § 81.122 amended under section 9 of the Pennsylvania Minority Business Development Authority Act (73 P. S. § 390.9).

Source

The provisions of this § 81.122 amended February 6, 1987, effective February 7, 1987, 17 Pa.B. 634. Immediately preceding text appears at serial page (49505).

§ 81.123. Application fees.

Applicants shall be charged a nonrefundable application fee, payable to the Authority, when an application is submitted to the regional office for review. This fee will be determined by the Board from time to time. Applicants shall be charged a nonrefundable fee equal to 1.0% of the loan amount, which fee will be due at the time of acceptance of the commitment letter. No disbursements will be made before these fees have been paid.

Authority

The provisions of this § 81.123 amended under section 9 of the Pennsylvania Minority Business Development Authority Act (73 P. S. § 390.9).

Source

The provisions of this § 81.123 adopted July 11, 1975, effective July 12, 1975, 5 Pa.B. 1781; amended February 6, 1987, effective February 7, 1987, 17 Pa.B. 634. Immediately preceding text appears at serial page (49505).

§ 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) 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) The sureties and guarantees of the principal and anyone else shall remain in effect for the entire period of the loan.
- (7) The applicant shall submit reports and provide information required by the Authority.
- (8) There may be no changes of expenditures of loan funds among categories without the prior written approval of the Authority.

Authority

The provisions of this § 81.124 issued under section 9 of the Pennsylvania Minority Business Development Authority Act (73 P. S. § 390.9).

Source

The provisions of this § 81.124 adopted February 6, 1987, effective February 7, 1987, 17 Pa.B. 634.

§ 81.125. Additional conditions for certain loans.

(a) *Additional conditions.* In addition to the other requirements in this chapter, an applicant for a loan in excess of the amounts specified in § 81.131(a)(1) and (2) (relating to amount and terms of loans) shall meet the following additional conditions:

(1) Individuals or entities with an ownership interest in the business of 10% or more shall serve as guarantors for the loan and shall submit personal financial statements to the Authority as part of the loan application. Personal financial statements submitted to the Authority shall state assets and direct liabilities, and include appropriate footnotes concerning the existence of contingent liabilities, or, in the alternative, specifically indicate that none exist to the best of the preparer's knowledge.

(2) The loan application shall include financial statements of the business for the latest 3 years of operations, prepared by an independent certified public accountant. Complete financial statements shall include the independent accountant's report and the notes to the financial statements.

(3) As requested by the Authority, the applicant shall include additional financial information necessary to support business or personal financial statements furnished with an application. Representatives of the Authority and its financial consultant will meet with the applicant and guarantors to discuss the financial statements, management background experience and other project details. Failure to cooperate with the Authority or its representatives in this regard shall result in disapproval of the loan application.

(4) The loan application shall include pro forma balance sheets and projected income statements and cash flows of the business for at least the first 3 full years of proposed operations prepared by an independent certified public accountant. These projections shall include footnotes which disclose, among other things, the methods of accounting to be used, proposed sources of financing—both debt and equity—interest rates and terms of proposed financing, and significant assumptions regarding projected income and expenses, including projected quantities, prices, customers and market areas, number of employees, labor rates, pension and fringe benefits and administrative and other operating expenses.

(5) If the Authority determines that the collateral offered in the loan application is insufficient, the applicant will be required to provide additional security. Acceptable kinds of additional security include:

(i) A participating first lien mortgage on the proposed project, but in no case less than a second lien mortgage on the proposed project.

(ii) Subordination of debt of the applicant or other business owners or investors to the repayment of the Authority loan.

(iii) Assignments of agreements of lease, sublease or installment sale.

