

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	03/17/2020	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 4/24/2020

2. COMAR Codification

Title Subtitle Chapter Regulation

05 13 07 01-.13

3. Name of Promulgating Authority

Department of Housing and Community Development

4. Name of Regulations Coordinator Telephone Number
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5. Name of Person to Call About this Document Telephone No.
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6. Check applicable items:

- New Regulations
 Amendments to Existing Regulations

Title 05
DEPARTMENT OF HOUSING AND COMMUNITY
DEVELOPMENT

Subtitle 13 NEIGHBORHOOD BUSINESS DEVELOPMENT

05.13.07 Business Lending Program

Authority: Housing and Community Development Article, §2-111, Annotated Code of Maryland

Notice of Proposed Action

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The Secretary of Housing and Community Development proposes to adopt new Regulations .01-.13 under COMAR 05.13.07 Business Lending Program.

Statement of Purpose

The purpose of this action is to implement statutory changes adopted by the General Assembly in the 2016 session to enhance the State’s financing programs to support small businesses.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

The proposed regulations will make it possible for the Maryland Department of Housing and Community Development (“DHCD”) to offer more types of loans and financial assistance than are currently permitted under the existing regulations. Recent statutory changes in 2016 expanded DHCD’s ability to provide business project loans in priority funding areas. New products may include loans for business owners who lack resources or are otherwise not able to obtain a competitive interest rate when starting or expanding a business. These additional products will allow new and existing businesses new opportunities by providing access to competitive loans that they might not be able to obtain from the existing private market or the U.S. Small Business Administration.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(R+)	Indeterminable
B. On other State agencies:	NONE	
C. On local governments:	(R+)	Indeterminable

	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(+)	Indeterminable
E. On other industries or trade groups:	(+)	Indeterminable
F. Direct and indirect effects on public:	(+)	Indeterminable

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. DHCD will receive revenue from the origination fees and loan repayments associated with expanded lending under the program. The number of and amounts of the loans that will be originated are indeterminable. DHCD will incur some minor administrative costs, but these costs will be less than the revenue generated. Administrative costs are already budgeted. No additional costs would be incurred administratively because of these regulations.

C. Local governments will benefit through increased property values and more job creation, as businesses seek funding for property renovations and business expansion within their city and county limits.

D. Private lenders may benefit by the proposed regulations because additional businesses may be eligible for loans originated by DHCD thus creating more partnership opportunities between the public and private financing sector.

E. Other industries such as construction, retailers, manufacturers etc. may benefit as these industries may expand due to the increased availability of funding.

F. The proposed regulations are expected to result in additional types of loans for business projects that are not currently being served. The proposed regulations allowing for expansion into Priority Funding Areas are expected to result in an increase in business projects and growth by expanding the availability of loans.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

Small businesses will benefit from the regulatory changes since the underlying program, Neighborhood Business Development Program (“NBW”), provides flexible financing for small businesses that is not otherwise available from the conventional financing sector.

For over 20 years, NBW has provided meaningful and impactful support to small businesses across the State of Maryland. With these regulatory changes, NBW’s ability to support small businesses will expand.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Matthew Heckles, Director of the Division of Development Finance and the Community Development Administration, Department of Housing and Community Development, 7800 Harkins Road, Lanham, Maryland 20706, or call 301-429-7796, or email to matthew.heckles@maryland.gov, or fax to . Comments will be accepted through May 26, 2020. A public hearing has not been scheduled.

Economic Impact Statement Part C

- A. Fiscal Year in which regulations will become effective: FY 2020
- B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?
No
- C. If 'yes', state whether general, special (exact name), or federal funds will be used:
- D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:
Special Fund revenue of the Department of Housing and Community Development is used to implement regulations.
- E. If these regulations have no economic impact under Part A, indicate reason briefly:
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.
- G. Small Business Worksheet:

Attached Document:

Title 05 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Subtitle 13 NEIGHBORHOOD BUSINESS DEVELOPMENT

Chapter 07 Business Lending Program

Authority: Housing and Community Development Article, §2-111, Annotated Code of Maryland

.01 General.

