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Title 19
CORPORATIONS AND BUSINESS
Part I. Office of Women's Business Enterprise

Chapter 1. General Provisions

§101. Statement of Policy

A. The Louisiana Small Business Procurement Act requires that, for each fiscal year, an amount not to exceed 10 percent of the value of anticipated total state procurement of goods and services be set aside for awarding to small businesses. In addition to this amount, 10 percent of that 10 percent will be set aside for awarding to Louisiana small, women-owned businesses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1735.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Women's Business Enterprise, LR 10:790 (October 1984).

§103. Definitions

A. For the purpose of these rules and regulations the following words have the meanings indicated.

Control—exercising the power to make policy decisions.

Operate—being actively involved in the day-to-day management of the company.

Small Business—a business as defined by the Small Business Administration of the United States government which for the purposes of size eligibility or other factors meets the applicable criteria set forth in 13 Code of Federal Regulations, Part 121, as amended, and which has its principle place of business in Louisiana.

Women Owned Business—a business that is at least 51 percent owned by a woman or women who also control and operate it.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1735.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Women's Business Enterprise, LR 10:790 (October 1984).

Chapter 3. Certification

§301. Delegation

A. The commissioner of administration has delegated to the Louisiana Office of Women's Business Enterprise the authority to certify that a business is woman-owned in accordance with R.S. 39:1738.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1735.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Women's Business Enterprise, LR 10:790 (October, 1984).

§303. Procedure

A. Companies must complete all portions of the certification materials and return them as specified in the following Subsections in order to be considered for certification under the women's set-aside program.

B. The following documents plus any specified attachments constitute the certification materials required from women-owned companies interested in providing goods, services or supplies under R.S. 39:1551-1755.

1. Certification Résumé (Form Number DA 3302: Revised 4/85) which must be completed and returned to the Department of Economic Development, Division of Minority and Women's Business Enterprise, Box 94185, Baton Rouge, LA 70804-9185. The following attachments must accompany the Certification Résumé when it is submitted:

a. legal ownership documents (articles of incorporation, partnership agreements, stock ownership/distribution agreements), financial statements of the company which indicate the ownership of major assets as well as the principal stockholders in the corporation (stock certificates), company balance sheets, federal income (business) tax statements for the past three years (or as applicable), state and city licenses (whichever applicable), a copy of the bank signature card for the business, résumé of corporate shareholders and employees, organizational chart, equipment/building ownership and/or rental documents, supplier contract and relationship between distributor and prime contractor (if applicable), and any additional legal documents that would reflect ownership and control;

b. all information requested on the Certification Résumé must be supplied, and the document itself must be notarized, as indicated, prior to submittal;

c. requests for a waiver of certain requested information in §303.B.1.a, not applicable to certain business structures, must be accompanied by a justification statement.

C. Misrepresentation of any of the information submitted is in violation of Act 713.

D. For women vendors interested in providing professional, personal or consulting services under R.S. 39:1481-1526, or who are interested in construction contract work in connection with public works projects under R.S. 38:2184-2317, the following documents, plus specified attachments, shall constitute the required certification materials:

1. Certification Résumé (Form Number DA 3302 Revised 4/85) plus attachments as specified in §303.B.1.a;

2. a listing, on company letterhead, of the subject areas of expertise of the vendor company; résumés of key personnel; and a list describing previous work done in each subject area with sufficient identification of the client with a contact person (name, title, business address, telephone number) for each client listed, so that references might be obtained;

3. all of the above materials must be submitted directly to the Division of Minority and Women's Business Enterprise for certification of these vendors.

E. Newly established businesses (operating less than one year) and potential businesses seeking interim certification for the purpose of obtaining a loan through the Louisiana Economic Development Corporation should submit a business plan with a cover letter requesting a waiver for documents that do not apply in §303.B and C.

F. The Louisiana Department of Transportation and Development will continue to certify, in accordance with its own procedures, women-owned business contractors who wish to perform work under Chapter 1 of Title 48. The Division of Minority and Women's Business Enterprise will accept such certifications as equivalent to its own.

G. Additional documents/information may be requested of applicants upon review of their applications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1735.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Women's Business Enterprise, LR 10:790 (October 1984), amended by the Department of Economic Development, Division of Minority and Women's Business Enterprise, LR 15:961 (November 1989).

§305. Disapproval of Women-Owned Businesses

A. The director of the Louisiana Office of Women's Business Enterprise shall either approve or disapprove businesses for certification. If a business is disapproved for certification as a woman-owned business, a letter will be sent to the named owner(s) of the business stating the reason(s) for disapproval. A copy of the disapproval form will remain on file at the Louisiana Office of Women's Business Enterprise, and a second copy will be forwarded to the State Purchasing Office and retained there for their records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1735.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Women's Business Enterprise, LR 10:790 (October 1984).

Chapter 5. Appeal Procedures

§501. Appeal Procedures

A. If a business owner is aggrieved by a disapproval, she has 15 days after receiving the disapproval letter to provide additional information, explanation, or clarification to the Louisiana Office of Women's Business Enterprise, Box 94095, Baton Rouge, LA 70804-9095. The business owner may provide this information either through a letter to this office or may request a hearing with the director of the Louisiana Office of Women's Business Enterprise. This information will be reviewed in conjunction with the original form submitted and a final determination will be made. The business owner will be notified in writing within 15 days of this final determination. Any business owner who is still aggrieved after the final determination of the director of the Louisiana Office of Women's Business Enterprise may request that the commissioner of administration review the record and the written determination. The request for this review shall be submitted in writing 15 days of receipt of the director's final determination and shall contain detailed reasons for the objection to the final ruling.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1735.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Women's Business Enterprise, LR 10:791 (October 1984).

Title 19
CORPORATIONS AND BUSINESS
Part II. Small and Emerging Business Development Program

Chapter 1. General Provisions

§101. Statement of Policy

A. In accordance with the provisions of R.S. 51:941-945 and the provisions of the Administrative Procedure Act, R.S. 49:950-970 as amended, the Department of Economic Development's Small and Emerging Business Development Program administers these regulations which are intended to prescribe the procedures for qualifying and certifying small and emerging businesses; to provide for bonding and other financial assistance; to provide for technical and managerial assistance; to provide for a business mentor-protégé program; to recognize achievements for small and emerging businesses; and to facilitate access to state agency procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:49 (January 1997), amended by the Department of Economic Development, Office of Business Development, LR 29:542 (April 2003), LR 30:753 (April 2004).

§103. Purpose

A. The purpose and intent of this Chapter is to provide the maximum opportunity for small and emerging businesses to become competitive in a non-preferential modern economy. This purpose shall be accomplished by providing a program of assistance and promotion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended by the Department of Economic Development, Office of Business Development, LR 29:542 (April 2003), LR 30:753 (April 2004).

§105. Definitions

A. When used in these regulations, the following terms shall have meanings as set forth below.

Assistant Secretary—the assistant secretary of the Department of Economic Development.

Certification—the determination that a business qualifies for designation as a small and emerging business.

Designee—the person designated by the director to act in his absence.

Director—the director of the Small and Emerging Business Development Program designated by the Secretary of the Department of Economic Development.

Firm—a business that has been certified as small and emerging.

Full-Time—working in the firm at least 20 hours per week.

Program—the Small and Emerging Business Development Program in the Department of Economic Development.

RFP—request for proposal.

Secretary—the Secretary of the Department of Economic Development.

Small and Emerging Business (SEB)—a small business organized for profit and performing a commercially useful function which is at least 51 percent owned and controlled by one or more small and emerging business persons and for which the principal business operations of the business are located in Louisiana including Louisiana as the primary place of employment for the employees of the business. A nonprofit organization is not a small and emerging business for purposes of this Chapter.

Small and Emerging Business Person—a citizen or legal resident of the United States who has resided in Louisiana for at least 12 consecutive months and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business, and whose diminished opportunities have precluded, or are likely to preclude, such individual from successfully competing in the open market.

Undersecretary—the undersecretary of the Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:430 (March 1998), amended by the Department of Economic Development, Office of Business Development, LR 29:542 (April 2003), LR 30:753 (April 2004), LR 33:2030 (October 2007), LR 36:51(January 2010).

§107. Eligibility Requirements for Certification

A. An SEB is a firm owned and controlled by one or more small and emerging business person(s). Eligibility requirements fall into two categories, one applies to the individual owners and the other to the applicant's firm. In order to continue participation in the program, a firm and its individual owners must continue to meet all eligibility requirements.

B. Small and Emerging Business Person. For purposes of the program, a person who meets all of the criteria in this Section shall be defined as a *small and emerging business person*.

1. Citizenship. The person is a citizen or legal resident of the United States.

2. Louisiana Residency. The person has resided in Louisiana for at least one year.

3. Net Worth. The person's net worth may not exceed $400,000. The market value of the assets of the person's small and emerging business, personal residence, 401K, IRA, and other legal retirement funds will be excluded from the net worth calculation.

C. Small and Emerging Business

1. Ownership and Control. At least 51 percent of the company must be owned and controlled by one or more small and emerging business persons.

2. Principal Place of Business. The firm's principal place of business must be Louisiana.

3. Lawful Function. The company has been organized for profit to perform a lawful, commercially useful function.

4. Business Net Worth. The business' net worth at the time of application may not exceed $1,500,000.

5. Full Time. Managing owners who claim small and emerging business person status must work a minimum of 20 hours per week in the applicant firm.

6. Job Creation. An applicant firm anticipates creating new full-time jobs.

D. Requirement for Certification. Must have an e-mail address and appropriately complete the on-line application located at www.ledsmallbiz.com.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:50 (January 1997), amended LR 24:430 (March 1998), LR 25:1084 (June 1999), LR 26:1572 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:542 (April 2003), LR 30:754 (April 2004), LR 33:2030 (October 2007), LR 36:52 (January 2010).

§109. Control and Management

A. Description. An applicant firm's management and daily business operations must be controlled by an owner(s) of the applicant firm who has/have been determined to be a small and emerging business person. In order for a small and emerging business person to be found to control the firm, that individual must have managerial or technical experience and competency directly related to the primary industry in which the applicant firm is seeking program certification.

1. The small and emerging business person(s) upon whom eligibility is based shall control the board of directors of the firm, either in actual numbers of voting directors or through weighted voting. In the case of a two-person board of directors where one individual on the board is a small and emerging business person and one is not, the formers vote must be weighted by share ownership, worth more than one vote to achieve a minimum of 51 percent control, in order for the firm to be eligible for the program. This does not preclude the appointment of nonvoting or honorary directors. All arrangements regarding the structure and voting rights of the board must comply with state law and with the firm's articles of incorporation and/or bylaws.

2. Individuals who are not a small and emerging business person may be involved in the management of an applicant's firm and may be stockholders, partners, officers, and/or directors of such firm. Such individual(s), their spouse(s) or immediate family members who reside in the individual's household may not, however:

a. exercise actual control or have the power to control the applicant or certified firm;

b. be an officer or director, stockholder, or partner of another firm in the same or similar line of business as the applicant or certified firm;

c. receive excessive compensation as directors, officers, or employees from either the applicant or certified firm. Individual compensation from the firm in any form, including dividends, consulting fees, or bonuses, which is paid to a non-disadvantaged owner, his/her spouse or immediate family member residing in the same household will be deemed excessive if it exceeds the compensation received by the small and emerging business person chief executive officer, president, partner, or owner, unless the compensation is for a clearly identifiable skill for which market rates must be paid for the firm to utilize the person's expertise;

d. be former employers of the small and emerging business owner(s) of the applicant or certified firm, unless the program determines that the contemplated relationship between the former employer and the small and emerging business person or applicant firm does not give the former actual control or the potential to control the applicant or certified firm and if such relationship is in the best interest of the certified firm.

B. Non-small and emerging business person control. non-small and emerging business person(s) or entities may not control, or have the power to control, the applicant firm. Examples of activities or arrangements which may disqualify an applicant firm from certification are:

1. a non-small and emerging business person such as an officer or member of the board of directors of the firm, or through stock ownership, has the power to control daily direction of the business affairs of the firm;

2. the non-small and emerging business person or entity provides critical financial or bonding support or licenses to the firm, which directly or indirectly allows the non-small and emerging business person to gain control or direction of the firm;

3. a non-small and emerging business person or entity controls the firm or the individual small and emerging business person(s) through loan arrangements;

4. other contractual relationships exist with non- small and emerging business person or entities, the terms of which would create control over the firm.

AUTHORITY NOTE: Promulgated in accordance with R.S.51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:51 (January 1997), amended by the Department of Economic Development, Office of Business Development, LR 29:543 (April 2003), LR 30:754 (April 2004), LR 33:2030 (October 2007).

§111. Responsibility for Applying

A. It is the responsibility of any business wishing to participate in the program to complete the required certification process. Failure to provide complete, true, or accurate data may result in rejection of the application.

B. Certification in the SEBD Program is accomplished on-line at www.ledsmallbiz.com. Applicants must have an e-mail address to become certified in the SEBD Program.

C. Certification as a SEB also does not constitute compliance with any other laws or regulations and does not relieve any firm of its obligations under other laws or regulations. Certification as a small and emerging business also does not constitute any determination by SEBD Program that the firm is responsible or capable of performing any work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), amended by the Department of Economic Development, Office of Business Development, LR 29:543 (April 2003), LR 30:755 (April 2004), LR 33:2030 (October 2007).

§113. Certification Application Procedure

A. Applicant completes and submits an on-line application at www.ledsmallbiz.com to the SEBD office.

B. The SEBD Program staff reviews the application and if it is found to be incomplete or further information is needed, the SEBD Program staff will contact applicant. If the applicant does not respond within 15 days, the application will be denied.

C. The director, or designee, notifies the applicant by e-mail of the decision whether or not to grant certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), amended by the Department of Economic Development, Office of Business Development, LR 29:544 (April 2003), LR 30:755 (April 2004), LR 33:2031 (October 2007).

§115. Duration of Certification

A. The maximum amount of time that a firm may be granted certification by the SEBD Program is 10 years or when the owner or firm no longer qualifies, whichever occurs first.

B. Retention of the firm in the program depends upon time, the firm's progress toward attainment of its business goals, willingness or ability to cooperate, and follow through on recommendations of the SEBD Program staff or its designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), amended LR 26:1572 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:544 (April 2003), LR 30:755 (April 2004), amended by the House Concurrent Resolution Number 8 of the 2006 Regular Legislative Session, LR 32:1536 (August 2006), amended by the Department of Economic Development, Office of Business Development, LR 33:2031 (October 2007).

§117. Reports by Certified Small and Emerging Businesses

A. Report Form. On forms identified or prescribed by the SEBD Program, certified businesses shall report at times specified by the SEBD Program their financial position and attainment of the business' performance goals. Failure to do so may result in termination from the program.

B. Verification of Eligibility. The SEBD Program, or its designee, may take any reasonable means at any time to confirm a certified firm's eligibility, such as by letter, telephone, contact with other governmental agencies, persons, companies, suppliers, or by either announced or unannounced site inspection.

C. Notification of Changes. To continue participation, a certified firm shall provide the SEBD Program, or its designee, with a written statement of any changes in an address, telephone number, ownership, control, financial status, or major changes in the nature of the operation. Failure to do so may be grounds for termination of eligibility.

D. Evaluation. The SEBD Program or its designee, as necessary, shall evaluate the information to determine progress, areas for further improvement, resources needed by the firm, and eligibility for continued participation in the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), LR 26:1572 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:544 (April 2003), LR 30:755 (April 2004).

§119. Deception Relating to Certification of a Small and Emerging Business

A. Any person found guilty of the crime of deception relating to certification of an SEB as provided in R.S. 51:944 will be discharged from the program and will not be eligible to reapply under the business name involved in the deception or any business with which such individual(s) may be associated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:944.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:52 (January 1997), amended by the Department of Economic Development, Office of Business Development, LR 29:544 (April 2003), LR 30:755 (April 2004).

Chapter 3. Developmental Assistance Program

§301. Developmental Assistance

A. Purpose. The SEBD Program will coordinate technical, managerial, and indirect financial assistance through internal and external resources to assist certified small and emerging businesses in becoming competitive in the market place.

B. Developmental Steps

1. The certified SEB owner will be required to participate in, and complete a SEBD Program approved entrepreneurial training program. The small and emerging business owner that demonstrates adequate entrepreneurial skills or compelling reasons for not participating may be granted a waiver by the director or designee.

2. Determination of Additional Assistance. In consultation with the business owner, the SEBD Program's staff or its designee will determine areas in which the business owner needs additional assistance.

3. Referral to Additional Resources. The SEBD Program or its designee will assist the firm obtain technical and/or managerial assistance from other resources, such as small business development centers, procurement centers, consultants, business networks, professional business associations, educational institutions, and other public agencies.

4. Ongoing Evaluation. In conjunction with the small and emerging business firm and appropriate external resources, the SEBD Program or its designee will periodically assess the SEB firm's progress toward attainment of its business goals. The SEBD Program, in conjunction with the SEB firm, will determine the effectiveness of assistance being administered. If assistance is ineffective, the SEBD Program will investigate and take appropriate action.

5. Graduation from the Program. Upon completion of the program's 10 year term or attainment of the SEB's programmatic goals, the SEB firm will graduate from the program. Companies that do not make satisfactory progress and/or exceed the net worth prerequisites for certification will be terminated from the SEBD Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:53 (January 1997), LR 26:1573 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:544 (April 2003), LR 30:755 (April 2004), amended by the House Concurrent Resolution Number 8 of the 2006 Regular Legislative Session, LR 32:1536 (August 2006).

Chapter 5. Mentor-Protégé Credit Program

§501. General

A. The intent of the Mentor-Protégé Tax Credit Program Act of 2007 (Act 356 of 2007; R.S. 47:6026 the provisions of which shall hereinafter be referred to as "Act 356") is to facilitate the growth and stability of Louisiana's economy by fostering the overall enhancement and development of protégé firms as a competitive contractor, subcontractor, joint venture partner, or supplier of local, state, federal, and private markets. These provisions are to be read in pari materiae with Act 356. For the purposes of this rule, the "secretary" shall be either the Secretary of Economic Development or his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 23:53 (January 1997), amended LR 26:1573 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:545 (April 2003), LR 30:756 (April 2004), amended LR 34:602 (April 2008).

§503. Guidelines for Participation

A. The Mentor/Protégé Program will be open to participation by any business entity, large or small, which meets the criteria for participation as outlined below.

1. Mentor Firms:

a. committed and able to provide professional guidance and support to its protégés to facilitate their development and growth, particularly in the critical areas of private and public procurements in construction;

b. demonstrates favorable financial health, including profitability for at least the last two years;

c. demonstrates the capability to provide managerial or technical skills transfer or capacity building;

d. capable of contracting with private and public entities;

e. in "good standing" with the Secretary of State, and not in violation of any state statutes, rules, or governing policies;

f. must remain in the program for the period of the developmental assistance as defined in the mentor/protégé plan; and

g. such other requirements by the secretary as shall be consistent with Act 356.

2. Protégé Firms:

a. is not an affiliate or related party of the mentor;

b. currently certified active in the Department of Economic Development's Small and Emerging Business Development Program, or is registered in the state's Small Entrepreneurship/Hudson Initiative Program;

c. in "good standing" with the Secretary of State, and not in violation of any state statutes, rules, or governing policies;

d. must remain in the program for the period of the developmental assistance as defined in the mentor/protégé plan; and

e. such other requirements by the secretary as shall be consistent with Act 356.

B. Mentor Application and Selection

1. Approval of the secretary shall be obtained upon receipt and satisfactory review of an application that provides the information contained in the department's mentor application template (see Attachment A). Upon receipt, the secretary shall make such requests for other information necessary to a determination that the business should or should not be certified as a mentor under the rules and consistent with Act 356.

2. The application shall be reviewed by the Department of Economic Development to determine if the applicant qualifies as a mentor under the rules and consistent with Act 356.

3. Mentor applicant shall be notified by email of the status of the application.

C. Protégé Selection

1. Selection of the protégé is the responsibility, and at the discretion, of the mentor, with the concurrence of Louisiana Economic Development.

2. Protégés shall be selected from firms that are certified active in the Small and Emerging Business Development program, or are registered in the Small Entrepreneurship/Hudson Initiative program, and who are otherwise qualified under these rules before it begins participation in the mentor-protégé arrangement. A protégé selected from another source or reference must be referred to the Department of Economic Development for certification in the Small and Emerging Business Development program or the Small Entrepreneurship/Hudson Initiative program. The protégé must meet the department's guidelines for certification in one or both of these programs as a condition of the mentor/protégé agreement acceptance.

3. The mentor or Department of Economic Development will notify protégé of its application status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1573 (August 2000), amended by Department of Economic Development, Office of Business Development, LR 29:545 (April 2003), LR 30:756 (April 2004), LR 34:602 (April 2008).

§505. The Mentor-Protégé Agreement

A. The mentor-protégé agreement is a written agreement between the mentor and protégé, and approved by the Department of Economic Development.

B. The mentor/protégé agreement, signed by the respective firms, shall be submitted to the Department of Economic Development for approval. The agreement shall contain a description of the developmental assistance that is mutually agreed upon and in the best developmental interest of the protégé firm.

C. The mentor-protégé agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement.

D. The mentor/protégé agreement shall include information on the mentor's ability to provide managerial or technical skills transfer or capacity building.

E. The mentor-protégé agreement shall include termination provisions complying with notice and due process rights of both parties and a statement agreeing to submit periodic report reviews and cooperate in any studies or surveys as may be required by the department in order to determine the extent of compliance with the terms of the agreement.

F. The submitted mentor/protégé agreement shall be reviewed by Louisiana Economic Development and approved if the agreement is in compliance with the program's mentor/ protégé guidelines and is consistent with Act 356.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1573 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:545 (April 2003), LR 30:757 (April 2004), LR 34:603 (April 2008).

§507. Internal Controls and Monitoring

A. The Secretary of the Department of Economic Development, or his designee, will designate and may change from time to time, one or more persons on his staff to act as the department's project representative or as the "mentor-protégé agreement monitor" for each mentor-protégé agreement, to provide liaison between the mentor, protégé and the department, and to perform various duties

which are specifically provided for in the mentor-protégé agreement.

B. The mentor and protégé are responsible to inform the department of any problems, delays or adverse conditions which will materially affect their ability to attain agreement objectives, prevent the meeting of time schedules and goals, or preclude the attainment of agreement work units by established time schedules and goals. A statement of the action taken or contemplated by the mentor and protégé and any assistance which may be needed to resolve the situation shall accompany such disclosure.

C. Department controls will include:

1. approving, reviewing and evaluating mentor/protégé agreements for goals and objectives;

2. reviewing quarterly progress reports submitted by mentors and protégés on protégé development to measure protégé progress against the approved agreement, and a final report within 30 days following the completion of the agreement, or by July 31 each year, whichever comes first.

3. requesting and reviewing periodic reports and any studies or surveys as may be required by the program to determine program effectiveness and impact on the growth, stability and competitive position of small and emerging businesses in the state of Louisiana; and

4. continuous improvement of the program via ongoing and systematic research and development of program features, guidelines and operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:546 (April 2003), LR 30:757 (April 2004), LR 34:603 (April 2008), LR 36:52 (January 2010).

§509. The Mentor-Protégé Tax Credit

A. The following mentor-protégé tax credit rules shall be applicable to mentors who enter into a mentor-protégé agreement.

1. The mentor may earn and apply for and, if qualified, be granted a refundable credit on any income or corporation franchise tax liability owed to the state by the mentor. The amount of the refundable credit shall be established by the Department of Economic Development and contained in the mentor-protégé agreement.

2. The amount of the tax credits granted pursuant to the provisions of this Part shall not exceed $50,000 per mentor-protégé agreement.

3. The mentor may participate in no more than two mentor-protégé agreements in any one tax year without the prior written approval of the secretary.

4. The mentor-protégé tax credits granted by the Department of Economic Development in any fiscal year shall not exceed $1,000,000.

5. The mentor-protégé tax credit shall be deemed earned on the date of the investment and may be claimed in the tax year in which the investment is made. The credit earned by an individual shall be claimed on their individual income tax return, the credit earned by an S-corporation shall be claimed as provided by R.S. 47:1675(G), the credit earned by a corporation other than an S-corporation shall be claimed on the corporation income and franchise tax return of the corporation, and the credit earned by a pass through entity shall be claimed on the income or franchise tax returns of the members or partners as provided by R.S. 47:1675(F).

6. A tax credit granted pursuant to this Part shall expire and have no value or effect on tax liability beginning with the twenty-first tax year after the tax year in which it was originally earned, applied for, and granted.

7. In the event it is subsequently determined by the Department of Economic Development that the mentor has not complied with the requirements of the mentor-protégé agreement, or that the mentor was otherwise not qualified to earn a tax credit pursuant to this Part, any tax credits previously earned and applied against the mentor's tax liability shall be recaptured and added to the tax liability of the mentor for the year that such determination is made.

8. The secretary shall provide the mentor with all necessary and appropriate tax credit certificates as provided by statute and as shall assist the Department of Revenue in its determination of applicability of the credit

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 942

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:546 (April 2003), LR 30:757 (April 2004), LR 34:604 (April 2008).

§511. Termination of Mentor-Protégé Agreement

A. Termination for Cause. The state may terminate the mentor-protégé agreement for cause based upon the failure of the mentor or protégé to comply with the terms and/or conditions of the agreement, provided that the state shall give the mentor or protégé written notice specifying the failure. If within 30 days after receipt of such notice, the mentor or protégé shall not have either corrected such failure or, in a case which cannot be corrected in 30 days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the state may, at its option, place the mentor or protégé in default and the agreement shall terminate on the date specified in such notice. The mentor or protégé may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the state to comply with the terms and conditions of the agreement; provided that the mentor or protégé shall give the state written notice specifying the state's failure and a reasonable opportunity for the state to cure the defect.

B. Termination for Convenience. Either party may terminate the agreement at any time by giving 30 days written notice. The mentor shall be entitled to payment for

deliverables in progress, to the extent work has been performed satisfactorily. The state may amend and/or terminate the agreement due to budgetary reductions or changes in funding priorities by the state upon giving 30 days written notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 942

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Small and Emerging Business Development, LR 26:1574 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:546 (April 2003), LR 30:757 (April 2004), LR 34:604 (April 2008).

Chapter 9. Small Business Bonding Program

§901. Small Business Bonding Assistance

A. Program Activities—Louisiana Contractors Accreditation Institute (LCAI)

1. Eligibility. All SEB construction contractors who are certified by the Small and Emerging Business Development Program, Department of Economic Development, are eligible to attend the institute. However, other contracting businesses will be invited to attend the institute but they will not be able to receive bond guarantee assistance until they have been certified by the SEBD Program.

2. Standards and Procedures for Determining Course Content. The staff of Bonding Assistance Program (BAP) will once a year, or as budget permits, consult with the heads of the construction schools in Louisiana approved by the Board of Regents and Department of Education to ensure that current course content adequately prepares the students to run their construction firms in a businesslike manner.

3. Attendance. Attendance is open to only certified or potentially certified small and emerging business construction contractors. However, contractors must register for the institute he or she wishes to attend. Each contractor who successfully completes the LCAI will be issued a certificate of accreditation.

4. Accreditation without Institute Attendance. An SEB firm may request to be accredited without attendance. The staff of the BAP will conduct a review of the firm. If the contractor can present evidence he conducts business within standards set by best practices, an accreditation may be issued to the firm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:53 (January 1997), amended LR 24:430 (March 1998), LR 26:1575 (August 2000), amended by the Department of Economic Development, Office of Business Development, LR 29:547 (April 2003), LR 30:758 (April 2004).

§903. Direct Bonding Assistance

A. Direct Bonding Assistance—Eligibility

1. All certified active small and emerging construction businesses, and all other certified SEBs (non-construction) may be eligible for surety bond guarantee assistance not to exceed the lesser of 25 percent of contract or $200,000 on any single project.

2. Beginning July 1, 2017, firms with previously approved SEBD certification status expiring after July 1, 2017 but prior to July 1, 2020, may be granted continued eligibility for the Direct Bonding Assistance Program for a period of up to three years, but no later than July 1, 2020.

3. All obligations, whether contractual or financial, will require the approval of the undersecretary.

B. Application Process

1. A small business bonding program applicant requesting a bond guaranty is first required to contact a surety company interested in insuring such a bond contingent on SEBD approval. The aforesaid surety will contact SEBD to discern eligibility requirements and submit a formal application on behalf of the business concern.

2. Application for surety bond guarantee assistance including contractor or business underwriting data as prescribed by surety companies shall be submitted by the contractor or it's agent to the surety company.

3. Manager of BAP or designee will:

a. determine and document that business is eligible to participate in program;

b. secure proof that project has been awarded to contractor or business, in the case of performance and payment bonds;

c. determine worthiness of the project based on advice and input from surety company;

d. make recommendations to the BRAS director as required.

C. Surety Companies

1. Criteria for Eligibility and Continuation in the Program. A surety company must have a certificate of authority from, and its rates approved by, the Department of Insurance, and appear in the most current edition of the *U.S. Treasury Circular 570*.

a. BAP, at its sole discretion, may refuse to recommend the issuance of further guarantees/letters of credit (LC) to a participating surety where the administration finds any of the following:

i. fraud or misrepresentation in any of the sureties business dealings, BAP-related or not;

ii. imprudent underwriting standards;

iii. excessive losses (as compared to other participating sureties);

iv. failure of a surety to consent to BAP audit;

v. evidence of discriminatory practices; and

vi. consideration of other relevant factors.

b. BAP, at its sole discretion, may refuse to recommend the issuance of further guarantees/LC to a participating surety where the Department of Economic Development finds that the surety has failed to adhere to prudent underwriting standards or other practices relative to those of other sureties participating in the BAP. Any surety that has been denied participation in the program may file an appeal, in writing, delivered by certified mail to the Secretary of the Department of Economic Development, or a designee, who will review the adverse action and will render the final decision for the department. Appeals must be received no later than 30 days from the issuance of the secretary's, or designee's, decision.

2. Subsuretyship. A lead or primary surety must be designated by those sureties who desire to bond a contract together. BAP will recommend a guarantee only to one surety. This does not mean that surety agreements cannot be entered. In a default situation, BAP will recommend to indemnify only the lead or primary surety, which will have an indemnification agreement with its re-insurers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:430 (March 1998), amended by the Department of Economic Development, Office of Business Development, LR 29:547 (April 2003), LR 30:758 (April 2004), LR 36:52 (January 2010), amended by the Department of Economic Development, Office of the Secretary, LR 43:2102 (November 2017).

§907. Management Construction/Risk Management Company

A. Surety may require contractor to engage a management construction/risk management company to do, at a minimum, an independent take off and review of all low bid projects and advise BAP of their findings, this determination shall be made based on the surety's standard underwriting procedures. Surety may also require contractor to engage a management construction/risk management company to provide the following services:

1. review of the initial bond request for compatibility of the contractor with the scope of work as outlined in the solicitation;

2. job cost breakdown and bid preparation assistance;

3. monitor all projects once awarded. This will include a full (critical path) reporting throughout the life of the contract;

4. funds receipt and disbursement through a job-specific account on each project. This will include compliance with all lien waivers, releases and vendor payment verification;

5. make itself immediately available for project completion on any defaults at no additional fee to the project cost.

B. Management construction/risk management company engaged by contractor shall be pre-approved by BAP and surety. BAP shall not receive any portion of any fees paid to management construction/risk management company by contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:431 (March 1998), amended by the Department of Economic Development, Office of Business Development, LR 29:548 (April 2003), LR 30:759 (April 2004).

§909. Underwriting a BAP Guaranteed Bond

A. In underwriting a BAP guaranteed bond, the surety is required to adhere to the surety industry's general principles and practices used in evaluating the credit and capacity; and is also required to adhere to those rules, principles, and practices as may be published from time to time by the BAP.

B. Once an application for a bond guarantee/LC is received from a contractor, a review will be conducted in order to determine whether the small and emerging business is eligible for BAP's surety bond guarantee assistance. This review will focus on the presence of a requirement for surety bonds and other statutory requirements.

1. Bonds

a. There must be a specific contract amount in dollars or obligee estimate of the contract amount, in writing, on other than firm fixed price contracts.

b. There must be nothing in the contract or the proposed bond that would prevent the surety, at its election, from performing the contract rather than paying the penalty.

c. BAP, having guaranteed the bid bond, may refuse to recommend guarantee of the required payment and performance bonds when the actual contract price exceeds the original bid and the next higher bid amount. In such an instance, the surety would either issue the payment and performance bond without BAP's guarantee, or suffer default in fulfilling the bid bond, which should result in claims against the surety and surety's claim against BAP.

2. Types of Bond Guarantees. BAP guarantees will be limited to certain bid, performance, and payment bonds issued in connection with a contract. Bid, performance, and payment bonds listed in the contract bonds section, *Rate Manual of Fidelity, Forgery and Surety Bonds*, published by the Surety Association of America, will be eligible for a BAP guarantee. In addition, the BAP guarantee may be expressly extended, in writing, to an ancillary bond incidental to the contract and essential to its performance.

3. Ineligible Bond Situations and Exceptions

a. If the contracted work is already underway, no guarantee will be issued unless the director or a designee consents, in writing, to an exception.

b. While it should not be a common occurrence, and is in fact to be discouraged, applications for surety bonds may occasionally be submitted for consideration after a job is in process. In such cases, the surety must submit, as part of the application, the following additional information:

i. evidence from the contractor that the surety bond requirement was contained in the original job contract;

ii. adequate documentation as to why a surety bond was not previously secured and is now being required;

iii. certification by contractor: list of all suppliers indicating that they are paid up to date, attaching a waiver of lien from each; that all labor costs are current; that all subcontractors are paid to their current position of work and a waiver of lien from each;

iv. certification by obligee that the job has been satisfactorily completed to present status; and

v. certification from the architect or engineer that the job is in compliance with plans and specifications; and is satisfactory to the present.

c. There are prepared forms published by the American Institute of Architects (AIA), which may be used for the purposes listed above.

C. The surety must satisfy to BAP that there is reasonable expectation that the small and emerging business will perform the covenants and conditions of the contract with respect to which a bond is required. BAP's evaluation will consider the small and emerging business' experience, reputation, and its present and projected financial condition. Finally, BAP must be satisfied as to the reasonableness of cost and the feasibility of successful completion of the contract. The BAP's determination will take into account the standards and principles of the surety industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:431 (March 1998), amended by the Department of Economic Development, Office of Business Development, LR 29:548 (April 2003), LR 30:759 (April 2004).

§911. Guarantee

A. Amount of Guarantee. Providing collateral in the form of an irrevocable letter of credit to the surety may be posted on an individual project basis, for one or more projects at any one time, at the discretion of the Department of Economic Development.

B. Surety Bond Guarantee Agreement

1. Terms and Conditions

a. The guarantee agreement is made exclusively for the benefit of BAP and the surety; it does not confer any rights or benefits on any other party including any right of action against BAP by any person claiming under the bond. When problems occur on a contract substantive enough to involve the surety, the surety is authorized to take actions it deems necessary. Regardless of the extent or outcome of surety's involvement, the surety's services, including legal fees and other expenses, will be chargeable to the contractor unless otherwise settled.

b. Any agreement by BAP to guarantee a surety bond issued by a surety company shall contain the following terms and conditions:

i. the surety represents that the bond or bonds being issued are appropriate to the contract requiring them;

ii. the surety represents that the terms and conditions of the bond or bonds executed are in accordance with those generally used by the surety for the type of bond or bonds involved;

iii. the surety affirms that without the BAP guarantee to surety, it will not issue the bond or bonds to the principal;

iv. the surety shall take all steps necessary to mitigate any loss resulting from principal's default;

v. the surety shall inform BAP of any suit or claim filed against it on any guaranteed bond within 30 days of surety's receipt of notice thereof. Unless BAP decides otherwise, and so notifies surety within 30 days of BAP's receipt of surety's notice, surety shall take charge of the suit for claim and compromise, settle or defend such suit or claim until so notified. BAP shall be bound by the surety's actions in such matters;

vi. the surety shall not join BAP as a third party in any lawsuit to which surety is a party unless BAP has denied liability in writing or BAP has consented to such joinder.

c. When contractor successfully completes bonded job a status inquiry report is signed by appropriate parties and is forwarded to surety's collateral department. Surety shall release standby letter of credit within 90 days of recordation of acceptance date shown on status inquiry report.

d. Variances. The terms and conditions of BAP's guarantee commitment or actual bond guarantee may vary from surety to surety and contract to contract depending on BAP's experiences with a particular surety and other relevant factors. In determining whether BAP's experience with a surety warrants terms and conditions which may be at variance with terms and conditions applicable to another surety, BAP will consider, among other things, the adequacy of the surety's underwriting; the adequacy of the surety's substantiation and documentation of its claims practice; the surety's loss ratio and its efforts to minimize loss on BAP guaranteed bonds; and other factors. Any surety which deems itself adversely affected by the director's exercise of the foregoing authority may file an appeal with the Secretary of the Department of Economic Development. The secretary will render the final decision.

2. Reinsurance Agreement. In all guarantee situations, BAP agrees to reimburse the participating surety up to the agreed-upon percentage of any and all losses incurred by virtue of default on a particular contract. The participating surety agrees to handle all claims, with recoveries being shared on a pro rata basis with BAP. This includes reinsurance agreements between the surety and any other licensed surety or reinsurance company. In other words, no indemnity agreement can be made to inure solely to the benefit of the surety to recover its exposure on any bond guarantee by BAP without BAP participating in its pro rata share.

3. Default

a. Notice of Default. Surety shall notify BAP if it becomes aware of any circumstances which may cause the contractor to fail to timely complete the project in accordance with the provisions of the contract. Where BAP receives information from other sources indicating a contractor is in potential violation of his contract, the information is to be relayed to the surety for its information and appropriate action.

b. Default Claims, Indemnity Pursuit, and Settlement

i. The sole authority and responsibility in BAP for handling claims arising from a contractor's default on a surety bond guaranteed by the BAP shall remain with the director and undersecretary relative to BAP's guarantee. The director and undersecretary will process and negotiate all claim matters with surety company representatives.

ii. In those situations where BAP's share is $500 or less, the surety shall notify the contractor, by letter, of its outstanding debt with no further active pursuit undertaken by the surety for which BAP would be requested to reimburse.

iii. In those situations where BAP's share is over $500 through $2,500, the surety shall promptly develop financial background information on the debtor contractor. These findings will determine whether it is economically justified to further pursue indemnity recovery or to close the file.

iv. In those situations where BAP's share is over $2,500, the surety shall pursue recovery through its normal method, assessing and comparing the estimated cost of recovery efforts with the probable monetary gain from the effort prior to exercising its rights under LC.

v. The surety shall advise BAP of attempts made to contact indemnitor or to attach other assets, and the outcome of these attempts. The surety shall insure that BAP is credited with its respective apportionment of all recovery within 90 days of the recovery.

vi. At the culmination of subrogation and indemnity recovery efforts, the surety shall notify the obligor of the total amount outstanding. A copy of the notice sent to the contractor shall be promptly forwarded to the BAP. After recovery efforts have been exhausted, the surety and BAP will make final reconciliation on the defaulted case, and close the file on that particular contractor's project. Prior to closing the file, surety shall conduct a recapitulation of the account to assure that BAP has been correctly credited with all funds recovered from any and all sources.

vii. Under the terms and conditions of the surety bond guarantee agreement, the authority to act upon proposed settlement offers in connection with defaulted surety bonds lies with the surety, not with the BAP. A settlement occurs when a defaulted contractor and its surety agree upon a total amount and/or conditions which will satisfy the contractor's indebtedness to the surety, and which will result in closing the loss file. The surety must pay BAP its pro rata share of such settlement. BAP, immediately upon receipt of same, closes the file.

4. Reinstatement. A contractor's contractual relationship is with the surety company. Therefore, all matters pertaining to reinstatement must be arranged with and through the surety. BAP's contractual relationship is with the surety company only. Because of these relationships, BAP will neither negotiate nor discuss with a contractor amounts owed the surety by the contractor, or settlement thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:432 (March 1998), amended by the Department of Economic Development, Office of Business Development, LR 29:549 (April 2003), LR 30:760 (April 2004).

§913. Audits

A. At all reasonable times, BAP or designee may audit the office of either a participating agency, its attorneys, or the contractor or subcontractor completing the contract, all documents, files, books, records and other material relevant to the surety bond guarantee commitments. Failure of a surety to consent to such an audit will be grounds for BAP to refuse to issue further surety guarantees until such time as the surety consents to such audit. However, when BAP has so refused to issue further guarantees the surety may appeal such action to the Secretary of the Department of Economic Development. All appeals must be in writing and delivered by certified mail within 30 days of receiving the director's, or designee's written issuance of notice that no further guarantees will be issued. Otherwise the director's, or designee's, decision becomes final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:433 (March 1998), amended by the Department of Economic Development, Office of Business Development, LR 29:550 (April 2003), LR 30:761 (April 2004).

§915. Ancillary Authority

A. The director, with the approval of the undersecretary and assistant secretary, will have the authority to commit

funds and enter into agreements which are consistent with and further the goals of this program. This authority would include, but not be limited to, designating a pool of funds upon which only a particular surety has recourse to, in the event of a contractor default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 24:433 (March 1998), amended by the Department of Economic Development, Office of Business Development, LR 29:550 (April 2003), LR 30:761 (April 2004).

Chapter 11. Promotion of Small and Emerging Businesses

§1101. Promotion

A. Directory

1. Compilation. The SEBD Program shall compile a directory of all certified SEBs and make it available to the businesses and governmental agencies.

2. Frequency of Publication. The directory shall be updated at least annually, based upon information provided by certified businesses. The SEBD Program may issue updated directories more frequently.

3. Volume and Distribution. At least one copy of the directory will be made available to each state agency and educational institution, and copies will be provided to the state library. Additional copies may be made available to the public and governmental agencies as SEBD Program's resources permit.

4. Available Information. Public information concerning a small and emerging business may be obtained by contacting the Small and Emerging Business Development Program staff during normal working hours.

B. Other Promotional Means. The SEBD Program will utilize other feasible means of promoting small and emerging businesses, such as, but not limited to, the internet, World Wide Web, electronic bulletin boards, trade shows, or private sector contacts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:942.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:54 (January 1997), amended by the Department of Economic Development, Office of Business Development, LR 29:550 (April 2003), LR 30:761 (April 2004).