- (iv) Additional collateral liens on other real estate owned by the applicant.
 - (v) An irrevocable letter of credit.
 - (vi) Limitations on the purchase of treasury stock, payment of dividends and payment of salaries of the applicant.
 - (vii) Additional equity participation in the proposed project.
 - (viii) Assignment of contracts.
 - (ix) A reduction in the size and scope of the project which will reduce the total amount of the debt incurred by the applicant and also reduce the amount of the Authority loan requested.
- (6) For loans which involve a regional or National franchise, the Authority may require franchiser participation in the project. Priority lending will be given to multiple unit franchises that create or retain a minimum of 35 jobs.
- (7) For business acquisitions, the targeted business enterprise shall meet the following:
- (i) Have been profitable for the previous 2 years and have been in existence for at least 5 years.
 - (ii) Have the capacity for growth in long-term markets.
 - (iii) Have its principal place of business in this Commonwealth or have the capacity to relocate to this Commonwealth.
 - (iv) Possess a continuity of management.
 - (v) Have a strong customer base.
- (8) For business acquisitions, the applicant shall have:
- (i) Minimum net worth between \$75,000 and \$150,000 depending on the size of the acquisition.
 - (ii) Three to five years demonstrated experience in the industry of the targeted business enterprise.
 - (iii) A cash equity investment in the project of not less than 10% of the total project cost.
- (b) *Costs.* Costs incurred by the applicant in meeting the requirements of this section may be treated as eligible costs of the project. With the concurrence of the Authority, these costs may be used as match for loan funds advanced or may be reimbursed with loan funds advanced.

Source

The provisions of this § 81.125 adopted December 24, 1992, effective December 26, 1992, 22 Pa.B. 6106; amended February 5, 1993, effective February 6, 1993, 23 Pa.B. 628. Immediately preceding text appears at serial pages (175925) to (175927).

Cross References

This section cited in 12 Pa. Code § 81.131 (relating to amount and terms of loans).

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.

Authority

The provisions of this § 81.131 amended under section 9 of the Pennsylvania Minority Business Development Authority Act (73 P. S. § 390.9).

Source

The provisions of this § 81.131 adopted July 11, 1975, effective July 12, 1975, 5 Pa.B. 1781; amended February 15, 1980, effective February 16, 1980, 10 Pa.B. 760; amended February 6, 1987, effective February 7, 1987, 17 Pa.B. 634; amended December 24, 1992, effective December 26, 1992, 22 Pa.B. 6106; corrected January 22, 1993, effective December 26, 1992, 23 Pa.B. 462; amended February 5, 1993, effective February 6, 1993, 23 Pa.B. 628. Immediately preceding text appears at serial pages (175927) to (175929).

Cross References

This section cited in 12 Pa. Code § 81.112 (relating to eligible projects); and 12 Pa. Code § 81.125 (relating to additional conditions for certain loans).

§ 81.132. Guarantee provisions.

(a) *Loan guarantee.* The Authority may guarantee loans made to a minority business enterprise under the same standards established for the granting of loans.

(b) *Equity guarantee.* The Authority may guarantee up to 50% of equity investments in a minority business enterprise made by a person, partnership, corporation or other entity not then an equity holder or involved in the management of the minority business enterprise or in any way related to the enterprise, its current shareholders, officers or other management personnel, to be made on terms and conditions as may be determined by the Board in its sole discretion.

(c) *Dollar value limitation.* The dollar value limitation of the equity and loan guarantee shall be the same as that of the loans under the program.

(d) *Escrow.* Upon the guarantee of a loan, 100% of the outstanding guaranteed balance of the loan shall be placed in escrow by the Authority for the term of the loan.

Authority

The provisions of this § 81.132 amended under section 9 of the Pennsylvania Minority Business Development Authority Act (73 P. S. § 390.9).

Source

The provisions of this § 81.132 adopted July 11, 1975, effective July 12, 1975, 5 Pa.B. 1781; amended February 6, 1987, effective February 7, 1987, 17 Pa.B. 634. Immediately preceding text appears at serial page (49506).

Cross References

This section cited in 12 Pa. Code § 81.112 (relating to eligible projects).