This chapter prescribes the policies, procedures, and authorizations for providing financial assistance to eligible business projects from the Community Development Administration, an agency in the Division of Development Finance of the Department of Housing and Community Development.

.02 Definitions.

- A. In this chapter, the following words have the meanings indicated and as defined in the Act.
- B. Terms Defined.

(1) "Act" means Housing and Community Development Article, Title 4, Subtitle 2, Annotated Code of Maryland.

- (2) "Administration" means the Community Development Administration, an agency in the Division of Development Finance of the Department of Housing and Community Development.
- (3) "Borrower" means a recipient of any type of financial assistance from the Administration under this chapter.
- (4) "Business project" means a project located in an area designated as a priority funding area under the State Finance and Procurement Article, § 5-7B-02, Annotated Code of Maryland; and
- (a) Is acquired, owned, developed, constructed, reconstructed, rehabilitated, or improved by a person or an entity for the purposes of carrying on a business whether or not for profit; or
- (b) Is eligible for funding from the Neighborhood Business Development Fund under Housing and Community Development Article, §6-310, Annotated Code of Maryland.
- (5) "Department" means the Department of Housing and Community Development, a principal department of the State.
- (6) (a) "Development costs" means the costs incurred in acquiring, developing, operating, and expanding a business that the Department considers reasonable and necessary for the project.
- (b) "Development costs" includes the costs for:
- (i) Acquisition of land, equipment and machinery;
- (ii) Operating costs;
- (iii) Necessary studies, surveys, plans, and specifications;
- (iv) Architectural, engineering, or special services;
- (v) Site preparation and development;
- (vi) Labor and materials for construction;
- (vii) Fees and closing costs incurred in connection with financing the project;
- (viii) Indemnity and surety bonds;
- (ix) Premiums on insurance; and
- (x) Other costs the Administration deems reasonable and necessary.
- (7) (a) "Financial assistance" means any form of assurance, guarantee, grant, payment, loan, loan participation, loan insurance, credit enhancement, or other assistance.
- (b) "Financial assistance" includes a reduction in the principal obligation of, or in the rate of interest payable on, a loan or portion of a loan.
- (8) "Nonprofit organization" means a corporation, foundation, or other entity that specifies in its charter or bylaws that no part of the net earnings may inure to the benefit of any private shareholder or individual holding any interest in the entity.
- (9) "Program" means the business loan program within the Administration.
- (10) "Project" means a business project.
- (11) "Secretary" means the Secretary of Housing and Community Development of Maryland.

.03 Eligible Applicants.

To qualify as an eligible recipient of financial assistance, an applicant shall:

- A. If a nonprofit organization, corporation, or partnership, be in good standing and qualified to do business in Maryland;
- B. Have the legal capacity and all necessary authorization to incur the obligations of the financial assistance;
- C. Own the project or have a valid contract to purchase or lease the project;
- D. Demonstrate credit worthiness and repayment ability acceptable to the Department; and
- E. Demonstrate the ability to complete and operate the project.

.04 Eligible Projects.

To be eligible for financial assistance, business projects shall be:

- A. Properly zoned for the proposed use;
- B. If involving construction or renovation, rehabilitated, constructed and operated in accordance with the applicable federal, State, and local building, zoning, environmental, health, and safety standards; and
- C. Licensed and registered as applicable.

.05 General Requirements.

- A. Financial assistance may be used for the development costs of a business project.
- B. The Administration shall establish interest rates and fees for the financial assistance based on the underwriting of each project.
- C. Terms for repayment of principal and interest shall be established based on the underwriting for each project.
- D. A loan shall be evidenced by a promissory note and secured by deed of trust or other security agreement in the form acceptable to the Administration.
- E. Financial Assistance shall be disbursed in accordance with a draw schedule approved by the Administration, which may include releasing funds upon successful inspections.
- F. Borrowers shall pay any servicing fees, loan insurance premiums, bond insurance premiums, late charges or other fees that the Administration or the loan insurer may require and that are permitted by State law.