Chapter 13. Complaints and Investigations

§1301. Complaints and Investigation of Ineligibility

A. Right to File Complaint. Any individual, firm, or governmental agency which believes that a certified business does not qualify for certification may file a written, signed complaint with the SEBD Program. The complaint must contain sufficient information for SEBD Program staff to conduct an investigation, including specific identification of the affected business, basis for the charge of ineligibility, and identification, mailing address, and telephone number of the complainant.

B. Right to Due Process. No small and emerging business shall be decertified based upon a complaint, without first having had an opportunity to respond to the allegations; however, failure of the small and emerging business to respond to the SEBD Program's notification within 30 calendar days of mailing from the Program may result in revocation of certification.

C. Investigative Procedure

1. Notification of Allegation. The SEBD Program shall notify the certified business which is subject of the complaint by certified mail, return receipt requested, of the allegation within 15 calendar days of the complaint's receipt.

2. Investigation Conducted. Within available resources, the SEBD Program shall investigate each complaint as promptly as possible. In no event shall the investigation extend beyond 60 calendar days from the date that the complaint was received.

3. Cooperation. The small and emerging business shall cooperate fully with the investigation and make its staff and records available to the SEBD Program, if requested. Insufficient cooperation may be grounds for concluding that the firm has not borne the burden of proving to the satisfaction of the SEBD Program that it is eligible for certification, resulting in revocation of certification.

4. Upon completion of the investigation, the SEBD Program's staff shall make a determination and issue a written decision which either rejects the complaint or revokes the certification within 10 working days. A copy of the written decision shall be sent to the firm that was subject of the complaint, the complainant, and the director of the SEBD Program of State Purchasing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:944.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:54 (January 1997), amended by the Department of Economic Development, Office of Business Development, LR 29:551 (April 2003), LR 30:762 (April 2004).

§1303. Grounds and Procedure for Reconsideration of Denial

A. Right to Petition. A decision by the SEBD Program to deny issuing certification, deny renewal of certification, or to revoke certification will be reconsidered after an applicant business has submitted a written petition for reconsideration to the staff of the SEBD Program.

B. Grounds. Grounds for petitioning the SEBD Program to reconsider a denial or revocation of certification are that the Small and Emerging Business Development Program:

1. did not have all relevant information;

2. misapplied its rules;

3. otherwise made an error in reaching it original decision.

C. Right to Petition for Reconsideration. A petitioning business may appeal SEBD Program's decision to deny issuance of certification, to deny recertification, or to revoke certification. Only a firm which is subject of the denial or revocation has a right to petition for reconsideration.

1. Petition Submitted. The appellant business submits a written petition for reconsideration to the SEBD Program's staff. If the petition has not been received by the SEBD Program within 30 days of the date of the letter announcing the denial or revocation, the SEBD Program's decision becomes administratively final.

2. The petition shall specify grounds upon which a reconsideration is justified and the type of remedy requested. The petition for reconsideration must also clearly identify a contact person, mailing address, telephone number. The petitioning firm may provide any additional information which would be pertinent to the issue.

3. Acknowledgment. Upon receiving a petition for reconsideration, SEBD Program shall acknowledge its receipt by sending certified mail, return receipt requested, to the petitioner within five working days.

4. Reconsideration. The SEBD Program shall consider the petition and review all pertinent information, including additional information provided by the appellant business. The SEBD Program may conduct further investigation as necessary.

5. Notification of Decision. No later than 60 calendar days from receipt of the petition for reconsideration, the SEBD Program shall notify the petitioner by certified mail, return receipt requested, of its decision either to affirm the denial or revocation, with specific reason(s) of the grounds for the decision.

D. Final Decision. A decision to deny, revoke, or suspend certification following consideration of a petition for reconsideration is final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:944.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Division of Economically Disadvantaged Business Development, LR 23:55 (January 1997), amended by the Department of Economic Development, Office of Business Development, LR 29:551 (April 2003), LR 30:762 (April 2004).

Title 19
CORPORATIONS AND BUSINESS
Part III. Minority Business Enterprises

Chapter 1. Statement of Policy/Legal Basis

§101. Statement of Policy

A. In accordance with the Louisiana Minority Business Enterprise Act of 1984 (R.S. 39:1951-1969 and 39:1981-1991 and the provisions of the Administrative Procedure Act, R.S. 49:950-970 as amended, the Office of the Governor, Office of Minority Business Enterprises, hereby adopts the following policies, rules and regulations relative to the Minority Business Enterprise Program, to be effective April 20, 1985. These regulations are both substantive and technical in nature, and are intended to specify the procedure for certification and as qualifications for a minority business enterprise; to provide for the effect of certification; to establish procedures for setting and attaining goals for minority business participation in state procurement activities; to provide for contracts requiring minority business participation, and the monitoring of agency and institutional contracts; and to establish penalties for interference and noncompliance. These regulations apply to all state departments, boards or commissions or educational institutions, created by the legislature or executive order within the executive branch of state government pursuant to Title 36, operating from funds appropriated, dedicated or self-sustaining; federal funds; or funds generated from any other source. These regulations do not apply to agencies of the judicial or legislative branches of state government, except to the extent that procurement or public works for these branches is performed by an executive branch agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969, R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:342 (April 1985).

Chapter 3. General Provisions

§301. Definitions

A. When used in these regulations, the following terms shall have meanings as set forth below.

1. *Small Business*—a business entity organized for profit (including an individual, partnership, corporation, joint venture, association or cooperative), as defined by the Small Business Administration of the United States Government which, for purposes of size eligibility or other factors, meets the applicable criteria set forth in Part 121 of the Title 13 of the *Code of Federal Regulations*, as amended, and which has its principal place of business in Louisiana.

2. *Minority*—a person who is a citizen or lawful permanent resident of the United States, domiciled in Louisiana, and who is a member of one or more of the following groups:

a. *Black*—having origins in any of the black racial groups of Africa.

b. *Hispanic*—having origins in Mexico, Puerto Rico, Cuba, Central or South America, or in other Spain or Portuguese cultures, regardless of race.

c. *Asian American*—having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

d. *American Indian or Alaskan Native*—having origins in any of the original peoples of North America.

3. *Minority Business Enterprise or Minority-Owned Business*—a small business, organized for profit and performing a commercially useful function, which is owned and controlled by one or more minority individuals or minority business enterprises and which has its principal place of business in Louisiana.

a. *Commercially Useful Function*—responsible for execution of a contract or distinct element of work under a contract by actually performing, managing, and supervising the work involved.

b. *Owned and Controlled*—ownership of at least 51 percent of the firm, or in the case of a corporation, at least 51 percent of the voting stock, and controlling at least 51 percent of the management and daily business operations of the business.

4. *State Procurement Activity*—the purchase, lease, or rental of any goods and/or services undertaken for any state governmental entity which is subject to these regulations. Procurement activities specifically include the following types of expenditures.

a. *Goods and/or Services*—all purchases for supplies or services made under Chapters 16 or 17 of Title 39 of the Louisiana Revised Statutes of 1950, and all purchases of materials and supplies made under Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950, including selection of professional services under Part VII of Chapter 10 of Title 38.

i. *Personal Service*—work rendered by an independent contractor which requires the use of creative or artistic skills, such as graphic artists, sculptors, musicians, photographers and writers, or which requires the use of highly technical or unique individual skills or talents, such

as paramedical, therapists, handwriting analysts, and expert witnesses for adjudication or court proceedings.

ii. *Professional Service*—work rendered by an independent contractor who has a professional knowledge of some department of learning or science used by its practical application of the affairs of others or in the practice of an art founded on it, including but not limited to lawyers, doctors, dentists, veterinarians, architects, engineers, landscape architects, and accountants. A profession is a vocation founded upon prolonged and specialized intellectual training which enables a particular service to be rendered. The word *professional* implies professed attainments in special knowledge as distinguished from mere skill. For contracts with a total amount of compensation of $75,000 or more, the definition of *professional service* shall be limited to lawyers, doctors, dentists, veterinarians, architects, engineers, landscape architects, accountants, and any other profession that may be added by regulations adopted by the Office of Contractual Review of the Division of Administration.

iii. *Consulting Service*—work, other than professional or personal services, rendered by an independent contractor who possesses specialized knowledge, experience and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis or advice in formulating or implementing programs or services or improvements in programs or services, including but not limited to such areas as management, personnel, finance, and accounting, planning and feasibility studies, data processing, advertising and public relations.

b. *Public Works*—all work, including construction, highway and ferry construction alteration and improvements (other than ordinary maintenance)—as provided in Chapter 10 of Title 38 or Chapter 1 of Title 48 of Louisiana Revised Statutes of 1950.

5. *Certified Minority Vendor*—a minority business enterprise or minority-owned business as defined in §301.A.3, which has completed the certification process as provided in Chapter 5 of this Part.

6. *Certification*—the process provided in Chapter 5 of this Part by which a minority-owned business or minority business enterprise is certified by the Office of Minority Business Enterprises (OMBE) as meeting the criteria for participation in the state's minority-owned business set-aside program.

7. *Non-Certified Minority Vendor*—a minority business enterprise or minority-owned business, as defined in §301.A.3, which has not been certified for participation in the set-aside program under Chapter 5 but which has confirmed its minority status under the procedures specified in Chapter 19 of this Part.

8. *State Agency*—any agency, department, office division, board, commission, educational institution, correctional facility, or other governmental entity within the executive branch of the state of Louisiana.

9. *Set-Aside*—those purchases, contracts, contract classes, or public works which have been designated and specifically set-aside by the commissioner of administration and/or the agency for awarding to minority-owned businesses or minority business enterprises under the provisions of Chapter 13 and Chapter 17 of this Part.

a. *Contract*—all types of state agreements, regardless of name of the purchase of supplies or services or for construction or major repairs. The term contract includes, but is not limited to, the following:

i. awards and notices of award;

ii. contracts of fixed price, cost, cost and fixed fee, or incentive type;

iii. leases/rental agreements;

iv. letter contracts;

v. contracts involving job or task orders;

vi. purchase orders;

vii. any supplemental agreement of these types.

b. *Class of Contracts*—an entire group of contracts having a common characteristic.

10. *Annual Target Goal*—the annual overall percentage of funds expected to be expended by each state agency for the procurement of all goods and services from minority-owned businesses, which has been established by the executive director of the Office of Minority Business Enterprises and the commissioner of administration in accordance with §1301 of this Part.

11. *Annual Plan*—the annual document prepared by each department of state government in accordance with §1303 of this Part which details the means by which that entity shall attempt to achieve its established annual target goal.

12. *Contracting Base*—the total annual funds of an agency which have been budgeted for the procurement of goods and services, other than capital outlay expenditures, for the subject fiscal year.

13. *Adjusted Fiscal Year (Target) Base*—the contracting base for an agency, less any excluded estimated expenditures under Chapter 13 of this Part, against which the annual goal percentage is to be applied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969, R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:342 (April 1985).

Chapter 5. Certification Procedures

§501. Criteria for Minority Certification

A. Eligibility for participation in the minority set-aside program of the state is contingent upon certification that the minority-owned business or minority business enterprise meets the criteria defined in §301.A.1-3 of this Part. It is the

responsibility of any minority business wishing to participate in the minority set-aside program or otherwise to receive minority vendor preference to complete the required certification process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969, R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:343 (April 1985).

§503. Distribution of Certification Applications

A. Certification materials will be distributed to interested minority vendors upon written or verbal request. Written requests for certification materials should be directed to the Office of Minority Business Enterprises, Box 94095, Baton Rouge, LA 70804-9095. Telephone requests should be directed to that same office at (225) 342-6491 (LINC 421-6491).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969, R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:343 (April 1985).

§505. Procedure

A. Companies must complete all portions of the certification materials and return them as specified in the following Subsections in order to be considered for certification under the minority set-aside program.

B. The following documents, plus any specified attachments, constitute the certification materials required from minority-owned companies interested in providing goods, services, or supplies under R.S. 39:1551-1755.

1. Certification Résumé (Form Number DA 3302: Revised 4/85) which must be completed and returned to the Department of Economic Development, Division of Minority and Women's Business Enterprise, Box 94185, Baton Rouge, LA 70804-9185. The following attachments must accompany the certification résumé when it is submitted:

a. legal ownership documents (articles of incorporation, partnership agreements, stock ownership/ distribution agreements), financial statements of the company which indicate the ownership of major assets as well as the principal stockholders in the corporation (stock certificates), company balance sheets, federal income (business) tax statements for the past three years (or as applicable), state and city licenses (whichever applicable,) a copy of the bank signature card for the business, résumé of corporate shareholders and employees, organizational chart, equipment/building ownership and/or rental documents, supplier contract and relationship between distributor and prime contractor (if applicable), and any additional legal documents that would reflect ownership and control;

b. birth certificates indicating racial heritage must be provided for all minority vendors for which certification is being sought, regardless of the type of business structure;

c. all information requested on the certification résumé must be supplied, and the document itself must be notarized, as indicated, prior to submittal;

d. a waiver may be requested for documents information in §505.B.1.a not applicable to certain business structures when accompanied by a justification statement in the application package.

C. Misrepresentation of any of the information submitted is in violation of Act 713.

D. For minority vendors interested in providing professional, personal or consulting services under R.S. 39:1481-1526 or who are interested in construction contract work in connection with public works projects under R.S. 38:2184-2317, the following documents, plus specified attachments, shall constitute the required certification materials:

1. Certification Résumé (Form Number DA 3302 Revised 4/85) plus attachments as specified in §505.B.1.a above;

2. a listing, on company letterhead, of the subject areas of expertise of the vendor company; résumés of key personnel, and, a list describing previous work done in each subject area with sufficient identification of the client with a contact person (name, title, business address, telephone number) for each client listed, so that references might be obtained;

3. all of the above materials must be submitted directly to the Division of Minority and Women's Business Enterprise for certification of these vendors.

E. Newly established businesses (operating less than one year) and potential businesses seeking interim certification for the purpose of obtaining a loan through the Economic Development Corporation a business plan should be submitted with a cover letter requesting a waiver for documents that do not apply in §505.B and C.

F. The Louisiana Department of Transportation and Development will continue to certify, in accordance with its own procedures, minority-owned business contractors who wish to perform work under Chapter 1 of Title 48. The Division of Minority and Women's Business Enterprise will accept such certifications as equivalent to its own.

G. Additional documents/information may be requested of applicants upon review of their applications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:343 (April 1985), amended by the Department of Economic Development, Division of Minority and Women's Business Enterprise, LR 14:350 (June 1988), LR 15:960 (November 1989).

§507. Submittal of Information Requested

A. It is the responsibility of the applying vendor to provide all the information requested on each of the specified certification documents. Failure to provide

adequate data may result in rejection of the application to participate in the minority set-aside program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985).

§509. Certification Documents Inquiries/Assistance

A. Minority vendors with questions about the certification process and/or the information requirements of the certification documents are encouraged to contact the Office of Minority Business Enterprises prior to submittal of documents, to obtain assistance that may prevent rejection of the certification application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:195-1969 and R.S. 3:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985).

§511. Notification of Minority Certification Decision

A. Certification of vendors as eligible to participate in the minority set-aside program requires the approval of several governmental agencies other than OMBE. To enable all governmental entities ample time to review each certification request, vendors will be notified by OMBE of the certification decision within 20 calendar days from submittal of the application materials.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985).

§513. Disapproval of Minority Certification

A. In the event that a request for certification is disapproved, the notification from OMBE will specify the reasons for disapproval.

B. Vendors may appeal certification disapproval, unless such disapproval is based upon verified ineligibility of the vendor as a minority-owned business under the Minority Business Enterprises Act. The applicant business vendor must file the appeal for reconsideration in writing with OMBE within 30 calendar days of mailing of the decision, or the decision shall become administratively final. The vendor must specify within the petition for reconsideration the grounds upon which an appeal of the decision is justified, and must clearly indicate the type of remedy being requested. The request for reconsideration must also clearly identify a contact person within the place of business, and may provide any additional information which the applicant has to offer which might affect the reconsideration decision.

C. Upon receipt of a petition for reconsideration, OMBE shall review its original decision, any additional information provided by the applicant business, and may conduct further investigation as necessary. OMBE shall respond to the request within 30 calendar days of receipt of the petition for reconsideration, via certified mail, return receipt requested. The response from OMBE shall contain specific reason(s) why the disapproval decision has been upheld or overturned. In the event that the disapproval is rescinded as the result of an appeal, OMBE will, in its decision notification to the vendor, indicate what steps must be taken to complete the certification process.

D. A decision to deny certification following consideration of a petition for reconsideration is administratively final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39-1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985).

§515. Verification of Information Submitted

A. OMBE reserves the right to verify any and all information submitted by a vendor on its application materials, in whatever manner seems most appropriated by OMBE, including but not limited to on-site visits, telephone interviews, or other records research.

B. OMBE further reserves the right to make unscheduled visits to the place of business of any vendor participating in the Minority Business Enterprises Program, and to conduct interviews with staff or otherwise to observe and review the operations of any vendor, for the purposes of confirming or verifying minority ownership and/or operational control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985).

§517. Change in Minority Ownership/Control

A. Vendors shall notify OMBE immediately in writing in the event of any changes in ownership, control or operations which might impact continued eligibility of the vendor to participate as a minority-owned business. Failure to do so may result in immediate suspension of certification or decertification of the vendor and dissolution of any set-aside contracts that may have been received during the period of the change. Failure to report a change in minority ownership which results in ineligibility of the business will result in a fine of not less than $1,000. If the business has continued to operate as a minority-owned business and has continued to participate inappropriately in the minority set-aside program, a fine of not less than $5,000 and immediate decertification shall result.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985).

§519. Application Denied or Withdrawn

A. An applicant which has withdrawn its application or whose application has been denied, may file a new application only if there has been a change in ownership,

control or organization of the business. No business may file more than two applications in any calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985).

§521. Liability

A. Certification as a minority business enterprise does not constitute compliance with any other laws or regulations (including contractor registration or prequalification requirements), and does not relieve any firm of its obligations under other laws or regulations. Certification as a minority business enterprise also does not constitute any determination by the Office of Minority Business Enterprises that the firm is responsible or capable of performing any work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985).

§523. Exceptions to Vendor Certification Requirements

A. The commissioner of administration, upon the recommendation of the executive director of OMBE, may waive in writing the small business portion of the certification requirements, so that a minority-owned business meeting all other certification criteria may participate in the set-aside program or otherwise obtain minority preferences. Such determination shall be made on a case-by-case basis, and prior written approval of the commissioner must be obtained before the vendor shall be deemed eligible for certification.

B. When a federal requirement that is a prescribed condition for allocation of federal funds to the state of Louisiana sets forth criteria for certification which are in conflict with those in these rules, then a business which is not otherwise certified for participation in the minority business enterprise program, but meets the particular federal criteria, shall be certified as a minority business enterprise for the particular projects(s) funded under those requirements, upon submittal to the Office of Minority Business Enterprise of sufficient documentation to show that said business meets the federal criteria.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985).

Chapter 7. Recertification Procedures

§701. Annual Recertification

A. Certification to participate in the women's set-aside program shall be valid for one calendar year. Thirty days prior to expiration of any woman-owned business certification, DMWBE will notify the firm that recertification has become due.

B. Vendors wishing to participate in the women's set-aside program must submit a notarized Affidavit of Recertification, which may be obtained from DMWBE, along with any other missing documents according to the provisions specified in LAC 19:I.303.B and C.

C. It is the responsibility of the business owner to notify the office in writing of any changes in ownership or location of the business or telephone number during the certification calendar year, which begins on the date of certification.

D. Changes in commodities or services for which the vendor wishes to receive bids must be submitted via letter from the vendor to both State Central Purchasing and DMWBE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1735.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985), amended by the Department of Economic Development, Division of Minority and Women's Business Enterprise, LR 15:959 (November 1989).

§703. Failure to Recertify

A. Women business enterprises which make no effort at recertification as of one month from the recertification notification date shall be deleted from the active vendor files and shall be ineligible to participate in the state programs for women business owners and/or any set-aside awards until such time as recertification has been completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1735.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985), amended by the Department of Economic Development, Division of Minority and Women's Business Enterprise, LR 15:960 (November 1989).

Chapter 9. Complaints Concerning Certified Vendors

§901. Ineligibility Complaints

A. Any individual, firm, agency, or other person who believes that an applicant certified as a minority business enterprise does not qualify under the standards of eligibility for certification may file a written, signed complaint with the Office of Minority Business Enterprises. Such complaints must contain sufficient information for the office to determine the validity of the complaint, including specific identification of the affected applicant business; the basis for the belief that the applicant does not meet eligibility criteria; and an identification of the complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:344 (April 1985).

§903. Investigation of Complaint

A. Within available resources, OMBE shall investigate each complaint as promptly as possible. In no event shall any investigation period exceed 60 calendar days from receipt of the complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

§905. Notification of Complaint

A. OMBE shall notify the subject minority-owned business of the details of the complaint by certified mail, return receipt requested, within 10 calendar days of complaint receipt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

§907. Response to Complaint

A. No minority business enterprise shall be decertified based upon a complaint, without first having an opportunity to respond to the complaint; however, failure of the minority-owned business to respond to notification of the complaint within 20 calendar days of mailing from OMBE may result in suspension of certification or decertification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

§909. Cooperation in Complaint Investigation

A. The minority business enterprise shall cooperate fully in any complaint investigation, and shall make its staff and/or records available to assist OMBE in its investigations as necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

§911. Temporary Suspension

A. The director of OMBE may suspend the certification of the affected minority business enterprise pending the outcome of the investigation, after providing the firm with seven calendar days notice via certified mail, return receipt requested, to show cause why suspension should not occur. Any such suspensions shall last not more than 60 calendar days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

§913. Complaint Investigation Decision

A. Upon completion of the investigation, the director of OMBE shall issue a written decision, either rejecting the complaint or revoking certification of the minority business enterprise. The written decision shall be distributed to both the minority business enterprise involved and to the complainant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

Chapter 11. Decertification Procedures

§1101. Certification Denied

A. Decisions by OMBE to deny certification, deny renewal of certification, or to revoke certification will be reconsidered upon submittal by the applicant business of a written petition for reconsideration on the following grounds:

1. the Office of Minority Business Enterprises did not have all relevant information;

2. the Office of Minority Business Enterprises misapplied its rules; or

3. the Office of Minority Business Enterprises otherwise made an error in reaching its original decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

§1103. Petition for Reconsideration

A. Such petitions for reconsideration must be received by OMBE within 30 calendar days of mailing of the original decision, or the decision becomes administratively final. The reconsideration appeal must contain specific information on why the decision is believed to be in error, and must specify the remedy being sought by the applicant business. In addition, the reconsideration appeal must identify a contact person within the firm and must supply any additional information which the applicant has to offer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.
HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

§1105. Petition Reconsidered or Reviewed by OMBE

A. Upon receipt of a petition for reconsideration, OMBE shall review its original decision, plus any additional information provided by the applicant, and may conduct further investigations as necessary OMBE shall respond to the request for reconsideration within 30 calendar days of receipt of the petition for reconsideration, via certified mail,

return receipt requested. The response shall contain specific reason(s) why the decision has been upheld or overturned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

§1107. Decision of Reconsideration Petition

A. A decision to deny, revoke, or suspend certification following consideration of a petition for reconsideration is administratively final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

Chapter 13. Minority Participation in State Procurement Activity

§1301. Establishment of Annual Goals for Agencies

A. The director of the Office of Minority Business Enterprises, with the concurrence of the commissioner of Administration, shall establish overall annual goals for participation by certified minority businesses in the procurement of all goods and services by each state agency, based upon the estimated expenditures by category in the budget request documents. These goals shall be in the form of overall annual percentages of expenditures which are expected to be awarded to certified minority businesses. The annual period shall be the fiscal year. The overall annual goals will be adopted by OMBE each year not later than June 15, and shall be distributed to the head of each agency and educational institution on or before June 30 of each year.

B. Upon receipt of the annual goal from OMBE, agencies shall have 15 calendar days in which to respond to OMBE with suggested revisions to the established annual target percentage.

C. Within 15 calendar days of date of agency submittal, OMBE shall establish a new annual target percentage or reconfirm the percentage established for the agency.

D. The director of OMBE shall review the overall annual goal for each agency and educational institution at the conclusion of each fiscal year, and with the concurrence of the commissioner of administration shall establish the goal for the upcoming year. In no case shall the goal exceed 10 percent of the estimated annual expenditures for goods and services. Factors to be considered in establishing the new goal shall include the number of certified minority businesses, the success of the agency in attaining the goals over the past year, the population of minorities within the state as a whole, and such other relevant information as may be available.

E. The annual overall goals of each state agency for the period from September 1, 1984 through June 30, 1985, shall be 10 percent minority owned business participation in the procurement of all goods and services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

§1303. Preparation by Agencies of Annual Plan for Attainment of Annual Goal

A. On an annual basis, each state agency shall formulate a plan for setting aside particular contracts or classes of contracts for award to minority-owned businesses, in a total dollar amount sufficient to attain its overall annual goal in the procurement of goods and services.

B. The annual plan must include Form DA 6201 and must be filed with the Office of Minority Business Enterprises by July 30 of each year.

C. The annual minority set-aside plan prepared by each state agency shall include, but not be limited to, the following information:

1. a narrative statement, affirming that the agency or institution is committed to the use of minority business enterprises in procurement of goods and/or services to the maximum extent possible;

2. a narrative description of the method used to encourage minority business enterprise participation in the public works and procurement contracting process of the agency;

3. a summary forecast, by expenditure category, itemizing the annual fiscal year plan amounts calculated by the agency from application of its annual goal. This summary forecast shall be submitted on Form DA 6201. This form may be ordered from the Forms Management Office within the Division of Administration:

a. the following general categories or expenditures shall be included by each agency in its calculation of the fiscal year base:

i. all estimated expenditures in the supplies category;

ii. all estimated expenditures in the acquisitions category;

iii. the segment of estimated expenditures within the category of professional services that is governed by the provisions of R.S. 39:1481 et seq.;

iv. those portions of estimated expenditures within the category of operating services that are governed by Chapters 16 and 17 of Title 39 of the Revised Statutes of 1950;

b. examples of goods or services that may not be included in establishment of the base include salaries and related benefits, postage, interagency expenditures, insurance, procurement of data processing hardware, and off-the-shelf software, contracts for fiscal intermediary services, payment for utility services, travel, printing services, interns or resident contracts, contracts for advertisements in connection with bidding requirements, or

other items justified by the agency and approved for exclusion by OMBE. In any event, professional services shall include only those contracts which involve independent contractor relationships;

4. a forecast of the contracts to be set-aside for award by the agency to minority-owned businesses, including estimated monetary value involved (if known,) the number and types of contracts to be awarded, and the expected solicitation dates;

5. a narrative description of the participation requirements of minority business enterprises in each contract or class of contract expected to be awarded during the coming fiscal year;

6. a statement of the method by which records of minority business enterprise participation in the contracting records of the agency will be kept, and a description of the method the agency or institution will use to achieve the overall annual goals;

7. a narrative description of the method the state agency will use to require compliance by bidders for its contracts with applicable minority business enterprise participation requirements.

D. The head of each department shall certify that the information contained in the annual plan is correct, to the best of his/her knowledge, at the time of submittal.

E. In the event that the agency changes its plan to fulfill its assigned minority percentages, a new minority business annual plan (Form DA 6201) shall be submitted. This new plan shall be clearly labeled as an updated plan, and shall supersede any plan previously submitted for that agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1069 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:345 (April 1985).

Chapter 15. Designation and Setting-Aside of Procurement Activities for Minority-Owned Business Participation

§1501. Identification of Goods and Services

A. All governmental bodies, in preparation of the annual plan, shall identify those goods and services which are eligible for inclusion in the minority-owned business set-aside program. For agencies on FACS, the State Central Purchasing Office of the Division of Administration shall compile this information on procurement of Chapter 17 goods and services through its Contracts Management System, and shall forward this data to each state agency for inclusion in the annual plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:346 (April 1985).

§1503. Publication of Minority Business Directory

A. The Office of Minority Business Enterprises, in cooperation with the business development agencies throughout the state and the Small Business Administration, shall identify, through the certification process described in these rules, minority-owned businesses interested in participating in the set-aside program. Information generated from the certification process shall be compiled by OMBE in the form of a Minority-Owned Business Directory as described in Chapter 23 of this Part. OMBE will forward this directory to purchasing agents in each state agency for use in determining categories or classes of contracts to be set-aside for minority business participation. In addition, such data shall be stored on the computer utilized by the State Central Purchasing Office, to allow for access and retrieval for the purposes of identifying prospective bidders and soliciting competitive bids for Chapter 17 procurement activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:346 (April 1985).

§1505. Minority Business Directory Usage

A. The State Central Purchasing Office and the individual departments shall refer to the Minority-Owned Business Directory and the computer listing of minority-owned businesses identifying prospective vendors and areas of potential set-asides during the solicitation of procurement activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:346 (April 1985).

§1507. Goods, Services and Public Works Set-Aside

A. All governmental entities shall designate as set-asides sufficient purchases of goods, services, and public works, for exclusive participation by minority-owned businesses, to attain the established annual target goal. For Chapter 17 procurements by agencies on FACS, such designation may be made on a class of contracts/commodities basis to the State Central Purchasing Office at the beginning of each fiscal year, so that all purchases for that commodity/class of commodities will be set-aside for minority participation. Alternatively, agencies may elect to make such designations on a contract by contract basis throughout the year, based upon their individual progress towards attainment of the annual goal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:346 (April 1985).

§1509. Applicable Laws

A. All procedures for procurement of goods and services from minority-owned businesses, including the solicitation

of bids and/or requests for proposals, shall be made in accordance with all applicable laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:346 (April 1985).

§1511. Bid Identified as Set-Aside

A. For purchases made through State Central Purchasing, the agency for whom the purchase is being made shall clearly label the request for issuance of an invitation to bid as a "MINORITY BUSINESS SET-ASIDE." State Central Purchasing shall then proceed to advertise the bid as a minority set-aside on behalf of the requesting agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:346 (April 1985).

§1513. Bid Proposal Advertisements

A. For procurement activities which are not handled through State Central Purchasing, but which have been designated as set-asides by the agency, the agency shall clearly indicate in all advertisements relative to solicitation of bids or proposals that the purchase of goods or services has been set-aside for the exclusive participation of certified minority businesses under R.S. 39:1951-1969 and R.S. 39:1981-1991. This notice shall appear in bold type as the heading of all such advertisements, and should be repeated within the main body of the advertisement. Notice of the minority set-aside nature of the contract which is contained solely in the body of the text shall not be sufficient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:346 (April 1985).

§1515. Agency Receipt and Evaluation of Minority Set-Aside Bids

A. Agencies shall evaluate all reasonable bids for proposals received from certified minority-owned businesses in response to a set-aside advertisement. Bids or proposals received shall be evaluated in accordance with the terms of the invitation to bid or the request for proposals and normal purchasing standards. Bids from vendors who have not been certified in accordance with the procedures of Chapter 5 of this Part shall not be considered in response to a set-aside contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:346 (April 1985).

§1517. Designation of a Minority Set-Aside Bid

A. In the event there are three or more certified minority vendors in a specific category, and there is a reasonable expectation of receiving three or more bids, the bid may be designated as a set-aside for exclusive participation by certified minority-owned businesses.

B. The bid document must clearly specify that the bid is a set-aside by containing, in bold type, the following statement: this proposal has been designated as a minority-owned set-aside. To be eligible for award, bidders must be certified prior to award in accordance with Act 653 of the 1984 Legislative Session. If the bid is estimated to be in excess of $5,000, the agency must advertise in accordance with R.S. 39:1594(C).

C. All advertisements for the bids must contain, in bold face type, the following statements in the heading: the commodity(ies) specified below has (have) been designated as a minority-owned set-aside and only those vendors certified prior to award shall be considered.

D. In the event there are not three or more certified minority vendors in a specific category, but the Office of Minority Business Enterprise certifies that there are not three such minority-owned businesses in Louisiana that are certified, nor are there three such minority-owned businesses which could be certified in the state of Louisiana, then the bid may be designated as a set-aside for the exclusive participation of certified minority-owned business as long as one certified minority vendor exists in the category being bid. The bid(s) received must conform with §1701.D and §1703.A relative to not exceeding 15 percent of what could have been obtained via open-market competition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:346 (April 1985), amended LR 13:342 (June 1987), LR 13:497 (September 1987).

Chapter 17. Criteria for Procurement of Goods and Services

§1701. Criteria for Procurement of Goods and Services

A. Bid Specifications for Chapter 17—Goods and Services: When the award of the contract for the purchase of goods and/or services has been set aside for minority-owned business participation, and at the time Invitations to Bid are released there are not at least three certified minority-owned businesses available to bid on the contract or class of contracts or class of contracts involved, or the contract has not been set-aside in accordance with §1517.D of this Part and regulations, the award shall be made on the basis of open competitive bidding under the Louisiana Procurement Code.

B. The award shall be made to a certified minority-owned business when the price bid by such a business is within the lower of 10 percent of $10,000 of the otherwise

lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation to bid.

C. In the event that there is no certified minority-owned business responding whose bid is within the range specified above, the award shall go to the otherwise lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation to bid, without regard to minority status.

D. In all cases, the state agency or educational institution actually making the award, either under open competitive bidding or under the set-aside provisions of this Title, may reject all bids if it is determined, based upon reasons provided in writing, that such action is in the best interest of the state. One reason, but not the only reason, for rejection of all bids when the contract has been set-aside under the set-aside provisions of this Title, shall be if prices obtained exceeded more than 15 percent of what could have been obtained via open-market competition.

Affidavit of Minority Status

STATE OF LOUISIANA
PARISH OF _____:

BEFORE ME, the undersigned authority, personally came and appeared _____, who stated, under oath, that s/he is a citizen or lawful permanent resident of the United States and is of minority heritage as defined at R.S. 39:1952(12).

_____
AFFIANT

sworn to and subscribed before me this ____ day of _____, 20__, at _____, Louisiana.

_____
NOTARY

Affidavit of Recertification

STATE OF LOUISIANA
PARISH OF _____:

BEFORE ME, the undersigned authority, personally came and appeared _____, who stated, under oath, that s/he is owner of a certified minority-owned business as provided at Chapter 19 of Subtitle III, of Title 39 of the Louisiana Revised Statutes as of the ____ day of _____, 20____, and that s/he appears herein for the purposes of attesting to the fact that all information contained in the original certification is still true and correct, and that s/he remains the owner of the minority-owned business, _____, as appears in
(Name of Business)
the files of the Office for Minority Business Enterprise.

_____
AFFIANT

sworn to and subscribed before me this ____ day of _____, 20__, at _____, Louisiana.

_____
NOTARY

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:347 (April 1985), amended LR 13:343 (June 1987).

§1703. Consulting Services

A. Criteria for Requests for Proposal for Consulting Services under LAC 19.III.Chapter 17. When the award for a contract for consulting services has been set-aside for minority-owned business participation, and at the time request for proposals are to be distributed, there are not at least three certified minority-owned businesses available to bid on the contract or class of contracts involved or the contract has not been set-aside in accordance with §1517.D of this Part and regulations, the award shall be made on the basis of open competitive bidding under the Louisiana Procurement Code.

B. Proposals submitted by certified minority-owned businesses shall be credited with such additional amounts as would amount to 10 percent of the maximum number of points which could be awarded to any single proposal under the criteria set forth in the request for proposals.

C. The maximum number of additional points specified above shall be awarded only where the certified minority-owned business is the prime contractor under the contract, and retaining and performing at least 51 percent of the dollar value of the work to be contracted.

D. For otherwise qualified proposals, where the certified minority-owned business participates in less than 51 percent of the total dollar value of work, the number of additional points to be credited shall be calculated by multiplying the maximum additional points by the dollar value percent participation of the minority-owned business.

E. In all cases, the state agency or educational institution actually making the award, either under open competitive bidding or under the set-aside provisions of this Title, may reject all proposals if it is determined based upon reasons provided in writing that such action is in the best interest of the state. One reason, but not the only reason, for rejection of all bids when the contract has been set-aside under the set-aside provisions of this Title, shall be if prices obtained exceeded more than 15 percent of what could have been obtained via open-market competition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:347 (April 1985), amended LR 13:497 (September 1987).

§1705. Public Work Bids $200,000 or More

A. Construction of Public Work ($200,000 or more). When a contract for the construction of public works in an amount of $200,000 or more is to be awarded by the Facility Planning and Control Section of the Division of Administration on the basis of competitive bidding, the award shall be made to a certified minority-owned business when the price bid by such as business is within 5 percent of the otherwise lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation to bid.

B. The award shall be made as above only where the certified minority-owned business is the prime contractor under the invitation to bid.

C. In the event that a minority-owned business is awarded a contract by bidding within the range as specified above, the minority-owned business shall adjust its bid to correspond to the bid of the otherwise lowest responsive and responsible bidder that would have been awarded the contract. In no case shall the adjustment be by more than 5 percent.

D. In the event that there is no certified minority-owned business whose bid is within the range specified above, the award shall go to the otherwise lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation to bid, without regard to minority status.

E. Contracts awarded to minority-owned businesses pursuant to these rules shall not exceed 10 percent of the total dollar amount of the contracts awarded by Facility Planning and Control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:347 (April 1985).

§1707. Construction Bids under $200,000

A. Construction of Public Works (under $200,000). The Facility Planning and Control Section of the Division of Administration shall set aside each fiscal year, for exclusive participation by minority-owned businesses, 10 percent of all contracts for the construction of public works less than $200,000 to be awarded by competitive bidding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:347 (April 1985).

Chapter 19. Noncertified Vendor Participation

§1901. Noncertified Vendor Participation

A. Agencies may include in their annual plans and may count towards attainment of their annual plan amounts any contracts for the above specified types of procurement activity with minority vendors who are not certified to participate in the minority set-aside program, but who are available to conduct business with the state, subject to submittal of a sworn affidavit which attests to the fact that the vendor does meet the definition of a minority business under the Act. For the purposes of this portion of the rules, completion of Part I, portions of Part II, and all or Part XIV of the Certification Résumé (Form DA 3302) shall constitute the required sworn affidavit. Agencies may obtain copies of Form DA 3302 from State Central Purchasing for this purpose as needed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:347 (April 1985).

§1903. Liability

A. It is the responsibility of the individual agencies to ascertain the possibility of minority status of a vendor on any particular purchase, contract, or procurement activity handled directly by the agency. At the time the procurement activity is initiated within the agency, the purchasing agent/buyer should ensure that the vendor completes the above referenced sworn affidavit. Upon receipt of the sworn affidavit from the vendor, the agency shall submit the affidavit, plus any supporting documentation, to OMBE for review and approval by the director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:347 (April 1985).

§1905. Small Business Criteria Waived

A. As with certified minority vendors, the commissioner of administration may waive the small business criteria requirements for a minority-owned business which meets all other criteria of the Act. The executive director of OMBE shall be responsible for securing approval from the commissioner of administration as necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:347 (April 1985).

§1907. Annual Target Goals with Non-Certified Minority Vendor

A. Upon receipt of notification of OMBE and the commissioner's approval of minority status for the vendor, the agency may count expenditures made under the affected contract towards the established annual target goals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:347 (April 1985).

§1909. Certification Procedures

A. Approval of minority status for a vendor under these provisions of the rules does not constitute certification of the vendor to participate in any set-aside award programs operated by the state under the Minority Business Enterprise Act, nor does it enable the affected vendor to obtain the minority preferences discussed under Chapter 19 of this Part. Certification as a minority vendor for set-aside purposes and for minority preferences can only be obtained via the procedures of Chapter 5, of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:347 (April 1985).

Chapter 21. Reports

§2101. Quarterly Reporting

A. All state agencies, boards, and commissions of the executive branch of state government shall submit to OMBE, on a quarterly basis, a Minority Business Report (Form DA 6202) illustrative of the minority business enterprise activity conducted by that agency during the previous quarter. The report must contain the signatures of both relevant department head and the preparer.

B. Quarterly reports are due in the Office of Minority Business Enterprise on the twentieth of the month following the end of the quarter being reported. Agencies may order supplies of Form DA 6202 from the Forms Management Office within the Division of Administration.

C. For the purposes of these rules, quarterly activity shall be reflective of the following time periods:

First Quarter	July 1-September 30
Second Quarter	October 1-December 31
Third Quarter	January 1-March 31
Fourth Quarter	April 1-June 30

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:347 (April 1985).

§2103. Annual Report to Legislature

A. Not later than August 31 of each year, OMBE shall submit to the Governor and the legislature a cumulative annual report, detailing the progress being made throughout the state towards minority participation in the state's procurement activities.

B. This report shall contain, for each department, a detailed listing of minority participation by category of expenditure, including a comparison of actual activity to the established annual plan amounts. This data shall be collected from the quarterly reports submitted by the agencies, and the annual report shall clearly indicate that all data is as reported by the agencies themselves.

C. The annual report shall also contain a separate listing of those agencies that have not complied with the reporting requirements of these rules, and a listing of agencies in which minority participation in procurement activity is below 5 percent.

D. The report shall contain a narrative description of activities undertaken by OMBE and/or other state agencies to encourage minority participation in the state's procurement activities, and an identification of barriers to full minority participation with suggested corrective measures.

E. OMBE shall also include performance indicators, reflecting the total number of certified minority vendors; the percentage increase or decrease in minority vendor certifications completed during the previous year; and such other data as might allow the legislature and the governor to assess the effectiveness of the minority set-aside program in achieving its intended goals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:348 (April 1985).

Chapter 23. Directory of Minority Businesses

§2301. Directory of Certified Minority Business Enterprises

A. The Office of Minority Business Enterprises will compile, from the certification applications it processes, a directory of all minority business enterprises certified for participation in the set-aside program. In addition, the directory will include those minority vendors which have been certified for participation in federally funded projects.

B. The directory shall be updated at least semi-annually, based upon the information provided by minority vendors during the intervening period. The Office of Minority Business Enterprises may issue supplements to the directory on a more frequent basis, as needed.

C. One copy of the Minority-Owned Business Directory will be made available to each state agency and educational institution at no charge, and copies will be provided to the state library at no charge. Additional copies for state agency use and/or for use by the general public and other interested individuals will be available for purchase at a reasonable cost.

D. State agencies contracting directly with a purported minority business enterprise shall have the responsibility of insuring that the firm has been properly certified, or that a sworn affidavit as described in Chapter 19 of this Part has been obtained.