**SURETY BOND GUARANTEES AND WORKING
CAPITAL LOANS****§ 81.135. Terms of surety bond guarantees.**(a) *Terms.*

(1) An applicant for a surety bond guarantee may request and receive a guarantee of no more than 90% of bid and performance bonds, provided by a surety company approved by the Commonwealth, which are needed to obtain a contract with a Commonwealth agency or contractor. The guarantee may not be in an amount greater than \$50,000.

(2) An applicant for a surety bond guarantee shall provide security, collateral and personal guarantees in the form and amount necessary to reasonably assure payment in the event of default or bankruptcy. The collateral shall include a contract in the amount of the guarantee which contract shall be assigned to the Authority.

(b) *Bid bond guarantee.* If approved by the Board, an applicant for a bid bond guarantee shall receive a guarantee which permits the applicant to bid on contracts with Commonwealth agencies or contractors for 1 year, except an applicant who fails to submit a bid for a contract for 6 consecutive months shall forfeit the right to the guarantee and funds set aside for that purpose shall be returned to the Authority's surety bond guarantee fund.

(c) *Performance bond guarantee.* If approved by the Board, an applicant for a performance bond guarantee shall receive a guarantee conditioned upon the actual receipt of a contract with a Commonwealth agency or contractor within 6 months of the Board's approval of the guarantee. Applicants receiving conditional approvals on performance bond guarantees shall submit current financial statements to the Authority prior to the guarantee closing.

Authority

The provisions of this § 81.135 issued under section 9 of the Pennsylvania Minority Business Development Authority Act (73 P. S. § 390.9).

Source

The provisions of this § 81.135 adopted February 6, 1987, effective February 7, 1987, 17 Pa.B. 634.

§ 81.136. Working capital loans.

An applicant may apply for a short-term working capital loan if the loan is directly related to an identified Commonwealth contract with a Commonwealth agency or contractor on which the applicant is qualified to bid and intends to bid. The loans may be in an amount of up to 50% of the value of the contract, not to exceed \$50,000, and shall be repaid over not less than 6 months but not more than 2 years. Approval of applications for short-term working capital loans shall be conditioned upon the award of the Commonwealth contract, and loan proceeds

shall be used only to defray costs related to purchasing materials and supplies, renting equipment, paying employes and meeting other operational expenses directly related to specified Commonwealth agency contracts.

Authority

The provisions of this § 81.136 issued under section 9 of the Pennsylvania Minority Business Development Authority Act (73 P. S. § 390.9).

Source

The provisions of this § 81.136 adopted February 6, 1987, effective February 7, 1987, 17 Pa.B. 634.

§ 81.137. Application process.

(a) *Submission of applications.* Applications for working capital loans or surety bond guarantees shall be submitted to and prepared by an approved Business Development Center, in a form prescribed by the Authority. The Business Development Center shall determine whether the application is complete and shall forward completed applications to the 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.

(b) *Board action.* The Board will take action to approve, disapprove or table an application within 60 days of the date on which it was filed.

Authority

The provisions of this § 81.137 issued under section 9 of the Pennsylvania Minority Business Development Authority Act (73 P. S. § 390.9).

Source

The provisions of this § 81.137 adopted February 6, 1987, effective February 7, 1987, 17 Pa.B. 634.

LOAN PAYMENT, REPAYMENT, PENALTIES AND ADMINISTRATION

§ 81.141. General requirements.

The Authority will not lend and will not continue lending to an applicant, unless the applicant is an eligible applicant, and the project is an eligible project, and both the applicant and the project comply with the terms and conditions set forth by the Board for the entire period of the loan or guarantee.

Authority

The provisions of this § 81.141 amended under section 9 of the Pennsylvania Minority Business Development Authority Act (73 P. S. § 390.9).

Source

The provisions of this § 81.141 adopted July 11, 1975, effective July 12, 1975, 5 Pa.B. 1781; amended February 6, 1987, effective February 7, 1987, 17 Pa.B. 634. Immediately preceding text appears at serial pages (49506) to (49507).

§ 81.142. Default.