G. Escrow Accounts. The Administration may require the borrower to make monthly deposits with the Administration for real estate taxes, insurance, mortgage insurance premiums, a reserve for replacements, and other expenses of the project.

H. Appraisal. Borrowers may be required to provide or pay for an appraisal performed by an appraiser acceptable to the Administration which shows the current value of the property and the expected value of the property after completion of the improvements.

I. The Administration may require certified financial statements for all partners, corporate borrowers or any other individuals or entities having an interest in the project in a form acceptable to the Administration.

J. The recipient of financial assistance shall agree not to sell, cease to own, assign, transfer, or dispose of all or any part of the business project or their interest in it, without the prior written consent of the Administration.

K. Taxes and assessments against the property which are due and payable shall be paid at or before closing.

.06 Liability and Other Insurance.

A. The borrower shall maintain property, fire and extended coverage insurance on the real and personal property comprising a project both during and after construction.

B. If the project is located on real property in the 100-year flood plain, as designated by the United States Administration of Housing and Urban Development, the project shall be covered by a flood plain insurance policy.

C. For all secured loans the borrower shall provide a standard American Land Title Association (ALTA) Loan policy or other form of title policy approved by the Administration.

D. The Administration may require the borrower to obtain any of the following types of insurance, depending on the size of the project and risks to the Administration:

- (1) Owner's liability;
- (2) Owner's property or hazard or contractor's builder's risk;
- (3) Contractor's liability;
- (4) Architect's errors and omissions; and
- (5) Engineer's errors and omissions.

E. All insurance required under this regulation shall meet the following requirements:

- (1) Be written by a company registered with the Maryland Insurance Administration;
- (2) Name the Administration as an additional insured;
- (3) Be in force at the time of closing;
- (4) Not be terminable without prior notification to the Administration;
- (5) Be in force for the duration of the financial assistance; and
- (6) Contain such other terms and coverage satisfactory to the Administration.

.07 Additional Requirements.

A. In addition to a promissory note and security agreement, the Administration may require the borrower to execute or provide additional loan documents which may include any of the following documents:

- (1) A loan agreement;
- (2) An agreement and declaration of covenants and restrictions;
- (3) A disbursement agreement;
- (4) A guaranty of completion or loan payments;
- (5) A completion assurance agreement;
- (6) An assignment of the construction contract;
- (7) An opinion of borrower's counsel;
- (8) An opinion of contractor's counsel;
- (9) A contractor's letter and certification;
- (10) An assurance of compliance with civil rights requirements;
- (11) A fair practices certification; and
- (12) Such other documents as the Administration may find it desirable or necessary to require.

B. The Administration, at its sole discretion, may require additional security or collateral from the borrower to assure completion of the construction of the project or repayment of the loan.

C. The collateral may be in the form of one or more of the following:

- (1) A cash escrow;
- (2) A letter of credit in an amount, form, and from a financial institution acceptable to the Administration;
- (3) Depository accounts pledged to the Administration;
- (4) Performance and payment bonds from a surety acceptable to the Administration;
- (5) A completion assurance agreement executed by the borrower and backed by some form of monetary collateral;
- (6) A guaranty of completion or loan payments, or both, executed by a third party who is financially able and willing to back the guarantee by some collateral acceptable to the Administration;
- (7) A pledge of the developer's fee; or
- (8) Other collateral acceptable to the Administration.

D. Credit Enhancement.

(1) After consideration of underwriting and the requirements of any bond issuance, the Administration shall determine and notify the borrower whether the borrower will be required to insure or guarantee the proposed loan, or otherwise insure or enhance the bonds financing the loan.

(2) If required by the Administration, the borrower shall engage a credit enhancer and secure a commitment to insure or guarantee the proposed loan, or otherwise insure or enhance any bonds financing the loan.