E. Information concerning the status of a firm as a minority business enterprise may be obtained by contacting the Office of Minority Business Enterprises during normal working hours (8 a.m. through 5 p.m., Monday through Friday) at (225) 342-6491 (LINC 421-6491). Callers should be prepared to fully identify the corporate name of the firms, as well as the principal officers and/or owner of the firms, when requesting telephone information from OMBE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1951-1969 and R.S. 39:1981-1991.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Minority Business Enterprises, LR 11:348 (April 1985).

Title 19
CORPORATIONS AND BUSINESS
Part V. Secretary of State

Chapter 1. Domestic Corporations

§100. Secure Business Filings Service

A. The Department of State has developed and now offers a secure business filings (SBF) service designed to discourage fraudulent business filings in Louisiana. The service will notify a corporation via email whenever amendments are submitted on the corporation through geauxBIZ. The corporation will have the opportunity to review the filing and approve or reject further processing by the Department of State.

B. Any person who has a geauxBIZ account with a verified email address can enroll in the optional SBF service. The enrollment application must be authorized by a person who is a named officer, director, member, manager, or partner of record (the authorizing authority). The identity of the authorizing authority must be verified by completing a secure business filing service enrollment application authorization which must be verified by a licensed notary public in the state where the authorizing authority resides. A copy of the authorization form can be found on the department's website. The authorization application is required for all SBF applicants, even if the applicant is the approval authority.

C. Business entities will have an opportunity to review the filing and approve or reject further processing by the Department of State. To approve a filing, the corporation must provide the PIN assigned to the corporation within five days of receiving notification of a pending file. If the corporation rejects a filing or if five days passes with no action performed, the filing will not be processed by the Department of State.

D. The corporation is responsible for PIN usage and security. The Department of State will not be responsible for unauthorized usage of the PIN or changes made to the corporation's business record as a result of an unauthorized user entering the correct PIN. The department reserves the right to cancel the SBF service, change the PIN, remove an SBF enrollee, change the SBF service terms and conditions, or act to prevent or prosecute fraudulent activity at any time.

E. An enrollment does not expire; however, it can be cancelled by the enrollee, by another authorized applicant, or by the Department of State. Enrollments are non-transferrable. A new SBF enrollment application must be completed to reinstate a cancelled enrollment or to change the SBF enrollment to a different geauxBIZ user. Once the enrollment application is approved by the department, the department will provide the corporation with a personal identification number (PIN) that will be unique to the corporation. The corporation can give the PIN to any person filing amendments on the corporation's behalf.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR 42:905 (June 2016), amended LR 44:1451 (August 2018).

§102. Commercial API Service

A. The Department of State has developed and now offers an optional paid Commercial API Subscription service which will allow customers, such as banks, service companies and agencies doing enforcement activities, to search for business entity filings using their back-end systems. This will allow the customer to integrate validation of business information into their processes, such as a bank creating a business checking account without having to open a browser, navigate to the secretary of state website, type in the business name, and click search. They could even populate data from the business information that the secretary of state has on file into fields in their application. The service will also allow customers to validate certificates issued by the Office of the Secretary of State to confirm their authenticity. The secretary of state currently does not know which customers are using the website. When customers sign up for the service, the secretary of state will have the contact information to provide better and more reliable service to them, and if there are any issues the secretary of state will know which customers to inform. The secretary of state has had to block legitimate customers from accessing the secretary of state website to try and prevent performance issues caused by people trying to harvest data from the site or just wreak havoc. The API would ensure legitimate business customers have access to the business data.

B. Any person who has a department single sign-on account with a verified email address can enroll in the optional Commercial API. The enrollment application will be completed online on the secretary of state website.

C. The service has a one-year non-refundable renewable subscription fee of $500. The subscription renewal form will be found on the secretary of state website. Enrollments are non-transferrable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR 46:1233 (September 2020).

Chapter 5. Nonprofit Corporations

§500. Secure Business Filings Service

A. The Department of State has developed and now offers a secure business filings (SBF) service designed to

discourage fraudulent business filings in Louisiana. The service will notify a corporation via email whenever amendments are submitted on the corporation through geauxBIZ. The corporation will have the opportunity to review the filing and approve or reject further processing by the Department of State.

B. Any person who has a geauxBIZ account with a verified email address can enroll in the optional SBF service. The enrollment application must be authorized by a person who is a named officer, director, member, manager, or partner of record (the authorizing authority). The identity of the authorizing authority must be verified by completing a secure business filing service enrollment application authorization which must be verified by a licensed notary public in the state where the authorizing authority resides. A copy of the authorization form can be found on the department's website. The authorization application is required for all SBF applicants, even if the applicant is the approval authority.

C. Business entities will have an opportunity to review the filing and approve or reject further processing by the Department of State. To approve a filing, the corporation must provide the PIN assigned to the corporation within five days of receiving notification of a pending file. If the corporation rejects a filing or if five days passes with no action performed, the filing will not be processed by the Department of State.

D. The corporation is responsible for PIN usage and security. The Department of State will not be responsible for unauthorized usage of the PIN or changes made to the corporation's business record as a result of an unauthorized user entering the correct PIN. The department reserves the right to cancel the SBF service, change the PIN, remove an SBF enrollee, change the SBF service terms and conditions, or act to prevent or prosecute fraudulent activity at any time.

E. An enrollment does not expire; however, it can be cancelled by the enrollee, by another authorized applicant, or by the Department of State. Enrollments are non-transferrable. A new SBF enrollment application must be completed to reinstate a cancelled enrollment or to change the SBF enrollment to a different geauxBIZ user. Once the enrollment application is approved by the department, the department will provide the corporation with a personal identification number (PIN) that will be unique to the corporation. The corporation can give the PIN to any person filing amendments on the corporation's behalf.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR 42:906 (June 2016), amended LR 44:1452 (August 2018).

§502. Commercial API Service

A. The Department of State has developed and now offers an optional paid Commercial API Subscription service which will allow customers, such as banks, service companies and agencies doing enforcement activities, to search for business entity filings using their back-end systems. This will allow the customer to integrate validation of business information into their processes, such as a bank creating a business checking account without having to open a browser, navigate to the secretary of state website, type in the business name, and click search. They could even populate data from the business information that the secretary of state has on file into fields in their application. The service will also allow customers to validate certificates issued by the Office of the Secretary of State to confirm their authenticity. The secretary of state currently does not know which customers are using the website. When customers sign up for the service, the secretary of state will have the contact information to provide better and more reliable service to them, and if there are any issues the secretary of state will know which customers to inform. The secretary of state has had to block legitimate customers from accessing the secretary of state website to try and prevent performance issues caused by people trying to harvest data from the site or just wreak havoc. The API would ensure legitimate business customers have access to the business data.

B. Any person who has a department single sign-on account with a verified email address can enroll in the optional Commercial API. The enrollment application will be completed online on the secretary of state website.

C. The service has a one-year non-refundable renewable subscription fee of $500. The subscription renewal form will be found on the secretary of state website. Enrollments are non-transferrable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR, 46:1233 (September 2020).

Chapter 7. Foreign Corporations

§700. Secure Business Filings Service

A. The Department of State has developed and now offers a secure business filings (SBF) service designed to discourage fraudulent business filings in Louisiana. The service will notify a corporation via email whenever amendments are submitted on the corporation through geauxBIZ. The corporation will have the opportunity to review the filing and approve or reject further processing by the Department of State.

B. Any person who has a geauxBIZ account with a verified email address can enroll in the optional SBF service. The enrollment application must be authorized by a person who is a named officer, director, member, manager, or partner of record (the authorizing authority). The identity of the authorizing authority must be verified by completing a secure business filing service enrollment application authorization which must be verified by a licensed notary public in the state where the authorizing authority resides. A copy of the authorization form can be found on the department's website. The authorization application is required for all SBF applicants, even if the applicant is the approval authority.

C. Business entities will have an opportunity to review the filing and approve or reject further processing by the Department of State. To approve a filing, the corporation must provide the PIN assigned to the corporation within five days of receiving notification of a pending file. If the corporation rejects a filing or if five days passes with no action performed, the filing will not be processed by the Department of State.

D. The corporation is responsible for PIN usage and security. The Department of State will not be responsible for unauthorized usage of the PIN or changes made to the corporation's business record as a result of an unauthorized user entering the correct PIN. The department reserves the right to cancel the SBF service, change the PIN, remove an SBF enrollee, change the SBF service terms and conditions, or act to prevent or prosecute fraudulent activity at any time.

E. An enrollment does not expire; however, it can be cancelled by the enrollee, by another authorized applicant, or by the Department of State. Enrollments are non-transferrable. A new SBF enrollment application must be completed to reinstate a cancelled enrollment or to change the SBF enrollment to a different geauxBIZ user. Once the enrollment application is approved by the department, the department will provide the corporation with a personal identification number (PIN) that will be unique to the corporation. The corporation can give the PIN to any person filing amendments on the corporation's behalf.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR 42:906 (June 2016), amended LR 44:1452 (August 2018).

§701. Notification of Foreign Corporation Not Registered with the Department of State

A. When the Department of State is made aware that a foreign corporation is transacting business in this state without a valid certificate of authority, the secretary of state shall notify the foreign corporation by certified mail (return receipt requested) that a certificate of authority is required and must be obtained within 30 days of receipt of the notification.

B. If the foreign corporation does not comply and obtain the certificate of authority within the 30-day period after notification, the Department of State shall investigate the foreign corporation and determine the penalty to be assessed in accordance with the penalty schedule detailed in §703. The foreign corporation shall be notified by certified mail (return receipt requested) that the penalty has been assessed and will have 60 days in which to pay the penalty to the Department of State.

C. If the foreign corporation does not pay the penalty as assessed within the 60-day period, the secretary of state shall notify the attorney general to institute proceedings against the foreign corporation to collect such penalty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 12:314.1 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR 42:69 (January 2016).

§702. Commercial API Service

A. The Department of State has developed and now offers an optional paid Commercial API subscription service which will allow customers, such as banks, service companies and agencies doing enforcement activities, to search for business entity filings using their back-end systems. This will allow the customer to integrate validation of business information into their processes, such as a bank creating a business checking account without having to open a browser, navigate to the secretary of state website, type in the business name, and click search. They could even populate data from the business information that the secretary of state has on file into fields in their application. The service will also allow customers to validate certificates issued by the Office of the Secretary of State to confirm their authenticity. The secretary of state currently does not know which customers are using the website. When customers sign up for the service, the secretary of state will have the contact information to provide better and more reliable service to them, and if there are any issues the secretary of state will know which customers to inform. The secretary of state has had to block legitimate customers from accessing the secretary of state website to try and prevent performance issues caused by people trying to harvest data from the site or just wreak havoc. The API would ensure legitimate business customers have access to the business data.

B. Any person who has a department single sign-on account with a verified email address can enroll in the optional Commercial API. The enrollment application will be completed online on the secretary of state website.

C. The service has a one-year non-refundable renewable subscription fee of $500. The subscription renewal form will be found on the secretary of state website. Enrollments are non-transferrable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR 46:1233 (September 2020).

§703. Foreign Corporation Penalty Schedule

A. The secretary of state hereby adopts the following penalty schedule for foreign corporations transacting business in this state without a valid certificate of authority.

1. For a foreign corporation transacting business in the state for less than one year, the penalty fee shall be $500.

2. For a foreign corporation transacting business in the state for greater than one year but less than three years, the penalty fee shall be $750.

3. For a foreign corporation transacting business in the state for greater than three years, the penalty fee shall be $1,000.

B. The acceptable forms of payment are: check, money orders, cashier's check, and credit card. For any check returned to the department as NSF, there will be a charge of

$25. There will be a $5 service charge for payments by credit card. Payment shall either be hand delivered to the department (Business Services Division, Twelve United Plaza, 8585 Archives Avenue, Baton Rouge, LA) or mailed to the department (Department of State, Business Services Division, P.O. Box 94125, Baton Rouge, LA 70804-9095).

AUTHORITY NOTE: Promulgated in accordance with R.S. 12:314.1 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR 42:69 (January 2016).

Chapter 9. Special Corporations

§900. Secure Business Filings Service

A. The Department of State has developed and now offers a secure business filings (SBF) service designed to discourage fraudulent business filings in Louisiana. The service will notify a corporation via email whenever amendments are submitted on the corporation through geauxBIZ. The corporation will have the opportunity to review the filing and approve or reject further processing by the Department of State.

B. Any person who has a geauxBIZ account with a verified email address can enroll in the optional SBF service. The enrollment application must be authorized by a person who is a named officer, director, member, manager, or partner of record (the authorizing authority). The identity of the authorizing authority must be verified by completing a secure business filing service enrollment application authorization which must be verified by a licensed notary public in the state where the authorizing authority resides. A copy of the authorization form can be found on the department's website. The authorization application is required for all SBF applicants, even if the applicant is the approval authority.

C. Business entities will have an opportunity to review the filing and approve or reject further processing by the Department of State. To approve a filing, the corporation must provide the PIN assigned to the corporation within five days of receiving notification of a pending file. If the corporation rejects a filing or if five days passes with no action performed, the filing will not be processed by the Department of State.

D. The corporation is responsible for PIN usage and security. The Department of State will not be responsible for unauthorized usage of the PIN or changes made to the corporation's business record as a result of an unauthorized user entering the correct PIN. The department reserves the right to cancel the SBF service, change the PIN, remove an SBF enrollee, change the SBF service terms and conditions, or act to prevent or prosecute fraudulent activity at any time.

E. An enrollment does not expire; however, it can be cancelled by the enrollee, by another authorized applicant, or by the Department of State. Enrollments are non-transferrable. A new SBF enrollment application must be completed to reinstate a cancelled enrollment or to change the SBF enrollment to a different geauxBIZ user. Once the enrollment application is approved by the department, the department will provide the corporation with a personal identification number (PIN) that will be unique to the corporation. The corporation can give the PIN to any person filing amendments on the corporation's behalf.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR 42:907 (June 2016), amended LR 44:1453 (August 2018).

§902. Commercial API Service

A. The Department of State has developed and now offers an optional paid Commercial API Subscription service which will allow customers, such as banks, service companies and agencies doing enforcement activities, to search for business entity filings using their back-end systems. This will allow the customer to integrate validation of business information into their processes, such as a bank creating a business checking account without having to open a browser, navigate to the secretary of state website, type in the business name, and click search. They could even populate data from the business information that the secretary of state has on file into fields in their application. The service will also allow customers to validate certificates issued by the Office of the Secretary of State to confirm their authenticity. The secretary of state currently does not know which customers are using the website. When customers sign up for the service, the secretary of state will have the contact information to provide better and more reliable service to them, and if there are any issues the secretary of state will know which customers to inform. The secretary of state has had to block legitimate customers from accessing the secretary of state website to try and prevent performance issues caused by people trying to harvest data from the site or just wreak havoc. The API would ensure legitimate business customers have access to the business data.

B. Any person who has a department single sign-on account with a verified email address can enroll in the optional Commercial API. The enrollment application will be completed online on the secretary of state website.

C. The service has a one-year non-refundable renewable subscription fee of $500. The subscription renewal form will be found on the secretary of state website. Enrollments are non-transferrable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR 46:1234 (September 2020).

Chapter 11. Limited Liability Companies

§1100. Secure Business Filings Service

A. The Department of State has developed and now offers a secure business filings (SBF) service designed to discourage fraudulent business filings in Louisiana. The service will notify a limited liability company via email whenever amendments are submitted on the limited liability company through geauxBIZ. The limited liability company

will have the opportunity to review the filing and approve or reject further processing by the Department of State.

B. Any person who has a geauxBIZ account with a verified email address can enroll in the optional SBF service. The enrollment application must be authorized by a person who is a named officer, director, member, manager, or partner of record (the authorizing authority). The identity of the authorizing authority must be verified by completing a secure business filing service enrollment application authorization which must be verified by a licensed notary public in the state where the authorizing authority resides. A copy of the authorization form can be found on the department's website. The authorization application is required for all SBF applicants, even if the applicant is the approval authority.

C. Business entities will have an opportunity to review the filing and approve or reject further processing by the Department of State. To approve a filing, the limited liability company must provide the PIN assigned to the limited liability company within five days of receiving notification of a pending file. If the limited liability company rejects a filing or if five days passes with no action performed, the filing will not be processed by the Department of State.

D. The limited liability company is responsible for PIN usage and security. The Department of State will not be responsible for unauthorized usage of the PIN or changes made to the limited liability company's business record as a result of an unauthorized user entering the correct PIN. The department reserves the right to cancel the SBF service, change the PIN, remove an SBF enrollee, change the SBF service terms and conditions, or act to prevent or prosecute fraudulent activity at any time.

E. An enrollment does not expire; however, it can be cancelled by the enrollee, by another authorized applicant, or by the Department of State. Enrollments are non-transferrable. A new SBF enrollment application must be completed to reinstate a cancelled enrollment or to change the SBF enrollment to a different geauxBIZ user. Once the enrollment application is approved by the department, the department will provide the limited liability company with a personal identification number (PIN) that will be unique to the limited liability company. The limited liability company can give the PIN to any person filing amendments on the limited liability company's behalf.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR 42:907 (June 2016), amended LR 44:1453 (August 2018).

§1102. Commercial API Service

A. The Department of State has developed and now offers an optional paid Commercial API subscription service which will allow customers, such as banks, service companies and agencies doing enforcement activities, to search for business entity filings using their back-end systems. This will allow the customer to integrate validation of business information into their processes, such as a bank creating a business checking account without having to open a browser, navigate to the secretary of state website, type in the business name, and click search. They could even populate data from the business information that the secretary of state has on file into fields in their application. The service will also allow customers to validate certificates issued by the Office of the Secretary of State to confirm their authenticity. The secretary of state currently does not know which customers are using the website. When customers sign up for the service, the secretary of state will have the contact information to provide better and more reliable service to them, and if there are any issues the secretary of state will know which customers to inform. The secretary of state has had to block legitimate customers from accessing the secretary of state website to try and prevent performance issues caused by people trying to harvest data from the site or just wreak havoc. The API would ensure legitimate business customers have access to the business data.

B. Any person who has a department single sign-on account with a verified email address can enroll in the optional Commercial API. The enrollment application will be completed online on the secretary of state website.

C. The service has a one-year non-refundable renewable subscription fee of $500. The subscription renewal form will be found on the secretary of state website. Enrollments are non-transferrable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR, 46:1234 (September 2020).

Chapter 13. Partnerships

§1300. Secure Business Filings Service

A. The Department of State has developed and now offers a secure business filings (SBF) service designed to discourage fraudulent business filings in Louisiana. The service will notify a partnership via email whenever amendments are submitted on the partnership through geauxBIZ. The partnership will have the opportunity to review the filing and approve or reject further processing by the Department of State.

B. Any person who has a geauxBIZ account with a verified email address can enroll in the optional SBF service. The enrollment application must be authorized by a person who is a named officer, director, member, manager, or partner of record (the authorizing authority). The identity of the authorizing authority must be verified by completing a secure business filing service enrollment application authorization which must be verified by a licensed notary public in the state where the authorizing authority resides. A copy of the authorization form can be found on the department's website. The authorization application is required for all SBF applicants, even if the applicant is the approval authority.

C. Business entities will have an opportunity to review the filing and approve or reject further processing by the Department of State. To approve a filing, the partnership

must provide the PIN assigned to the partnership within five days of receiving notification of a pending file. If the partnership rejects a filing or if five days passes with no action performed, the filing will not be processed by the Department of State.

D. The partnership is responsible for PIN usage and security. The Department of State will not be responsible for unauthorized usage of the PIN or changes made to the partnership's business record as a result of an unauthorized user entering the correct PIN. The department reserves the right to cancel the SBF service, change the PIN, remove an SBF enrollee, change the SBF service terms and conditions, or act to prevent or prosecute fraudulent activity at any time.

E. An enrollment does not expire; however, it can be cancelled by the enrollee, by another authorized applicant, or by the Department of State. Enrollments are non-transferrable. A new SBF enrollment application must be completed to reinstate a cancelled enrollment or to change the SBF enrollment to a different geauxBIZ user. Once the enrollment application is approved by the department, the department will provide the partnership with a personal identification number (PIN) that will be unique to the partnership. The partnership can give the PIN to any person filing amendments on the partnership's behalf.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR 42:907 (June 2016), amended LR 44:1454 (August 2018).

§1302. Commercial API Service

A. The Department of State has developed and now offers an optional paid Commercial API subscription service which will allow customers, such as banks, service companies and agencies doing enforcement activities, to search for business entity filings using their back-end systems. This will allow the customer to integrate validation of business information into their processes, such as a bank creating a business checking account, without having to open a browser, navigate to the secretary of state website, type in the business name, and click search. They could even populate data from the business information that the secretary of state has on file into fields in their application. The service will also allow customers to validate certificates issued by the Office of the Secretary of State to confirm their authenticity. The secretary of state currently does not know which customers are using the website. When customers sign up for the service, the secretary of state will have the contact information to provide better and more reliable service to them, and if there are any issues the secretary of state will know which customers to inform. The secretary of state has had to block legitimate customers from accessing the secretary of state website to try and prevent performance issues caused by people trying to harvest data from the site or just wreak havoc. The API would ensure legitimate business customers have access to the business data.

B. Any person who has a department single sign-on account with a verified email address can enroll in the optional Commercial API. The enrollment application will be completed online on the secretary of state website.

C. The service has a one-year non-refundable renewable subscription fee of $500. The subscription renewal form will be found on the secretary of state website. Enrollments are non-transferrable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:222 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Business Services Division, LR 46:1234 (September 2020).

Title 19
CORPORATIONS AND BUSINESS
Part VII. Louisiana Economic Development Corporation
Subpart 1. Small Business Loan and Guaranty Program (SBL and GP)

Chapter 1. Loan Guaranty Policies

§101. Purpose

A. The Louisiana Economic Development Corporation (LEDC) wishes to stimulate the flow of private capital, medium to long-term loans, lines of credit loans, loan guaranties, loan participations and other financial assistance for the sound financing of the development, expansion, and retention of small business concerns in Louisiana, as a means of helping them grow and expand their businesses and of providing higher levels of employment, income growth, and expanded economic opportunities, especially to small and emerging businesses and disabled person business enterprises and within distressed and rural areas of our state.

B. The corporation will consider sound business loans, lines of credit, loan guaranties and loan participations so long as resources permit. The board of directors of the corporation recognizes that lending money, guaranteeing loans or participating in loans carries certain risks and is willing to undertake reasonable exposure.

C. LEDC will monitor the program, including the repayment progress of borrowers, as well as the servicing performance of participating lenders.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:445 (June 1989), repromulgated LR 23:40 (January 1997), LR 26:2255 (October 2000), amended LR 26:2255 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:993 (April 2012), LR 48:1469 (June 2022), LR 48:1917 (July 2022).

§103. Definitions

Board—Board of Directors of Louisiana Economic Development Corporation.

Borrower—also referred to herein as the *applicant/borrower* or *customer/borrower;* the business person or entity borrowing and accepting the loaned funds from the lender.

Corporation—Louisiana Economic Development Corporation.

Disabled Person's Business Enterprise—a small business concern which is at least 51 percent owned and controlled by a disabled person, as defined by the federal Americans with Disabilities Act of 1990.

Financial Institution—also referred to herein as a *bank, financial lending institution, lending institution, commercial lending entity,* or *lender*; includes any insured depository institution, insured credit union, or community development financial institution, as those terms are defined in §103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702).

Lead Lender—the bank or other lender that makes or originates the loan with the borrower.

LED—Louisiana Department of Economic Development.

LEDC—Louisiana Economic Development Corporation.

Lender—also referred to herein as the *applicant/lender;* the financial institution originating the loan and providing the loan funds to the borrower.

Lender Insider—an executive officer, director, or principal shareholder of the lender, or a member of the immediate family of an executive officer, director or principal shareholder of the lender, or a related interest of such executive officer, director, principal shareholder or member of the immediate family. For the purposes of this provision, the terms executive officer, director, principal shareholder, immediate family, and related interest shall have the respective meaning ascribed thereto in Federal Reserve Act Sections 22(g) and (h), Federal Reserve Board Regulation O and applicable Office of the Comptroller of the Currency or Office of Thrift Supervision.

Loan—the temporary provision of money or funds for a business purpose, usually for a limited term and requiring the payment of interest along with the repayment of the loaned funds. As used herein, the word "loan" includes a line of credit loan guarantee, term loan guarantee and loan participation.

Loan Guaranty or *Guarantee*—an agreement to pay the loan of another borrower, up to any limit in the amount guaranteed as provided in the agreement, in case the original borrower defaults in or is unable to comply with his repayment obligation.

Loan Participation—an agreement to participate as a lender in a loan or to acquire from the lender a share or ownership interest in a loan. A *purchase participation* or *purchase transaction* is one in which the state purchases a portion of a loan originated by a lender; and a *companion loan*, a *parallel loan*, or a *co-lending participation* is one in which the lender originates a loan and the state originates a second loan to the same borrower. (In the latter case, the state's second loan may be subordinate or co-equal to the

first loan originated by the lender.) *Loan participations* enable the state to act as a lender, in partnership with a financial institution lender, to provide small business loans at attractive terms.

Permanent Full-Time Jobs—refers to direct jobs which are not contract jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week.

Small and Emerging Business—a Louisiana business certified as a Small and Emerging Business (SEB) by the Louisiana Department of Economic Development's Small Business Services.

Small Business Concern—as defined by SBA for purposes of size eligibility as set forth by 13 CFR 121.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:40 (January 1997), amended LR 26:2255 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:993 (April 2012), LR 48:1469 (June 2022), LR 48:1917 (July 2022).

§105. Application Process

A. Any applicant/borrower(s) applying for either a loan guarantee, line of credit guarantee, or loan participation will be required first to contact a financial lending institution (a bank or other commercial lending entity) that is willing to entertain, originate, process and service such a loan or line of credit with the prospect of a guaranty or a participation, and the lender will then contact LEDC for qualification and shall submit a complete application to LEDC for review and approval. The financial institution shall also be responsible for obtaining assurances of eligibility from each borrower.

B. Information submitted to LEDC with the application representing the applicant's/borrower's business plan, financial position, financial projections, personal financial statements and background checks will be kept confidential to the extent allowed under the Louisiana Public Records Law, R.S. 44:1 et seq. Confidential information in the files of LEDC and its accounts acquired in the course of its duty will be used solely by and for LEDC.

C. The following submission and review policies shall be followed.

1. A completed Louisiana Economic Development Corporation application form must be submitted to LEDC.

2. Small and Emerging Businesses (SEBs) applying for assistance under that provision will have to submit a copy of the certification from the Louisiana Department of Economic Development's Small Business Services, along with the request for financial assistance.

3. Businesses applying for consideration under the disabled person's business enterprise provision shall submit adequate information to support the disabled status.

4. The applicant/lender shall submit to LEDC its complete analysis and evaluation, proposed loan structure, and commitment letter to the borrower. LEDC staff may do its own analysis and evaluation of the application, independent of the lending institution's analysis and evaluation.

5. The applicant/lender shall submit to LEDC the same pertinent data that it submitted to the lending institution's loan committee, whatever pertinent data the lending institution can legally supply.

6. LEDC staff will review the application and analysis, and then make recommendations. The staff will work with the applicant/lender on terms of the loan, including interest rate, maturity, collateral, other loan terms, and any LEDC loan stipulations or requirements.

7. The LEDC's board screening committee or the board's other designated committee will review only the completed applications submitted by LEDC staff and may approve or disapprove applications within its authority as established by the LEDC board, or will make recommendations to the LEDC board.

8. The applicant/borrower(s) or their designated representative, and the loan officer or a representative of the lending institution are not required to attend the board screening committee or other designated committee meeting unless requested by LEDC or its staff to do so.

9. The applicant/borrower(s) or their designated representative, and the loan officer or a representative of the lending institution shall be required to attend the LEDC's board of directors meeting wherein the application will be considered by the board.

10. LEDC's board of directors, the board screening committee, or the board's other designated committee that has considered the application within its authority has the final approval authority for such applications.

11. The applicant/borrower or the lending institution will be notified within five (5) business days by mail or e-mail of the outcome of the application process.

12. An LEDC commitment letter, including LEDC's terms, and any stipulations or requirements, will be mailed or e-mailed by LEDC staff to the lending institution within five business days of approval by the LEDC Board or its committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department Economic Development, Economic Development Corporation, LR 15:446 (June 1989), amended LR 23:40 (January 1997), LR 26:2255 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:994 (April 2012), LR 48:1470 (June 2022), LR 48:1918 (July 2022).

§107. Eligibility/Ineligibility for Participation in This Program

A. In connection with the business purpose for the requested loan: for loans up to and not to exceed $100,000, applicant/borrower shall create in this state at least one or shall retain in this state at least one permanent full-time job; and for loans in excess of $100,000, applicant/borrower(s) shall create in this state at least two new permanent full-time jobs.

B. The following businesses shall be eligible for participation in this program, except for those ineligible businesses and purposes hereinafter shown:

1. small business concerns organized as a sole proprietorship qualified to do and doing business in Louisiana, or either a for profit corporation, partnership, limited liability company, limited liability partnership, joint venture, cooperative, non-profit entity with an eligible business purpose as defined above, or other entity which is registered and authorized to conduct business in the state of Louisiana that maintain an office in Louisiana;

2. Small and Emerging Businesses (SEBs) certified by LED's Small Business Services that maintain an office in Louisiana;

3. disabled person's business enterprises authorized to do and doing business in Louisiana, that maintain an office in Louisiana; or

4. funding requests for any business purpose may be considered, except for the following ineligible businesses or purposes:

a. restaurants (except for regional or national franchises),including grills, cafes, fast food operations, motorized vehicle, trailer, curb-side, sidewalk or street vender food operations, and any other business or project established for the principal purpose of dispensing cooked food for consumption on or off the premises having been in operations less than two years;

b. bars, saloons, daiquiri shops, operations for the sale of alcoholic popsicles and other alcoholic food items, packaged liquor stores, including any other business or project established for the principal purpose of dispensing, packaging, or distributing alcoholic beverages;

c. any business or establishment which has gaming or gambling as its principal business;

d. any business or establishment which has consumer or commercial financing as its business;

e. funding for the acquisition, renovation, or alteration of a building or property for the principal purpose of real estate speculation, rental, or any other passive real estate investment purposes;

f. funding for the principal purpose of refinancing existing debt unless under the following conditions:

i. a lender may refinance a borrower's existing loan, line of credit, extension of credit, or other debt originally made by an unaffiliated lender only if the following conditions are met:

(a). the amount of the refinanced loan or other debt is at least 150 percent of the previous outstanding balance;

(b). the transaction results in a 30 percent reduction in the fee-adjusted APR contracted for the term of the new debt, to help ensure that funding is used only for transactions that meaningfully benefit borrowers by providing access to sustainable products; and

(c). proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

ii. a lender may use funds to support a new extension of credit that repays the amount due on a matured loan or other debt that was previously used for an eligible business purpose when all the following conditions are met:

(a). the amount of the new loan or other debt is at least 150 percent of the outstanding amount of the matured loan or other debt;

(b). the new credit supported with funding is based on a new underwriting of the small business's ability to repay the loan and new approval by the lender;

(c). the prior loan or other debt has been paid as agreed and the borrower was not in default of any financial covenants under the loan or debt for at least the previous 36 months (or since origination, if shorter); and

(d). proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

g. funding for the purpose of buying out any stockholder or equity holder by another stockholder or equity holder in a business;

h. funding for the purpose of establishing a park, theme park, amusement park, or camping facility; or

i. funding for the purpose of buying out any family member or reimbursing any family member.

j. funding for the purpose of pyramid sales;

k. funding activities related either directly or indirectly to cryptocurrency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:446 (June 1989), amended LR 23:41 (January 1997), LR 26:2255 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:994 (April 2012), LR 44:229 (February 2018), LR 48:1470 (June 2022), LR 48:1918 (July 2022).

§109. General Loan Guaranty and Loan Participation Provisions

A. The Louisiana Economic Development Corporation will be guided by the following general principles in

approving loan guaranties, line of credit guaranties, or loan participations.

1. The corporation shall confirm that the financial institution lender has sufficient commercial lending experience and financial and managerial capacity to participate in this program. The corporation may utilize, among other resources, the financial institution's most recent call report showing the percentage of commercial loans in its portfolio.

2. The corporation shall not knowingly approve any loan guarantee, line of credit guarantee, or loan participation if the applicant/borrower has presently pending or outstanding any claim or liability relating to failure or inability to pay promissory notes or other evidence of indebtedness, state or federal taxes, or a bankruptcy proceeding; nor shall the corporation approve any loan, line of credit, loan guarantee or participation if the applicant/borrower has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit or any legal proceeding involving a criminal violation other than misdemeanor traffic violations. Further, the corporation shall not approve any loan guarantee, line of credit guarantee, or participation if the applicant/ borrower or his/her/its principle management has a criminal record showing convictions for any criminal violations other than misdemeanor traffic violations.

3. The terms or conditions imposed and made part of any loan guarantee, line of credit guarantee, or loan participation authorized by vote of the corporation board, its board screening committee or its other designated committee shall not be amended or altered by any member of the Board or employee of the Department of Economic Development except by subsequent vote of approval by the board, its board screening committee or other designated committee at the next meeting of the board or committee in open session with full explanation for such action.

4. Each financial institution lender shall be required to have a meaningful amount of its own capital resources at risk in each small business loan included in this program. Such lenders shall bear at 20 percent or more of the loss from a small business loan default.

5. The corporation shall not subordinate its position to other creditors.

B. Interest Rate

1. On all loans or lines of credit guarantees, the interest rate is to be negotiated between the borrower and the lender, but shall not exceed the lesser interest rate of either; 5 percent per annum above New York prime as published in the Wall Street Journal at either a fixed or variable rate; the interest rate cap as established by either the Federal Credit Union Act (FCUA), that established by the Office of the Comptroller of the Currency (OCC), or applicable State legislation that may be enacted.

2. On all participation loans, the rate shall be determined by utilizing the rate for a U.S. Government Treasury security for the time period that coincides with the term of the participation and adding between 1 and 5 percentage points.

C. Collateral

1. The value of the collateral shall be no less than the guaranteed portion of the loan.

2. The value of the collateral required for certified small and emerging businesses loans may be up to 80 percent.

3. The collateral position may be negotiated, but it shall be no less than a sole second position.

4. Collateral Value Determination

a. The appraiser must be certified by a recognized organization in the area of the collateral.

b. The appraisal shall not be more than 90 days old, except for real estate loans, which shall not be more than 6 months old.

5. Acceptable collateral may include, but shall not be limited to, the following:

a. fixed assets—business real estate, buildings, fixtures;

b. equipment, machinery, inventory;

c. accounts receivable with supporting aging schedule; but not to exceed 80 percent of receivable value (to be used with personal guarantee only).

6. Unacceptable collateral may include, but shall not be limited to the following:

a. stock in applicant/borrower company and/or related companies;

b. personal items or borrower's primary residence;

c. intangibles; to include but not limited to, digital currency such as cryptocurrency and NFTs.

7. Personal guarantees may be offered but will not count towards the value of the collateral; if to be used, a signed and dated personal financial statements of the guarantors must also be submitted to LEDC.

D. Equity Requirements

1. Equity required will be no less than 15 percent of the loan or line of credit amount for a start-up operation, or acquisition, or expansion. However, if the equity requirement as noted above is not available for a guarantee the following chart may be applied which provides for a guarantee fee attached to a lesser equity position.

Equity Percent	Guarantee Fee
15 Percent	3.00 Percent
14 Percent	3.20 Percent
13 Percent	3.40 Percent
12 Percent	3.60 Percent
11 Percent	3.80 Percent
10 Percent	4.00 Percent

*In no case shall the equity position be less than 10 percent.

2. *Equity* is defined to be:

a. cash;

b. paid-in capital;

c. paid-in surplus and retained earnings; or

d. partnership capital and retained earnings.

3. No research, development expense nor intangibles of any kind will be considered equity.

E. Limit on the Amount of LEDC's Guarantee:

1. For small business loans, the corporation's loan guarantee shall be:~~–~~no greater than 80 percent of a loan not to exceed a guaranty amount of $1,500,000.

2. For certified small and emerging business loans, or disabled person's business enterprise loans, the corporation's loan guarantee shall be~~:~~ no greater than 90 percent of a loan not to exceed a guaranty amount of $1,500,000.

3. For small businesses, the corporation's loan participation shall be no greater than 40 percent, but in no case shall it exceed $1,500,000.

4. For certified small and emerging businesses, or disabled person's business enterprises, the corporation's loan participation shall be no greater than 50 percent, but in no case shall it exceed $1,000,000.

F. Terms

1. Maturity, collateral, and other loan terms shall be negotiated between the borrower and the applicant/lending institution, and the LEDC shall have an opportunity to approve the terms of such loans prior to the closing; but guaranty term periods with regard to various types of loan guaranties shall be limited as follows:

a. for revolving lines of credit (RLOC) guarantee term periods may extend for up to and not exceed seven years.

b. for equipment term loans guarantee term periods may extend for up to and not exceed 10 years.

c. for real estate term loans guarantee term periods may extend for up to and shall not exceed 25 years.

G. LEDC SBLGP Program Fees

1. LEDC will charge a guaranty program fee not to exceed a maximum amount of 4 percent on the guaranteed loan amount, unless the board, the board screening committee or other designated committee waives the guaranty fee.

2. LEDC will charge a $100 application fee, unless the board, the board screening committee or other designated committee waives the application fee.

3. LEDC will share in a pro-rata position in any fees assessed by the lender on a loan participation.

4. LEDC will waive the application fee and program fee for businesses certified by LED as an SEB.

H. Use of Loan Funds

1. Loan funds may be used for business purposes, including but not limited to the purchase of fixed assets, including buildings that will be occupied by the applicant/borrower to the extent of at least 51 percent.

2. Loan funds may be used for the purchase of equipment, machinery, or inventory.

3. Loan funds may be used for a line of credit for accounts receivable or inventory.

4. Debt restructure may be considered by LEDC, but will not be considered when the debt:

a. exceeds 25 percent of the total loan, with the following exception:

i. a maximum of 35 percent may be considered on a guaranteed loan, but the guaranteed percentage will be decreased by 5 percent;

b. pays off a creditor or creditors who are inadequately secured;

c. provides funds to pay off a debt to principals of the borrower business; and/or

d. provides funds to pay off family members.

5. Loan funds may not be used to buy out stockholders or equity holders of any kind, by any other stockholder or equity holder.

6. Loan funds may not be used to purchase any speculative investment or real estate development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:448 (June 1989), amended LR 23:41 (January 1997), LR 26:2256 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation, LR 38:995 (April 2012), LR 40:274 (February 2014), LR 44:229 (February 2018), LR 48:1470 (June 2022), LR 48:1918 (July 2022).

§111. General Guaranty Agreement Provisions

A. Guaranty Agreement

1. The lending institution shall conduct all of the customer/borrower interaction, and shall be responsible for the proper administration and monitoring of the loan or line of credit, including monthly invoicing, collections, and loan workouts, and the proper liquidation of the collateral in the event of a default.

2. The loan or line of credit shall not be sold, assigned, participated out, or otherwise transferred without the prior written consent of the LEDC board.

3. If liquidation through foreclosure occurs, the lender will sell the collateral, handle the legal proceedings, and absorb all expenses associated with these activities.

4. There will be a reduction of the guarantee:

a. in proportion to the principal reduction of the amortized portion of the loan or line of credit;

b. if no principal reduction has occurred in any annual period of the loan or line of credit, a reduction in the guarantee amount will be made proportional to the remaining guarantee life.

5. The guarantee will cover the unpaid principal amount owed only.

6. Delinquency will be defined according to the lender's normal lending policy and all remedies will be outlined in the guarantee agreement. Notification of delinquency will be made to the corporation in writing by submitting a completed, signed and dated SBLGP banker loan status monthly report within five business days after the end of the month/reporting period and as stated in the guarantee agreement.

B. Loan Participation Agreement

1. The lending institution shall conduct all of the customer/borrower interaction, and shall be responsible for the proper administration and monitoring of the loan, including monthly invoicing, collections, and loan workouts, and the proper liquidation of the collateral in the event of a default.

2. The lead lender will hold no less participation in the loan than that equal to LEDC's, but not to exceed its legal lending limit.

3. The lead lender may sell other participations with LEDC's consent.

4. Should liquidation through foreclosure occur, the lender will sell the collateral and handle the legal proceedings and absorb all expenses associated with these activities.

5. The lender is able to set its rate according to risk, and may blend its rate with the LEDC rate to yield a lower overall rate to a project.

6. Delinquency will be defined according to the lender's normal lending policy and all remedies will be outlined in the participation agreement. Notification of delinquency will be made to the corporation in writing by submitting a completed, signed and dated SBLGP banker loan status monthly report within five business days after the end of the month/reporting period, as stated in the loan participation agreement.

C. Borrower Agreement

1. At the discretion of LEDC, the borrower will agree to strengthen management skills by participation in a form of continuing education acceptable to LEDC.

2. The borrower shall provide initial proof as well as an annual report of job creation, including the number of jobs, job titles and salaries.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:448 (June 1989), amended LR 23:42 (January 1997), LR 26:2257 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:996 (April 2012), LR 48:1472 (June 2022), LR 48:1920 (July 2022).

§113. Confidentiality

A. Confidential information in the files of the corporation and its accounts acquired in the course of its duty is to be used solely for the corporation. The corporation is not obliged to give out any credit rating or confidential information regarding the applicant/borrower (see Louisiana Attorney General's Opinion #82-860).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:453 (June 1989), amended LR 23:43 (January 1997), LR 26:2257 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:997 (April 2012).

§115. Conflict of Interest

A. No member of the corporation, employee thereof, or employee of the Department of Economic Development, or members of their immediate families shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:453 (June 1989), amended LR 23:43 (January 1997), LR 26:2258 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:997 (April 2012).

§117. Guidelines

A. The Louisiana Economic Development Corporation (LEDC), or the Louisiana Department of Economic Development, also known as Louisiana Economic Development (LED), as the administrator of this program for LEDC, may make, create, or issue from time to time Guidelines interpreting, construing, explaining and/or supplementing these Rules; and may revise, supplement, or otherwise change or modify the guidelines at any time with or without notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business

Development and Louisiana Economic Development Corporation, LR 44:229 (February 2018).