The defaults and remedies thereof shall be set forth in the instruments which are a part of the loan transaction. Failure to remain an eligible applicant or failure to maintain the project as an eligible project shall constitute an automatic default and grounds for penalties the Authority may deem appropriate.

Authority

The provisions of this § 81.142 amended under section 9 of the Pennsylvania Minority Business Development Authority Act (73 P. S. § 390.9).

Source

The provisions of this § 81.142 adopted July 11, 1975, effective July 12, 1975, 5 Pa.B. 1781; amended February 6, 1987, effective February 7, 1987, 17 Pa.B. 634. Immediately preceding text appears at serial page (49507).

§ 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.

Authority

The provisions of this § 81.143 amended under section 9 of the Pennsylvania Minority Business Development Authority Act (73 P. S. § 390.9).

Source

The provisions of this § 81.143 adopted July 11, 1975, effective July 12, 1975, 5 Pa.B. 1781; amended February 6, 1987, effective February 7, 1987, 17 Pa.B. 634. Immediately preceding text appears at serial page (49507).

§ 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 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.

Authority

The provisions of this § 81.144 amended under section 9 of the Pennsylvania Minority Business Development Authority Act (73 P. S. § 390.9).

Source

The provisions of this § 81.144 adopted July 11, 1975, effective July 12, 1975, 5 Pa.B. 1781; amended February 6, 1987, effective February 7, 1987, 17 Pa.B. 634. Immediately preceding text appears at serial page (49507).

§ 81.145. Powers of the Executive Director.

Between Board meetings, the Executive Director and other staff as the Executive Director may designate, are authorized to exercise the powers of the Authority with regard to the protection of collateral and taking necessary action in the case of problem loans, subject to review by the Board at the next meeting at which a quorum is present. The powers are in addition to specific duties and responsibilities delegated to the Executive Director by the Board.

Authority

The provisions of this § 81.145 issued under section 9 of the Pennsylvania Minority Business Development Authority Act (73 P. S. § 390.9).

Source

The provisions of this § 81.145 adopted February 6, 1987, effective February 7, 1987, 17 Pa.B. 634.

§ 81.146. Collection procedures.

(a) *Collection of loans.* The Executive Director is authorized to take actions necessary to preserve the position of the Authority with respect to a loan which is not in compliance with the terms and conditions thereof, including but not limited to, the initiation of collection procedures as the Executive Director deems appropriate. For this purpose, a legal contingency fund is established.

(b) *Removal of discharged debts.* If the Executive Director determines, after seeking the advice of legal counsel to the Board, that an amount owing to the Authority has been discharged in bankruptcy and that no practical legal remedies remain to pursue collection, the Executive Director will request the Board to request the comptroller to remove the discharged debts from the financial statements of the Authority.

Authority

The provisions of this § 81.146 issued under section 9 of the Pennsylvania Minority Business Development Authority Act (73 P. S. § 390.9).

Source

The provisions of this § 81.146 adopted February 6, 1987, effective February 7, 1987, 17 Pa.B. 634.

§ 81.147. General.

- (a) *Board meetings.* The Board will meet monthly.
- (b) *Targeted funds.* Twenty percent of the appropriated funds available to the Authority may be targeted by the Board expressly for loans to be awarded for eligible enterprises located or to be located in Enterprise Development Areas as set forth at 12 Pa. Code Chapter 121 (relating to enterprise development area initiative—statement of policy) or other redevelopment areas.

Authority

The provisions of this § 81.147 issued under section 9 of the Pennsylvania Minority Business Development Authority Act (73 P. S. § 390.9).

Source

The provisions of this § 81.147 adopted February 6, 1987, effective February 7, 1987, 17 Pa.B. 634.

Subchapter C. EXAMINATION AND INVESTIGATION OF LOANS**EXAMINATIONS AND INVESTIGATIONS**

- Sec.
- 81.201. Examinations and investigations pursuant to this chapter.
- 81.202. Scope of examinations and investigations.
- 81.203. Powers and remedies available to the Authority.
- 81.204. Conduct of hearings.
- 81.205. Private hearings.
- 81.206. Presiding member.
- 81.207. Oaths, affirmation and conduct of hearings.
- 81.208. Staff.
- 81.209. Rules of evidence not to apply.
- 81.210. Transcripts, reports and prepared statements.