(3) The borrower shall comply with any conditions of the insurance or guarantee commitment so that the insurance or guarantee will be in effect from the time of loan closing, with respect to loan insurance, or from the time of the issuance of the bonds, with respect to bond insurance.

E. Disclosure.

(1) All directors, officers, principals, members, general partners, and limited partners of the borrower shall be identified, and the proportionate share of each in the proposed project so indicated in the application.

(2) Subsequent changes in either a general partner, a limited partner having more than a 25 percent interest in the borrower, a managing member, or member owning more than a 20 percent interest in the borrower shall be subject to the written approval of the Administration.

(3) The borrower is responsible for providing any disclosure required by the Administration or any credit enhancer relating to the project, the borrower, the syndication, and the construction team.

.08 Applications and Processing.

A. An application for financial assistance shall be submitted to the Department and shall be made upon standard forms prescribed by the Department.

B. Each application shall:

(1) Be submitted by an eligible applicant as described in Regulation .03 of this chapter;

(2) Contain the applicant's organizational documents, including, as applicable, its articles of incorporation, bylaws, articles of organization, operating agreement, certificate of partnership, partnership agreement, or joint venture agreement;

(3) Contain a description of the project;

(4) Contain a description of all sources of funding the applicant has obtained for the project;

(5) Contain sufficient information to determine that the:

(a) Project is located in a priority funding area;

(b) Project is eligible in accordance with Regulation .04 of this chapter; and

(c) Terms and requirements of financial assistance as set forth in Regulation .06 of this chapter can be met.

(6) Contain the following additional information:

(a) The estimated number and types of jobs to be created or retained by the project;

(b) The amount, size, and types of space to be created or retained;

(c) The cost of the project;

(d) A project budget identifying all sources and uses of funds;

(e) A pro forma showing anticipated project revenue, expenses, and debt service and other indebtedness of the project;

(f) Identification of the revenues which can be used to repay the financial assistance provided by the Administration; and

(g) Other information as the Administration may request.

C. Application Evaluation.

(1) Each application submitted shall be reviewed by the Program to determine whether all of the information required is contained in the application.

(2) Upon submission of all required information, the Program shall undertake an analysis of each application and make a recommendation to the Secretary, as to whether, in accordance with this section, a project is eligible for financial assistance, the amount of financial assistance, and any special terms and conditions for a project.

(3) The Program may take the information set forth in an application and the following factors into consideration in recommending an award of financial assistance:

(a) The ratio of Program and other State funds to both private and other non-State public funds;

(b) The relationship of a project to area revitalization plans, efforts, and strategies;

(c) The capability of an applicant to administer a project;

(d) The potential of the business to serve the needs of the priority funding area in which it is situated; and

(e) Other factors which the Program determines are desirable in fostering commercial and economic revitalization within a local jurisdiction.

D. Approval of Applications.

(1) The Program shall evaluate each application for financial assistance. If the Program recommends approval of a project for financial assistance, the Program shall present the project to the Secretary. The Secretary shall approve, disapprove, or approve with modifications all financial assistance to be provided under the Program.

(2) The Secretary, in the sole discretion of the Secretary, may delegate to an authorized officer of the Department and Administration the authority to recommend approval, approve, disapprove, or approve with modifications financial assistance provided under the Program.

E. Rejection of Applications. If the Program does not recommend approval of a project for financial assistance, the Program shall issue a written notice of rejection with an evaluation and explanation for rejection.

F. Reconsideration.

(1) An applicant may request reconsideration of a rejection by submitting a written request, to the Secretary, which is received within 30 days following the date of the rejection notice. The request for reconsideration shall address each reason for the rejection and provide documentation supporting reasons for reconsideration of the issues. The Secretary shall respond in writing to the applicant's request for reconsideration within 30 days of receipt by the Secretary of the request for reconsideration.

(2) An initial decision or reconsideration of a decision is not a contested case within the meaning of the Administrative Procedure Act or COMAR 05.01.01.02.

(3) The Secretary, in the sole discretion of the Secretary, may delegate to an authorized officer of the Department the authority to approve, disapprove, or approve with modifications a request for reconsideration of a rejection under the Program.