Chapter 3. Loan and Guaranty Policies for the State Small Business Credit Initiative (SSBCI) Program

§301. Purpose

A. The purposes for this Chapter 3 program shall be the same as the purposes previously provided in Section 101 of Chapter 1 of the Small Business Loan and Guaranty Program which shall also apply to this Chapter 3 program (except that loan participations will not be utilized in this Chapter 3 program); and additionally this Chapter 3 program is to establish loan and guaranty policies for the federal program entitled the State Small Business Credit Initiative (SSBCI) Program and to accommodate the requirements of this federal program. The Louisiana Economic Development Corporation (LEDC) will utilize SSBCI funds to increase access to credit and capital funding to further assist small businesses statewide, to expand loan capabilities to include a broader range of businesses statewide, to direct a greater concentration on those small businesses, and to reach, identify and promote small business growth in low and moderate income communities, in minority communities, in other underserved communities, and to women- and minority-owned businesses. This LEDC program and the SSBCI funding will be marketed through outreach activities to inform lenders, small businesses and trade associations of the program, and to generate increased small business activity, awareness and access to additional sources of capital to start and expand existing business opportunities, as well as participation in the program. The LEDC will also monitor these plans, including the repayment progress of borrowers, the servicing performance of participating lenders, and to ensure successful outcomes in the form of program utilization and eventual securing of funds for these groups.

B. The LEDC wishes to maintain for this Chapter 3 Program all of the purposes of §101 and all of the other Sections and provisions of Chapter 1 of the Small Business Loan and Guaranty Program shown above, except where there is a need for the policies of this Program to be different from Chapter 1. For this reason, all of the Sections and provisions of Chapter 1 above shall also apply to this Chapter 3, except in those instances where a different or additional rule or policy is provided below in this Chapter 3.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:997 (April 2012).

§303. Definitions

A. All of the same definitions provided in Section 103 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:998 (April 2012).

§305. Application Process

A. Except as may be hereinafter provided, all of the provisions contained in §105 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program (except that loan participations will not be utilized in this Chapter 3 program).

B. Loan Purpose Requirements and Prohibitions. In addition to the application process provisions provided in the Section mentioned in the above Subsection A, in connection with each loan to be enrolled under this Chapter 3 program the financial institution lender shall also be responsible for obtaining and providing to LEDC with the lender's application an assurance from each borrower stating that the loan proceeds shall not be used for any impermissible purpose under the SSBCI Program. And additionally, each financial institution lender must also obtain and provide to LEDC with its application under this Chapter 3 program an assurance from the borrower affirming:

1. the loan proceeds must be used for a business purpose. A *business purpose* includes, but is not limited to, start up costs, working capital, business procurement, franchise fees, equipment, inventory, as well as the purchase, construction renovation or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of *business purpose* excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership, the purchase of securities; and lobbying activities as defined in section 3 (7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended;

2. the loan proceeds will not be used to:

a. repay a delinquent federal or state income taxes unless the borrower has a payment plan in place with the relevant taxing authority; or

b. repay taxes held in trust or escrow, e.g. payroll or sales taxes; or

c. reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance; or

d. purchase any portion of the ownership interest of any owner of the business;

3. the borrower is not:

a. an executive officer, director, or principal shareholder of the financial institution lender; or

b. a member of the immediate family of an executive officer, director, or principal shareholder of the financial institution lenders; or

c. a related interest of an such executive officer, director, principal shareholder, or member of the immediate family;

i. for the purposes of these three borrower restrictions, the terms *executive officer*, *director*, *principal shareholder*, *immediate family*, and *related interest* refer to the same relationship to a financial institution lender as the relationship described in part 215 of title 12 of the *Code of Federal Regulations*, or any successor to such part;

4. the borrower is not:

a. a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business;

NOTE: Permissible borrowers include state-designated charitable, religious, or other non-profit or eleemosynary institutions, government-owned corporations, consumer and marketing cooperatives, and faith-based organizations provided the loan is for a "business purpose" as defined above.

b. a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company certified as a community development financial institution; or

c. a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants; or

d. a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted (Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution.); or

e. a business engaged in gambling enterprises, unless the business earns less than 33 percent of its annual net revenue from lottery sales;

5. no principal of the borrowing entity has been convicted of a sex offense against a minor [as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)]. For the purposes of this certification, *principal* is defined as if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20 percent or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

C. The financial institution lender must also provide to LEDC with its application, in connection with each loan to be enrolled under this Chapter 3 program, an assurance affirming:

1. he loan has not been made in order to place under the protection of the approved state Capital Access Program (CAP) prior debt that is not covered under the approved state CAP and that is or was owed by the borrower to the financial institution lender or to an affiliate of the financial institution lender;

2. the loan is not a refinancing of a loan previously made to that borrower by the financial institution lender or an affiliate of the financial institution lender;

3. no principal of the financial institution lender has been convicted of a sex offense against a minor [as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)]. For the purposes of this certification, *principal* is defined as if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:998 (April 2012).

§307. Eligibility/Ineligibility for Participation in This Program

A. Except as may be hereinafter provided, all of the provisions contained in §107 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program (except that loan participations will not be utilized in this Chapter 3 program).

B. In addition to the eligibility and ineligibility provisions provided in the Section mentioned in the above Subsection A, applicant/borrowers and loans, lines of credit and loan guarantees in connection with this Chapter 3 program shall meet the following criteria:

1. the applicant/borrower(s) shall employ 500 employees or less at the time the loan is enrolled in this program;

2. this credit support shall not be extended to applicant/borrower(s) that have more than 750 employees;

3. any loan supported in this program shall not exceed a principal amount of $5,000,000;

4. any credit extended through this program shall not exceed a principal amount of $20,000,000;

5. SSBCI funds utilized in this Chapter 3 program will be permitted only for new extensions of credit; that is, funds of the SSBCI Program shall not be used to support existing extensions of credit, including but not limited to prior loans,

lines of credit or other borrowing, that were previously made available as part of a state small business credit enhancement program; and

6. Small Business Administration (SBA) guaranteed loans shall not be purchased in loan participations through this program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:999 (April 2012).

§309. General Loan, Credit, Guaranty and Participation Provisions

A. Except as may be hereinafter provided, all of the provisions contained in §109 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program (except that loan participations will not be utilized in this Chapter 3 program).

B. Interest Rates

1. On all loan or line of credit guarantees, the interest rate is to be negotiated between the borrower and the lender, but shall not exceed 5 percent per annum above New York prime as published in the *Wall Street Journal* at either a fixed or variable rate.

C. Equity Requirements

1. To qualify for this Chapter 3 program, the borrower must infuse not less than 15 percent into the equity in an existing or expanding business, or not less than 20 percent into the equity of a start-up operation or an acquisition.

D. Limit on the Amount of LEDC's Guarantee

1. In connection with loans included in this Chapter 3 program, for certified small and emerging business loans, or disabled person's business enterprise loans, the corporation's loan guarantee shall be:

a. no greater than 75 percent of a loan of up to $2,000,000; or

b. if the loan request exceeds $2,000,000, the guaranty shall not exceed $1,500,000.

E. Terms

1. For loan guaranties included in this Chapter 3 program, all of the provisions contained in §109.F.1.a, b and c of Chapter 1 of the Small Business Loan and Guaranty Program, with regard to term periods of various types of loan guaranties, shall also apply to this Chapter 3 program.

F. LEDC Fees

1. In connection with loans and guaranties included in this Chapter 3 program, LEDC will charge a guaranty fee not to exceed a maximum amount of 2 percent of the guaranteed loan amount, unless the board, the board screening committee or other designated committee waives the guaranty fee.

2. In connection with loans and guaranties included in this Chapter 3 program, LEDC will charge no application fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation, LR 38:999 (April 2012), LR 40:274 (February 2014).

§311. General Agreement Provisions

A. Except as may be hereinafter provided, all of the provisions contained in §111 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program (except that loan participations will not be utilized in this Chapter 3 program).

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:999 (April 2012).

§313. Confidentiality

A. All of the provisions contained in §113 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:999 (April 2012).

§315. Conflict of Interest

A. All of the provisions contained in §115 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:1000 (April 2012).

Chapter 5. SSBCI Loan Guaranty ARPA 2021

§501. Purpose

A. The purpose of this program is to utilize federal SSBCI funds to strengthen state programs that support private financing to small businesses as a response to the economic effects of the COVID-19 pandemic, in accordance with prevailing federal guidelines issued by the U.S. Treasury.

B. The Louisiana Economic Development Corporation (LEDC) will utilize SSBCI funds from ARPA 2021 to increase access to credit and capital funding to further assist small businesses statewide, to expand loan capabilities to include a broader range of businesses statewide, to direct a

greater concentration on those small businesses, and to reach, identify and promote small business growth, especially to Socially and Economically Disadvantaged Businesses (SEDI) and Small and Emerging Businesses (SEB).

C. This LEDC program and the SSBCI funding will be marketed through outreach activities to inform venture capital funds, local foundations, small businesses, trade associations, incubator associations, and economic development organizations of the program, and to generate increased small business activity, awareness of and access to additional sources of capital to start and expand existing business opportunities, as well as participation in the program. The marketing will also be used to find investment opportunities located in the underserved markets that will be targeted with SSBCI funds.

D. The LEDC will also monitor these plans, including the progress of individual businesses receiving investments and the performance of participating venture capital organizations, to ensure successful outcomes in the form of program utilization and eventual securing of funds for these groups.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1472 (June 2022), LR 48:1926 (July 2022).

§503. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in prevailing federal guidelines issued by the U.S. Treasury, unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Board—Board of Directors of Louisiana Economic Development Corporation.

Borrower—also referred to herein as the *applicant/borrower* or *customer/borrower;* the business person or entity borrowing and accepting the loaned funds from the Lender.

CDFI-Community Development Financial Institution (CDFI)—has the meaning given that term under Section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994.

CDFI Investment Area—areas defined by CDFI which are generally low-income, high-poverty geographies that receive neither sufficient access to capital nor support for the needs of small businesses, including minority-owned businesses. For purposes of SSBCI, Treasury has determined that the entirety of American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands constitute a CDFI Investment Area.

Corporation—Louisiana Economic Development Corporation.

Disabled Person's Business Enterprise—a small business concern which is at least 51 percent owned and controlled by a disabled person, as defined by the federal Americans with Disabilities Act of 1990.

Financial Institution—also referred to herein as a *Bank, Financial Lending Institution, Lending Institution, Commercial Lending Entity, or Lender*; includes any insured depository institution, insured credit union, or community development financial institution, as those terms are defined in Section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702).

*Lead Lender—t*he bank or other lender that makes or originates the loan with the borrower.

LED—Louisiana Department of Economic Development.

LEDC—Louisiana Economic Development Corporation.

Lender—also referred to herein as the *applicant/lender;* the Financial Institution originating the loan and providing the loan funds to the borrower.

Lender Insider—an executive officer, director, or principal shareholder of the Lender, or a member of the immediate family of an executive officer, director or principal shareholder of the Lender, or a related interest of such executive officer, director, principal shareholder or member of the immediate family. For the purposes of this provision, the terms *executive officer*, *director*, *principal shareholder, immediate family*, and *related interest* shall have the respective meaning ascribed thereto in Federal Reserve Act Sections 22(g) and (h), Federal Reserve Board Regulation O and applicable Office of the Comptroller of the Currency or Office of Thrift Supervision.

Loan—the temporary provision of money or funds for a business purpose, usually for a limited term and requiring the payment of interest along with the repayment of the loaned funds. As used herein, the word *loan* includes a line of credit loan guarantee, term loan guarantee and loan participation.

Loan Guaranty or *Guarantee*—an agreement to pay the loan of another borrower, up to any limit in the amount guaranteed as provided in the agreement, in case the original borrower defaults in or is unable to comply with his repayment obligation.

Loan Participation—an agreement to participate as a lender in a loan or to acquire from the lender a share or ownership interest in a loan. A *purchase participation* or *purchase transaction* is one in which the State purchases a portion of a loan originated by a lender; and a *companion loan*, a *parallel loan*, or a *co-lending participation* is one in which the lender originates a loan and the state originates a second loan to the same borrower. (In the latter case, the State's second loan may be subordinate or co-equal to the first loan originated by the lender.) Loan participations enable the state to act as a lender, in partnership with a

financial institution lender, to provide small business loans at attractive terms.

Permanent Full-Time Jobs—refers to direct jobs which are not contract jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week.

Small and Emerging Business—a Louisiana business certified as a Small and Emerging Business (SEB) by the Louisiana Department of Economic Development's Small Business Services.

Small Business Concern—as defined by SBA for purposes of size eligibility as set forth by 13 C.F.R. 121.

Socially and Economically Disadvantaged Individual (SEDI) Owned Business—(for the purposes of this program)

a. business enterprises that certify that they are owned and controlled by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their (

i. membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society;

ii. gender;

iii. veteran status;

iv. limited English proficiency;

v. physical handicap;

vi. long-term residence in an environment isolated from the mainstream of American society;

vii. membership of a federally or state-recognized Indian Tribe;

viii. long-term residence in a rural community;

ix. residence in a U.S. territory;

x. residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); or

xi. membership of another *underserved community* as defined in U.S. Executive Order 13985;

b. business enterprises that certify that they are owned and controlled by individuals whose residences are in CDFI investment areas, as defined in prevailing federal guidelines issued by the U.S. Treasury;

c. business enterprises that certify that they will operate a location in a CDFI investment area, as defined in prevailing federal guidelines issued by the U.S. Treasury; or

4. business enterprises that are located in CDFI Investment Areas, as defined in prevailing federal guidelines issued by the U.S. Treasury.

Very Small Business—a business with fewer than 10 employees; may include independent contractors and sole proprietors

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1473 (June 2022), LR 48:1927 (July 2022).

§505. Application Process

A. Any applicant/borrower(s) applying for either a loan, loan guarantee, line of credit guarantee, loan guaranty or loan participation will be required first to contact a financial lending institution (a bank or other commercial lending entity) that is willing to entertain, originate, process and service such a loan or line of credit with the prospect of a guaranty or a participation, and the lender will then contact LEDC for qualification and shall submit a complete application to LEDC for review and approval. The financial institution shall also be responsible for obtaining assurances of eligibility from each borrower.

B. Businesses applying for consideration as a SEDI owned business will have to self-certify under conditions in Clauses i -iii to the extent allowed under the Louisiana Public Records Law, R.S. 44:1 et seq. Confidential information in the files of LEDC and its accounts acquired in the course of its duty will be used solely by and for LEDC.

C. Loan Purpose Requirements and Prohibitions. In addition to the application process provisions provided in the Section mentioned in the above Subsection A, in connection with each loan to be enrolled under this Chapter 3 program the financial institution lender shall also be responsible for obtaining and providing to LEDC with the lender's application an assurance from each borrower stating that the loan proceeds shall not be used for any impermissible purpose under the SSBCI program. And additionally, each financial institution lender must also obtain and provide to LEDC with its application under this Chapter 3 program an assurance from the borrower affirming:

1. The loan proceeds must be used for a business purpose. A business purpose includes, but is not limited to, start-up costs, working capital, business procurement, franchise fees, equipment, inventory, as well as the purchase, construction renovation or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of business purpose excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership, the purchase of securities; and lobbying activities as defined in Section 3 (7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended.

2. The loan proceeds will not be used to:

a. repay a delinquent federal or state income taxes unless the borrower has a payment plan in place with the relevant taxing authority; or

b. repay taxes held in trust or escrow, e.g. payroll or sales taxes; or

c. reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance; or

d. purchase any portion of the ownership interest of any owner of the business.

3. The borrower is not:

a. an executive officer, director, or principal shareholder of the financial institution lender; or

b. a member of the immediate family of an executive officer, director, or principal shareholder of the financial institution lenders; or

c. a related interest of an such executive officer, director, principal shareholder, or member of the immediate family.

NOTE: (For the purposes of these three borrower restrictions, the terms *executive officer*, *director*, *principal shareholder*, *immediate family*, and *related interest* refer to the same relationship to a financial institution lender as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.)

4. The borrower is not:

a. a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business; or

NOTE: Permissible borrowers include state-designated charitable, religious, or other non-profit or eleemosynary institutions, government-owned corporations, consumer and marketing cooperatives, and faith-based organizations provided the loan is for a *business purpose* as defined above.

b. a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company certified as a community development financial institution; or

c. a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants; or

d. a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); this category of business includes direct and indirect marijuana businesses, as defined in SBA Standard Operating Procedures 50 10 6; or

e. a business engaged in gambling enterprises, unless the business earns less than 33 percent of its annual net revenue from lottery sales.

5. No principal of the borrowing entity has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification, *principal* is defined as "if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20 percent or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity."

D. The financial institution lender must also provide to LEDC with its application, in connection with each loan to be enrolled under this program, an assurance affirming:

1. the loan has not been made in order to place under the protection of the approved state capital access program (CAP) prior debt that is not covered under the approved state CAP and that is or was owed by the borrower to the financial institution lender or to an affiliate of the financial institution lender;

2. the loan is not a refinancing of a loan previously made to that borrower by the financial institution lender or an affiliate of the financial institution lender unless under the following conditions:

a. a lender may refinance a borrower's existing loan, line of credit, extension of credit, or other debt originally made by an unaffiliated lender only if the following conditions are met:

i. the amount of the refinanced loan or other debt is at least 150 percent of the previous outstanding balance;

ii. the transaction results in a 30 percent reduction in the fee-adjusted APR contracted for the term of the new debt, to help ensure that SSBCI funding is used only for transactions that meaningfully benefit borrowers by providing access to sustainable products; and

iii. proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

b. a lender may use SSBCI funds to support a new extension of credit that repays the amount due on a matured loan or other debt that was previously used for an eligible business purpose when all the following conditions are met:

i. the amount of the new loan or other debt is at least 150 percent of the outstanding amount of the matured loan or other debt;

ii. the new credit supported with SSBCI funding is based on a new underwriting of the small business's ability to repay the loan and new approval by the lender;

iii. the prior loan or other debt has been paid as agreed and the borrower was not in default of any financial covenants under the loan or debt for at least the previous 36 months (or since origination, if shorter); and

iv. proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

3. No principal of the financial institution lender has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification, *principal* is defined as if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

E. The following submission and review policies shall be followed:

1. a completed Louisiana Economic Development Corporation application form must be submitted to LEDC;

2. small and emerging businesses (SEBs) applying for assistance under that provision will have to submit a copy of the certification from the Louisiana Department of Economic Development's Small Business Services , along with the request for financial assistance;

3. businesses applying for consideration under the disabled person's business enterprise provision shall submit adequate information to support the disabled status;

4. the applicant/lender shall submit to LEDC its complete analysis and evaluation, proposed loan structure, and commitment letter to the borrower. LEDC staff may do its own analysis and evaluation of the application, independent of the lending institution's analysis and evaluation;

5. the applicant/lender shall submit to LEDC the same pertinent data that it submitted to the lending institution's loan committee, whatever pertinent data the lending institution can legally supply;

6. LEDC staff will review the application and analysis, and then make recommendations. The staff will work with the applicant/lender on terms of the loan, including interest rate, maturity, collateral, other loan terms, and any LEDC loan stipulations or requirements;

7. the LEDC's board screening committee or the board's other designated committee will review only the completed applications submitted by LEDC staff and may approve or disapprove applications within its authority as established by the LEDC board, or will make recommendations to the LEDC board;

8. the applicant/borrower(s) or their designated representative, and the loan officer or a representative of the lending institution are not required to attend the board screening committee or other designated committee meeting unless requested by LEDC or its staff to do so;

9. the applicant/borrower(s) or their designated representative, and the loan officer or a representative of the lending institution shall be required to attend the LEDC's board of directors meeting wherein the application will be considered by the board;

10. LEDC's board of directors, the board screening committee, or the board's other designated committee that has considered the application within its authority has the final approval authority for such applications.

11. the applicant/borrower or the lending institution will be notified within five business days by mail or e-mail of the outcome of the application process;

12. an LEDC commitment letter, including LEDC's terms, and any stipulations or requirements, will be mailed or e-mailed by LEDC staff to the lending institution within five business days of approval by the LEDC Board or its committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1474 (June 2022), LR 48:1928 (July 2022).

§507. Eligibility/Ineligibility for Participation in This Program

A. Funding requests for any business purpose may be considered, however, the following businesses and purposes shall be considered.

1. Eligible:

a. small business concerns authorized to do and doing business in Louisiana, that maintain an office in Louisiana; small business concerns organized as a sole proprietorship qualified to do and doing business in Louisiana, or either a for profit corporation, partnership, limited liability company, limited liability partnership, joint venture, cooperative, non-profit entity with an eligible business purpose as defined above, or other entity which is registered and authorized to conduct business in the State of Louisiana that maintain an office in Louisiana

b. certified small and emerging businesses (SEBs) certified by LED's small business services that maintain an office in Louisiana ;

c. disabled person's business enterprises authorized to do and doing business in Louisiana, that maintain an office in Louisiana.

2. Ineligible:

a. restaurants (except for regional or national franchises),including grills, cafes, fast food operations, motorized vehicle, trailer, curb-side, sidewalk or street vender food operations, and any other business or project established for the principal purpose of dispensing cooked food for consumption on or off the premises having been in operations less than two years;

b. bars, saloons, daiquiri shops, operations for the sale of alcoholic popsicles and other alcoholic food items, packaged liquor stores, including any other business or

project established for the principal purpose of dispensing, packaging, or distributing alcoholic beverages;

c. any business or establishment which has gaming or gambling as its principal business;

d. any business or establishment which has consumer or commercial financing as its business;

e. funding for the acquisition, renovation, or alteration of a building or property for the principal purpose of real estate speculation, rental, or any other passive real estate investment purposes;

f. funding for the principal purpose of refinancing existing debt unless under the following conditions:

i. a lender may refinance a borrower's existing loan, line of credit, extension of credit, or other debt originally made by an unaffiliated lender only if the following conditions are met:

(a). the amount of the refinanced loan or other debt is at least 150 percent of the previous outstanding balance;

(b). the transaction results in a 30 percent reduction in the fee-adjusted APR contracted for the term of the new debt, to help ensure that funding is used only for transactions that meaningfully benefit borrowers by providing access to sustainable products; and

(c). proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

ii. a lender may use funds to support a new extension of credit that repays the amount due on a matured loan or other debt that was previously used for an eligible business purpose when all the following conditions are met:

(a). the amount of the new loan or other debt is at least 150 percent of the outstanding amount of the matured loan or other debt;

(b). the new credit supported with funding is based on a new underwriting of the small business's ability to repay the loan and new approval by the lender;

(c). the prior loan or other debt has been paid as agreed and the borrower was not in default of any financial covenants under the loan or debt for at least the previous 36 months (or since origination, if shorter); and

(d). proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

g. funding for the purpose of buying out any stockholder or equity holder by another stockholder or equity holder in a business;

h. funding for the purpose of establishing a park, theme park, amusement park, or camping facility;

i. funding for the purpose of buying out any family member or reimbursing any family member;

j. funding for the purpose of pyramid sales;

k. funding activities related either directly or indirectly to cryptocurrency.

B. In addition to the eligibility and ineligibility provisions above, applicant/borrowers lines of credit guarantees and loan guarantees in connection with this program shall meet the following criteria.

1. The applicant/borrower(s) shall employ 500 employees or less at the time the loan is enrolled in this program;

2. This credit support shall not be extended to applicant/borrower(s) that have more than 750 employees;

3. Any loan supported in this Program shall not exceed a principal amount of $ 5,000,000;

4. Any credit extended through this Program shall not exceed a principal amount of $ 20,000,000;

5. SSBCI funds utilized in this Chapter 3 Program will be permitted only for new extensions of credit; that is, funds of the SSBCI Program shall not be used to support existing extensions of credit, including but not limited to prior loans, lines of credit or other borrowing, that were previously made available as part of a state small business credit enhancement program unless under the following conditions:

a. a lender may refinance a borrower's existing loan, line of credit, extension of credit, or other debt originally made by an unaffiliated lender only if the following conditions are met:

i. the amount of the refinanced loan or other debt is at least 150 percent of the previous outstanding balance;

ii. the transaction results in a 30 percent reduction in the fee-adjusted APR contracted for the term of the new debt, to help ensure that SSBCI funding is used only for transactions that meaningfully benefit borrowers by providing access to sustainable products; and

iii. proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

b. a lender may use SSBCI funds to support a new extension of credit that repays the amount due on a matured loan or other debt that was previously used for an eligible business purpose when all the following conditions are met:

i. the amount of the new loan or other debt is at least 150 percent of the outstanding amount of the matured loan or other debt;

ii. the new credit supported with SSBCI funding is based on a new underwriting of the small business's ability to repay the loan and new approval by the lender;

iii. the prior loan or other debt has been paid as agreed and the borrower was not in default of any financial covenants under the loan or debt for at least the previous 36 months (or since origination, if shorter); and

iv. proceeds of the transaction are not used to finance an extraordinary dividend or other distribution.

6. Small Business Administration (SBA) guaranteed loans shall not be purchased in loan participations through this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1476 (June 2022), LR 48:1930 (July 2022).

§509. General Loan Guaranty and Participation Provisions

A. The Louisiana Economic Development Corporation will be guided by the following general principles in approving loan guaranties, line of credit guaranties, or loan participations.

1. The corporation shall confirm that the financial institution lender has sufficient commercial lending experience and financial and managerial capacity to participate in this program. The corporation may utilize, among other resources, the financial institution's most recent call report showing the percentage of commercial loans in its portfolio.

2. The corporation shall not knowingly approve any loan guarantee, line of credit guarantee, or loan participation if the applicant/borrower has presently pending or outstanding any claim or liability relating to failure or inability to pay promissory notes or other evidence of indebtedness, state or federal taxes, or a bankruptcy proceeding; nor shall the corporation approve any loan, line of credit, loan guarantee or participation if the applicant/borrower has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit or any legal proceeding involving a criminal violation other than misdemeanor traffic violations. Further, the corporation shall not approve any loan guarantee, line of credit guarantee, or participation if the applicant/ borrower or his/her/its principle management has a criminal record showing convictions for any criminal violations other than misdemeanor traffic violations.

3. The terms or conditions imposed and made part of any loan guarantee, line of credit guarantee, or loan participation authorized by vote of the corporation board, its board screening committee or its other designated committee shall not be amended or altered by any member of the board or employee of the Department of Economic Development except by subsequent vote of approval by the board, its board screening committee or other designated committee at the next meeting of the board or committee in open session with full explanation for such action.

4. Each financial institution lender shall be required to have a meaningful amount of its own capital resources at risk in each small business loan included in this program. Such lenders shall bear at least 20 percent or more of the loss from a small business loan default.

5. The corporation shall not subordinate its position to other creditors.

B. Interest Rates

1. On all loans or lines of credit guarantees, the interest rate is for each individual loan, at the time of obligation, may not exceed the National Credit Union Administration's (NCUA) interest rate ceiling for loans made by federal credit unions as described in 12 U.S.C. § 1757(A)(vi)(I) and set by the NCUA board. . Further, on all loan or line of credit guarantees, the interest rate is to be negotiated between the borrower and the lender, but shall not exceed the lesser interest rate of either; the National Credit Union Administration's (NCUA) interest rate ceiling, that established by the Federal Credit Union Act (FCUA), that established by the Office of Comptroller of the Currency (OCC), or applicable State legislation that may be enacted.

C. Equity Requirements

1. The borrower must infuse not less than 15 percent into the equity in an existing or expanding business, or for a start-up operation or acquisition loan request.

D. Limit on the Amount of LEDC's Guarantee

1. The corporation's loan guarantee shall be no greater than 80 percent of a loan not to exceed a guaranty amount of $1,500,000.

E. Terms

1. All of the provisions contained in §109.F.1.a. - c. of Chapter 1 of the Small Business Loan Guaranty Program, with regard to term periods of various types of loan guaranties, shall also apply to this Chapter 3 Program.

F. LEDC Program Fees

1. LEDC will charge a guaranty fee not to exceed a maximum amount of 2 percent of the guaranteed loan amount, except that:

a. the guaranty program fee will be automatically waived for SEDI and SEB small business types; or

b. unless the board, the board screening committee or other designated committee waives the guaranty program fee.

2. LEDC will charge no application fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1477 (June 2022), LR 48:1931 (July 2022).

§511. General Guaranty Agreement Provisions

A. Guaranty Agreement

1. The lending institution shall conduct all of the customer/borrower interaction, and shall be responsible for the proper administration and monitoring of the loan or line of credit, including monthly invoicing, collections, and loan workouts, and the proper liquidation of the collateral in the event of a default.

2. The loan or line of credit shall not be sold, assigned, participated out, or otherwise transferred without the prior written consent of the LEDC board.

3. If liquidation through foreclosure occurs, the lender will sell the collateral, handle the legal proceedings, and absorb all expenses associated with these activities.

4. There will be a reduction of the guarantee:

a. in proportion to the principal reduction of the amortized portion of the loan or line of credit;

b. if no principal reduction has occurred in any annual period of the loan or line of credit, a reduction in the guarantee amount will be made proportional to the remaining guarantee life.

5. The guarantee will cover the unpaid principal amount owed only.

6. Delinquency will be defined according to the lender's normal lending policy and all remedies will be outlined in the guarantee agreement. Notification of delinquency will be made to the corporation in writing by submitting a completed, signed and dated SBLGP banker loan status monthly report within five business days after the end of the month/reporting period as stated in the guaranty agreement.

B. Loan Participation Agreement

1. The lending institution shall conduct all of the customer/borrower interaction, and shall be responsible for the proper administration and monitoring of the loan, including monthly invoicing, collections, and loan workouts, and the proper liquidation of the collateral in the event of a default.

2. The lead lender will hold no less participation in the loan than that equal to LEDC's, but not to exceed its legal lending limit.

3. The lead lender may sell other participations with LEDC's consent.

4. Should liquidation through foreclosure occur, the lender will sell the collateral and handle the legal proceedings and absorb all expenses associated with these activities.

5. The lender is able to set its rate according to risk, and may blend its rate with the LEDC rate to yield a lower overall rate to a project.

6. Delinquency will be defined according to the lender's normal lending policy and all remedies will be outlined in the participation agreement. Notification of delinquency will be made to the corporation in writing by submitting a completed, signed and dated SBLGP banker loan status monthly report within five business days after the end of the month/reporting period, as stated in the loan participation agreement.

C. Borrower Agreement

1. At the discretion of LEDC, the borrower will agree to strengthen management skills by participation in a form of continuing education acceptable to LEDC.

2. The borrower shall provide initial proof as well as an annual report of job creation, including the number of jobs, job titles and salaries.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1478 (June 2022), LR 48:1931 (July 2022).

§513. Confidentiality

A. Confidential information in the files of the corporation and its accounts acquired in the course of its duty is to be used solely for the corporation. The corporation is not obliged to give out any credit rating or confidential information regarding the applicant/borrower. (See Louisiana Attorney General's Opinion #82-860.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1478 (June 2022), LR 48:1932 (July 2022).

§515. Conflict of Interest

A. No member of the corporation, employee thereof, or employee of the Department of Economic Development, or members of their immediate families shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1478 (June 2022), LR 48:1932 (July 2022).

§517. Guidelines

A. The Louisiana Economic Development Corporation (LEDC), or the Louisiana Department of Economic Development, also known as Louisiana Economic Development (LED), as the administrator of this program for LEDC, may make, create, or issue from time to time guidelines interpreting, construing, explaining and/or supplementing these rules; and may revise, supplement, or otherwise change or modify the guidelines at any time with or without notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the

Louisiana Economic Development Corporation, LR 48:1479 (June 2022), LR 48:1932 (July 2022).

Title 19
CORPORATIONS AND BUSINESS
Part VII. Louisiana Economic Development Corporation
Subpart 2. Louisiana Venture Capital Program

Chapter 21. Louisiana Venture Capital Co-Investment Program

§2101. Eligibility

A. Any venture capital fund with five years experience in the management of investments made with the capital of other investors and having at least $7,500,000 under management is eligible to apply for certification under this program.

AUTHORITY NOTE: Promulgated In accordance with R.S. 51:2331.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:460 (June 1989).

§2103. Application for Certification

A. The application for certification shall contain, but not be limited to, the following:

1. a cover letter that states that application to the program for certification is being made and indicating reason for application for certification;

2. résumés of the principal manager(s);

3. list of all funds managed by the partner(s);

4. amount of fund(s);

5. project preferences including:

a. role in financing;

b. type of financing;

c. minimum investment;

d. preferred investment;

e. preferred investment (LBO);

6. industry preferences;

7. five-year statement showing investments made and results of those investments;

8. experience with co-investment with any other governmental agency;

9. previous/current experience with projects within Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:460 (June 1989).

§2105. Procedure for Certification Review

A. The application will be submitted to the executive director of the corporation no later than two weeks prior to the regular monthly meeting of the screening committee of the board. He shall review and analyze the information. If the application is complete, he shall submit it and his analysis to the next meeting of the screening committee of the corporation board, which shall review the application and make a recommendation to the next meeting of the full board for certification or denial. Upon certification, a certification number shall be assigned the applicant by the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:461 (June 1989).

§2107. Co-Investment Criteria

A. Certified venture capital funds may apply to the corporation for a co-investment by the corporation in a round of financing in a specific project. The project must be for a Louisiana-based enterprise maintaining headquarters and production facilities in Louisiana. The corporation shall not co-invest more than 25 percent of the total venture capital investment in the proposed round of financing of the project. The corporation investment shall not exceed $500,000 in the proposed round of financing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:461 (June 1989).

§2109. Application Procedures for Co-Investment

A. The summary application must contain but not be limited to:

1. applicant information:

a. venture capital fund name;

b. address;

c. LEDEC certification number;

d. telephone number;

2. project firm information:

a. name of business;

b. address (postal and physical);

c. phone number;

d. year established;

e. state chartered in;

f. legal structure of business;

g. IRS tax number;

h. product or service;

i. headquarters location;

j. location of all production and research and development facilities;

k. list any pending litigation;

l. list any bankruptcy or insolvency filings;

3. owner/manager information:

a. name;

b. address;

c. title;

d. Social Security number;

e. percent of ownership;

f. annual compensation;

g. list any pending litigation;

h. list any bankruptcy or insolvency filings;

4. use of funds:

a. purpose;

b. amount;

5. securities given in exchange for investment:

a. list types of securities to be issued in this round of financing to all investors with any terms and/or conditions attached thereto;

6. equity information:

a. list all equity investors with numbers of shares owned, type of shares owned, dollar value of investment and date of investment;

b. total shares authorized by class;

c. total shares outstanding by class.

B. A business plan that contains but is not limited to:

1. business goals and earnings projections and potential return to investors;

2. market analysis:

a. description of total market;

b. industry trends;

c. target market;

d. competition;

3. products or services:

a. description of product line;

b. proprietary position: patents, copyrights and legal and technical considerations and ownership of same;

c. comparison to competitors' products;

4. manufacturing process (if applicable):

a. materials;

b. sources of supply;

c. production methods;

5. marketing strategy:

a. overall strategy;

b. pricing policy;

c. sales terms;

d. method of selling, distributing and servicing products;

6. management plan:

a. form of business organization;

b. board of directors composition;

c. officers: organization chart and responsibilities;

d. résumés of key personnel;

e. staffing plan/number of employees;

f. facilities plan/planned capital improvements;

g. operating plan/schedule of upcoming work for next one to two years;

7. financial data (for existing firms):

a. financial history (five years to present);*

b. three-year financial projections (first year by quarters; remaining years annually):

i. profit and loss statements;

ii. balance sheets;

iii. cash flow chart;

iv. capital expenditure estimates;

c. explanation of projections;

d. key business ratios;

e. explanation of use and effect of new funds;

f. potential return to investors compared to competitors and industry in general;*

8. financial data for startup firms:

a. three-year financial projections (first year by quarters; remaining years annually):

i. profit and loss statements;

ii. balance sheets;

iii. cash flow chart;

iv. capital expenditure estimates;

b. explanation of projections;

c. key business ratios;

d. explanation of use and effect of new funds;

e. potential return to investors compared to competitors and industry in general;*

9. schedule of debt:

a. to whom;

b. date opened;

c. original balance;

d. present balance;

e. payment schedule;

f. date of maturity;

g. rate;

h. collateral;

i. terms of convertibility;

j. list all liens against the project firm and related firms;

10. list of trade creditors/suppliers:

a. creditor name;

b. address;

c. date opened;

d. high credit;

e. balance;

f. terms;

11. collateral offered:

a. type and description;

b. present market value:

i. appraisals no more than 90 days old at time of application;

c. present balance owed;

d. total value of collateral;

e. source of repayment:

i. primary source;

ii. secondary source;

f. federal and state tax status:

i. date of current tax status;

ii. date of last audit;

iii. deficiencies assessed/proposed.

*All financial statements must meet Generally Accepted Accounting Practices (GAAP).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:461 (June 1989).

§2111. Procedure for Application Review

A. The application will be submitted to the executive director of the corporation no later than two weeks prior to the regular monthly meeting of the screening committee of the board. He shall review and analyze the information. If the application is complete, he shall submit it and his analysis to the next meeting of the screening committee of the corporation board, which shall review the application and make a recommendation to the next meeting of the full board for approval or denial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:462 (June 1989).

§2113. General Policy

A. The corporation shall not approve any co-investment if the project firm has presently pending, at the federal, state or local level, any proceeding concerning denial or revocation of any necessary license or permit.

B. The corporation will invest in the project on the same terms and conditions as the certified venture capital fund.

C. The requirement of personal guarantee shall be negotiated by the board on a project-by-project basis.

D. Nothing contained herein shall limit the ability of the board or committee thereof to make a reasonable decision based on information submitted to it.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:462 (June 1989).

§2115. Conditions for Disbursements of Funds

A. The secretary-treasurer and one of the following: president of the corporation, chairman, or executive director shall execute all necessary legal instruments at the closing after certification by counsel that all legal requirements have been met.

B. In the case that the co-investment is to be disbursed in a phased funding, the monies provided by the corporation shall be placed in an escrow account to be disbursed at the joint written request of both the venture capital fund co-investor and the project firm at the same rate of disbursement as that of the co-investor venture capital firm. The secretary-treasurer shall have the authority to release the funds from escrow.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:462 (June 1989).

§2117. Compliance Requirements of Project Firms

A. Each year, on the anniversary of the initial disbursement of funds, each recipient of funds shall provide the following:

1. list of all stockholders with the number of shares held by each at any time during the previous year;

2. monthly statement of financial condition including, but not limited to, a balance sheet, profit and loss statement, changes in financial condition, capital reconciliation;

3. current reconciliation of net worth;

4. one-year projected cash flow statement. Statement must be prepared on a month-to-month basis, accompanied with footnotes;

5. current personal financial statement of all principals;

6. annual (within 90 days of the end of the fiscal year) audited financial statement prepared by a certified public accountant;

7. current insurance policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:462 (June 1989).

§2119. Repayment Terms

A. The board of the corporation shall have the sole responsibility to set repayment terms on a project-by-project basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:463 (June 1989).

§2121. Confidentiality and Conflict of Interest

A. Confidentiality. Confidential information in the files of the program and its accounts, acquired in the course of duty, is to be used solely for the program. The program is not obliged to give credit rating or confidential information regarding applicant. Also see Attorney General Opinion Number 82.860.

B. Conflict of Interest. No member of the corporation, employee thereof, or employee of the Department of Economic Development or members of their immediate families shall either directly or indirectly be a party to, or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever. If any contract or agreement shall be made in violation of the provisions of this Section the same shall be null and void and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:463 (June 1989).

§2123. Ownership of Stock and Incidents Thereto

A. Stock taken in co-investment shall be held by the corporation. The board through its duly authorized designee shall vote the stock.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development. Economic Development Corporation, LR 15:463 (June 1989).

Chapter 23. Louisiana Venture Capital Match Program

§2301. Eligibility

A. Eligible applicants are:

1. venture capital funds with a minimum of $5,000,000 of privately raised capital for risk investment under management with:

a. proven, experienced management recognized in the venture capital community. The management should have significant management experience in risk investments of the types and volumes contemplated by the applicant venture capital funds;

b. a Louisiana-based production office. The production office shall have permanent employees employed by the fund capable of evaluating potential investment opportunities;

c. funds without headquarters located in Louisiana must have a minimum of one-year operating history;

2. for the purposes of this Chapter, *Risk Investment* means an investment which may provide equity through the purchase of common stock, preferred stock, partnership rights or any other equity instrument. Additionally it may mean debt positions which may act as equity or have equity features such as subordinated debt, debentures or other such instruments used in conjunction with features intended to yield significant capital appreciation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:463 (June 1989), amended LR 23:558 (May 1997).

§2303. Valuation of Investment Fund

A. The amount of privately raised funds under management shall mean the value of any monies invested or otherwise used as risk capital in businesses plus the unexpended monies available for investment or used as risk capital. The value of an equity investment and/or risk capital

investment shall be the amount of dollars actually invested. For the purpose of calculating private capital, only cash and commitments which are available for risk investments at the time of LEDC's match, may be counted in the match amount.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:463 (June 1989), amended LR 23:559 (May 1997).

§2305. Application Procedure

A. The application shall contain, but not be limited to, an offering memorandum which includes, but is not limited to, the following:

1. name of fund, address (mailing and physical);

2. specify the amount of LEDC investment/ commitment requested;

3. specify the minimum and maximum amounts of non-LEDC capital to be raised if LEDC makes the requested investment/commitment;

4. specify applicant's projected timetable, with milestones for completion of the fund raising;

5. specify whether applicant anticipates taking in all of the committed capital investment at closing, or whether applicant plans a phase in. If a phase-in is planned, specify the proposed schedule. It is permissible to have different scenarios based on the actual amount of capital raised;

6. *market*—identify the proposed market of the applicant:

a. describe and discuss the types of businesses that the fund will finance. Discuss the extent to which the fund intends to specialize in certain industries, or if special circumstances will be addressed;

b. describe the size range of businesses that it is contemplated the fund will finance, with a general indication of where most of the focus is expected;

c. discuss the life cycle stage or stages of the companies which the fund will likely finance, with an indication of where most of the focus is contemplated, e.g., start-up, expansion;

d. discuss the geographic area in which the fund plans to focus. Specify the city or parish in which the fund's principal office will be located, and discuss intentions, if any, to establish any additional offices;

e. describe the types of financing instruments that are intended to be utilized for investments, e.g., debentures, notes, preferred stock, royalties, etc.;

7. *management assistance*—discuss the plans of the fund to provide management and/or technical assistance to companies for which the fund provides financing. Discuss the fund's plans for monitoring its financing, and enforcing provisions of loan or investment agreements. Discuss how the fund plans to handle problem loans and investments;

8. *idle funds*—describe plans for the management of the idle funds of the fund;

9. *realization of returns by investors*—discuss long-term plans and strategies for providing a tangible return to the investors in the fund;

10. *tax and accounting issues*—discuss relevant tax and accounting issues for the fund;

11. *management structure*—describe the proposed management structure for the fund;

12. describe the proposed responsibilities of each of the members of the management team. If any of these people will not be full time, describe their other activities;

13. describe the responsibilities of any management position for which a person has not been identified;

14. specify any other key people including any advisors, consultants, attorneys and accountants, and submit resumes and/or descriptions of firms. LEDC reserves the right to perform general and criminal background checks on these key people.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:463 (June 1989), amended LR 23:559 (May 1997).