SUBPOENAS

- 81.221. Issuing subpoenas.
- 81.222. Persons required to appear.
- 81.223. Producing documents or review by Authority staff.
- 81.224. Service of subpoenas.

RIGHTS OF WITNESSES

- 81.231. Witness to be advised.
- 81.232. Counsel for a witness.

81.233. Transcript.

Source

The provisions of this Subchapter C adopted August 4, 1978, 8 Pa.B. 2156; renumbered from 13 Pa. Code Chapter 105, May 16, 1997, effective May 17, 1997, 27 Pa.B. 2415. Immediately preceding text appears at serial pages (209825) to (209829).

EXAMINATIONS AND INVESTIGATIONS

§ 81.201. Examinations and investigations pursuant to this chapter.

Examinations and investigations by the Authority will be conducted through its members and staff in a manner consistent with the provisions of this chapter.

Cross References

This section cited in 12 Pa. Code § 81.221 (relating to issuing subpoenas).

§ 81.202. Scope of examinations and investigations.

Examinations and investigations conducted by the Authority will be limited to any matter material for the Authority's information and necessary to:

- (1) The determination of the eligibility of the applicant to receive a loan granted under the act.
- (2) The determination of the economic viability of the loan.
- (3) The power to review the operation of any business that has received a loan granted under the authority of the act.

Cross References

This section cited in 12 Pa. Code § 81.221 (relating to issuing subpoenas).

§ 81.203. Powers and remedies available to the Authority.

Every hearing constituted and conducted pursuant to this chapter will be deemed a hearing and proceeding by and for the Authority, and all powers and remedies available to the Authority will apply thereto.

Cross References

This section cited in 12 Pa. Code § 81.221 (relating to issuing subpoenas).

§ 81.204. Conduct of hearings.

Hearings may be conducted only with the prior approval of the Board of the Authority. Hearings may be conducted by and before the Authority, or any one or more members of the Authority appointed by the Board of the Authority to conduct such hearings.

Cross References

This section cited in 12 Pa. Code § 81.221 (relating to issuing subpoenas).

§ 81.205. Private hearings.

Unless otherwise ordered by the Authority, investigations and examinations will not be public.

Cross References

This section cited in 12 Pa. Code § 81.221 (relating to issuing subpoenas).

§ 81.206. Presiding member.

The Chairperson of the Board of the Authority or his designee, who must be a Deputy Secretary of the Department, will preside over the examinations and investigations before the Authority.

Cross References

This section cited in 12 Pa. Code § 81.221 (relating to issuing subpoenas).

§ 81.207. Oaths, affirmation and conduct of hearings.

The presiding member will administer oaths and affirmations to witnesses, rule upon matters arising in the course of the hearing, and take such actions as may be necessary to insure that the hearing proceeds in an orderly and proper manner.

Cross References

This section cited in 12 Pa. Code § 81.221 (relating to issuing subpoenas).

§ 81.208. Staff.

The Authority may designate such staff members as it deems necessary to aid in the conduct of the examinations and investigations. Questioning of witnesses at a hearing shall be limited to members of the Authority, members of the staff of the Authority, and such other persons as may be permitted to do so by the presiding member.

Cross References

This section cited in 12 Pa. Code § 81.221 (relating to issuing subpoenas).

§ 81.209. Rules of evidence not to apply.

(a) The presiding member may receive any evidence, by testimony, deposition, exhibit or otherwise which he deems relevant and will not be bound by the rules of evidence applicable in courts of law.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.161—35.169 (relating to evidence).

Cross References

This section cited in 12 Pa. Code § 81.221 (relating to issuing subpoenas).

§ 81.210. Transcripts, reports and prepared statements.

(a) Members of the Board of the Authority will be given full access to the transcript of all hearings or, if no transcript is made, the report of the information received at the hearing.