G. Closing. The closing of an award of financial assistance shall be scheduled at a time acceptable to the Department and the Office of the Attorney General.

H. Disbursement of Financial Assistance. Financial assistance may be disbursed in accordance with the terms and conditions set forth in the financial assistance documents.

.9 Books and Accounts.

A. Applicants, contractors, and subcontractors shall maintain such books, accounts, and records and shall file with the Department such financial and other reports as the Department may from time to time require.

B. All of these books, accounts, and records shall be open to the inspection of representatives of the Department or other agencies of the State during reasonable working hours.

C. Books, accounts, and records of contractors and subcontractors shall be maintained and made available for inspection for 3 years past the date of termination of the contractual relationship between the contractor and the applicant.

.10 Program Administration.

A. The Program may establish from time to time detailed Program guidelines containing underwriting standards, processing requirements, and other requirements or matters relating to providing financial assistance.

B. In accordance with the Act, the Department shall reserve at least the lesser of \$5,000,000 or the annual capital appropriation for the Fund to make financial assistance available to projects located in sustainable communities.

C. The Department may charge and collect from an applicant or recipient of financial assistance under this title:

(1) Origination, application, and processing fees; and

(2) Any other charges, fees, or reimbursements incidental to a project application or providing financial assistance.

D. The Department shall ensure that Program guidelines, fee information, and application forms are publically available on its website and at its offices.

E. The Administration may:

(1) Sell, assign, or otherwise dispose of all or a portion of any Program loan or revenue from a loan on terms and conditions acceptable to the Administration; and

(2) Pledge a program loan as security for any:

(a) Business project loan, bond, or security that is issued, made, or purchased by Administration under Housing and Community Development Article, Title 4, Subtitle 2, Annotated Code of Maryland; or

(b) Insurance, guaranty, or credit enhancement on a program loan or bond issued to fund a program loan.

.11 Nondiscrimination and Drug-Free and Alcohol-Free Workplace.

A. An applicant or contractor may not discriminate on the basis of race, color, religion, national origin, sex, marital status, physical or mental disability, sexual orientation, or age, except with regard to age as permitted under the federal Housing for Older Persons Act, as amended from time to time, or other similar federal laws, in leasing or otherwise providing dwelling accommodations or in any other aspect of the development, administration, or operation of any project or undertaking financed or assisted under the Program, or in any aspect of employment by any sponsor, developer, or contractor in the construction, repair, or maintenance of any property financed or assisted under the Program.

B. An applicant or contractor shall comply with all applicable federal, State, and local laws and Departmental policies and programs regarding discrimination, equal opportunity in employment, housing, and credit practices, and drug and alcohol free workplaces, including:

(1) Title VI and VII of the Civil Rights Act of 1964, as amended;

(2) Title VIII of the Civil Rights Act of 1968, as amended;

(3) The Fair Housing Amendments Act of 1988, as amended;

(4) The Department's Minority Business Enterprise Program, as amended;

(5) Executive Order 01.01.1989.18, Drug and Alcohol Free Workplace, and any Department or State regulations adopted or to be adopted to carry out the requirements of that Order;

(6) State Government Article, Title 20, Annotated Code of Maryland, as amended; and

(7) The Americans with Disabilities Act of 1990, as amended.

C. Covenants implementing these requirements, including affirmative action measures, shall be included in appropriate agreements between the Administration and other parties.

.12 Waiver.

The Secretary may waive or vary provisions of these regulations to the extent that the waiver or variance is consistent with the Act and if, in the written determination of the Secretary, the application of a regulation in a specific case or in an emergency situation would be inequitable or contrary to the purposes of the Act.

.13 False Statements.

An applicant or recipient of financial assistance who knowingly makes or causes to be made a false statement or report, whether in the nature of an understatement or overstatement of financial condition or any other fact material to the Department's action shall be subject to immediate acceleration of the loan, in addition to the criminal penalties authorized by the Act.