§2307. Amount of Investment

A. The corporation may invest up to $5,000,000. The corporation may use its discretion to set the ratio of corporation investment to private investment. However, the ratio shall not exceed $1 of corporation monies to $2 of privately-raised dollars.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:463 (June 1989), amended LR 23:559 (May 1997).

§2309. Investment Criteria

A. The criteria for investment may include but not be limited to the following.

1. The applicant will be required to make investments that will at least create jobs in, create wealth in, and shall have a substantial economic impact to the economy of Louisiana.

2. The investment made by LEDC shall be made on no less than the same terms and conditions, and with the same expected return on investment, as other private investors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:464 (June 1989), amended LR 23:559 (May 1997).

§2311. Reporting Requirements

A. Funds receiving investments under this program shall submit quarterly and annual financial and narrative reports on the use of monies and all investments made by the fund during the reporting period. The narrative report shall include the number of applications received in addition to other activities. The narrative report shall include a listing of all investors in each business and all subsequent financings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:465 (June 1989), amended LR 23:559 (May 1997).

§2313. Inactivity

A. If no activity has occurred in the fund for a period of one year or reporting requirements are not met, the Venture Fund shall be reviewed by the board of the corporation. After review the board may choose to revoke its investment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:465 (June 1989), amended LR 23:560 (May 1997).

§2315. Reporting Requirements

A. Funds receiving investments under this program shall submit quarterly and annual financial and narrative reports on the use of Louisiana Fund monies and all other investments made by the fund during the reporting period. The narrative report shall include the number of applications received in addition to other activities. The narrative report shall include a listing of all investors in each business and all subsequent financings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:464 (June 1989).

§2317. Inactivity

A. If no activity has occurred in the Louisiana Fund for a period of two years, or reporting requirements are not met, the Venture Fund shall be reviewed by the board of the corporation. After review the board may choose to revoke its investment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:464 (June 1989).

Chapter 25. Louisiana Minority Venture Capital Match Program

§2501. Eligibility

A. Any Louisiana-owned and headquartered Venture Capital Fund with a minimum of $250,000 of privately-raised capital for equity investment under management may apply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:464 (June 1989).

§2503. Valuation of Investment Fund

A. The amount of funds under management shall mean the value of any monies invested in a business plus the unexpended monies available for investment. The value of an equity investment shall be the amount of dollars actually invested.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:464 (June 1989).

§2505. Fund Management

A. Management shall be comprised of individuals with substantial experience in business operations and financing, including business startup or expansion financing. The development of these investments may have been done for the individual's own account or on behalf of others.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:464 (June 1989).

§2507. Application Procedure

A. The application shall contain but not be limited to:

1. résumés of principals;

2. current balance sheet and income statement of applicant fund and individual investments;

3. balance sheet and income statement of all funds and investments managed by applicant principals during the last three years and/or other investments managed by the principals in the last three years;

4. list of fund investors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:464 (June 1989).

§2509. Amount of Investment

A. The corporation may invest up to $2,500,000. The corporation may use its discretion to set the ratio of corporation investment to private investment; however, the ratio shall not exceed $1 of corporation monies to $2 of privately-raised dollars.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:464 (June 1989).

§2511. Terms of Investments

A. Corporation investments shall be made on the same terms and conditions as those of other investors in the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:465 (June 1989).

§2513. Creation of a Louisiana Fund

A. The applicant shall, on receipt of funds from the corporation, immediately set up an account in a financial institution domiciled in Louisiana to be called the Louisiana Fund and deposit the proceeds of the state's investment into that fund. The proceeds of this fund shall be used solely for investments in minority owned enterprises maintaining headquarters and production facilities in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:465 (June 1989).

§2515. Reporting Requirements

A. Funds receiving investments under this program shall submit quarterly and annual financial and narrative reports on the use of Louisiana Fund monies and all other investments made by the fund during the reporting period. The narrative report shall include the number of applications received in addition to other activities and the number of applications received from minority owned firms. Reports must include a listing of all investors in each business and all subsequent financing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:465 (June 1989).

§2517. Inactivity

A. If no activity has occurred in the Louisiana Fund for a period of two years, the Venture Fund shall be reviewed by the board of the corporation. After review the board may choose to revoke its investment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:465 (June 1989).

Chapter 27. University Foundation Investment Program

§2701. Purpose

A. The purpose of this program is to promote and enhance Louisiana Department of Economic Development's cluster development, the goals of Vision 20/20, Louisiana's long-term plan for economic development, and related public policy for the university systems of Louisiana to transfer technologies developed in the research universities in order to build Louisiana businesses and commercialize these technologies. Universities that form technology transfer foundations and/or other vehicles to form seed investment funds need commitments of funding or funding to start-up these seed funds. The intent of this program is to provide initial funding for university-formed seed fund investments that include sound business plans and private, independent management that is attractive to experienced institutional and private investors in keeping with traditional venture capital fund structures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:2634 (December 2003).

§2703. Definitions

Agreement—the funding agreement of contract hereinafter referred to between DED, LEDC, and applicant through which the parties by cooperative endeavor or otherwise, include appropriate documentation necessary to conventionally protect the interest of the LEDC in the funding of the award, and set forth the terms, conditions and performance objectives of the award provided pursuant to these rules.

Applicant—the University Research and Technology Foundation and its subsidiary entity requesting the funding from the Louisiana University Foundation Investment Program for seed funds that provide early stage funding for the statewide development of University research based companies that seek to commercialize the results of their work through technology transfer in accordance with sound business strategies. In order to be eligible for this program, the applicant must provide a program for engagement of all research universities in the state. The program must indicate that it is seeking inclusion and coordination of effort on a statewide basis and is proceeding in accordance with a sound business plan in a manner consistent with the rules hereinafter provided.

Award—the funding of the project by the LEDC under this program to eligible applicants.

LED—the Louisiana Department of Economic Development charged by statute with administering the Louisiana University Foundation Investment Program and the relevant LED cluster and service directors and assigned staff shall administer the program provided for by these rules.

LEDC Board—the board of directors of the Louisiana Economic Development Corporation and when referred to herein in terms of approval of an award, shall mean that the award has been approved in accordance with the by-laws and procedures of the board of directors whether such approval requires or does not require board approval under those by-laws and procedures.

Secretary—the secretary of the LED, who is also the president of LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:2634 (December 2003).

§2705. General Principles

A. The following general principles will direct the administration of the Louisiana Project Equity Fund.

1. Awards are not to be construed as an entitlement for Louisiana University Foundations or their subsidiary entities locating and are subject to the discretion of the LED, the secretary of the LED and the LEDC.

2. An award must reasonably be expected to be a significant factor in improving or enhancing economic development, including cluster development, whether in a particular circumstance, or overall.

3. Awards must reasonably be demonstrated to result in the enhanced economic well-being of the state and local communities.

4. The anticipated economic benefits to the state will be considered in making the award.

5. Whether or not an award will be made is entirely at the discretion of the LED, its cluster and service directors, the secretary and the LEDC board and shall depend upon the facts and circumstances of each case, funds available, funds already allocated, and other such factors as the board may, in its discretion deem to be pertinent. The grant or rejection of an application for an award shall not establish any precedent and shall not bind the LED, its cluster directors, the secretary, or the LEDC board to any future course of action with respect to any application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:2634 (December 2003).

§2707. Eligibility

A. In order to be eligible for an award pursuant to this program, the applicant and company must demonstrate to the satisfaction of the board that the award sought must be consistent with the provisions set forth above, and the applicant and company must demonstrate a need for the award consistent with the requirements set forth below. Where it is represented that certain contingent actions will be taken in order to comply with these conditions, then the LEDC may, upon recommendation of the LED and its contract monitor, withhold funding until there is substantial performance of the contingencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:2635 (December 2003).

§2709. Qualification for an Award

A. Applications for awards may be made in phases that are representative of the applicant's overall business plan and design. The application shall state whether or not funds are sought for a phase of operation, or whether it represents the total amount sought by the applicant from the fund.

B. Each application must set forth the following:

1. the establishment or plan for establishment of the subsidiary investment entity;

2. the hiring or plan for hiring, including qualifications, of the chief executive officer of the subsidiary entity;

3. the establishment or plan for establishment of an Investment Advisory Board, including qualifications of its members and scope of its authority;

4. the hiring or plan for hiring, including qualifications of an investment fund manager;

5. a preliminary business plan for the subsidiary entity, including therein a plan for statewide inclusion and coordination of the economic development of technology transfer initiatives;

6. the amount of funding being sought by the applicant, and if phased, the total amount of funding that the applicant anticipates will be sought;

7. the goals and objectives of the funding, and the performance measures to be met by the applicant in order to obtain the funding.

C. Depending upon the nature of the funding being sought, applications for funding shall include goals, objectives and performance measures that to the satisfaction of the department and the LEDC, provide for the following:

1. the amount of funding being sought by the applicant;

2. the business plan of the applicant and the relationship between the funding sought and the plan;

3. the minimum and maximum total amount of capital to be raised including the commitment by the state as evidenced by the funding for which the application is being made and a timetable for raising funds and including goals and objectives for funding and milestones for completion of raising capital;

4. the plan for cluster development, proposed markets for the use of the funds sought, the industry and business development sought by the fund and any new areas for development of the funding; specific involvement of the appropriate department cluster directors in the formation of the plan is recommended;

5. the plan for technology commercialization and transfer and/or the commercialization and transfer of other University-based research that will be implemented through use of the funds;

6. the proposed market of the applicant including the types of businesses that the fund will finance, the extent to which the fund intends to specialize in certain industries, or if special circumstances will be addressed;

7. a survey of the possible avenues of rural development; actual and potential uses of the fund in enhancing the quality of life in the areas of the state most affected by poverty;

8. financing instruments that are intended to be utilized for investments, e.g., debentures, notes, preferred stock, royalties, etc., and a plan reflecting flexibility and adjustment to economic opportunity that may arise from the use of the funds;

9. whether applicant anticipates taking in all of the committed capital investment at closing, or whether applicant plans a phase in. If a phase-in is planned, specify the proposed schedule. It is permissible to have different scenarios based on the actual amount of capital raised;

10. applicant's plans for the fund to provide management and/or technical assistance to companies for which the fund provides financing;

11. plans and procedures for monitoring its financing, and enforcing provisions of loan or investment agreements and the handling of problem loans and investments;

12. plans for the management of any idle funds, long-term plans and strategies for providing a tangible return to the investors, and relevant tax and accounting issues for the fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:2635 (December 2003).

§2711. LEDC Investment Criteria

A. In considering applicant's application for funding, LEDC may require, but not be limited to the following considerations:

1. that the secretary or his designee sits upon the foundation's board of directors; and that another representative of the department, designated by the LEDC, sit upon the board of investment advisors;

2. that LEDC's funding be accompanied by other investment; and that future funding be conditioned upon the ability of the applicant to attract other investment and that applicant provide a specific business plan and time table for raising those funds;

3. that LEDC's funds shall be considered equity in the fund with any funds that were used for initial expenses to be counted as equity for carry and distribution purposes;

4. that LEDC shall participate in the distributions in its pro-rate share;

5. that if there are any other investors that receive state tax credits, then LEDC's return on investment shall be calculated on an equal basis;

6. that the professional fund manager or the chief executive officer of the applicant provide the LEDC board with semi-annual reports detailing the investments made, return on investment, and the applicant's meeting of the goals and objectives and performance measures under which the application was approved;

7. that LEDC may condition the applicant's use of investment capital as up-front operating funding upon submission of a quarterly accounting for the use of funds and a quarterly budget. Additionally, applicant may be required to submit quarterly and annual financial and narrative reports on the use of monies and all investments made by the fund during the reporting period. The narrative report shall include the number of applications received in addition to other activities. The narrative report shall include a listing of all investors in each business and all subsequent financings. Additionally, the reports shall contain information on the number of jobs created by the portfolio business, the payroll figures, the amount of any state tax incentive or other incentives utilized, and state taxes paid by the businesses;

8. that LEDC may condition applicant's funding as may be appropriate and may require such securitization or other documentation as may be appropriate to the investment goals and objectives and performance measures;

9. that LEDC may condition investment upon performance of such additional requirements as may be negotiated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:2635 (December 2003).

§2713. Contract between LEDC and Applicant

A. LEDC and applicant shall enter into such terms of agreement as may be customary in the industry for the creation and maintenance of Venture Capital Funding, provided that the agreement shall fully reflect the representations made by applicant as provided in Qualification for Award and Investment Criteria as set forth above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:2636 (December 2003).

Chapter 29. SSBCI Venture Capital ARPA 2021

§2901. Purpose

A. The purpose of this program is to utilize federal SSBCI funds to strengthen state programs that support private financing to small businesses as a response to the economic effects of the COVID-19 pandemic, in accordance with prevailing federal guidelines issued by the U.S. Treasury.

B. The Louisiana Economic Development Corporation (LEDC) will utilize SSBCI funds from ARPA 2021 to make investments to create and grow start-up and early-stage businesses or for expansion of small businesses statewide, and to reach, identify and promote small business growth in low and moderate income communities, in minority communities, in other underserved communities, and to women- and minority-owned businesses.

C. This LEDC program and the SSBCI funding will be marketed through outreach activities to inform venture capital funds, local foundations, small businesses, trade associations, incubator associations, and economic development organizations of the program, and to generate increased small business activity, awareness of and access to additional sources of capital to start and expand existing business opportunities, as well as participation in the program. The marketing will also be used to find investment opportunities located in the underserved markets that will be targeted with SSBCI funds.

D. The LEDC will also monitor these plans, including the progress of individual businesses receiving investments and the performance of participating venture capital organizations, to ensure successful outcomes in the form of program utilization and eventual securing of funds for these groups.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1490 (June 2022).

§2903. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in prevailing federal guidelines issued by the U.S. Treasury, unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Board—Board of Directors of Louisiana Economic Development Corporation.

Business Partner of an SSBCI Insider—a person who owns 10 percent or more of any class of equity interest, on a fully diluted basis, in any private entity in which an SSBCI insider also owns 10 percent or more of any class of equity interest on a fully diluted basis.

Community Development Financial Institution (CDFI)—has the meaning given that term under Section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994.

Community Development Financial Institution (CDFI) Investment Area—areas defined by CDFI which are generally low-income, high poverty geographies that receive neither sufficient access to capital nor support for the needs of small businesses, including minority-owned businesses.

Corporation—Louisiana Economic Development Corporation.

Direct Investment—an investment in which financial investors take part with each other and act jointly by uniting or combining together to invest directly into individual companies or businesses

Family Member of an SSBCI Insider—such person's spouse, domestic partner, parents, grandparents, children, grandchildren, brothers, sisters, stepbrothers, and stepsisters; and any other relatives who live in the same household as the SSBCI insider.

Independent Non-Profit Entity—any non-profit entity that is not state- sponsored.

LED—Louisiana Department of Economic Development.

LEDC—Louisiana Economic Development Corporation, as known as Corporation.

Owned and Controlled—if privately owned, 51 percent is owned by such individuals; if publicly owned, 51 percent of the stock is owned by such individuals; and in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of such individuals.

Personal Financial Interest—any financial interest derived from ownership or right to ownership of, or lending to or other investment in, a private, for-profit entity that may receive an SSBCI investment (including any financial interest derived from ownership or right to ownership of, or investment in, a venture capital fund).

Risk Investment—an investment that may provide equity through the purchase of common stock, preferred stocks, partnership rights or any other equity investment. Additionally it may mean debt positions, which may act as equity or have equity features such as subordinated debt, debentures or other such instruments used in conjunction with features intended to yield significant capital appreciation.

Socially and Economically Disadvantaged Individuals (*SEDI*) *Owned Business*—for the purposes of this program:

a. business enterprises that certify that they are owned and controlled by individuals who have had their

access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their:

i. membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society;

ii. gender;

iii. veteran status;

iv. limited English proficiency;

v. physical handicap;

vi. long-term residence in an environment isolated from the mainstream of American society;

vii. membership of a federally or state-recognized Indian Tribe;

viii. long-term residence in a rural community;

ix. residence in a U.S. territory;

x. residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); or

xi. membership of another *underserved community* as defined in U.S. Executive Order 13985;

b. business enterprises that certify that they are owned and controlled by individuals whose residences are in CDFI Investment Areas, as defined in prevailing federal guidelines issued by the U.S. Treasury;

c. business enterprises that certify that they will operate a location in a CDFI Investment Area, as defined in prevailing federal guidelines issued by the U.S. Treasury; or

d. business enterprises that are located in CDFI Investment Areas, as defined in prevailing federal guidelines issued by the U.S. Treasury.

SSBCI Insider—a person who, in the 12-month period preceding the date on which SSBCI support for a specific investment in a venture capital fund or company is closed or completed:

a. was:

i. a manager or staff member, whether by employment or contract, in the state's SSBCI venture capital program;

ii. a government official with direct oversight or jurisdiction over an SSBCI venture capital program, or such an official's immediate supervisor;

iii. a member of the board of directors or similar body for a state-sponsored non-profit entity who, through such membership, has authority to vote on decisions to invest SSBCI funds or has authority over the employment or compensation of staff managing processes related to the investment of SSBCI funds;

iv. a member of the board of directors or similar body for an independent non- profit or for-profit entity that operates an SSBCI venture capital program; or

v. an employee, volunteer, or contractor on an investment committee or similar body that recommends or approves SSBCI investments under the SSBCI venture capital program; or

b. exercised a controlling influence on state decisions regarding:

i. the allocation of SSBCI funds among approved state venture capital programs;

ii. eligibility criteria for the state's SSBCI venture capital programs; or

iii. the processes for approving investments of SSBCI funds under the state's SSBCI venture capital program.

State-Sponsored Non-Profit Entity—a non-profit entity created by state legislation to pursue policies of the state government and over which state officials exercise a controlling influence through budgetary decisions or other legislative action or direction.

Valuation of Investment Fund—the value of any monies invest or otherwise used as risk capital in businesses plus the unexpended monies available for investment or used as risk capital.

Venture Capital Fund—a fund that makes and manages a portfolio of investments in individual companies or businesses. also referred to herein as the applicant organization;

Very Small Business (VSB)—a business which employees 10 or less employees, including independent contractors and sole proprietors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1491 (June 2022).

§2905. Eligibility for Venture Capital Fund to Participate in This Program

A. LEDC will undertake a formal evaluation process and consider various factors when determining which applicants will be selected to participate in this program. Among the factors which may be taken into account in the evaluation process are the following;

B. Eligible applicants are venture capital funds:

1. with a minimum of $500,000 in investments or has a minimum of $2 1/2 million under management;

2. already has on hand cash sums sufficient to cover the general and administrative costs for the first and early years of its operations for participation in the SSBCI Venture Capital Program;

3. has proven, experienced management recognized in the venture capital community. The management should have significant management experience in risk investments of the types and volumes contemplated by the applicant venture capital funds;

4. are encouraged to have a production office based in Louisiana with permanent employees employed by the fund capable of evaluating potential investment opportunities.

C. In addition to the eligibility provisions provided in the Section mentioned in the above Subsection A, LEDC investments made in venture capital funds and programs in connection with this program shall meet the following criteria:

1. the venture capital fund(s) shall target an average business-size of 500 employees or less at the time the individual business investment is made;

2. it is strongly encouraged for each venture capital fund(s) to make every effort to target and invest in SEDI-owned businesses and VSB;

3. such individual business investments shall not be extended to businesses with more than 750 employees;

4. any investment targeted in this program shall not exceed the amount of $ 5,000,000; and

5. any investment transaction or investment round extended through this program shall not exceed the amount of $20,000,000.

D. The board has the sole discretion to determine whether or not each particular applicant is eligible and meet the criteria for program participation, and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1492 (June 2022).

§2907. Valuation of Investment Fund

A. The amount of privately raised funds under management shall mean the value of any monies invested or otherwise used as risk capital in businesses plus the unexpended monies available for investment or used as risk capital. The value of an equity investment and/or risk capital investment shall be the amount of dollars actually invested. For the purpose of calculating private capital, only cash and commitments which are available for risk investments at the time of LEDC's investment, may be counted in the investment amount.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1492 (June 2022).

§2909. Application Requirements for Investment

A. Prior to a venture capital fund submitting a request to the Louisiana Economic Development Corporation (LEDC) for consideration of an investment, a prospective fund shall first submit an application for the applicant fund to be considered qualified or eligible to participate in this program. The application for the fund's qualification or eligibility to the LEDC shall consist of detailed information covering three main categories, including:

1. the experience and qualifications of the fund's existing or proposed management team; and

2. the business plan for the venture capital fund. The applicant can use its own format, as long as the basic information is provided. Moreover, the applicant shall provide additional information which is viewed as relevant. The LEDC or its staff may request additional information beyond that which is specified below and what is provided by the applicant.

B. After its receipt and review by the LEDC staff, the completed application for qualification will then be submitted to the next scheduled LEDC board meeting for its consideration of final approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1492 (June 2022).

§2911. Application Procedure

A. The application shall contain, but not be limited to, an offering memorandum which includes, but is not limited to, the following:

1. name of fund, address (mailing and physical);

2. specify the amount of LEDC investment/ commitment requested;

3. specify the minimum and maximum amounts of non-LEDC capital to be raised if LEDC makes the requested investment/commitment;

4. specify applicant's projected timetable, with milestones for completion of the fund raising;

5. specify whether applicant anticipates receiving all of the committed capital investment at closing, or whether applicant plans a phase in. If a phase-in is planned, specify the proposed schedule. It is permissible to have different scenarios based on the actual amount of capital raised;

6. *market*—identify the proposed market of the applicant:

a. describe and discuss the types of businesses that the fund will finance. Discuss the extent to which the fund intends to specialize in certain industries, or if special circumstances will be addressed;

b. describe the size range of businesses that it is contemplated the fund will finance, with a general indication of where most of the focus is expected;

c. discuss the life cycle stage or stages of the companies which the fund will likely finance, with an indication of where most of the focus is contemplated, e.g., start-up, expansion;

d. discuss the geographic area in which the fund plans to focus. Specify the city or parish in which the fund's principal office will be located, and discuss intentions, if any, to establish any additional offices;

e. describe the types of financing instruments intended to be utilized for investments, e.g., debentures, notes, preferred stock, royalties, etc.;

7. *management assistance*—discuss the plans of the fund to provide management and/or technical assistance to companies for which the fund provides financing. Discuss the fund's plans for monitoring its financing, and enforcing provisions of investment agreements. Discuss how the fund plans to handle problem loans and investments;

8. *idle funds*—describe plans for the management of the idle funds in the fund;

9. *realization of returns by investors*—discuss long-term plans and strategies for providing a tangible return to the investors in the fund;

10. *tax and accounting issues*—discuss relevant tax and accounting issues for the fund;

11. *management structure*—describe the proposed management structure for the fund;

12. describe the proposed responsibilities of each of the members of the management team. If any will not be full time, describe their other activities;

13. describe the responsibilities of any management position for which a person has not been identified;

14. specify any other key people including any advisors, consultants, attorneys and accountants, and submit resumes and/or descriptions of firms. LEDC reserves the right to perform general and criminal background checks on these key people.

B. All applications under this program must be submitted to the Louisiana Economic Development Corporation, as directed by staff.

C. All applications received by LEDC will be reviewed by the LEDC staff; and the staff may request additional information beyond that which has been provided. After their receipt and review by the LEDC staff, the completed applications shall then be submitted to the next scheduled LEDC board meeting for its consideration of final approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1493 (June 2022).

§2913. Amount of Investment

A. A qualified or eligible fund led by a non-profit entity may receive an investment equal to $1 of LEDC funds for each $2 of funds privately raised by the applicant fund. The maximum total dollar amount of an LEDC investment in an eligible fund shall not exceed $10,000,000.

B. Any other qualified or eligible fund may receive an investment equal to $1 of LEDC funds for each $4 of funds privately raised by the applicant fund. The maximum total dollar amount of an LEDC investment in an eligible fund shall not exceed $10,000.000.

C. Subject to availability of SSBCI funding and associated allocation to this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1493 (June 2022).

§2915. Investment Criteria

A. The criteria for investment may include but not be limited to the following.

1. The applicant will be required to make investments that will at least create jobs in, create wealth in, and shall have a positive economic impact to the economy of Louisiana.

2. The investment made by LEDC shall be made on no less than the same terms and conditions, and with the same expected return on investment, as other private investors.

B. A qualified or eligible fund may charge for services as allowed by the U.S. Treasury.

C. Investment funds may be used for out of state investments, after approval by LED.

D. Investment funds must make investments in accordance to U.S. Treasury guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1493 (June 2022).

§2917. Reporting

A. Upon closing of each investment, each venture capital fund that is the recipient of LEDC funds shall provide to LEDC the following information:

1. name of company, census tract, NAICS code, amount of investment, total amount of round of funding, and date of investment

2. the number of jobs with corresponding salaries, new and retained;

3. narrative of business, use of funds, board presentation;

4. prior and post investment of private capital; and

5. assurances and certifications in accordance to U.S. Treasury guidelines.

B. Each year, on the anniversary date of the initial disbursement of funds, or on such date as may be authorized by LEDC, each venture capital fund that is the recipient of LEDC funds shall provide to LEDC the following information:

1. a list of all investors in the fund, including the amounts of each investment and the nature of each investment;

2. a statement of the financial condition of the fund including, but not limited to, a balance sheet, a profit and loss statement, and a statement showing changes in the fund's financial condition;

3. a current reconciliation of the fund's net worth; and

4. an annual audited financial statement prepared by a certified public accountant (prepared within 120 days of the end of the fund's fiscal year).

C. Investment funds must submit assurances and certifications in accordance to U.S. Treasury guidelines on each investment prior to closing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1494 (June 2022).

§2919. Conflict of Interest

A. No member of the corporation, employee thereof, or employee of the Department of Economic Development, or members of their immediate families shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1494 (June 2022).

Title 19
CORPORATIONS AND BUSINESS
Part VII. Economic Development Corporation
Subpart 4. Small Business Innovative Research Program

Chapter 51. Matching Grant Program

§5101. Purpose

A. To provide for support of innovative private sector research and development activities that are intended to generate commercial products, processes, or services through the provision of grants matching those Phase 1 grants or contracts awarded by the United States Government through its Small Business Innovative Research Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:733 (September 1989).

§5103. Eligibility

A. Any Louisiana firm which has received a Federal SBIR Phase 1 research award.

B. Any out-of-state firm which agrees to relocate headquarters and research and development operations to Louisiana and has received a Federal SBIR Phase 1 research award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:733 (September 1989).

§5105. Application Process

A. The application shall include but not be limited to:

1. a copy of the Phase 1 proposal to the federal program;

2. a statement that the applicant has submitted the proposal to the federal program and that they are submitting a notification of intent to file with the state program;

3. a use of funds schedule for the requested state grant;

4. a copy of the grant/contract award from the federal program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:733 (September 1989).

§5107. Submission and Review Procedure

A. Applications will be received only after the applicant has submitted an application to the Federal SBIR program. Applications may be submitted through the course of the Phase 1 research period. No applications for match will be received after the expiration date of the federal grant or contract.

B. All applications must be submitted no later than three weeks prior to the scheduled screening committee meeting for consideration at the next scheduled board meeting of the corporation following the screening committee meeting.

C. LEDEC staff shall review the application and make recommendations regarding the use and disbursement of the matching grant funds to the screening committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:733 (September 1989).

§5109. Term

A. Grant funds must be expended by the firm no later than 30 days after the decision of the federal agency regarding the Phase 2 application or 60 days after the acceptance of the final Phase 1 report by the federal agency if no Phase 2 application is made.

B. Exceptions to this may be made by the board on a case-by-case basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:733 (September 1989).

§5111. Disbursement and Use of Funds

A. The project proposed for state funding must represent:

1. a continuation of and be compatible with the firm's Phase 1 research; and/or

2. funds may be used to complete Phase 1 research;

3. the funds will be disbursed at the time and in the manner determined by the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.
HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:733 (September 1989).

§5113. Grant Document

A. The secretary-treasurer of the corporation and one of the following shall execute all necessary legal instruments to effect the grant award:

1. president of the corporation;
2. chairman of the board; or
3. executive director.

B. The grant documents must satisfy all legal requirements as evidenced by the written approval of the corporation's attorney.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:733 (September 1989).

§5115. Residency Requirement

A. If a firm that has received Louisiana Small Business Innovative Research-matching grant funds moves its headquarters or research and development operations out of Louisiana within five years of receiving the grant, said firm will be immediately obligated to repay the state the full amount of the state-matching grant received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:734 (September 1989).

§5117. Recision

A. Recision or reduction of a firm's federal SBIR grant funds will result in the immediate recision or reduction of the state matching grant to the firm. Any state matching award funds which have been disbursed to the firm and which are determined by the corporation to relate to the recision or reduction, are immediately owed to the corporation and shall be returned to the corporation within seven days of the notice of the recision or reduction of the firm's federal SBIR award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:734 (September 1989).

§5119. Reporting Requirements

A. The applicant shall file a financial and narrative report monthly until state funds have been expended.

B. The applicant shall submit a copy of the final report submitted to federal grant agency along with a final financial report covering the entire state grant period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:734 (September 1989).

§5121. Confidentiality

A. Confidential information in the files of the corporation, acquired in the course of duty, is to be used solely for the corporation. The corporation is not obliged to give out a credit rating or confidential information regarding any applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:734 (September 1989).

§5123. Conflict of Interest

A. No member of the corporation, employee thereof, or employee of the Department of Economic Development, or members of their immediate families shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against the corporation. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2322.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:734 (September 1989).

Title 19
CORPORATIONS AND BUSINESS
Part VII. Economic Development Corporation
Subpart 5. Contract Loans

Chapter 61. Contract Loan Program

§6101. Purpose

A. The Louisiana Economic Development Corporation (LEDC) wishes to stimulate the flow of private capital, long-term loans, and other financial assistance for the sound financing of the development, expansion, and retention of small business concerns in Louisiana as a means of providing high levels of employment, income growth, and expanded economic opportunities, especially to disadvantaged persons and within distressed and rural areas.

B. This program will be a pilot program for a period of one year upon which the board of directors of the LEDC will consider extending the program. The corporation will consider sound loans so long as resources permit. The board of the corporation recognizes that guaranteeing, participating, or lending money carries certain risks and is willing to undertake reasonable exposure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 2312(A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 21:672 (July 1995).

§6103. Definitions

Contract—a contract for goods and/or services to any federal, state, or local government entity.

Disabled Person's Business Enterprise—a small business concern which is at least 51 percent owned and controlled by a disabled person as defined by the federal Americans with Disabilities Act of 1990.

Minority- or *Woman-Owned Business Enterprise*—must be owned or controlled by a socially or economically disadvantaged person, which is defined by the SBA as a person(s), regardless of sex or marital status, who is a member of groups whose disadvantage may arise from cultural, racial, chronic economic circumstances, or background as stated in R.S. 51:2347 et seq., and must be certified as a minority business enterprise or woman's business enterprise as defined in R.S. 51:2347(B)(1-6).

Small Business Concerns—as defined by SBA for purposes of size eligibility as set forth by 13 CFR 121.

AUTHORITY NOTE: Promulgated in accordance with R. S. 51:2312(A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 21:672 (July 1995).

§6105. Application Process

A. Applicant is required to first contact a financial lending institution that is willing to entertain such a loan with the prospect of additional credit support provided by a LEDC guaranty/participation and complete the application process.

B. Information submitted to LEDC with the application representing the applicant's business plan, financial position, financial projections, personal financial statements, and background checks will be kept confidential to the extent allowed under the Public Records Law, R.S. 44:1 et seq. Confidential information in the files of LEDC and its accounts, acquired in the course of duty, will be used solely by and for LEDC.

C. Submission and Review Policy

1. A completed Louisiana Economic Development Corporation application form, along with the information identified in Attachment A, must be submitted with a $100 application fee. Applications will be processed with decisions confirmed promptly.

2. Minority- and women-owned businesses applying for assistance under that provision will have to submit certification from the Minority and Women's Business Enterprise Office of the Department of Economic Development, along with the request for financial assistance.

3. Businesses applying for consideration under the "disabled persons" provision shall submit adequate information to support the disabled status.

4. LEDC staff will review the applications for completeness and submit only complete packages for analysis. Any applications not receiving approval in the initial analysis process shall be individually reviewed, and exceptions to underwriting criteria noted. The LEDC staff will report to the screening committee monthly those applications approved, and those not recommended for approval, with reasons.

5. Loans guaranteed/participated in by LEDC must qualify under LEDC pre-approved underwriting criteria using standardized LEDC documentation. The originating bank is responsible for all loan closing documentation. Closing will occur only after a site visit by a LEDC staff member or designated representative.

6. Only those applicants and/or their designated representatives asked to be present by the LEDC staff need to be present for the screening committee.

7. The board of directors will review the results of all applications processed and screened. Loans recommended for approval by the LEDC staff as exceptions to standard underwriting criteria will be presented to the screening committee of the board for approval. Loans for $100,000 or less approved under standard underwriting procedures requiring a LEDC guarantee/participation shall be approved jointly by the LEDC executive director and deputy director. In the absence of one of those persons, the president of LEDC, or the secretary/treasurer, could additionally approve the loan. All completed applications recommended by staff on loans in excess of $100,000 will be approved by the screening committee and the board.

8. The applicant will be notified promptly from date accepted for processing by mail of the outcome of the application.

9. A LEDC commitment letter and standard guaranty or participation agreement will be mailed to the bank promptly after approval by the LEDC staff applying standardized evaluation processes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 2312(A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 21:672 (July 1995).

§6107. Eligibility

A. Small business concerns as defined by SBA for purposes of size eligibility as set forth by 13 CFR 121.

B. Small businesses whose owner(s) or principal stockholder(s) shall be a resident of Louisiana, and the business is domiciled in Louisiana with preference given to certified minority businesses, women-owned businesses, or businesses owned by disabled persons.

C. An assignable contract for goods or services with a federal, state, or local entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 2312(A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 21:673 (July 1995).

§6109. General Loan Provisions

A. Only one contract loan will be allowed for any one borrower at any one time. A borrower may apply for additional contract loans only after the full repayment of any previous contract loan is complete.

B. The Louisiana Economic Development Corporation will be guided by the following general principles in making loans.

1. Funding requests will only be considered for supporting contracts for goods and services provided to federal, state, or local entities.

2. Proceeds of the loan shall not be used for any of the following purposes:

a. repayment of debt to or the cashing out of any stockholder or principal of the business;

b. repayment of any personal debt;

c. funding for the principal purpose of refinancing existing debt in excess of 10 percent of the total requested loan amount.

3. The corporation shall not knowingly approve any loan guaranty/participation if the applicant has presently pending, or outstanding, any claim or liability relating to failure or inability to pay promissory notes or other evidence of indebtedness including state or federal taxes, or bankruptcy proceeding; nor shall the corporation approve any loan guarantee/participation if the applicant has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit.

4. The terms or conditions imposed and made part of any loan guaranty/participation authorized by vote of the corporation board shall not be amended or altered by any member of the board or employee of the Department of Economic Development except by subsequent vote of approval by the board at the next meeting of the board in open session with full explanation for such action.

5. The corporation shall not subordinate its position.

C. Interest Rates. On all loan participations/guarantees the interest rate is to be negotiated between the borrower and the bank but may not exceed four percentage points above New York prime, as published in the *Wall Street Journal*, at either a fixed or variable rate.

D. Collateral

1. Collateral-to-loan ratio will be no less than one-to-one (1:1).

2. Collateral position shall be negotiated but will be no less than a sole second position.

3. Collateral value determination:

a. the appraiser must be certified by recognized organization in area of collateral;

b. the appraisal cannot be over 90 days old;

c. the percentage of value considered shall be consistent with the underwriting criteria established by the LEDC Board from time-to-time.

4. Acceptable collateral may include, but not be limited to the following:

a. fixed assets: real estate, buildings, fixtures;

b. equipment, machinery: used in support of the contract at cost supported by invoice or no more than 75 percent of cost for existing equipment or machinery;

c. inventory: used in support of the contract at cost supported by invoice or no more than 50 percent of cost for existing inventory;

d. personal guarantees are required; however, no value will be assessed towards collateral value. A signed and dated personal financial statement is also required;

e. 85 percent of accounts receivable considered collectable with supporting aging schedule;

f. contract with federal, state, or local entity shall be assigned to lender; however, no value will be assessed towards collateral value.

5. Unacceptable collateral may include, but not be limited to the following:

a. stock in applicant company and/or related companies;

b. personal items.

E. Equity

1. Will be no less than 10 percent of the loan amount for a start-up operation, an acquisition, or an expansion.

2. Equity is defined to be:

a. cash;

b. paid in capital;

c. paid in surplus and retained earnings;

d. partnership capital and retained earnings;

e. unfunded portion of inventory and receivables.

3. No research, development expense, nor intangibles or contributed assets, other than cash of any kind, will be considered equity.

F. Amount

1. For small businesses the corporation's participation shall be no greater than 50 percent of a loan, but in no case shall it exceed $500,000.

2. For certified minority-owned, women-owned, or owned by disabled persons, the corporation's participation shall be no greater than 60 percent of a loan, but in no case shall it exceed $500,000.

3. For either a small business or a certified minority-owned, woman-owned, or disabled-owned business the corporation's guarantee shall be no greater than 50 percent of the lending institution's portion of the amount of the first draw of the contract. The first draw cannot exceed 50 percent of the total loan amount.

G. Terms. The term may be no longer than 180 days past the completion date of the contract but in no case any greater than one and one half years.

H. Use of Funds. To support a contract for goods and services for a federal, state, or local entity. All proceeds of the contract will be assigned and collected by the lending institution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 2312(A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 21:673 (July 1995).

§6111. General Agreement Provisions

A. Participation Agreement

1. The lending institution is responsible for administration and monitoring of the loan.

2. The lead lender may not sell any additional participations in the loan.

3. Should liquidation through foreclosure occur, the bank will sell the collateral and handle the legal proceedings.

4. The bank interest rate may not exceed 4 percentage points above New York prime, as published in the *Wall Street Journal*, at either a fixed or variable rate.

5. Delinquency will be defined according to the bank's normal lending policy and all remedies will be outlined. Notification of delinquency will be made to the corporation in writing and verbally in a time satisfactory to the bank and the corporation.

B. Guaranty Agreement

1. Lending institution is responsible for proper administration and monitoring of loan and proper liquidation of collateral in case of default.

2. If liquidation through foreclosure occurs, the bank sells collateral and handles legal proceedings.

3. The guarantee will commence upon the first draw on the line of credit and will end upon the advance of the second draw on the line of credit.

4. The guarantee will cover the unpaid principal amount owed only.

5. Delinquency will be defined according to the bank's normal lending policy, and all remedies will be outlined in the guarantee agreement. Notification of delinquency will be made to the corporation in writing and verbally in a time satisfactory to the bank and the corporation as stated in the guarantee agreement.

C. Borrower Agreement. At the discretion of LEDC, the borrower will agree to strengthen management skills by participation in a form of continuing education acceptable to LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51: 2312(A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 21:674 (July 1995).

§6113. Confidentiality

A. Confidential information in the files of the corporation and its accounts, acquired in the course of duty, is to be used solely for the corporation. The corporation is not obliged to give credit rating or confidential information regarding applicant. Also see Attorney General Opinion Number 82-860.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341-2347.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 21:674 (July 1995).

§6115. Conflict of Interest

A. No member of the corporation, employee thereof, employee of the Department of Economic Development, nor members of their immediate families, shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341-2347.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 21:674 (July 1995).

§6117. Attachment A

A. Attachment A. The application for financial assistance should consist of a completed LEDC application form and a comprehensive business plan/loan proposal which contains, but is not limited to, the following guidelines:

1. a LEDC Contract Loan Application Form;

2. Executive Summary:

a. business description:

i. name;

ii. location and business facility description;

iii. product or service;

iv. market and competition;

v. management expertise;

b. business goals, including number of employee jobs to be saved or created as a result of this loan;

c. uses of loan proceeds;

d. copy of contract: provide name, address, and telephone number of awarding agency;

e. projected financial results demonstrating payback capability;

3. Operations

i. board of directors composition;

ii. officers: organization chart and responsibilities;

iii. list of stockholders with more than 15 percent ownership;

iv. résumés of key personnel;

v. staffing plan/number of employees;

vi. facilities plan/planned capital improvements;

vii. operating plan/schedule of upcoming work for next one to two years;

viii. list of work backlog, if any;

4. The originating bank may be asked by LEDC to share additional information on which they based a favorable decision;

5.a. For sole proprietorships:

i. last three years personal, federal and state income tax returns complete with all schedules (as available based upon age of business);

ii. interim business income statement for the current year;

iii. complete personal financial statement.

b. For partnerships or corporations:

i. last three years' business financial statements including balance sheets and income statements;

ii. interim business financial statements;

iii. last three years' business income tax returns complete with all schedules;

iv. most recent personal income tax returns including all schedules with K1s for each owner, general partner, and/or guarantor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341-2347.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 21:674 (July 1995).

Title 19
CORPORATIONS AND BUSINESS
Part VII. Economic Development Corporation
Subpart 6. Louisiana Economic Development Corporation

Chapter 71. BIDCO Investment and Co-Investment Program

§7101. Definitions

BIDCO—a business and industrial development corporation licensed by the Louisiana Office of Financial Institutions (OFI) with its business consisting of providing non-traditional capital and/or debt funding for Qualified Louisiana Businesses.