(b) The presiding member will determine whether a witness may read or place in the record a prepared or written statement.

(c) Subsections (a) and (b) supersede 1 Pa. Code §§ 35.131—35.133 (relating to transcript).

Cross References

This section cited in 12 Pa. Code § 81.221 (relating to issuing subpoenas).

SUBPOENAS**§ 81.221. Issuing subpoenas.**

(a) The Board of the Authority may issue a subpoena, directing the person named therein to appear before a hearing as provided in §§ 81.201—81.210 (relating to examinations and investigations) at a designated time and place to testify or to produce documentary evidence, or both, relating to a matter under investigation by the Authority.

(b) The Board of the Authority or any authorized member thereof may issue a subpoena not directly related to the conduct of a hearing directing the person named to produce documentary evidence relating to a matter under investigation by the Authority.

(c) Subsections (a) and (b) supersede 1 Pa. Code § 35.142 (relating to subpoenas).

§ 81.222. Persons required to appear.

(a) A person deemed to have information relevant to any examination or investigation may be required by subpoena to appear and testify at an Authority hearing.

(b) Subsection (a) supersedes 1 Pa. Code § 35.142 (relating to subpoenas).

§ 81.223. Producing documents or review by Authority staff.

(a) A person, corporation, entity or association of any kind having possession or control of documents or records deemed relevant to any investigation may be required by subpoena to produce the materials at an Authority hearing or, at the election of the presiding member, to make them available for inspection by any one or more members of the Authority or one or more members of staff of the Authority.

(b) Subsection (a) supersedes 1 Pa. Code § 35.142 (relating to subpoenas).

§ 81.224. Service of subpoenas.

- (a) Subpoenas may be served by any person designated by the Authority.
- (b) Subsection (a) supersedes 1 Pa. Code § 35.142 (relating to subpoenas).

RIGHTS OF WITNESSES**§ 81.231. Witness to be advised.**

(a) A person under examination or investigation compelled or requested to furnish information or documentary evidence shall be advised with respect to the purpose and scope of the investigation.

(b) Subsection (a) supersedes 1 Pa. Code § 35.137 (relating to oral examination).

§ 81.232. Counsel for a witness.

Any witness may be accompanied, represented, and advised by counsel as follows:

(1) Counsel for a witness may advise his client, in confidence and upon the initiative of either himself or the witness, with respect to any question asked of his client, and, if the witness refuses to answer the question, then counsel may briefly state on the record if he has advised his client not to answer the question and the legal grounds for such refusal.

(2) When it is claimed that the testimony or evidence sought from a witness is outside the scope of the investigation or that the witness is privileged for reasons other than self-incrimination, which may only be asserted by the witness personally, to refuse to answer a question or to produce other evidence, counsel for the witness may object on the record to the question or requirement and may state briefly and precisely the grounds therefor.

(3) Any objections made under this section will be treated as continuing objections and preserved throughout the further course of the hearing without the necessity for repeating them as to any similar line of inquiry.

(4) Counsel for a witness may not, for any purpose or to any extent not allowed by paragraphs (1) and (2), interrupt the examination of a witness by making any objections or statements on the record.

(5) Following completion of the examination of a witness, counsel for the witness may, on the record, request the presiding member to permit the witness to clarify any of his answers which may need clarification in order that they may not be left equivocal or incomplete on the record. The granting or denial of such requests will be within the sole discretion of the presiding member.

(6) The presiding member will take all necessary action to regulate the course of the hearing to avoid delay and to prevent or restrain disorderly, dilatory, obstructionist, or contumacious conduct or contemptuous language.

(7) Objections made under this section will be disposed of by the presiding member and the rulings of the presiding member will be final.

§ 81.233. Transcript.

(a) A witness appearing at a hearing of which a transcript is made may obtain a copy of the transcript of this testimony upon payment of the costs thereof.

(b) Subsection (a) supersedes 1 Pa. Code §§ 35.131—35.133 (relating to transcript).

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