Private Capital—paid in cash from non-LEDC sources, available for investment in assets of the BIDCO. These non-LEDC sources may include other non-state governmental sources provided the non-state governmental funds do not exceed 50 percent of the private capital, and provided the non-state governmental funds are not directly or indirectly derived from state sources. For purposes of calculating the eligibility of a request for matching equity capital, components other than paid in cash will not be considered.

Qualified Louisiana Business—any enterprise with its primary operations in Louisiana, or with substantially all of its production in Louisiana, and which has no more than 500 employees and has annual business receipts not in excess of $7,000,000.

Specialty BIDCO—defined in accordance with the Office of Financial Institution's BIDCO policy.

Seed Investor—an investor in the start-up stages of the BIDCO, prior to certification by OFI and LEDC.

Definitions of other terms used herein are provided in the legislation which is reflected in Chapter 39-A of Title 51 of the Louisiana Revised Statutes of 1950, comprised of R.S. 51:2386 through 2398.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A) (7), (B) (1) and (B) (3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 18:1357 (December 1992), amended LR23:554 (May 1997), LR 26:2243 (October 2000).

§7103. Eligibility for Submission of an Application

A. In order to be eligible for consideration to receive a matching or co-investment equity capital investment by LEDC, the applicant must fulfill the following eligibility requirements.

1. It must have obtained a license from OFI.

2. It must be a for profit Louisiana corporation.

3. In order to be eligible to receive an investment from LEDC, as described in §7107, it must have raised a minimum of $1,000,000 of private capital, exclusive of LEDC funds. These private capital funds must be actual cash contributions [pursuant to R.S. 51:2392(B)(2)(d)(2)].

4. Its management must be experienced in debt and/or capital financing of the types and volume contemplated by the applicant BIDCO.

5. LEDC may consider applications from BIDCOs which have a businesslike mission but with special circumstances or specialized opportunities (herein "Specialty BIDCOs").

6. Owners and Investors cannot be in conflict with the Code of Governmental Ethics R.S. 42:1112. BIDCO's shall not invest in a company in which a principal or officer of the BIDCO also has an interest in the company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A) (7), (B) (1) and (B) (3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 18:1358 (December 1992), amended LR 26:2243 (October 2000).

§7105. Application

A. An application fee of $500 shall be submitted at the time of application.

B. Applications will be processed for a matching equity capital investment or for a co-investment as follows.

1. Applications will be processed in the order in which they are received.

2. LEDC staff will conduct an initial screening of the application for completeness.

3. An incomplete application will be returned to the submitter. A previously incomplete application may be resubmitted, which will establish a new time and date received for that application.

4. An incomplete application not resubmitted within 30 days will forfeit the application fee.

5. LEDC staff will begin the evaluation process within 30 days of receipt.

C. Information submitted with the application either for a match investment or co-investment representing the applicant's business plan, financial position, financial projections, personal financial statements and background checks will be kept confidential to the extent allowed under the Public Records Law, R.S. 44:1 et seq. Confidential information in the files of LEDC and its accounts acquired in the course of duty will be used solely by and for LEDC. However, in the event of a BIDCO's licensure surrender,

dissolution, bankruptcy, or other indication of insolvency previously confidential information shall be disclosable under the Public Records Law.

D. A BIDCO shall submit to LEDC evidence of its OFI approval with the application.

E. Application for a matching investment will contain the following information. The applicant may provide other information which it believes relevant. LEDC may request further information beyond what is specified below:

1. name of BIDCO, address (mailing and physical);

2. specify the amount of LEDC investment/ commitment requested;

3. specify the minimum and maximum amounts of non-LEDC capital to be raised if the LEDC makes the requested investment/commitment;

4. specify applicant's projected timetable, with milestones for completion of the fund raising;

5. specify whether applicant anticipates taking in all of the committed capital investment at closing, or whether applicant plans a phase in. If a phase-in is planned, specify the proposed schedule. It is permissible to have different scenarios based on the actual amount of capital raised;

6. market—identify the proposed market of the applicant:

a. describe and discuss the types of businesses that the BIDCO will finance. Discuss the extent to which the BIDCO intends to specialize in certain industries, or if special circumstances will be addressed;

b. describe the size range of businesses that it is contemplated the BIDCO will finance, with a general indication of where most of the focus is expected;

c. discuss the life cycle stage or stages of the companies which the BIDCO will likely finance, with an indication of where most of the focus is contemplated, i.e., start-up, expansion;

d. discuss the geographic area in which the BIDCO plans to focus. Specify the city or parish in which the BIDCO's principal office will be located, and discuss intentions, if any, to establish any additional offices;

7. Management Assistance. Discuss the plans of the BIDCO to provide management and/or technical assistance to companies for which the BIDCO provides financing. Discuss the BIDCO's plans for monitoring its financing, and enforcing provisions of loan or investment agreements. Discuss how the BIDCO plans to handle problem loans and investments;

8. Idle Funds. Describe plans for the management of the idle funds of the BIDCO;

9. Realization of Returns by Investors. Discuss long term plans and strategies for providing a tangible return to the investors in the BIDCO including dividend policy, public markets, future mergers and acquisitions, sinking funds, etc.;

10. Tax and Accounting Issues. Discuss relevant tax and accounting issues for the BIDCO;

11. submit business and professional references for all stockholders, members of the board and corporate officers;

12. Management Structure. Describe the proposed management structure for the BIDCO;

13. describe the proposed responsibilities of each of the members of the management team. If any of these people will not be full time, describe their other activities;

14. describe the responsibilities of any management position for which a person has not been identified;

15. specify any other key people including any advisors, consultants, attorneys and accountants, and submit resumes and/or descriptions of firms. LEDC reserves the right to perform general and criminal background checks on these key people;

16. identify all principal shareholders (i.e., owning directly or indirectly, or controlling directly or indirectly, 10 percent or more of the voting stock of the BIDCO), by name with specific ownership identified;

17. Financial Projections. Provide the following financial projections:

a. returns-on-average assets and returns-on-capital performance projections, year by year, for a 10 year period. These projections should show summary cash flow, summary income and expense (including taxes), and summary balance sheet data. For these performance projections, operating income and expenses can be grouped by category. Emphasis must be placed on a specific exit strategies including provisions for a sinking fund to buy out LEDC's position. Specify the assumptions used for the performance projections;

b. specify computer programs used for projections, if any, and specify formulas used.

F. A business plan which contains the following information shall be submitted for either a match investment or a co-investment request.

1. Provide a market analysis that the applicant deems relevant.

2. Marketing Strategy. Describe the BIDCO's plans and approach to marketing its services, including methods of identifying potential applicants for financing assistance.

3. Screening Process and Evaluation Criteria. Discuss the anticipated number of business firms that will be reviewed for possible financing assistance, in comparison with the number that will actually be financed. Discuss the approach to screening business firms, and the evaluation criteria for deciding whether, and under what terms and conditions, to provide financing assistance.

4. Financing. Describe and discuss the financing instruments that are intended to be used by the BIDCO (e.g., debt with capital features, royalty, capital, pure debt (with SBA or not), etc.). Discuss the anticipated mix of the various

types of financing instruments. Discuss the anticipated size range of loans/investments to be made, and information regarding pricing, term, and other conditions. Discuss risk/return expectations on projects. Discuss methods of exit from investments.

5. Specify applicant's start-up budget, including funds already expended and a detailed projected budget for completion of the fund raising. Specify the person or persons who will be working on the start-up phase, including how much of their time they will spend; how, if at all, they will be compensated; and their resumes and references. List applicant's seed investors, if any, with amount invested and number of shares of stock owned. Specify any additional amount of seed capital applicant is seeking, including a discussion of possible sources.

6. Describe and discuss the applicant's fund raising strategy for raising the private capital.

7. Specify the principal investor sources that the Applicant will be targeting.

8. Attach all specific financing commitments already obtained, including documentation for each. This should include the evidence of the initial required capital.

9. Describe specific demonstrations of interest from private investor sources, including documentation where possible.

10. Capital Structure. Leverage—discuss the BIDCO's plans and prospects for leveraging its capital by borrowing money, use of the SBA guarantee secondary market, or other approaches. With respect to borrowing money, describe the degree of leverage the BIDCO will seek and over what time period. Identify sources of debt financing the applicant plans to utilize. Describe how the applicant plans to structure the debt. If use of the SBA program is contemplated, discuss applicant's approach to this activity and analyze its potential profitability. If applicant is relying heavily on the SBA guarantee program, describe its alternate course of action if the SBA guarantee program is eliminated or its effectiveness significantly curtailed.

11. Financial Projections. Provide the following financial projections:

a. returns-on-average assets and returns-on-capital performance projections, year by year, for a 10 year period. These projections should show summary cash flow, summary income and expense (including taxes), and summary balance sheet data. For these performance projections, operating income and expenses can be grouped by category. Specify the assumptions used for the performance projections;

b. specify computer programs used for projections, if any, and specify formulas used.

12. Fee Income. Discuss the potential for fee income, and any plans that the BIDCO might have for generating fee income.

13. Complementary and Affiliate Relationships. Discuss the nature of complementary or affiliate relationships that are anticipated with banks, commercial lenders, investment bankers, venture capitalist and other institutions. This discussion can be based on general types of institutions and should identify specific institutions where complementary or affiliate relationships have already been discussed or arranged.

G. Application for a co-investment will contain the following information. The applicant may provide other information which it believes relevant. LEDC may request further information beyond what is specified below:

1. the proposed amount, terms, and conditions of the investment;

2. a business and funding plan for the recipient completed in accordance with the standards outlined in LEDC program material for all other LEDC programs;

3. identify all "principal shareholders" (i.e., owning directly or indirectly, or controlling directly or indirectly, 10 percent or more of the voting stock of the BIDCO), by name with specific ownership identified;

4. the recipient must have its primary operating activities located in Louisiana, and the application of the funding must result in meaningful economic impact to the area of Louisiana where its activities are conducted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A) (7), (B) (1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 18:1358 (December 1992), amended LR 23:554 (May 1997), LR 26:2244 (October 2000).

§7107. Amount of Investment

A. Co-Investment

1. If a non-specialty BIDCO can show cash of at least $1 MM but less than $2,000,000, LEDC may co-invest $1 for each $2 for each LEDC approved project submitted to it by the BIDCO. The LEDC investment will participate pro-rata with the BIDCO share of the investment. The LEDC investment will not exceed 33 percent of any project nor will LEDC funding exceed $1 for each $2 of the BIDCO's total capital. On each project submitted for review, an application fee of $250 is required.

2. If a specialty BIDCO can show cash of at least $500K plus enough operating capital to administer ongoing investments, but less than $1,000,000, LEDC may co-invest $1 for each $1 for each LEDC approved project submitted to it by the BIDCO. The LEDC investment will participate pro-rata with the BIDCO share of the investment. The LEDC investment will not exceed 50 percent of any project nor will LEDC funding exceed $1 for each $1 of other BIDCO capital committed.

3. On each project submitted for reviewed, an application fee of $250 is required.

B. Match Investment

1. Each request should be accompanied by a $500 application fee.

2. If a non-specialty BIDCO can show cash, of $2,000,000, exclusive of any previous investments by LEDC, the BIDCO may request a matching equity capital contribution from LEDC subject to availability of funds and a determination by LEDC management that the BIDCO business plan is consistent with investment targets of LEDC. If the BIDCO is considered an acceptable risk, based upon LEDC review of its credentials, performance, and business plan, or some combination thereof, LEDC may make a matching cash contribution on the basis of $1 for each $2 of the BIDCO capital not to exceed $2,500,000, reduced for any previous LEDC capital contributions. LEDC will base it's matching equity capital contribution on the amount of capital as calculated in accordance with §103.D. Thereafter it will participate in all future BIDCO investments on a pro-rata basis with all other BIDCO funds. Any BIDCO which has received a LEDC match investment is ineligible to present portfolio projects to LEDC for assistance through any of LEDC's other programs.

3. If a specialty BIDCO can show capital contributions, as defined in §103, of $1,000,000, exclusive of any previous investments by LEDC, the BIDCO may request a matching equity capital contribution from LEDC. Each request should be accompanied by a $500 application fee. If the BIDCO is considered an acceptable risk, based upon LEDC review of its credentials, performance, and business plan, or some combination thereof, LEDC may make a matching cash contribution on the basis of $1 for each $1 of the BIDCO capital not to exceed $1,000,000 subject to availability of funds and a determination by LEDC management that the BIDCO business plan is consistent with investment targets of LEDC reduced for any previous LEDC capital contributions. LEDC will base its matching equity capital contribution on the amount of non-LEDC capital as calculated in accordance with §103.D. Thereafter it will participate in all future BIDCO investments on a pro-rata basis with all other BIDCO funds. Any BIDCO which has received a LEDC match investment is ineligible to present portfolio projects to LEDC for assistance through any of LEDC's other programs.

4. All funding of BIDCOs is subject to the availability of resources as allocated by the LEDC Board of Directors.

5. The consolidated dollar total of all LEDC investments authorized under §109.A-D shall not exceed $2,500,000 to any one BIDCO.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A) (7), (B) (1) and (B) (3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 18:1358 (December 1992), amended LR 23:554 (May 1997), LR 26:2245 (October 2000).

§7109. Terms of Investment

A. Founders stock and or investment given in exchange for services shall be subordinate to LEDC's investment unless LEDC determines that the pricing of such founders investment and or stock is commensurate with the services performed or risks taken, in comparison with the pricing of LEDC investment.

B. LEDC will have the right to appropriate representation on the board in the BIDCO. This may include but not be limited to board seat/seats; veto authority or supermajority requirements for key management and financial decisions; board visitation rights.

C. LEDC's stock may be repurchased by the BIDCO or, secondarily, by its private-capital stockholders at any time beginning with the end of the third year based on the then-current book value or market value, whichever is higher, subject to LEDC's concurrence on the valuation methodology. However, the BIDCO shall establish a sinking fund beginning in year three so that the LEDC investment is returned by the end of year 10.

D. LEDC may negotiate additional operating requirements with individual applicant BIDCOs on a case by case basis, as needed to safeguard the quality of LEDC's investment or to promote achievement of the objectives of the program or LEDC.

E. All agreements will be executed by duly authorized persons outlining the details of the transaction.

F. The LEDC's funding under its commitment will be made on a quarterly basis subject to verification of non-LEDC funds received by the BIDCO and availability of LEDC funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A) (7), (B) (1) and (B) (3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 18:1359 (December 1992), amended LR 23:554 (May 1997), LR 26:2246 (October 2000).

§7111. Operating Requirements

A. During the period when LEDC owns an investment in a BIDCO, the BIDCO shall operate in accordance with the following parameters.

1. The BIDCO shall provide financing assistance to Qualified Louisiana Businesses or to firms who will become Qualified Louisiana Businesses as a result of the funding by the BIDCO. If the business firm has multi-state operations, the criterion that shall be used by the BIDCO is whether or not Louisiana is the state where the primary economic benefit of the financing transaction is likely to occur. The BIDCO shall refrain from purchasing corporate stocks or other capital positions unless such investments are part of the BIDCO's funding plan for the Qualified Louisiana Business entity.

2. The BIDCO shall maintain as its primary focus the markets which it identifies in its initial business plan. The BIDCO shall not engage in operations outside the state of Louisiana while LEDC is an investor.

3. The BIDCO shall invest in or lend to qualified Louisiana businesses an amount at least equal to the sum of

LEDC's funds plus the matching private-capital funds. For examples:

a. if LEDC invests $2.5 million to match $5 million of private capital funds, the BIDCO shall invest in or lend to Qualified Louisiana Businesses a minimum of $7.5 million of its total portfolio exclusive of operating expenses and minimum capital reserve requirements as set out by the Office of Financial Institutions;

b. if LEDC invests $1 million to $2 million of private capital, the BIDCO shall invest/lend to Qualified Louisiana Businesses a minimum of $3 million of its total portfolio exclusive of operating expenses and minimum capital reserve requirements as set out by the Office of Financial Institutions.

4. Without the consent of LEDC, the BIDCO shall not apply to OFI to surrender its license, provided, however, that if LEDC is not a stockholder no consent of LEDC is necessary. If LEDC grants its consent for such license-surrender application, the application shall state the commitment of the BIDCO to repurchase LEDC's stock at the time of license surrender for its then-current book value or market value, whichever is greater, or, if discounted pursuant to these rules, for the agreed-upon discounted price. If OFI requires surrender of license, the BIDCO must immediately notify LEDC to review the future plans of operation.

5. LEDC may negotiate additional operating requirements or material changes in the business plan with individual applicant BIDCOs on a case by case basis, as needed to safeguard the quality of LEDC's investment or to promote achievement of the objectives of the program or LEDC.

6. Reporting requirements shall include the following:

a. annual audited financial statements in accordance with GAAP, quarterly financial statements, and minutes of all regular and special board meetings;

b. timely advice of all management and board member changes with reasons for the changes and submission of new members' resumes showing experience and qualifications;

c. reports of activity including client businesses' names, addresses, employment levels before and after funding, and other information required for LEDC's annual legislative report;

d. the BIDCO shall provide LEDC with complete copies of OFI's annual audit report;

e. if the BIDCO is also a CAPCO, it must be in compliance with all CAPCO regulations;

f. the BIDCO's officers shall provide LEDC annual certification that BIDCO investments are consistent with their business plan and that they are in compliance with the Code of Governmental Ethics, R.S. 42:1112 et seq.

7. The failure of a BIDCO to comply with these operating requirements will constitute violation of the premise(s) on which LEDC relied in making its investment and will be just cause for LEDC to demand and require that its investment be immediately repurchased in whole or in part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A) (7), (B) (1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 18:1357 (December 1992), amended LR 23:555 (May 1997), LR 26:2246 (October 2000).

Chapter 72. Capital Access Program

§7201. Purpose

A. The Capital Access Program is designed to be a flexible and non-bureaucratic program to assist Louisiana financial institutions to make loans that carry a higher risk than conventional loans in a manner consistent with sound banking regulations. The purpose of the Capital Access Program is to increase the loan capital available to small business in Louisiana through a public/private loan portfolio insurance fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2247 (October 2000).

§7203. Definitions

A. The following terms shall have the following definitions, unless the context otherwise requires.

Agreement—a contract between a financial institution and the Louisiana Economic Development Corporation authorizing the financial institution to participate in the program under the terms and conditions specified in the agreement.

Borrower—a qualified business that has received or been approved for a qualified loan from a lender.

a. If the lender is a banking institution, national bank, international institution or foreign institution a borrower may not be an executive officer, director, or principal shareholder of the lender, or a member of the immediate family of an executive officer, director or principal shareholder of the lender or a related interest of any such executive officer, director, principal shareholder or member of the immediate family.

b. If the lender is a federal credit union, a credit union or an out-of-state credit union doing business in Louisiana, a borrower may not be an official, immediate family member of an official or any individual having a common ownership, investment or other pecuniary interest in a business enterprise with an official or with an immediate family member of an official. For the purposes of this Subsection an official shall mean any member of the board of directors, credit committee or supervisory committee of the *lender* and *immediate family member* shall mean his/her

children, brothers, sisters, parents, spouse, and the parents of his/her spouse.

Common Enterprise—any business with common or joint ownership.

Enrolled Loan—a qualified loan enrolled in the program.

Fees—a non-refundable fee of no less than 2 percent and no more than 3 1/2 percent of the principal amount of the qualified loan charged by the lender to the borrower. The lender shall pay a non-refundable fee equal to the fee paid by the borrower. LEDC shall contribute a match to the fee equal to the contribution of the lender, but not to exceed $105,000 for a single borrower and not to exceed 10 percent of a lender's total enrolled loans.

Financial Institution—any Louisiana commercial financial institution regulated by either the Louisiana Office of Financial Institutions, the Federal Depository Insurance Corporation, or the Federal Reserve.

LEDC—the Louisiana Economic Development Corporation.

Lender—a participating financial institution that has enrolled one or more qualified loans under the program.

Loss—any principal amount due and not paid, accrued interest due and not paid, and documented out of pocket collection expenses, at the time the lender determines, in a manner consistent with its normal method and time table for making such determinations that a qualified loan is uncollectible and is to be charged off as a loss. The amount of principal and interest included in the loss shall not exceed the principal amount of the enrolled loan, plus accrued and unpaid interest on such covered principal amount, from the date the qualified loan is made.

Loss Reserve Account—separate accounts held and maintained by the participating financial institution and the Louisiana Economic Development Corporation (LEDC), to cover losses sustained by the participating financial institution on enrolled loans.

Participating Financial Institution—a financial institution that has executed an agreement with the Louisiana Economic Development Corporation to participate in the program.

Primary Economic Effect—the majority of economic benefit resulting from a business activity occurs in Louisiana. It shall be conclusively presumed that the primary economic effect is in Louisiana if the following conditions exist:

a. at least 51 per cent of the total jobs of the qualified business are created or retained in Louisiana; and

b. the borrower's domicile and principal place of business is located in Louisiana.

Program—the Capital Access Program.

Qualified Business—a Louisiana corporation, partnership, joint venture, sole proprietorship, cooperative, or other entity, and a small business as defined by the SBA doing business for profit which is authorized to conduct business in the state.

Qualified Loan—a loan, specified portion of a loan, the amount of a loan or additional loan in excess of a loan that is refinanced, or the maximum amount that may be drawn down against a line of credit (not to exceed five years) and its interest rate does not exceed 3.5 percent above New York Prime, extended by a lender to a qualified business, for any business activity which has its primary economic effect in Louisiana. Excluded from the term are:

a. a loan for the construction or purchase of residential housing of any kind;

b. a loan for the purchase or construction of real property that is not used for the business operations of the borrower, including real estate owned for the purpose of deriving income from speculation, trade, lease or rental;

c. a loan for the refinancing of the remaining principal balance of an existing loan;

d. unsecured loans.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2247 (October 2000).

§7205. Authority to Implement Agreement

A. The executive director or the president, and the secretary treasurer of the Louisiana Economic Development Corporation are authorized to execute any document reasonably necessary or convenient to implement the agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2248 (October 2000).

§7207. Program Registration Procedure

A. A financial institution wishing to participate in the program will complete a program registration application on a form provided by LEDC. LEDC shall determine the financial institution's eligibility to participate in the program from the information provided, or from such other information as LEDC may deem necessary.

B. A financial institution that is eligible to participate in the program shall enter into an agreement with the LEDC on a form provided by the LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2248 (October 2000).

§7209. Agreement

A. The agreement entered into by the participating financial institution and the LEDC shall provide for:

1. a loss reserve account by LEDC, owned by LEDC and for the benefit of the participating financial institutions;

2. the creation of a loss reserve account by the participating financial institution with contributions from the participating financial institution and the borrower;

3. the liability of LEDC to the participating financial institution is limited to the balance of the contributed amount in the LEDC loss reserve account attributed to enrolled qualified loans for the participating financial institution;

4. the terms and conditions of qualified loans to be determined solely by agreement of the lender and borrower;

5. the enrollment of qualified loans in the program;

6. the deposit of funds by the borrower and the lender into the loss reserve account when the lender makes a qualified loan to the borrower;

7. the deposit of funds by LEDC into its loss reserve account set up in LEDC for its match;

8. a deposit of $50,000 seed by LEDC into the LEDC loss reserve account for each participating financial institution which will be reimburse as loans are enrolled;

9. a claims process for reimbursement of losses that have been incurred from defaults on qualified loans;

10. payment by the LEDC from its loss reserve account to a lender to reimburse it for any loss;

11. disposition of any recoveries from a borrower made by the lender subsequent to being reimbursed for any loss by LEDC;

12. conditions for subrogation of LEDC, at LEDC's request, to the rights of the lender in collateral, personal guarantees, and all other forms of security for the qualified loan;

13. conditions for decreases by LEDC of excess balances in the LEDC loss reserve account;

14. termination by LEDC of the obligation to enroll qualified loans under the program;

15. conditions for termination of the agreement, and disposition by the lender and LEDC of any remaining balance in the loss reserve accounts;

16. withdrawal by a lender from the program, and disposition by the lender and LEDC of any remaining balance in the loss reserve accounts;

17. periodic reporting to LEDC by the lender as required;

18. inspection by LEDC of the pertinent files of the lender relating to enrolled loans;

19. transmittal to LEDC by the applicable state or federal regulatory body of the lender of any public information directly relating to the lenders participation in program;

20. such other terms and conditions as LEDC may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2248 (October 2000).

§7211. Establishing a Loss Reserve Account

A. Upon the execution of the agreement with the participating financial institution, the lender shall establish a loss reserve account to receive all fees from the borrower and the lender. The lender's loss reserve account shall be domiciled with a financial institution in the form of an insured, interest-bearing deposit in accordance with statutory requirements.

B. LEDC's loss reserve account will be established as an account controlled by LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2249 (October 2000).

§7213. Ownership, Control, Investment of Loss Reserve Account

A. All moneys in a loss reserve account held at and by the bank are to be used exclusively for this program by the bank. The LEDC may withdraw funds from a loss reserve account only as provided for in these rules.

B. Any earnings on the balance in a loss reserve account are deemed to be part of the loss reserve account up to 10 percent above the present maximum portfolio exposure.

C. The LEDC may withdraw at any time and for use as deemed appropriate by the LEDC a maximum of 100 percent of all earnings that have been credited to the loss reserve account over the present portfolio exposure, with such withdrawal limited to a maximum of 100 percent of earnings credited to the loss reserve account since the last such withdrawal.

D. Should the bank opt to terminate the program, LEDC will be entitled to and claim ownership of all funds in the loss reserve account held by the bank. however, any enrolled loans which are still outstanding at the time of termination will be covered by the loss reserve account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2249 (October 2000).

§7215. Loan Loss Contributions

A. When making an enrolled loan, the lender shall charge the borrower no less than 2 percent and no more than 3.5 percent of the loan amount for their contribution to the loan loss fund and the lender shall match the contribution with a like percentage. The bank shall deposit the contributions in the loan loss fund at closing. LEDC will

contribute the same percentage of the loan amount as the bank at the time it is notified of the enrollment of the loan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2249 (October 2000).

§7217. Procedure for Enrollment of a Qualified Loan

A. A lender shall enroll a qualified loan under the program:

1. by notifying LEDC in writing, on a form prescribed by LEDC and within 10 days after the qualified loan is made, that it is enrolling a qualified loan. for purposes of this Section, the date on which the lender makes a qualified loan is the earlier of the date on which the lender first disburses proceeds of the qualified loan to the borrower, or the date on which the loan documents have been executed and the lender has obligated itself to disburse proceeds of the loan; and

2. by transmitting to LEDC a deposit receipt of the contributions collected from the lender and the borrower in connection with the qualified loan.

B. LEDC shall, upon receipt of documentation from the lender, enroll the qualified loan if LEDC is satisfied that the qualified loan is eligible. LEDC shall notify the lender of enrollment within 10 business days from receipt of documentation, in such form as will be determined by LEDC.

C. When the requirements of a qualified loan are met, LEDC shall also transfer funds to the LEDC loss reserve account an amount equal to the banks contributed percentage of the enrolled loan amount but not to exceed $105,000 for a single borrower and not to exceed 10 percent of a lenders total enrolled loans.

D. Prior to making a loan a lender may request that LEDC certify that the proposed loan is an eligible loan. The lender must submit all information required in Subsection A above with such request. LEDC will certify within 10 days of receipt of the request that the loan is eligible or is not eligible. Such certification shall be binding for 30 days if no change in a material representation has occurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2249 (October 2000).

§7219. Procedure for Making Claim for Reimbursement of Loss

A. At the time a lender charges off all or part of an enrolled loan as a result of a default by the borrower, the lender may make a claim for reimbursement for all or part of the loss incurred by notifying LEDC of the claim in writing on a form provided by LEDC within three calendar months of the date a loss has occurred with respect to the enrolled loan.

B. A lender may make a claim for reimbursement of a loss prior to the liquidation of collateral, or to realization on personal or their financial guarantees or from other sources, subject however to the provision in §7223 on recoveries on loans subsequent to payment of claims.

C. The lender shall retain documentation in its files substantiating all claims.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2249 (October 2000).

§7221. Payment of Claims by LEDC

A. LEDC shall pay loss claims as submitted, except LEDC may reject a claim when the representations and warranties provided by the Lender at the time of enrolling the qualified loan were false.

B. Lender shall send evidence that a withdrawal of an amount equal to 66.66 percent of the loan loss has been made from the lenders loss reserve account with the payment request from LEDC.

C. LEDC shall pay loss claims in the order it receives them. If two or more loss claims are filed simultaneously by the lender and there are insufficient funds in the loss reserve account to pay them, the lender may designate the order the loss claims are paid by LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2250 (October 2000).

§7223. Recoveries on Loans Subsequent to Payment of Claim

A. If subsequent to the payment of a loss claim by LEDC the lender recovers from the borrower, from liquidation of collateral or from any other source, any amount for which lender was reimbursed by LEDC, the lender shall promptly pay to LEDC its 33.33 percent of the amount received that in aggregate exceeds the amount needed to fully cover the lender's loss on the enrolled loan, for deposit in the loss reserve account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2250 (October 2000).

§7225. Available Collateral, Guarantees and Other Security Not Realized

A. After LEDC has paid a loss claim to the lender from the loss reserve account, and the lender has terminated its lending relationship with the borrower, the lender shall, at LEDC's request, provide LEDC with details and copies of any collateral, guarantee, or other security documents which secured the qualified loan and which remain available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2250 (October 2000).

§7227. Subrogation

A. At LEDC's request, LEDC will be subrogated to the rights of the lender in collateral, personal guarantees, and all other forms of security for the qualified loan that have not been realized upon by the lender, when the lender's loss has been fully or partially covered by payment of a loss claim, or by a combination of payment of a loss claim and recovery from the borrower, liquidation of collateral, or from other sources, and the lender has stated to LEDC that it will not take action to realize on remaining available sources of collateral or other security for recovery.

B. At the time of subrogating its rights, the lender shall provide LEDC with all original security agreements, any documents evidencing title to real property, certificates of title, guarantees, and any other documents representing security for the qualified loan, duly recorded and perfected, and accompanied by enforceable assignments and conveyances to LEDC.

C. If the lender chooses not to institute proceedings and/or recover from the borrower, through the liquidation of collateral or from any other source and was reimbursed by LEDC, then LEDC will have the authority to do so and retain any and all funds recovered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2250 (October 2000).

§7229. Reporting

A. The lender shall provide LEDC with a monthly statement providing details of the balance and the payment and receipts activity in the loss reserve account for the prior month.

B. To assist LEDC in determining the progress of the program and in identifying excesses in loss reserve accounts, the lender shall on or before February 15, May 15, August 15, and November 15 of each year file a report with LEDC indication the number and aggregate outstanding balance of all enrolled loans as of the previous December 31 in the case of the report due February 15, as of the previous March 31 in the case of the report due May 15, as of the previous June 30 in the case of the report due August 15, and as of the previous September 30 in the case of the report due November 15. In computing the aggregate outstanding balance of all enrolled loans, the balance of any enrolled loan shall in no event be considered to be greater than the covered amount of the enrolled loan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2250 (October 2000).

§7231. Withdrawal of Excess Deposits in Loss Reserve Accounts

A. LEDC may withdraw any excess deposits in its loss reserve account if the balances in a loss reserve account have exceeded the aggregate outstanding balances of enrolled loans continuously for a period of six calendar months. LEDC may withdraw the excess of the balance of the loss reserve account over the total balance of enrolled loans on the last day of the sixth calendar month of such excesses, and on the last day of each calendar quarter thereafter, so long as an excess continues to exist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2250 (October 2000).

§7233. Termination of and Withdrawal from Program

A. LEDC may terminate its obligation to enroll qualified loans under the program for a lender on the date specified in LEDC's notice of termination to the lender, or for all participating lenders under the program upon 90 days notice, or such earlier date should the balance in LEDC's available budget reach zero, or should LEDC anticipate that the balance in the available budget will reach zero. Termination shall not apply to any qualified loans made before the date of termination.

B. Should the balance of a lender's loss reserve account be reduced to zero, LEDC may, at its sole discretion, terminate the agreement.

C. A participating financial institution may withdraw from the program after giving written notice to LEDC. After receipt of this notice, LEDC shall, at its sole discretion, determine the disposition of any remaining balance in the loss reserve account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2250 (October 2000).

§7235. Inspection of Files

A. LEDC may inspect the files of the lender relating to the enrolled loans at any time during normal business hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2250 (October 2000).

§7237. Reports of Regulatory Agencies

A. LEDC may apply to the applicable state or federal regulatory body of the lender for information directly related to the lender's participation in the program. LEDC shall, to the extent permitted by law, hold any information acquired from regulators in confidence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 (A)(7), (B)(1) and (B)(3).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2251 (October 2000).

Title 19
CORPORATIONS AND BUSINESS
Part VII. Economic Development Corporation
Subpart 7. Louisiana Small Business Linked Deposit Loan Program

Chapter 73. Procedures for Authorization and Administration

§7301. Definitions

'But For' Statement—a signed statement from the lending institution that 'but for' the additional cash flow from the linked deposit the lender would not have made this loan.

Certified Disadvantaged Business—any business which has received certification from the Division of Economically Disadvantage Business Enterprises.

Corporation—the Louisiana Economic Development Corporation of the Department of Economic Development.

Eligible Lending Institution—any bank located in this state and organized under the laws of this state and any national bank which is authorized to make commercial loans and which agrees to participate in the linked deposit program as defined herein.

Eligible Small Business—any business, that has all the following characteristics:

1. is headquartered in this state;

2. maintains offices and operating facilities in this state and transacts business in this state;

3. employs fewer than 150 employees, the majority of whom are residents of this state;

4. is organized for profit;

5. is not a federally chartered or state chartered bank or savings and loan institution;

6. is not engaged in real estate purchasing, holding, renting, or leasing;

7. is not a professional business of doctors, dentists, chiropractors, certified public accountants, or attorneys.

High Unemployment Area—as defined by the third quartile of unemployment in the state by the latest semi-annual statistics from the Louisiana Department of Labor.

Linked Deposit—a certificate of deposit placed by the treasurer (as defined herein) with an eligible lending institution at a percentage below existing investment rates, as determined and calculated by the treasurer, provided the institution agrees to provide a loan to an eligible small business at an equal percentage below the existing borrowing rate applicable to each specific business at the time of the deposit of state funds in the lending institution.

Low Employment Area—as defined to be in the lower two quartiles of the state by the latest semi-annual statistics from the Louisiana Department of Labor.

Substantial Stockholders—any person who owns more than 20 percent of a business applying for or currently participating in the Linked Deposit Loan Program as outlined in LAC 19.VII.Subpart 7.Chapter 73.

Treasurer—the treasurer of the state of Louisiana.

Very High Unemployment Area—as defined to be in the upper quartile of unemployment in the state by the latest semi-annual statistics from the Louisiana Department of Labor.

AUTHORITY NOTE: Promulgated in accordance with LA R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:412 (March 1999).

§7303. General Provisions

A. The Linked Deposit Program is funded to meet all current and anticipated application needs. The extreme changes in the interest rate environment in recent years have, on occasion, presented the treasury with a dilemma. Interest earnings on treasury deposits supporting the Linked Deposit Program have been so low that the rate buy down prescribed below would force the treasury to accept zero or negative earnings on its money. To preclude such events, a floor of 0.5 percent (0.005) is set as the lowest interest earnings accepted for treasury funds on deposit under the Linked Deposit Program, as determined by the state treasury. The buy down described, to the extent that it does not violate this floor, will be awarded on approval of an application.

B. Priority for application approval and funding shall be given as follows.

1. A eligible Louisiana business located in a very high unemployment area which creates one or more jobs shall receive a maximum of a 4 percent interest rate buy down.

2. A eligible Louisiana business located in a high employment area which creates three or more jobs shall receive a 3 percent interest rate buy down (less than three jobs shall receive 2 percent).

3. An eligible Louisiana certified disadvantaged business, disabled owned business, or research recipient of a Small Business Innovative Research Grant, which creates one or more jobs shall receive a maximum of a 3 percent interest rate buy down.

4. An eligible Louisiana business, in a low unemployment area that creates four or more jobs shall receive a maximum of a 2 percent interest rate buy down.

5. An eligible Louisiana business in a low unemployment area creating one to four jobs shall receive a maximum of a 1 percent interest rate buy down.

C. At no time shall the total amount of the dollars in the linked deposits in low unemployment areas exceed 33 percent of the total available for linked deposits, unless otherwise specified by the treasurer.

D. Applications which provide a "but for" statement shall be eligible for a five year term on the linked deposit. All other applications are eligible for two year terms only.

AUTHORITY NOTE: Promulgated in accordance with LA R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:412 (March 1999), amended by Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:859 (June 2003).

§7305. Linked Deposit Loan Program Authorization Lending Institution Requirements; Applicants Requirements and Conditions for Approval

A. The treasurer may invest in linked deposits, as provided and defined by R.S. 51:2312 and also defined herein, provided that at the time of placement of any linked deposit, the total amount of such investments at any one time shall not exceed, in the aggregate, $30,000,000. When deciding whether to invest in linked deposits, the treasurer shall give priority to the investment, liquidity, and cash flow needs of the state and a determination of the financial soundness of the eligible lending institution.

B. An eligible lending institution that desires to receive a linked deposit shall accept and review applications for loans from eligible small business. The eligible lending institution shall apply all usual lending standards to determine the creditworthiness of each eligible small business with the exception of a business the lending institution determines is eligible as a 'but for' application. The eligible lending institution shall not charge, levy or collect any loan application fee, processing fee, or other charges other than its normal loan application fee, processing fee, or other charges when handling a linked deposit application.

C.1. Only one loan through the linked deposit program shall be made and shall be outstanding at any one time to any eligible small business, owner, or borrower.

2. The maximum amount of a linked deposit which may be made to any eligible small business at any one time shall be $200,000.

3. No loan shall be made to any officer or director of the lending institution making the loan.

4. No loan shall be made for the sole purpose of refinancing previous debt held either by the lending institution or another lending institution. The maximum debt refinance allowed is 25 percent of the total loan amount for any eligible small business.

5. There shall be at least a one year moratorium from the time one linked deposit matures to time of application for any new linked deposit for any eligible small business.

6. The net jobs created by the linked deposit must be maintained by the business for a period of not less than the period of the linked deposit or the treasurer may, in his sole discretion, declare the deposit and interest earned thereon, or any part thereof, to become immediately due and payable, not withstanding any agreement or contract to the contrary.

D. An eligible small business shall certify on its loan application that the reduced rate loan will be used exclusively to create new jobs or preserve existing jobs and employment opportunities in the state. Job titles of all existing employees as well as job titles of new jobs to be created shall be forwarded with each application and reapplication. Whoever knowingly files a false statement concerning such application shall be guilty of the offense of filing false public records and shall be subject to the penalty provided for in R.S. 14:133.

E. In considering which eligible small business to include in the linked deposit loan package for reduced-rate loans, the eligible lending institution shall give priority to the economic needs of the area of the state in which the business is located, the number of jobs to be created in the state by the receipt of such loans, and such other factors as the eligible lending institution considers appropriate to determine the relative financial need of the eligible small business.

F. The eligible lending institution applying for a 5-year linked deposit shall forward to the corporation a complete loan package as prepared for and presented to the institutions loan committee which includes a statement 'but for' the additional cash flow from this linked deposit, this loan will not be made under these terms and conditions.

G.1. The eligible lending institution shall forward to the corporation and the treasurer for review, a linked deposit loan package in the form and manner prescribed by the corporation. The package shall include such information as required by the corporation including:

a. the amount of the loan requested;

b. the number of jobs to be created in the state by each eligible small business;

c. the ratio of state funds requested to jobs created; and

d. any reports, statements, or plans applicable to the business, the overall financial need of the business, and such other factors as the corporation considers appropriate.

2. The eligible financial institution shall certify that each applicant is an eligible small business as defined herein and shall, for each eligible small business, certify the present borrowing rate applicable to each specific eligible small business. Within 45 days after receipt, the corporation shall

provide written recommendations to the treasurer on each linked deposit loan package received from eligible financial institutions.

H.1. The treasurer may accept or reject a linked deposit loan package or any portion thereof, based on:

a. the treasurer's review of the recommendations of the corporation;

b. the availability and amount of state funds to be deposited; and

c. a determination of the financial soundness of the financial institution in which the deposit is to be made.

2. The treasurer shall notify the corporation and the eligible lending institution of acceptance or rejection of a linked deposit loan package within 15 days of receipt by the treasurer of the recommendations of the corporation.

I. Upon acceptance of the linked deposit loan package or any portion thereof, the treasurer may place certificates of deposit with the eligible lending institution at a percentage below the current investment rates, as determined and calculated by the treasurer.

J. The eligible lending institution shall enter into a deposit agreement with the treasurer, which shall include the requirements necessary to carry out the purposes of LAC 19:VII.Chapter 73. The requirements shall reflect the market conditions prevailing in the eligible lending institution's lending area. The agreement shall specify the period of time in which the lending institution is to lend funds upon the placement of a linked deposit, and shall include provisions for the certificates of deposit to mature within a period not to exceed one year. The treasurer may renew a certificate of deposit in one-year increments, but in no event shall the total period of time that a certificate of deposit is placed with any lending institution exceed five consecutive years. Interest shall be paid at the times determined by the treasurer. However, upon placement of a linked deposit, the treasurer will give priority to renewal of existing linked deposits prior to placement of new linked deposits. Prior to renewal of linked deposits, the treasurer shall continue to give priority to the investment, liquidity cash flow needs of the state and a determination of the financial soundness of the eligible lending institution.

K. The period of time for which each certificate of deposit is placed with an eligible lending institution shall be neither longer nor shorter than the period of time for which the linked deposit shall be used to provide loans at reduced interest rates. The agreement shall further provide that the state shall receive investment interest rates on any certificate of deposit or any portion thereof for any period of time for which there shall be no corresponding linked deposit loan outstanding to an eligible small business.

L. Upon placement of a linked deposit with an eligible lending institution, the institution shall lend such funds to the approved eligible small business listed in the linked deposit loan package. Each loan shall be at a fixed or variable rate of interest for a period of one year, coinciding with the annual maturity of the linked treasury funds, and shall be the allowed percentage below the current competitive borrowing rate applicable to each eligible small business. At each annual maturity, the lender shall adjust the loan rate for the next year to the then competitive rate for that business, considering the usual concerns for loan payment performance and overall risk. All records and documents pertaining to the linked deposit program shall be segregated by each lending institution for ease of identification and examination. A certification of compliance with this Section in the form and manner prescribed by the treasurer shall be completed by the lending institution and filed with the treasurer and the corporation.

M. If it is discovered that there is a linked deposit made for any purpose not authorized, the certificate may be matured and/or rewritten, if appropriate, without penalty to the state treasurer. If this situation occurs, the eligible lending institution will pay the state treasury the same terms and interest rate as if the deposit were placed without benefit of a linked deposit. If the eligible lending institution fails to pledge securities to the treasurer or if such securities shall be unsatisfactory to secure the deposit, in his sole discretion, the treasurer may declare the deposit and interest earned thereon, or any part thereof, to become immediately due and payable, notwithstanding any agreement or contract to the contrary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:412 (March 1999), amended by Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:860 (June 2003).

§7307. Liability

A. Neither the state, the corporation, nor the treasurer shall be liable to any lending institution in any manner for payment of the principal or interest on any loan to an *eligible small business* under §7301. Any delay in payments or default on the part of a small business shall not in any manner affect the deposit agreement between the eligible lending institution and the treasurer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Economic Development Corporation, LR 25:414 (March 1999).

Title 19
CORPORATIONS AND BUSINESS
Part VII. Economic Development Corporation
Subpart 9. Micro Loan Program

Chapter 75. Loan Policies

§7501. Purpose

A. The Louisiana Economic Development Corporation (LEDC) wishes to stimulate the flow of private capital, long-term loans, and other financial assistance for the sound financing of the development, expansion, and retention of small business concerns in Louisiana as a means of providing high levels of employment, income growth, and expanded economic opportunities, especially to disadvantaged persons and within distressed and rural areas.

B. The corporation will consider sound loans so long as resources permit. The board of the corporation recognizes that guaranteeing, participating, or lending money carries certain risks and is willing to undertake reasonable exposure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:555 (May 1997).

§7503. Definitions

Disabled Person's Business Enterprise—a small business concern which is at least 51 percent owned and controlled by a disabled person as defined by the federal Americans with Disabilities Act of 1990.

Economically Disadvantaged Business—a Louisiana business certified as economically disadvantaged by the Department of Economic Development's Division of Economically Disadvantaged Business Development.

Micro Loans—those loans ranging in size from $5,000 to $50,000.

Small Business Concerns—as defined by SBA for purposes of size eligibility as set forth by 13 CFR 121.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:555 (May 1997).

§7505. Application Process

A. Applicant is required to first contact a financial lending institution that is willing to entertain such a loan with the prospect of additional credit support provided by a LEDC guarantee or a participation and complete the application process. An applicant may also apply to LEDC directly for loan consideration, provided it is based upon documented eligibility as established as follows. Only after rejection by at least two lending institutions for participation on the basis of either a loan participation or a loan guarantee shall an applicant be eligible to be considered for a direct loan by LEDC. Such applications may be forwarded directly to LEDC.

B. Information submitted to LEDC with the application representing the applicant's business plan, financial position, financial projections, personal financial statements and background checks will be kept confidential to the extent allowed under the Public Records Law, R.S. 44:1 et seq. Confidential information in the files of LEDC and its accounts acquired in the course of duty will be used solely by and for LEDC.

C. Submission and Review Policy

1. A completed Louisiana Economic Development Corporation application form along with information identified by LEDC as appropriate must be submitted to LEDC. Applications will be processed, with decisions confirmed promptly.

2. Economically disadvantaged businesses applying for assistance under that provision will have to submit certification from the Division of Economically Disadvantaged Business Development Office of the Department of Economic Development along with the request for financial assistance.

3. Businesses applying for consideration under the disabled persons provision shall submit adequate information to support the disabled status.

4. LEDC staff will review the applications for completeness and submit only complete packages for analysis. Any applications not receiving approval in the initial analysis process shall be individually reviewed and exceptions to underwriting criteria noted. The LEDC staff will report to the screening committee monthly those applications approved, and those not recommended for approval with reasons.

5. Loans guaranteed or participated in by LEDC must qualify under LEDC pre-approved underwriting criteria using standardized LEDC documentation. The originating bank is responsible for all loan closing documentation. Closing will occur only after a site visit by an LEDC staff member or designated representative.

6. Direct loans by LEDC must qualify under LEDC pre-approved underwriting criteria, or be approved by the board of directors as an exception to such criteria. Such

loans will be closed by LEDC or its designated agents using standardized LEDC documentation.

7. Only those applicants and/or their designated representatives asked to be present by the LEDC staff need to be present for the screening committee.

8. The board of directors will review the results of all applications processed and screened. Loans recommended for approval by the LEDC staff as exceptions to standard underwriting criteria will be presented to the screening committee of the board for approval. Loans approved under standard underwriting procedures requiring direct LEDC funding, LEDC guarantees or participation shall be approved by LEDC in accordance with established policies and procedures.

9. The applicant will be notified promptly from date accepted for processing by mail of the outcome of the application.

10. A LEDC commitment letter, standard guaranty or participation agreement will be mailed to the bank promptly after approval by the LEDC staff applying standardized evaluation processes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:556 (May 1997).

§7507. Eligibility

A. Small business concerns as defined by SBA for purposes of size eligibility as set forth by 13 CFR 121.

B. Small businesses whose owner(s) or principal stockholder(s) shall be a resident of Louisiana and the business is domiciled in Louisiana with preference given to certified economically disadvantaged businesses or businesses owned by disabled persons.

C. Funding request for all but the following may be considered:

1. restaurants, except for regional or national franchises;

2. bars;

3. any project established for the principal purpose of dispensing alcoholic beverages;

4. any establishment which has gaming or gambling as its principal business;

5. any establishment which has consumer or commercial financing as its business;

6. funding for the acquisition, renovation, or alteration of a building or property for the principal purpose of real estate speculation;

7. funding for the principal purpose of refinancing existing debt in excess of 10 percent of the total requested loan amount;

8. funding for the purpose of buying out any stockholder or equity holder by another stockholder or equity holder in a business;

9. funding for the purpose of establishing a park, theme park, amusement park, or camping facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:556 (May 1997).

§7509. General Loan Provisions

A. The Louisiana Economic Development Corporation will be guided by the following general principles in making loans.

1. The corporation shall not knowingly approve any loan guarantee, loan participation or loan if the applicant has presently pending or outstanding any claim or liability relating to failure or inability to pay promissory notes or other evidence of indebtedness including state or federal taxes, or bankruptcy proceeding; nor shall the corporation approve any loan or guarantee if the applicant has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit.

2. The terms or conditions imposed and made part of any loan or loan guarantee authorized by vote of the corporation board shall not be amended or altered by any member of the board or employee of the Department of Economic Development except by subsequent vote of approval by the board at the next meeting of the board in open session with full explanation for such action.

3. The corporation shall not subordinate its position.

B. Interest Rates

1. On all loan guarantees the interest rate is to be negotiated between the borrower and the bank but may not exceed 4 percentage points above New York prime as published in the *Wall Street Journal* at either a fixed or variable rate.

2. On all participation loans the interest rate to LEDC shall be determined by utilizing the rate for a U.S. Government Treasury Security for the time period that coincides with the term of the participation and adding 1 percent.

3. On all direct loans by LEDC the interest rate to LEDC shall be negotiated at a rate commensurate with the loan risk for either variable or fixed rate loans.

C. Collateral

1. Collateral to loan ratio will be no less than 1:1, except for direct loans where the ratio will be 1.2:1.

2. Collateral position shall be negotiated but will be no less than a sole second position.

3. Collateral Value Determination

a. The appraiser must be certified by recognized organization in area of collateral.

b. The appraisal cannot be over 90 days old.

c. The percentage of value considered shall be consistent with the underwriting criteria established by the LEDC Board from time to time.

4. Acceptable collateral may include, but not be limited to, the following:

a. fixed assets—real estate, buildings, fixtures;

b. equipment, machinery, inventory;

c. personal guaranties are open for negotiation, if used, there must be signed and dated personal financial statements;

d. accounts receivable with supporting aging schedule, except for direct loans where accounts receivable are ineligible.

5. Unacceptable collateral may include but not be limited to the following:

a. stock in applicant company and/or related companies;

b. personal items.

D. Equity

1. Will be no less than 10 percent of the loan amount for a start-up operation, acquisition, or expansion.

2. Equity is defined to be:

a. cash;

b. paid in capital;

c. paid in surplus and retained earnings;

d. partnership capital and retained earnings.

3. No research, development expense or intangibles will be considered equity.

E. Amount

1. For small businesses the corporation's guarantee shall be no greater than 80 percent of a loan.

2. For certified economically disadvantaged businesses or businesses owned by disabled persons, the guarantee shall be no greater than 90 percent of a loan.

3. The corporation's participation in loans shall be no greater than 50 percent, but in no case shall it exceed $25,000.

F. Terms

1. Terms may be negotiated with the bank but in no case shall the terms exceed five years.

G. Fees

1. LEDC will charge a minimum guarantee fee of one percent of the guarantee amount.

H. Use of Funds

1. Purchase of fixed assets, including buildings that will be occupied by the applicant to the extent of at least 51 percent.

2. Purchase of equipment, machinery, or inventory.

3. Line of credit for accounts receivable or inventory.

4. Debt restructure may be considered by LEDC but will not be considered when the debt:

a. exceeds 10 percent of total loan; and/or

b. pays off a creditor or creditors who are inadequately secured; and/or

c. provides funds to pay off debt to principals of the business; and/or

d. provides funds to pay off family members.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:557 (May 1997).

§7511. General Agreement Provisions

A. Guaranty Agreement

1. Originating bank or LEDC agent responsible for proper administration and monitoring of loan and proper liquidation of collateral in case of default.

2. The loan shall not be sold, assigned, participated out, or otherwise transferred without prior written consent of the LEDC Board.

3. If liquidation through foreclosure occurs, the bank sells collateral and handles legal proceedings.

4. There will be a reduction of the guarantee:

a. in proportion to the principal reduction of the amortized portion of the loan;

b. if no principal reduction has occurred in any annual period of the loan, a reduction in the guarantee amount will be made proportional to the remaining guarantee life.

5. The guarantee will cover the unpaid principal amount owed only.

6. Delinquency will be defined according to the bank's normal lending policy and all remedies will be outlined in the guaranty agreement. Notification of delinquency will be made to the corporation, in writing and verbally, in a time satisfactory to the bank and the corporation as stated in the guaranty agreement.

B. Participation Agreement

1. The bank is responsible for administration and monitoring of the loan.

2. The lead bank will hold no less participation in the loan than that equal to LEDC's but not to exceed its legal lending limit.

3. The lead bank may sell other participation with LEDC's consent.

4. Should liquidation through foreclosure occur, the bank will sell the collateral and handle the legal proceedings.

5. The bank is able to set its rate according to risk. A blend with the LEDC rate to yield a lower overall rate to project.

6. Delinquency will be defined according to the bank's normal lending policy and all remedies will be outlined. Notification of delinquency will be made to the corporation in writing and verbally in a time satisfactory to the bank and the corporation.

C. Borrower Agreement. At the discretion of LEDC the borrower will agree to strengthen management skills by participation in a form of continuing education acceptable to LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:557 (May 1997).

§7513. Confidentiality

A. Confidential information in the files of the corporation and its accounts acquired in the course of duty is to be used solely for the corporation. The corporation is not obliged to give credit rating or confidential information regarding applicant. Also see Attorney General Opinion Number 82-860.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:558 (May 1997).

§7515. Conflict of Interest

A. No member of the corporation, employee thereof, or employee of the Department of Economic Development, members of their immediate families shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation. If any contract or agreement shall be made in violation of the provisions of this Section the same shall be null and void and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(C).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:558 (May 1997).

Chapter 76. SSBCI Micro Lending Program ARPA 2021

§7601. Purpose

A. The Louisiana Economic Development Corporation (LEDC) wishes to stimulate the flow of private capital, short term loans , lines of credit loans, and other financial assistance through a mission driven focus in creating a revolving loan fund for the sound financing of the development, expansion, and retention of small business concerns in Louisiana as a means of helping to start or grow their business and of providing employment, income growth, and expanded economic opportunities, especially to Small Businesses owned by Socially and Economically Disadvantaged Individuals (SEDI) and to those Very Small Businesses (VSB).

B. Through the American Rescue Plan Act of 2021, which reauthorized the State Small Business Initiative (SSBCI), the U.S. Congress has appropriated funds to be allocated and disbursed to the states that have created programs to increase the amount of capital made available by private lenders to small businesses, and the State of Louisiana has been approved to receive and disburse SSBCI funds within the SSBCI Program. The Louisiana Department of Economic Development, which will be working with and through LEDC, has been designated to provide services for the SSBCI, including the Micro Lending Program (MLP), which by a Program Participation Agreement previously entered into, between LEDC and the Lender to make additional capital available for the loan. The LEDC will utilize SSBCI funds to increase access to credit and capital funding to further assist small businesses statewide, to expand loan capabilities to a broader range of businesses statewide, to direct a greater concentration to those small businesses, and to reach, identify and promote small business growth in low and moderate income communities, in minority communities, in other underserved communities, and to small businesses owned by socially and economically disadvantaged individuals across our state. .

C. By partnering with Louisiana CDFIs and other qualifying lenders who share a similar mission driven focus as the purpose of this program, LEDC will provide funding to participating CDFIs, and other qualifying lenders having been approved as a participating lender, for the purpose of making direct loans up to $100,000 to small businesses meeting the SSBCI criteria as outlined in the program participation agreement.

D. Interested small businesses will be referred to participating Lenders for loan qualification purposes. Participating Lenders will apply to LEDC for acceptance to enroll a loan or line of credit under the Program on behalf of their qualified small business borrowers. Participating Lenders are responsible for their own credit underwriting decisions and originating the loans. LEDC’s responsibility is: to ensure compliance with the Micro Lending Program

requirements; ensure compliance with the SSBCI requirements as directed by Treasury, as well as participation in the program; and to report to the U.S. Treasury.

E. In considering acceptance of the loans presented to LEDC through Lenders having agreed to participate in the Micro Lending Program, the Corporation will consider sound business purpose loans and lines of credit, so long as SSBCI resources permit. The board of directors of the corporation recognizes that loan participations carry certain risks and are willing to undertake reasonable exposure.

F. LEDC will monitor the program, including the repayment progress of borrowers, as well as the servicing performance of participating lenders, in order to ensure successful outcomes in the form of program utilization and eventual securing of funds for these groups.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1479 (June 2022), LR 48:1920 (July 2022).

§7603. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in prevailing federal guidelines issued by the U.S. Treasury, unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Board—Board of Directors of Louisiana Economic Development Corporation.

Borrower—also referred to herein as the *applicant/borrower* or *customer/borrower;* the business person or entity borrowing and accepting the loaned funds from the Lender.

Corporation—Louisiana Economic Development Corporation.

CDFI—Community Development Financial Institution - has the meaning given that term under section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994

CDFI Investment Area—defined in 12 C.F.R. § 1805.201(b)(3)(ii)—are generally low-income, high-poverty geographies that receive neither sufficient access to capital nor support for the needs of small businesses, including minority-owned businesses.

Eligible Loan—a loan or line of credit commitment made by the lender to the borrower which meets the established SSBCI criteria.

Enrolled Loan—a loan enrolled by the Lender to a Borrower pursuant to the terms of the Lender Participation Agreement whereby the eligible loan has been accepted in writing by LEDC.

LED—Louisiana Department of Economic Development.

LEDC—Louisiana Economic Development Corporation.

Lender—for purposes of this Program Chapter, also referred to herein as the *lender;* the Community Development Financial Institution or other qualifying lender sharing a similar mission driven focus as this program and who has been approved by LED as a participating MLP lender to originate the loan and provide the loan funds to the Borrower.

Lender Insider—means an executive officer, director, or principal shareholder of the lender, or a member of the immediate family of an executive officer, director or principal shareholder of the lender, or a related interest of such executive officer, director, principal shareholder or member of the immediate family. For the purposes of this provision, the terms *executive officer, director, principal shareholder, immediate family,* and *related interest* shall have the respective meaning ascribed thereto in Federal Reserve Act Sections 22(g) and (h), Federal Reserve Board Regulation O and applicable Office of the Comptroller of the Currency or Office of Thrift Supervision.

Loan—the temporary provision of money or funds for a business purpose, usually for a limited term and requiring the payment of interest along with the repayment of the loaned funds. As used herein, the word *loan* includes a line of credit or term loan originated by a participating CDFI, or other participating lender, of this chapter.

Lender Loan Documents—written documentation evidencing an Enrolled Loan from the Lender to the Borrower pursuant to the Micro Loan Program describe herein and includes, but is not limited to, a loan agreement, note, mortgage, security agreement and guaranty agreement.

Maximum Enrolled Loan Amount—the aggregate outstanding amount of $500,000 for any enrolled loans or loans of a borrower or any common enterprise in which the borrower has an ownership interest.

Micro Loans—those loans ranging in size from $1,000 to $100,000.

Micro Lending Program (MLP)—an OSCP program approved by Treasury which is the subject of this Chapter

Passive Real Estate Ownership—ownership of real estate for the purpose of deriving income from speculation, trade or rental, except that such term shall not include:

a. the ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate; or

b. ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.

Small Business Concerns—for purposes of size; eligibility for this program will be limited to businesses with 100 employees or less.

Socially and Economically Disadvantaged Individual (SEDI) Owned Business—

a. business enterprises that certify that they are owned and controlled by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their:

i. membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American Society;

ii. gender;

iii. veteran status;

iv. limited English proficiency;

v. physical handicap;

vi. long-term residence in an environment isolated from the mainstream of American society;

vii. membership of a federally or state-recognized Indian Tribe;

viii. long-term residence in a rural community;

ix. residence in a U.S. Territory;

x. residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); or

xi. membership of another *underserved community* as defined in Executive Order 13985;

b. business enterprises that certify that they are owned and controlled by individuals where residences are in CDFI investment Areas, as defined in 12 C.F.R. §1805.201(b)(3)(ii);

c. business enterprises that certify that they will operate a location in a CDFI Investment Area, as defined in 12 C.F.R. §1805.201(b)(3)(ii); or

d. business enterprises that are located in CDFI Investment Areas, as defined in 12 C.F.R. § 1805.201(b)(3)(ii).

Very Small Business—a business with fewer than 10 employees; may include independent contractors and sole proprietors

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1480 (June 2022), LR 48:1921 (July 2022).

§7605. Application Process

A. Applicant is required to first contact a participating community development financial lending institution (CDFI), or other participating lender, under the Louisiana Economic Development (LED) SSBCI Micro Lending Program that is willing to entertain, originate, process and service such a loan or line of credit; and confirms the loan request is an SSBCI eligible loan before completing the program enrollment application process with LEDC. The participating Lender will then contact LEDC for qualification and shall submit a complete Micro Lending Program Enrollment Application to LEDC for its review and acceptance as an enrolled loan, or enrolled line of credit, under the Program. The Lender shall also submit to LEDC the Lender's assurances, certifications, representations and warranties, and shall be responsible for obtaining and submitting to LEDC assurances of eligibility, including certifications, representations and warranties from each borrower, all as required by the American Rescue Plan Act of 2021.

B. Information submitted to LEDC with the enrollment application representing the applicant's business plan, financial position, financial projections, personal financial statements and background checks will be kept confidential to the extent allowed under the Public Records Law, R.S. 44:1 et seq. Confidential information in the files of LEDC and its accounts acquired in the course of duty will be used solely by and for LEDC.

C. In order to enroll a loan under the SSBCI Micro Lending Program, the lender shall

1. file the loan for enrollment by delivering or causing to be delivered to LEDC a copy of the program enrollment application packet as may be specified by LEDC, bearing an execution signature of an authorized officer of the lender;

2. submit such additional documentation required for Lender to review and underwrite the loan request;

3. executed lender and borrower assurances, certifications and information reasonably required by the corporation and related to the loan to be enrolled. The loan shall be deemed enrolled in the SSBCI Micro Lending Program at such time as the program enrollment application is accepted, in writing, by LEDC.

D. Businesses applying for consideration as a SEDI owned business will have to self-certify under conditions in Paragraphs a-c as noted above in §7503 under SEDI-Owned Business definition.

E. The following micro lending program submission and review policies shall be followed.

1. A completed Louisiana Economic Development Corporation Micro Lending Program enrollment application form along with information identified by LEDC as appropriate must be submitted to LEDC prior to any loan closing.

2. The participating lender is expected to use its best efforts to provide small Louisiana businesses, SEDI, with maximum practicable opportunity to participate in the micro lending program.

3. The borrower's completed micro lending program enrollment application packet must be submitted by the Lender to LEDC and include:

4. Borrower's completed LED micro lending program enrollment application and related information and materials.

5. The participating lender shall submit to LEDC its complete analysis and evaluation, proposed loan structure, and commitment letter to the borrower. LEDC staff may do its own review and evaluation of the enrollment application packet. The participating lender shall submit to LEDC the same pertinent data that it submitted to the lending institution's loan committee, whatever pertinent data the lending institution can legally supply.

6. Businesses applying for consideration as a SEDI owned business will have to self-certify under conditions in Paragraphs a - c as noted above in §7503 under SEDI-owned business definition.

7. Lender and borrower signed assurances and certifications as required by Treasury at the time of application for enrollment.

8. LEDC staff will review the enrollment application for completeness and compliance requirements as required by treasury under the SSBCI program and then approve and accept as an enrolled loan or disapprove and reject the enrollment application, if the dollar amount of the loan is within its board approved authority, or make recommendations to the board committees and to the board for approval and acceptance as an enrolled loan or disapproval and rejection under the micro lending program.

9. The LEDC's board screening committee, the board's other designated committee, or the board itself, may review only the completed enrollment applications and related materials submitted by LEDC staff and may approve and accept as an enrolled loan or disapprove and deny applications for enrollment under the program within the committee's authority as established by the LEDC board, or board committees will make recommendation to the LEDC board for its decision.

10. The applicant/borrower or their designated representative(s), and the loan officer or a representative of the lender may be required to attend the LEDC's board of directors meeting wherein the program enrollment application will be considered by the board.

11. LEDC's board of directors, the board screening committee, or the board's other designated committee that has considered the enrollment application within its authority has for such enrollment applications; except for those loans which shall be within the staff's authority to approve and accept for enrollment or disapprove, as established by the LEDC board, the staff shall the final approval of acceptance as an enrolled loan under the program or disapproval and denial authority, unless the board overrules the staff's decision.

12. The LEDC staff will report to the board monthly those loans accepted for enrollment under the program, as well as those loans not approved by the lender under the program.

13. Loans originated by participating community development financial institutions (CDFIs), or other participating lenders, under the micro lending program must qualify under the SSBCI treasury guidance. Lenders interested in participating under the program must first gain approval by LEDC. CDFIs, and other participating lenders, will reference their internal credit policies to underwrite the loan for acceptable terms and structure. The lender is responsible for all loan closing documentation.

14. LEDC staff will email the Lender within 3 business days of the loan closing written notice that the enrollment application has been approved and accepted as an enrolled loan under the micro lending program.

F. Loan Purpose Requirements and Prohibitions. In addition to the application process provisions provided in the Section mentioned in the above subparagraph A, in connection with each loan to be enrolled under this Chapter the lender shall also be responsible for obtaining and providing to LEDC with the lender's enrollment application an assurance from each borrower stating that the loan proceeds shall not be used for any impermissible purpose under the SSBCI Program. And additionally, each lender must also obtain and provide to LEDC with its enrollment application under this Chapter an assurance from the borrower affirming:

1. The loan proceeds must be used for a business purpose. A business purpose includes, but is not limited to, start-up costs, working capital, business procurement, franchise fees, equipment, inventory, as well as the purchase, construction renovation or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of *business purpose* excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership, the purchase of securities; and lobbying activities as defined in Section 3 (7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended.

2. The loan proceeds will not be used to:

a. repay a delinquent federal or state income taxes unless the borrower has a payment plan in place with the relevant taxing authority; or

b. repay taxes held in trust or escrow, e.g. payroll or sales taxes; or

c. reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance; or

d. purchase any portion of the ownership interest of any owner of the business.

3. The borrower is not:

a. an executive officer, director, or principal shareholder of the financial institution lender; or

b. a member of the immediate family of an executive officer, director, or principal shareholder of the financial institution lenders; or

c. a related interest of such executive officer, director, principal shareholder, or member of the immediate family.

NOTE: For the purposes of these three borrower restrictions, the terms *executive officer, director, principal shareholder, immediate family,* and *related interest* refer to the same relationship to a financial institution lender as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.)

4. The borrower is not:

a. a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil, investments in stock market and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business; or

NOTE: (Note: Permissible borrowers include state-designated charitable, religious, or other non-profit or eleemosynary institutions, government-owned corporations, consumer and marketing cooperatives, and faith-based organizations provided the loan is for a *business purpose* as defined above.)

b. a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company certified as a community development financial institution; or

c. a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants; or

d. a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); this category of business includes direct and indirect marijuana businesses, as defined in SBA Standard Operating Procedures 50 10 6; or

e. a business engaged in gambling enterprises, unless the business earns less than 33 percent of its annual net revenue from lottery sales.

f. The corporation shall not knowingly accept any enrollment applications under the Micro Lending Program if the applicant/borrower has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit or any legal proceeding involving a criminal violation other than misdemeanor traffic violations. Nor should they accept any enrollment applications under the micro lending program if the applicant/borrower or his/her/its principle management has a criminal record showing convictions for any criminal violations other than misdemeanor traffic violations in which the applicant has not been reinstated into society.

5. No principal of the borrowing entity has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification, "principal" is defined as "if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20 percent or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity."

G. The lender must also provide to LEDC with its enrollment application, in connection with each loan to be enrolled under this Chapter, an assurance affirming:

1. The loan has not been made in order to place under the protection of the approved state Capital Access Program (CAP) prior debt that is not covered under the approved state CAP and that is or was owed by the borrower to the lender or to an affiliate of the lender.

2. The loan is not a refinancing or a loan previously made to that borrower by the lender or an affiliate of the lender.

3. No principal of the lender has been convicted of a sex offense against a minor (as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification, *principal* is defined as if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

4. The corporation shall not knowingly accept any enrollment applications under the Micro Lending Program if the applicant/borrower has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit or any legal proceeding involving a criminal violation other than misdemeanor traffic violations. Nor should they accept enrollment applications under the Micro Lending Program if the applicant/borrower or his/her/its principle management has a criminal record showing convictions for any criminal violations other than misdemeanor traffic violations in which the applicant has not been reinstated into society.

5. The borrower business structure is a for-profit corporation, partnership, limited liability company, limited liability partnership, joint venture, cooperative, non-profit entity with an eligible business purpose as defined above or other entity which is registered and authorized to conduct business in the state of Louisiana that maintain an office in Louisiana. The borrower business structure is a sole proprietor qualified to do business in Louisiana that maintains an office in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1481 (June 2022), LR 48:1922 (July 2022).

§7607. Eligibility/ Ineligibility for Participation in This Program

A. This Program is for loans (including lines of credit) for an eligible business purpose, having a principal amount of $500,000 or less, to eligible borrowers doing business in Louisiana having 100 employees or less at the time the loan is enrolled in this program. An *eligible business purpose* includes but is not limited to: start-up costs; working capital; business procurement; franchise fees; and acquisition of equipment, inventory, or services used in the production, manufacturing, or delivery of a business's goods or services, or the purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of *eligible business purpose* excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership for investment or leasing; the purchase of securities; and lobbying activities as defined in Section 3 (7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended.

B. The loan should be a new extension of credit to the borrower, and shall not be used to support existing extensions of credit, including but not limited to prior loans, lines of credit, or other borrowings that were previously made available as a part of a state small business credit enhancement program; no portion of the loan shall be used for any guaranteed or unguaranteed portion of a Small Business Administration (SBA) guaranteed loan or any other federal loan without prior written consent of the treasury; and SBA guaranteed loans shall NOT be purchased through this program.

C. In connection with the business purpose for the requested loan the applicant/borrower(s) shall create or retain in this State at least one new permanent full-time jobs.

D. In addition to the eligibility and ineligibility provisions provided in the Section, the applicant/borrowers loans and lines of credit in connection with this Chapter shall meet the following criteria:

1. the applicant/borrower(s) shall employ 100 employees or less at the time the loan is enrolled in this Program. The borrower business structure is a for-profit corporation, partnership, limited liability company, limited liability partnership, joint venture, cooperative, non-profit entity with an eligible business purpose as defined above or other entity which is registered and authorized to conduct business in the state of Louisiana that maintain an office in Louisiana.

2. the borrower business structure is a sole proprietor qualified to do business in Louisiana that maintains an office in Louisiana. Small and emerging businesses (SEBs) certified by LED's small business services that maintain an office in Louisiana.

3. small and emerging businesses (SEBs) certified by LED's Small Business Services that maintain an office in Louisiana.

4. small businesses owned by socially and economically disadvantaged individuals (SEDI) that meet the SEDI definition above;

5. small business concerns as defined above for size purposes.

E. The small business is domiciled in Louisiana with preference given to socially and economically disadvantaged individuals as defined herein this Chapter.

F. Funding request for all but the following may be considered:

1. Restaurants having been in business less than two years, except for regional or national franchises;

2. bars, saloons, daiquiri shops, operations for the sale of alcoholic popsicles and other alcoholic food items, packaged liquor stores, including any other business or project established for the principal purpose of dispensing, packaging, or distributing alcoholic beverages;

3. any establishment which has gaming or gambling as its principal business;

4. any establishment which has consumer or commercial financing as its business;

5. funding for the acquisition, renovation, or alteration of a building or property for the principal purpose of real estate speculation;

6. direct or indirect activities related to cryptocurrency;

7. any business engaged in pyramid sales;

8. any business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of products that are to be used in connection with any illegal activity, such as but not limited to selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); this category of business includes direct and indirect marijuana businesses, as defined by SBA Standard Operating Procedures 50 10 6;

9. funding for the principal purpose of refinancing existing debt; a refinancing of a loan previously made to the borrower by the Lender or an affiliate of the lender; or a loan made in order to place under the micro lending program prior debt that is not covered under this program and that is or was owed by the borrower to the Lender or to an affiliate of the lender;

10. funding for the purpose of buying out any stockholder or equity holder by another stockholder or equity holder in a business; for the purpose of purchasing any portion of the ownership interest of any owner of the business; or for buying out any family member or reimbursing any family member;

11. funding for the purpose of reimbursing funds owed to any owner, including any equity injection or injection of capital for the business's continuance;

12. funding for paying any person to influence or attempt to influence any agency, elected official, officer or employee of a state or local Government in connection with lobbying activities, the making, award, extension, continuation, renewal, amendment, or modification of any State or Local Government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. §1352;

13. funding for paying any costs incurred in connection with:

a. any defense against any claim or appeal of the United States Government, any agency or instrumentality thereof (including the U.S. Department of Treasury), against the state of Louisiana; or

b. any prosecution of any claim or appeal against the United States Government, any agency or instrumentality thereof (including the U.S. Department of Treasury), which the state of Louisiana instituted or in which the state of Louisiana has joined as a claimant;

14. funding to be used to pay any delinquent federal or state income taxes, as well as any taxes held in trust or escrow, such as payroll taxes or sales taxes.

15. funding for the purpose of buying out any stockholder or equity holder by another stockholder or equity holder in a business;

16. funding for the purpose of establishing a park, theme park, amusement park, or camping facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1483 (June 2022), LR 48:1923 (July 2022).

§7609. General Loan Provisions

A. Those CDFIs, and other qualifying lenders, participating in the Micro Lending Program shall be guided by the following general principles in making loans.

1. The lender shall not knowingly approve any loans if the applicant has presently pending or outstanding any claim or liability relating to failure or inability to pay promissory notes or other evidence of indebtedness including state or federal taxes, or bankruptcy proceeding; nor shall the lender approve any loan if the applicant has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit.

2. The terms or conditions imposed and made part of any enrolled loan authorized by vote of the corporation board shall not be amended or altered by any member of the board or employee of the Department of Economic Development except by subsequent vote of approval to accept the changes of said enrolled loan by the board, its board screening committee or other designated committees at the next meeting of the board or committee in in open session with full explanation for such action.

B. Loan amounts under this program are intended to be smaller in size and may range from $1,000 to $100,000.

C. Interest Rates

1. On all loans or lines of credits under this chapter, at the time of obligation, the interest rate is to be negotiated between the lender and borrower, but shall not exceed the National Credit Union Administration's (NCUA) interest rate ceiling for loans made by federal credit unions as described in 12 U.S.C. §1757(A)(vi)(I) and set by the NCUA board. Further, on all loans or lines of credits, the interest rate shall not exceed the lesser interest rate of either; the National Credit Union Administration (NCUA) interest rate ceiling, that established by the Federal Credit Union Act (FCUA), that established by the Office of the Comptroller of the Currency (OCC), or applicable state legislation that may be enacted.

D. Borrower's Collateral

1. The value of the borrower's collateral shall be determined according to the lender's normal lending criteria and policy. Loans greater than $50,000 shall require collateral.

2. Collateral position shall be negotiated but will be no less than a sole second position.

3. Unacceptable collateral includes:

a. stock in applicant company and/or related companies;

b. personal residence

E. Equity

1. Equity requirements shall be determined according to the lenders normal loan criteria and policy.

F. Terms

1. Terms may be negotiated with the lender but in no case shall the terms exceed five years.

G. LEDC Fees

1. LEDC may charge a $100 application fee, unless the Board, the Board Screening Committee, other designated committee, or LEDC staff waives the application fee.

2. LEDC will waive the application fee for SEDI, SEB and VSB business types.

3. LEDC may charge a program fee up to $500 for loans less than $25,000 or may charge a program fee up to 2 percent for loans greater than $25,000.

H. Use of Funds

1. Purchase of fixed assets, including buildings that will be occupied by the applicant to the extent of at least 51 percent.

2. Purchase of equipment, machinery, or inventory.

3. Line of credit for accounts receivable or inventory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1484 (June 2022), LR 48:1925 (July 2022).

§7611. General Agreement Provisions

A. Program Participation Agreement

1. The lender shall market the micro lending program, identify eligible borrowers for the program, originate the loan, conduct all of the customer/borrower interaction, and shall be responsible for the proper administration and monitoring of the loan (or line of credit), including monthly invoicing, collections, and loan workouts, and the proper liquidation of the collateral in the event of a default.

2. The lender shall agree to underwrite each loan (including line of credit) using its normal underwriting criteria and will perform a credit analysis of the borrower for each loan, assuming full responsibility for credit and ongoing security of the loan and will follow prudent industry loan underwriting processes and will determine that the funds to be provided under the micro lending program will be instrumental in order for the Lender to make the loan.

3. The lender shall be responsible for the preparation of all loan (including line of credit) documents to be used in connection with such loans made and accepted under this program.

4. The lender is able to set its rate according to risk but shall not exceed that stated in the treasury SSBCI guidance under this program.

5. Delinquency will be defined according to the lender's normal lending policy and all remedies will be outlined. Notification of delinquency will be made to the corporation in writing and verbally in a time satisfactory to the bank and the corporation on the monthly lender loan status report.

B. Reporting

1. Reporting will be required by all participating lenders under this program as required by treasury under the SSBCI program and as required by the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1485 (June 2022), LR 48:1925 (July 2022).

§7613. Confidentiality

A. Confidential information in the files of the corporation and its accounts acquired in the course of duty is to be used solely for the corporation. The corporation is not obliged to give credit rating or confidential information regarding applicant. Also see Attorney General Opinion Number 82-860.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1485 (June 2022), LR 48:1926 (July 2022).

§7615. Conflict of Interest

A. No member of the corporation, employee thereof, or employee of the Department of Economic Development, members of their immediate families shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation. If any contract or agreement shall be made in violation of the provisions of this Section the same shall be null and void and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1485 (June 2022), LR 48:1926 (July 2022).

§7617. Guidelines

A. The Louisiana Economic Development Corporation (LEDC), or the Louisiana Department of Economic Development, also known as Louisiana Economic Development (LED), as the administrator of this program for LEDC, may make, create, or issue from time to time guidelines interpreting, construing, explaining and/or supplementing these rules; and may revise, supplement, or otherwise change or modify the guidelines at any time with or without notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1485 (June 2022), LR 48:1926 (July 2022).

Title 19
CORPORATIONS AND BUSINESS
Part VII. Louisiana Economic Development Corporation
Subpart 11. Louisiana Seed Capital Program (LSCP)

Chapter 77. Louisiana Seed Capital Program (LSCP)

§7701. Purpose

A. The purpose of this Louisiana Economic Development Corporation (LEDC) program is to encourage the formation of Louisiana-based seed capital funds (venture capital funds for start-up and early-stage businesses). This program is intended to provide investment capital to create and grow start-up and early-stage businesses. This program will be investing in other venture capital funds that in turn invest seed capital in individual Louisiana businesses. Funding under this program shall be limited to those qualified organizations who agree to invest such funds exclusively in companies based in Louisiana for the purpose of financing any business purpose or process, technique, product, or device which is or may be exploitable commercially, which has advanced beyond the theoretical state, and which is capable of being or has been reduced to practice without regard to whether a patent has or could be granted. This program is not intended for retail or professional services.

B. The LEDC will make the decision as to whether it will invest in the venture capital fund; and the venture capital fund will make the investment decision in eligible individual businesses.

C. The LEDC will provide high-level monitoring of aggregate performance of its portfolio, with monitoring of a small amount of data on each venture capital fund investment; and the venture capital fund will actively monitor each individual business investment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 26:2251 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:986 (April 2012).

§7703. Definitions

Board—Board of Directors of Louisiana Economic Development Corporation.

Co-Investment—an investment in which financial investors take part with each other and act jointly by uniting or combining together.

Corporation—Louisiana Economic Development Corporation.

LED—Louisiana Department of Economic Development.

LEDC—Louisiana Economic Development Corporation.

Match Investment—an investment in which a financial investor provides or combines additional funds to equal, meet or complement funds provided by another investor or other investors.

Seed Capital (for the purposes of this program)—

1. a dollar amount of not less than $25,000 of capital provided to an inventor or entrepreneur to prove a concept and to qualify for start-up capital, which may involve product development and market research, as well as building a management team and developing a business plan, if the initial steps are successful;

2. research and development financing to finance product development for start-up as well as early-stage companies (which may include a company that may already be in business for three years or less);

3. start-up or early-stage financing to companies completing product development and initial marketing which companies may be in the process of organizing or they may already be in business for three years or less, but have sold their product commercially; or

4. first-stage or early-stage financing to companies that have expended their initial capital and require funds to initiate full-scale manufacturing and sales, for costs of inventory, equipment, expansion, modernization, and for working capital purposes.

Venture Capital Fund—also referred to herein as a *seed capital fund*, or the *applicant organization;* a fund that makes and manages a portfolio of investments in individual companies or businesses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 26:2251 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:987 (April 2012).

§7705. Eligibility for Participation in This Program

A. The applicant organization must be a Louisiana-based venture capital fund organized for the purpose of making seed capital investments in Louisiana businesses.

B. The applicant organization may be organized either for profit or non-profit purposes.

C. The applicant organization must demonstrate that its management personnel have at least three years of experience in managing investments in individual, privately-held companies, utilizing funds provided by others to make such investments.

D. The applicant organization must have a minimum cash investment already on hand sufficient to cover the general and administrative costs for the first and early years of its operations.

E. The applicant organization must have already raised a minimum of $250,000 to be eligible for co-investments or raised a minimum of $500,000 to be eligible for a match investment; and must have already on hand cash sums sufficient to cover the general and administrative costs for the first and early years of its operations for participation in this program. The minimum funds may be in cash and commitments.

F. The applicant organization must verify the eligibility of portfolio companies, obtain assurances of eligibility from each business, and assurances from each business that proceeds will be used for acceptable business purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 26:2251 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:735 (March 2012).

§7707. Application Requirements for Qualification or Eligibility, and for Co-Investment

A. Prior to a seed capital fund submitting a request to the Louisiana Economic Development Corporation (LEDC) to be considered for a commitment for a co-investment, a prospective seed capital fund must first submit an application for the applicant fund to be considered qualified or eligible to participate in this program. The application for the fund's qualification or eligibility to the LEDC shall consist of detailed information covering two main categories, including:

1. the experience and qualifications of the fund's existing or proposed management team; and

2. the business plan for the seed capital fund. The following provisions specify in more detail the information that should be covered. While these provisions provide a possible format, the applicant should in no way feel bound by this format. The applicant can use its own format, as long as the basic information is provided. Moreover, the applicant should feel free to provide additional information which is viewed as relevant. The LEDC or its staff may request additional information beyond that which is specified below and what is provided by the applicant.

B. After its receipt and review by the LEDC staff, the completed application for qualification will then be submitted to the next scheduled LEDC board screening committee or other board designated committee meeting for recommendations. The recommendations of the committee will be submitted to the full Board of Directors of LEDC at its next scheduled meeting for its consideration of final approval.

C. Experience and Qualifications. In or with its application, the applicant shall:

1. submit résumés, references, and private placement memoranda for all principal members of the management team that are identified;

NOTE: Louisiana Economic Development Corporation reserves the right to perform criminal background checks on any or all of the members of the management team.

2. describe the responsibilities of each of the principal members of the management team that have been identified. If any of these people are not full-time management team members, describe their other activities;

3. describe the responsibilities of any principal management position for which a person has not been identified;

4. specify any directors that have been identified, and submit their resumes;

5. specify any other key people that have been identified, including any advisors, consultants, attorneys and accountants, and submit résumés and/or descriptions of firms;

NOTE: Louisiana Economic Development Corporation reserves the right to perform criminal background checks on any or all of these key people.

6. provide evidence of the initial $250,000 minimum capital required for the applicant fund's eligibility to participate in this program.

D. Business Plan. In its application, and with regard to the subjects mentioned below, the applicant shall:

1. targeted market:

a. describe and discuss the types of businesses that the seed capital fund will finance. Discuss the extent to which the seed capital fund intends to specialize in certain industries, or whether a more broad based approach is planned;

b. describe the size range of businesses that it is contemplated the seed capital fund will finance, with a general indication of where most of the focus is expected;

c. discuss the life cycle stage or stages of the companies which the seed capital fund will likely finance, with an indication of where most of the focus is contemplated;

d. discuss the geographic area in which the seed capital fund plans to focus. Specify the city or parish in which the seed capital fund's principal office is planned to be located, and discuss intentions, if any, to establish any additional offices;

e. provide any market analysis that the applicant deems relevant;

2. financing. Describe and discuss the financing instruments that are intended to be used by the seed capital fund. Discuss the anticipated mix of the various types of financing instruments. Discuss the anticipated size range of investments to be made, and information regarding pricing, term, and other conditions. Discuss risk/return expectations on projects. Discuss methods of exit from investments;

3. marketing strategy. Describe the seed capital fund's plans and approach to marketing its services, including the identification of potential applicants for financing assistance;

4. screening process and evaluation criteria. Discuss the anticipated number of business firms that will be reviewed for possible investment, in comparison with the number that will actually be invested in. Discuss the approach to screening business firms, and the evaluation criteria for deciding whether, and under what terms and conditions, to provide investment;

5. fee income. Discuss the potential for fee income, and any plans that the seed capital fund might have for generating fee income;

6. management assistance. Discuss the plans of the seed capital fund to provide management and/or technical assistance to companies for which the seed capital fund provides investment. Discuss the seed capital fund's plans for monitoring its investments, and enforcing provisions of investment agreements. Discuss how the seed capital fund plans to handle problem investments. Discuss the seed capital fund's plans to provide management assistance to companies that the seed capital fund is not investing in;

7. complementary relationships. Discuss the nature of complementary relationships that are anticipated with banks, commercial lenders, investment bankers, venture capitalists and other institutions. This discussion can be based on general types of institutions and/or can identify specific institutions where complementary relationships have already been discussed;

8. management structure. Describe the proposed or existing management structure for the seed capital fund, and anticipated compensation for principal members of the management team;

9. idle funds. Describe plans for the management of the idle funds of the seed capital fund;

10. tax and accounting issues. Discuss relevant tax and accounting issues for the seed capital fund;

11. financial projections:

a. provide a detailed operating budget for the first three years of the seed capital fund's operation. The first year shall be month by month. The second and third years may be presented on an annual basis;

b. provide performance projections, year by year, for a five year period. These projections should show cash flow, income and expense (including taxes), and balance sheet data. For these performance projections, operating expenses can be consolidated into one line item;

c. specify the assumptions used for the performance projections. It is permissible to submit several sets of performance projections based on differing assumptions. However, if applicant submits several sets of projections based on differing assumptions, specify which set of assumptions are applicant's primary assumptions;

d. specify computer programs used for projections, and specify formulas used.

E. If the applicant fund has been found to be qualified or eligible to participate in this program by the LEDC board of directors, the application for the qualified applicant's co-investment project shall contain, but shall not be limited to, the identical information provided to the eligible seed capital fund requesting the co-investment. The LEDC or its staff may request additional information beyond that which has been provided. After its receipt and review by the LEDC staff, the completed application for the qualified applicant's co-investment project shall then be submitted to the next scheduled LEDC board screening committee meeting or other board designated committee meeting for recommendations. The recommendations of the committee will be submitted to the full board of directors of LEDC at its next scheduled meeting for its consideration of final approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 26:2251 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:987 (April 2012).

§7709. Application Requirements for Qualification or Eligibility, and for Match Investment

A. Prior to a seed capital fund submitting a request to the Louisiana Economic Development Corporation (LEDC) to be considered for a commitment for a match investment, a prospective seed capital fund shall first submit an application for the applicant fund to be considered qualified or eligible to participate in this program. The application for the fund's qualification or eligibility to the LEDC shall consist of detailed information covering three main categories, including:

1. the experience and qualifications of the Fund's existing or proposed management team;

2. if applicable, the fund's fund raising abilities, activities and success; and

3. the business plan for the seed capital fund. The following provisions specify in more detail the information that should be covered. While these provisions provide a possible format, the applicant should in no way feel bound by this format. The applicant can use its own format, as long as the basic information is provided. Moreover, the applicant should feel free to provide additional information which is viewed as relevant. The LEDC or its staff may request additional information beyond that which is specified below and what is provided by the applicant.

B. After its receipt and review by the LEDC staff, the completed application for a match investment will then be submitted to the next scheduled LEDC board screening committee meeting or other board designated committee meeting for recommendations. The recommendations of the committee will be submitted to the full board of directors of LEDC at its next scheduled meeting for its consideration of final approval.

C. Experience and Qualifications. In or with its application, the applicant shall:

1. submit resumes, references, and private placement memoranda for all principal members of the management team that are identified;

NOTE: Louisiana Economic Development Corporation reserves the right to perform criminal background checks on any or all of the members of the management team.

2. describe the responsibilities of each of the principal members of the management team that have been identified. If any of these people are not full-time management team members, describe their other activities;

3. describe the responsibilities of any principal management position for which a person has not been identified;

4. specify any directors that have been identified, and submit their resumes;

5. specify any other key people that have been identified, including any advisors, consultants, attorneys and accountants, and submit resumes and/or descriptions of firms.

NOTE: Louisiana Economic Development Corporation reserves the right to perform criminal background checks on any or all of these key people.

D. Fund Raising. In or with its application, the applicant shall:

1. specify the amount of LEDC commitment sought;

2. provide evidence of the amount of private capital that has been raised, and specify the ratio of actual cash to commitments raised;

3. describe the basic legal structure of the seed capital fund;

4. if applicable, describe and discuss the applicant's fund raising strategy for the raising of any additional private capital;

5. if applicable, specify the principal investor sources that the applicant fund will be targeting;

6. if applicable, provide the applicant's basic proposal to its prospective private investors, and the expectations and objectives the applicant is specifying. This shall include, for example, representations regarding reasonably expected returns on private equity investment, indirect financial benefits, if any, and social purposes, if applicable;

7. list all specific investors and financing commitments already obtained, including documentation for each. This shall include evidence of the initial $500,000 minimum capital required for the applicant fund's eligibility to participate in this program;

8. specify whether applicant anticipates taking in all of the LEDC equity investment at closing, or whether applicant plans a phase in. If a phase-in is planned, specify the proposed schedule. It is permissible to have different scenarios based on the actual amount of equity capital raised.

E. Business Plan. In its application, and with regard to the subjects mentioned below, the applicant shall:

1. targeted market:

a. describe and discuss the types of businesses that the seed capital fund will finance. Discuss the extent to which the seed capital fund intends to specialize in certain industries, or whether a more broad based approach is planned;

b. describe the size range of businesses that it is contemplated the seed capital fund will finance, with a general indication of where most of the focus is expected;

c. discuss the life cycle stage or stages of the companies which the seed capital fund will likely finance, with an indication of where most of the focus is contemplated;

d. discuss the geographic area in which the seed capital fund plans to focus. Specify the city or parish in which the seed capital fund's principal office is planned to be located, and discuss intentions, if any, to establish any additional offices;

e. provide any market analysis that the applicant deems relevant;

2. financing. Describe and discuss the financing instruments that are intended to be used by the seed capital fund. Discuss the anticipated mix of the various types of financing instruments. Discuss the anticipated size range of investments to be made, and information regarding pricing, term, and other conditions. Discuss risk/return expectations on projects. Discuss methods of exit from investments;

3. marketing strategy. Describe the seed capital fund's plans and approach to marketing its services, including the identification of potential applicants for financing assistance;

4. screening process and evaluation criteria. Discuss the anticipated number of business firms that will be reviewed for possible investment, in comparison with the number that will actually be invested in. Discuss the approach to screening business firms, and the evaluation criteria for deciding whether, and under what terms and conditions, to provide investment;

5. fee income. Discuss the potential for fee income, and any plans that the seed capital fund might have for generating fee income;

6. management assistance. Discuss the plans of the seed capital fund to provide management and/or technical assistance to companies for which the seed capital fund

provides investment. Discuss the seed capital fund's plans for monitoring its investments, and enforcing provisions of investment agreements. Discuss how the seed capital fund plans to handle problem investments. Discuss the seed capital fund's plans to provide management assistance to companies that the seed capital fund is not investing in;

7. complementary relationships. Discuss the nature of complementary relationships that are anticipated with banks, commercial lenders, investment bankers, venture capitalist and other institutions. This discussion can be based on general types of institutions and/or can identify specific institutions where complementary relationships have already been discussed;

8. management structure. Describe the proposed or existing management structure for the seed capital fund, and anticipated compensation for principal members of the management team;

9. idle funds. Describe plans for the management of the idle funds of the seed capital fund;

10. tax and accounting issues. Discuss relevant tax and accounting issues for the seed capital fund;

11. financial projections:

a. provide a detailed operating budget for the first or for the next three years of the seed capital fund's operation. The first year shall be month by month. The second and third years may be presented on an annual basis;

b. provide performance projections, year by year, for a five year period. These projections should show cash flow, income and expense (including taxes), and balance sheet data. For these performance projections, operating expenses can be consolidated into one line item;

c. specify the assumptions used for the performance projections. It is permissible to submit several sets of performance projections based on differing assumptions. However, if applicant submits several sets of projections based on differing assumptions, specify which set of assumptions are applicant's primary assumptions;

d. specify computer programs used for projections, and specify formulas used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 26:2253 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:989 (April 2012).

§7711. Application Process

A. All applications under this program must be submitted to the Executive Director, Louisiana Economic Development Corporation, P.O. Box 44153, Baton Rouge, 70804.

1. Application Requirements for Qualification or Eligibility to Participate in this Program and Co-Investment Application or Match Investment Application

a. The application for qualification or eligibility of the seed capital fund to participate in this program and its application for the co-investment project may be, but are not required to be, submitted simultaneously for consideration.

b. The application for qualification or eligibility of the seed capital fund to participate in this program and its application for the match investment project may be, but are not required to be, submitted simultaneously for consideration.

c. Once a seed capital fund is deemed qualified or eligible to participate in this program, the fund is not required to resubmit a qualification or an eligibility application for subsequent co-investment or match investment requests.

2. All applications received by LEDC will be reviewed by the LEDC staff; and the staff may request additional information beyond that which has been provided. After their receipt and review by the LEDC staff, the completed applications shall then be submitted to the next scheduled LEDC board screening committee meeting or other board designated committee meeting for recommendations. The recommendations of the committee will be submitted to the full board of directors of LEDC at its next scheduled meeting for its consideration of final approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 26:2254 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:990 (April 2012).

§7713. Investments

A. Co-Investment

1. A qualified or eligible fund that has not received a match investment from the LEDC may apply for co-Investment funds on a case by case basis. The co-investment of LEDC shall not exceed the lesser of 50 percent of the total round of investment needed or $250,000.

2. Only investments in Louisiana businesses are eligible for co-investments.

3. Co-investments will be on the same terms and conditions as the seed capital fund has negotiated with the business included in the co-investment project.

B. Match Investment

1. A qualified or eligible fund may receive a match investment equal to $1 of LEDC funds for each $2 of funds privately raised by the applicant fund. The maximum total dollar amount of an LEDC match investment in an eligible fund shall not exceed $2,000,000.

2. A qualified or eligible fund shall be a Louisiana organized and based seed capital fund. For purposes of this program, *organized and based* means the seed capital applicant fund is registered with the Louisiana Secretary of State's office, and that it maintains a staffed office in Louisiana where investments may be initiated and closed.

3. Match investment funds may be used only for Louisiana businesses.

4. The method of LEDC's investment into the qualified or eligible fund will be equal to the method of investment of the other investors into that fund, i.e., committed capital for committed capital, cash investment for cash investment, or cash and commitment for cash and commitment.

5. The terms of each match investment will be negotiated by LEDC on a case by case basis.

C. Closing

1. Prior to the disbursement of funds, the secretary-treasurer of LEDC and any one of the following: either the chairman of the board, the president, or the executive director of LEDC, shall execute all necessary legal instruments after certification by legal counsel that all appropriate legal requirements have been met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 26:2254 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation, LR 38:990 (April 2012), LR 40:275 (February 2014).

§7715. Reporting

A. Each year, on the anniversary date of the initial disbursement of funds, or on such date as may be authorized by LEDC, each venture capital fund that is the recipient of LEDC funds shall provide to LEDC the following information:

1. a list of all investors in the fund, including the amounts of each investment and the nature of each investment;

2. a statement of the financial condition of the fund including, but not limited to, a balance sheet, a profit and loss statement, and a statement showing changes in the fund's financial condition;

3. a current reconciliation of the fund's net worth; and

4. an annual audited financial statement prepared by a certified public accountant (prepared within 120 days of the end of the fund's fiscal year).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 26:2254 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:991 (April 2012).

Chapter 79. Matching Grants Program

§7901. Purpose

A. The purpose of this program is to leverage state and local funding in order to maximize matching funds from federal and other grants for the purpose of assisting, whether individually or collectively, qualified Louisiana businesses, minority-owned businesses, high-growth potential businesses, women-owned businesses, small business enterprises and disabled persons' business enterprises as those terms are defined by R.S. 39:2303, in such manner and as may be determined by the board in its discretion, and may also include providing matching funding for federal grants for infrastructure and basic infrastructure projects under the Louisiana Economic Development Award Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Economic Development Corporation, LR 29:1068 (July 2003).

§7903. Definitions

Applicant—the public entity requesting matching grant funds under this program. The public entity may be joined in the application by any other entity.

Award—the funding of matching grant money under this program for eligible applicants.

Award Agreement—the agreement of contract hereinafter referred to between the public entity, DED and LEDC, and where applicable, any other entity through which the parties by cooperative endeavor or otherwise, set forth the terms, conditions and performance objectives of the award provided pursuant to these rules.

DED—the Louisiana Department of Economic Development.

Project—a proposal by a public entity that promotes economic development for which matching grant funds are sought under this program. Where matching grant funds are sought for projects that are defined as basic infrastructure or infrastructure under the EDAP rules, then the rules pertaining to EDAP, in addition to these rules, apply to the determination as to the funding of the matching grant funds.

Public Entity—the applying public or quasi-public entity that will be responsible for receiving and administering the performance and oversight of the project and for supervising compliance with the terms, conditions and performance objectives of the award agreement.

Secretary—the Secretary of the Department of Economic Development, who is also the President of LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Economic Development Corporation, LR 29:1069 (July 2003).

§7905. General Principles

A. The following general principles will direct the administration of the Matching Grant Award Program.

1. Awards are not to be construed as an entitlement for companies locating or located in Louisiana.

2. An award must reasonably be expected to be a significant factor in improving or enhancing economic development, whether in a particular circumstance, or overall.

3. Awards must reasonably be demonstrated to result in the enhanced economic well-being of the state and local communities.

4. Awards that promote retention and strengthening of existing businesses will be evaluated using the same procedures and with the same priority as the recruitment of new businesses to the state.

5. The anticipated economic benefits to the state will be considered in making the award.

6. Appropriate cost sharing among project beneficiaries is a factor in the consideration of the award.

7. Whether or not an award will be made is entirely at the discretion of the LEDC board and shall depend upon the facts and circumstances of each case, funds available, funds already allocated, and other such factors as the board may, in its discretion deem to be pertinent. The grant or rejection of an application for an award shall not establish any precedent and shall not bind the board to any future course of action with respect to any application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:1069 (July 2003).

§7907. Eligibility

A. In order to be eligible for a matching grant award pursuant to this program, the applicant must demonstrate the following to the satisfaction of the board.

1. The award sought must be consistent with the Principles set forth above, the applicant must demonstrate a need for the matching grant funds, the ability to administer the funds in accordance with all applicable laws, rules and regulations governing the receipt of the grant, and that management are, or will be, in place to provide the services the grant is intended to provide. Where it is represented that certain contingent actions will be taken in order to comply with these conditions, then the LEDC may, in its discretion, withhold funding until there is substantial performance of the contingencies.

2. Preference will be given to applicants representing rural communities, or those communities designated as renewal communities.

3. The applicant must demonstrate that the matching funds and resulting grant from available matching funds will serve, individually, or collectively, the purposes of the program as defined in §7901 and the general principles defined in §7905 above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Economic Development Corporation, LR 29:1069 (July 2003).

§7909. Application for Matching Grant

A. The applicant must submit an application to the DED or LEDC on a form provided which shall contain the following information:

1. a copy of the application or a valid description of the grant for which matching funds are sought;

2. a letter of commitment or such other information as will provide the board necessary information to assure that if the funds are made available and other necessary and appropriate steps are taken, the grant will be matched by the granting authority;

3. an explanation for the reason that LEDC provide the match to the grant;

4. a plan which shall include a budget as to how and when the match and the grant are to be spent;

5. résumés or other appropriate information on the grant administrator or grant monitor;

6. a statement that reflects that the value of the matching funds to the project and to the economic development of the state sought through the project will equal or exceed the benefits given to the recipient of the grant funds;

7. how matching the grant funds will serve the best interests of the businesses defined in the purposes set forth in §7901 above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Economic Development Corporation, LR 29:1069 (July 2003).

§7911. Matching Grant Funding

A. The award shall not be drawn down before the grant is funded by the federal or other entity that is providing the funds for which the matching grant is being awarded.

B. There shall be a contribution from the applicant that in the opinion of the board constitutes a commitment to the project for which the funds are being sought.

C. The Louisiana Economic Development Corporation may allocate funds to this program on a case by case basis

and may, by vote, determine a maximum amount to be allocated for the fiscal year.

D. This program shall be evaluated by the board in one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Economic Development Corporation, LR 29:1070 (July 2003).

Chapter 87. Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program

§8701. Purpose

A. The purpose for this Chapter 87 Program shall be the same as the purposes previously provided in §7701 of Chapter 77 of Subpart 11 of the Louisiana Seed Capital Program which shall also apply to this Chapter 87 program; and additionally this Chapter 87 program is to establish the Louisiana Seed Capital Program for the federal program entitled the "State Small Business Credit Initiative (SSBCI) Program" and to accommodate the requirements of this federal program. The Louisiana Economic Development Corporation (LEDC) will utilize SSBCI funds to make seed stage investments to create and grow start-up and early-stage businesses or for expansion of small businesses statewide, and to reach, identify and promote small business growth in low and moderate income communities, in minority communities, in other underserved communities, and to women- and minority-owned businesses. This LEDC program and the SSBCI funding will be marketed through outreach activities to inform venture capital funds, local foundations, small businesses, trade associations, incubator associations, and economic development organizations of the program, and to generate increased small business activity, awareness of and access to additional sources of capital to start and expand existing business opportunities, as well as participation in the program. The marketing will also be used to find investment and seed investment opportunities located in the underserved markets that will be targeted with SSBCI funds. The LEDC will also monitor these plans, including the progress of individual businesses receiving investments and the performance of participating venture capital organizations, to ensure successful outcomes in the form of program utilization and eventual securing of funds for these groups. This program is not intended for retail or professional services.

B. The LEDC wishes to maintain for this Chapter 87 program all of the purposes of §7701 and all of the other Sections and provisions of Chapter 77 of the Seed Capital Program shown above, except where there is a need for the policies of this program to be different from Chapter 77. For this reason, all of the Sections and provisions of Chapter 77 above shall also apply to this Chapter 87, except in those instances where a different or additional rule or policy is provided below in this Chapter 87.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:991 (April 2012).

§8703. Definitions

A. All of the same definitions provided in §7703 of Chapter 77 of the Seed Capital Program shall also apply to this Chapter 87 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:991 (April 2012).

§8705. Eligibility for Participation in This Program

A. Except as may be hereinafter provided, all of the eligibility provisions contained in §7705 of Chapter 77 of the Seed Capital Program shall also apply to this Chapter 87 Program, except that co-investments will not be utilized in this Chapter 87 program.

B. The applicant organization must have raised a minimum of $500,000 in investments or has a minimum of $2 1/2 million under management, and already on hand cash sums sufficient to cover the general and administrative costs for the first and early years of its operations for participation in the SSBCI Match Investment Program.

C. In addition to the eligibility provisions provided in the Section mentioned in the above Subsection A, LEDC investments made in venture capital funds and programs in connection with this Chapter 87 program shall meet the following criteria:

1. the venture capital fund(s) shall target an average business-size of 500 employees or less at the time the individual business investment is made;

2. such individual business investments shall not be extended to businesses with more than 750 employees;

3. any investment targeted in this program shall not exceed the amount of $ 5,000,000; and

4. any investment extended through this program shall not exceed the amount of $ 20,000,000.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:991 (April 2012).

§8707. Application Requirements for Qualification or Eligibility, and for Co-Investment

A. None of the provisions contained in §7707 of Chapter 77 of the Seed Capital Program shall apply to this Chapter 87 program. The co-investment provisions of Chapter 77 will not be utilized in this SSBCI Chapter 87 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:992 (April 2012).

§8709. Application Requirements for Qualification or Eligibility, and for Match Investment

A. Except as may be hereinafter provided, all of the provisions contained in §7709 of Chapter 77 of the seed capital program shall also apply to this Chapter 87 Program. Only match investments will be utilized in this SSBCI Chapter 87 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:992 (April 2012).

§8711. Application Process

A. Except as may be hereinafter provided, all of the provisions contained in §7711 of Chapter 77 of the Seed Capital Program shall also apply to this Chapter 87 program. Co-investments will not be utilized in this Chapter 87 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:992 (April 2012).

§8713. Investments

A. Except as may be hereinafter provided, all of the provisions contained in §7713 of Chapter 77 of the Seed Capital Program shall also apply to this Chapter 87 program, except that co-investments will not be utilized in this Chapter 87 program. Only match investments will be utilized in this SSBCI Chapter 87 Program.

B. A qualified or eligible fund may receive a match investment equal to $1 of LEDC funds for each $1.50 of funds privately raised by the applicant fund. The maximum total dollar amount of an LEDC match investment in an eligible fund shall not exceed $2,000,000.

C. LEDC investments made in a qualified Seed Capital Fund will not exceed an initial investment of $450,000, with up to four expected follow-up investments, but shall not exceed a total investment of $2,000,000 per fund.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and the Louisiana Economic Development Corporation, LR 38:992 (April 2012), amended LR 40:275 (February 2014).

§8715. Reporting

A. Except as may be hereinafter provided, all of the provisions contained in §7715 of Chapter 77 of the Seed Capital Program shall also apply to this Chapter 87 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:992 (April 2012).

Chapter 89. SSBCI Seed Capital ARPA 2021

§8901. Purpose

A. The purpose of this program is to utilize federal SSBCI funds to strengthen state programs that support private financing to small businesses as a response to the economic effects of the COVID-19 pandemic, in accordance with prevailing federal guidelines issued by the U.S. Treasury.

B. The Louisiana Economic Development Corporation (LEDC) will utilize SSBCI funds from ARPA 2021 to make seed stage investments to create and grow start-up and early-stage businesses or for expansion of small businesses statewide, and to reach, identify and promote small business growth in low and moderate income communities, in minority communities, in other underserved communities, and to women- and minority-owned businesses.

C. This LEDC program and the SSBCI funding will be marketed through outreach activities to inform venture capital funds, local foundations, small businesses, trade associations, incubator associations, and economic development organizations of the program, and to generate increased small business activity, awareness of and access to additional sources of capital to start and expand existing business opportunities, as well as participation in the program. The marketing will also be used to find investment and seed investment opportunities located in the underserved markets that will be targeted with SSBCI funds.

D. The LEDC will also monitor these plans, including the progress of individual businesses receiving investments and the performance of participating venture capital organizations, to ensure successful outcomes in the form of program utilization and eventual securing of funds for these groups.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1486 (June 2022).

§8903. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in prevailing federal guidelines issued by the U.S. Treasury, unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Board—Board of Directors of Louisiana Economic Development Corporation.

Business Partner of an SSBCI Insider—a person who owns 10 percent or more of any class of equity interest, on a fully diluted basis, in any private entity in which an SSBCI insider also owns 10 percent or more of any class of equity interest on a fully diluted basis.

Direct Investment—an investment in which financial investors take part with each other and act jointly by uniting or combining together to invest directly into individual companies or businesses

Community Development Financial Institution (CDFI)—has the meaning given that term under Section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994.

Community Development Financial Institution (CDFI) Investment Area—areas defined by CDFI which are generally low-income, high poverty geographies that receive neither sufficient access to capital nor support for the needs of small businesses, including minority-owned businesses.

Corporation—Louisiana Economic Development Corporation.

Family Member of an SSBCI Insider—such person's spouse, domestic partner, parents, grandparents, children, grandchildren, brothers, sisters, stepbrothers, and stepsisters; and any other relatives who live in the same household as the SSBCI insider.

Independent Non-Profit Entity—any non-profit entity that is not state-sponsored.

Owned and Controlled—if privately owned, 51 percent is owned by such individuals; if publicly owned, 51 percent of the stock is owned by such individuals; and in the case of a mutual institution, a majority of the board of directors, account holders, and the community which the institution services is predominantly comprised of such individuals.

Personal Financial Interest—any financial interest derived from ownership or right to ownership of, or lending to or other investment in, a private, for-profit entity that may receive an SSBCI investment (including any financial interest derived from ownership or right to ownership of, or investment in, a venture capital fund).

Seed Capital—

a. a dollar amount of not less than $25,000 of capital provided to an inventor or entrepreneur to prove a concept and to qualify for start-up capital, which may involve product development and market research, as well as building a management team and developing a business plan, if the initial steps are successful;

b. research and development financing to finance product development for start-up as well as early-stage companies (which may include a company that may already be in business for three years or less);

c. start-up or early-stage financing to companies completing product development and initial marketing which companies may be in the process of organizing or they may already be in business for three years or less, but have sold their product commercially; or

d. first-stage or early-stage financing to companies that have expended their initial capital and require funds to initiate full-scale manufacturing and sales, for costs of inventory, equipment, expansion, modernization, and for working capital purposes.

Socially and Economically Disadvantaged Individuals (SEDI)-Owned Business—

a. business enterprises that certify that they are owned and controlled by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their:

i. membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society;

ii. gender;

iii. veteran status;

iv. limited English proficiency;

v. physical handicap;

vi. long-term residence in an environment isolated from the mainstream of American society;

vii. membership of a federally or state-recognized Indian Tribe;

viii. long-term residence in a rural community;

ix. residence in a U.S. territory;

x. residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); or

xi. membership of another *underserved community* as defined in U.S. Executive Order 13985;

b. business enterprises that certify that they are owned and controlled by individuals whose residences are in CDFI Investment Areas, as defined in prevailing federal guidelines issued by the U.S. Treasury;

c. business enterprises that certify that they will operate a location in a CDFI Investment Area, as defined in prevailing federal guidelines issued by the U.S. Treasury; or

d. business enterprises that are located in CDFI Investment Areas, as defined in prevailing federal guidelines issued by the U.S. Treasury.

SSBCI Insider—a person who, in the 12- month period preceding the date on which SSBCI support for a specific investment in a venture capital fund or company is closed or completed:

a. was:

i. a manager or staff member, whether by employment or contract, in the state's SSBCI venture capital program;

ii. a government official with direct oversight or jurisdiction over an SSBCI venture capital program, or such an official's immediate supervisor;

iii. a member of the board of directors or similar body for a state-sponsored non-profit entity who, through such membership, has authority to vote on decisions to invest SSBCI funds or has authority over the employment or compensation of staff managing processes related to the investment of SSBCI funds;

iv. a member of the board of directors or similar body for an independent non- profit or for-profit entity that operates an SSBCI venture capital program; or

v. an employee, volunteer, or contractor on an investment committee or similar body that recommends or approves SSBCI investments under the SSBCI venture capital program; or

b. exercised a controlling influence on state decisions regarding:

i. the allocation of SSBCI funds among approved state venture capital programs;

ii. eligibility criteria for the state's SSBCI venture capital programs; or

iii. the processes for approving investments of SSBCI funds under the state's SSBCI venture capital program.

State-Sponsored Non-Profit Entity—a non-profit entity created by state legislation to pursue policies of the state government and over which state officials exercise a controlling influence through budgetary decisions or other legislative action or direction.

Venture Capital Fund—also referred to herein as a *seed capital fund*, or the *applicant organization;* a fund that makes and manages a portfolio of investments in individual companies or businesses.

Very Small Business (VSB)—a business which employees 10 or less employees, including independent contractors and sole proprietors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1486 (June 2022).

§8905. Eligibility for Seed Capital Fund to Participate in This Program

A. LEDC will undertake a formal evaluation process and consider various factors when determining which applicants will be selected to participate in this program. Among the factors which may be taken into account in the evaluation process are the following.

B. The applicant organization may be organized either for profit or non-profit purposes.

C. The applicant organization must demonstrate that its management personnel have at least three years of experience in managing investments in individual, privately-held companies, utilizing funds provided by others to make such investments.

D. The applicant organization is encouraged to have a Louisiana-based production office.

E. The applicant organization must have raised a minimum of $500,000 in investments or has a minimum of $2 1/2 million under management, and have on hand cash sums sufficient to cover the general and administrative costs for the first and early years of its operations for participation in the SSBCI Venture Capital Program.

F. In addition, LEDC investments made in venture capital funds shall meet the following criteria:

1. the venture capital fund(s) shall target an average business-size of 500 employees or less at the time the individual business investment is made;

2. It is strongly encouraged for each venture capital fund(s) to make every effort to target and invest in SEDI-owned businesses and VSB;

3. such individual business investments shall not be extended to businesses with more than 750 employees;

4. any investment targeted in this program shall not exceed the amount of $ 5,000,000; and

5. any investment transaction or investment round extended through this program shall not exceed the amount of $ 20,000,000.

G. The board has the sole discretion to determine whether or not each particular applicant is eligible and meet the criteria for program participation, and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1487 (June 2022).

§8907. Application Requirements for Investment

A. Prior to a seed capital fund submitting a request to the Louisiana Economic Development Corporation (LEDC) for consideration for an investment, a prospective seed capital fund shall first submit an application for the applicant fund

to be considered qualified or eligible to participate in this program. The application for the fund's qualification or eligibility to the LEDC shall consist of detailed information covering three main categories, including:

1. the experience and qualifications of the Fund's existing or proposed management team;

2. if applicable, the fund's fund raising abilities, activities and success; and

3. the business plan for the seed capital fund. The applicant can use its own format, as long as the basic information is provided. Moreover, the applicant should provide additional information which is viewed as relevant. The LEDC or its staff may request additional information beyond that which is specified below and what is provided by the applicant.

B. After its receipt and review by the LEDC staff, the completed application for an investment will then be submitted to the next scheduled LEDC board meeting for its consideration of final approval.

C. Experience and Qualifications. In or with its application, the applicant shall:

1. submit resumes, references, and private placement memoranda for all principal members of the management team that are identified. Louisiana Economic Development Corporation reserves the right to perform criminal background checks on any or all of the members of the management team;

2. describe the responsibilities of each of the principal members of the management team that have been identified. If any are not full-time management team members, describe their other activities;

3. describe the responsibilities of any principal management position for which a person has not been identified;

4. specify any directors that have been identified, and submit their resumes;

5. specify any other key people that have been identified, including any advisors, consultants, attorneys and accountants, and submit resumes and/or descriptions of firms. Louisiana Economic Development Corporation reserves the right to perform criminal background checks on any or all of these key people.

D. Fund Raising. In or with its application, the applicant shall:

1. specify the amount of LEDC commitment sought;

2. provide evidence of the amount of private capital that has been raised, and specify the ratio of actual cash to commitments raised;

3. describe the basic legal structure of the seed capital fund;

4. if applicable, describe and discuss the applicant's fund raising strategy for the raising of any additional private capital;

5. if applicable, specify the principal investor sources that the applicant fund will be targeting;

6. if applicable, provide the applicant's basic proposal to its prospective private investors, and the expectations and objectives the applicant is specifying. This shall include, for example, representations regarding reasonably expected returns on private equity investment, indirect financial benefits, if any, and social purposes, if applicable;

7. list all specific investors and financing commitments already obtained, including documentation for each. This shall include evidence of the initial $500,000 minimum capital required for the applicant fund's eligibility to participate in this program;

8. specify whether applicant anticipates receiving all of the LEDC equity investment at closing, or whether applicant plans a phase in. If a phase-in is planned, specify the proposed schedule. It is permissible to have different scenarios based on the actual amount of equity capital raised.

E. Business Plan. In its application, and with regard to the subjects mentioned below, the applicant shall:

1. targeted market:

a. describe and discuss the types of businesses that the seed capital fund will finance. Discuss the extent to which the seed capital fund intends to specialize in certain industries, or whether a more broad based approach is planned;

b. describe the size range of businesses that it is contemplated the seed capital fund will finance, with a general indication of where most of the focus is expected;

c. discuss the life cycle stage or stages of the companies which the seed capital fund will likely finance, with an indication of where most of the focus is contemplated;

d. discuss the geographic area in which the seed capital fund plans to focus. Specify the city or parish in which the seed capital fund's principal office is planned to be located, and discuss intentions, if any, to establish any additional offices;

e. provide any market analysis that the applicant deems relevant;

2. financing. Describe and discuss the financing instruments intended to be used by the seed capital fund. Discuss the anticipated mix of the various types of financing instruments. Discuss the anticipated size range of investments to be made, and information regarding pricing, term, and other conditions. Discuss risk/return expectations on projects. Discuss methods of exit from investments;

3. marketing strategy. Describe the seed capital fund's plans and approach to marketing its services, including the identification of potential applicants for financing assistance;

4. screening process and evaluation criteria. Discuss the anticipated number of business firms that will be reviewed for possible investment, in comparison with the number that will actually be invested in. Discuss the approach to screening business firms, and the evaluation criteria for deciding whether, and under what terms and conditions, to provide investment;

5. fee income. Discuss the potential for fee income, and any plans that the seed capital fund might have for generating fee income;

6. management assistance. Discuss the plans of the seed capital fund to provide management and/or technical assistance to companies for which the seed capital fund provides investment. Discuss the seed capital fund's plans for monitoring its investments, and enforcing provisions of investment agreements. Discuss how the seed capital fund plans to handle problem investments. Discuss the seed capital fund's plans to provide management assistance to companies that the seed capital fund is not investing in;

7. complementary relationships. Discuss the nature of complementary relationships that are anticipated with banks, commercial lenders, investment bankers, venture capitalist and other institutions. This discussion can be based on general types of institutions and/or can identify specific institutions where complementary relationships have already been discussed;

8. management structure. Describe the proposed or existing management structure for the seed capital fund, and anticipated compensation for principal members of the management team;

9. idle funds. Describe plans for the management of the idle funds of the seed capital fund;

10. tax and accounting issues. Discuss relevant tax and accounting issues for the seed capital fund;

11. financial projections:

a. provide a detailed operating budget for the first or for the next three years of the seed capital fund's operation. The first year shall be month by month. The second and third years may be presented on an annual basis;

b. provide performance projections, year by year, for a five year period. These projections should show cash flow, income and expense (including taxes), and balance sheet data. For these performance projections, operating expenses can be consolidated into one line item;

c. specify the assumptions used for the performance projections. It is permissible to submit several sets of performance projections based on differing assumptions. However, if applicant submits several sets of projections based on differing assumptions, specify which set of assumptions are applicant's primary assumptions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1488 (June 2022).

§8909. Application Process

A. All applications under this program must be submitted to the Louisiana Economic Development Corporation, as directed by staff.

1. Application Requirements for Qualification or Eligibility to Participate in this Program and Investment Application.

a. The application for qualification or eligibility of the seed capital fund to participate in this program and its application for the investment project may be, but are not required to be, submitted simultaneously for consideration.

b. Once a seed capital fund is deemed qualified or eligible to participate in this program, the fund is not required to resubmit a qualification or an eligibility application for subsequent investment requests.

2. All applications received by LEDC will be reviewed by the LEDC staff; and the staff may request additional information beyond that which has been provided. After their receipt and review by the LEDC staff, the completed applications shall then be submitted to the next scheduled LEDC board meeting for its consideration of final approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1489 (June 2022).

§8911. Investments

A. A qualified or eligible fund may receive an investment equal to $1 of LEDC funds for each $1 of funds privately raised by the applicant fund. The maximum total dollar amount of an LEDC investment in an eligible fund shall not exceed $5,000,000. Subject to availability of SSBCI funding and associated allocation to this program.

B. The method of LEDC's investment into the qualified or eligible fund or investment will be equal to the method of investment of the other investors into that fund, i.e., committed capital for committed capital, cash investment for cash investment, or cash and commitment for cash and commitment.

C. A qualified or eligible fund may charge for services as allowed by the U.S. Treasury.

D. Investment funds may be used for out of state investments, after approval by LED.

E. Investment funds must make investment in accordance to U.S. Treasury guidelines.

F. Prior to the disbursement of funds, the secretary-treasurer of LEDC and any one of the following: either the chairman of the board, the president, or the president's designee, shall execute all necessary legal instruments after certification that all appropriate legal requirements have been met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1489 (June 2022).

§8913. Reporting

A. Upon closing of each investment, each venture capital fund that is the recipient of LEDC funds shall provide to LEDC the following information:

1. name of company, census tract, NAICS code, amount of investment, total amount of round of funding, and date of investment;

2. the number of jobs with corresponding salaries, new and retained;

3. narrative of business, use of funds, board presentation;

4. prior and post investment of private capital; and

5. assurances and certifications in accordance to U.S. Treasury guidelines.

B. Each year, on the anniversary date of the initial disbursement of funds, or on such date as may be authorized by LEDC, each venture capital fund that is the recipient of LEDC funds shall provide to LEDC the following information:

1. a list of all investors in the fund, including the amounts of each investment and the nature of each investment;

2. a statement of the financial condition of the fund including, but not limited to, a balance sheet, a profit and loss statement, and a statement showing changes in the fund's financial condition;

3. a current reconciliation of the fund's net worth; and

4. an annual audited financial statement prepared by a certified public accountant (prepared within 120 days of the end of the fund's fiscal year).

C. Investment funds must submit assurances and certifications in accordance to U.S. Treasury guidelines on each investment prior to closing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1490 (June 2022).

§8915. Conflict of Interest

A. No member of the corporation, employee thereof, or employee of the Department of Economic Development, or members of their immediate families shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1490 (June 2022).

Subpart 13. Collateral Support Program

Chapter 91. SSBCI Collateral Support Program ARPA 2021

§9101. Purpose

A. The Louisiana Economic Development Corporation (LEDC or Corporation) wishes to stimulate the flow of private capital, including short, medium and long-term loans, lines of credit loans, and other related financial assistance for the sound financing of the development, expansion, and retention of small business concerns in Louisiana, as a means of helping them grow and expand their businesses and of providing higher levels of employment, income growth, and expanded economic opportunities, especially to small businesses owned by socially and economically disadvantaged individuals (SEDI).

B. Through The American Rescue Plan Act of 2021, which reauthorized the State Small Business Credit Initiative (SSBCI), the U.S. Congress has appropriated funds to be allocated and disbursed to the states that have created programs to increase the amount of capital made available by private lenders to small businesses, and the State of Louisiana has been approved to receive and disburse SSBCI funds within the SSBCI Program. The Louisiana Department of Economic Development LED), which will be working with and through the LEDC, has been designated to provide services for the SSBCI, including the collateral support program (CSP), which by a master lender CSP participation agreement previously entered into, and a LEDC CSP loan and deposit agreement, each between LEDC and the lender, will provide for the LEDC to place a cash deposit with the lender to make additional capital available for a portion of the loan, and to serve as cash collateral for a portion of the loan. The Louisiana Economic Development Corporation (LEDC), working with LED, will utilize SSBCI funds to increase access to credit and capital funding to further assist

small businesses statewide, to expand loan capabilities to a broader range of businesses statewide, to direct a greater concentration on those small businesses, and to reach, identify and promote small business growth in low and moderate income communities, in minority communities, in other underserved communities, and to small businesses owned by socially and economically disadvantaged individuals across our state.

C. The CSP establishes pledged cash collateral accounts with participating lenders to enhance loan collateral for qualified small business borrowers exhibiting a shortfall in collateral and who would not otherwise be able to obtain financing on acceptable terms and conditions. Collateral deposits are established on an individual loan basis and are available to cover loan losses in the event of default by the borrower. Upon loan maturity and repayment, deposits are returned to LEDC for recycling to other qualified small business borrowers.

D. Interested small businesses will be referred to participating lenders for loan and collateral support deposit qualification purposes. Participating lenders will apply to LEDC for collateral support deposits on behalf of their qualified small business borrowers. Participating lenders are responsible for their own credit underwriting decisions and originating the loans. LEDC's responsibilities are: to ensure compliance with CSP requirements; to establish and manage collateral support accounts; to promote and market the CSP through outreach activities to inform lenders, small businesses and trade associations of the Program; to generate increased small business activity, awareness and access to additional sources of capital to start and expand existing business opportunities, as well as participation in the Program; and to report to the U.S. Treasury.

E. In considering approval or acceptance of the loans presented to LEDC through lenders having previously agreed to participate in the Collateral Support Program (CSP), the corporation will consider sound business purpose loans and lines of credit, so long as SSBCI resources permit. The board of directors of the corporation recognizes that collateralizing loans and lines of credit carries certain risks and is willing to undertake reasonable exposure.

F. LEDC will monitor the program, including the repayment progress of borrowers, as well as the servicing performance of participating lenders, in order to ensure successful outcomes in the form of program utilization and eventual securing of funds for these groups.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1460 (June 2022, LR 48:1905 (July 2022).

§9103. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in prevailing federal guidelines issued by the U.S. Treasury, unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Accepted Loan—a loan accepted by LEDC as eligible under the collateral support program (CSP).

Affiliate of the Borrower—any person or entity directly or indirectly controlled by the borrower or directly or indirectly controlling the borrower or under common control with the borrower. For purposes of this definition, a person controls another person if such person directly or indirectly, or acting through or in concert with one or more persons:

a. owns, controls, or has the power to vote twenty percent (20 percent) or more of any class of voting securities or interests of the other person;

b. controls in any manner the election or appointment of a majority of the directors or management of the other person; or

c. has the power to exercise a controlling influence over the management or policies of the other person.

Affiliate of the Lender—any person or entity directly or indirectly controlled by the lender or directly or indirectly controlling the lender or under common control with the lender. For purposes of this definition, a person controls another person if such person directly or indirectly, or acting through or in concert with one or more persons:

a. owns, controls, or has the power to vote 20 percent or more of any class of voting securities or interests of the other person;

b. controls in any manner the election or appointment of a majority of the directors or management of the person; or

c. has the power to exercise a controlling influence over the management or policies of the other person.

Board—the Board of Directors of Louisiana Economic Development Corporation (LEDC).

Borrower—an eligible borrower which is the recipient of a loan which is, has been, or will be registered by the lender under the CSP for collateral support through a collateral deposit account.

Business Day—any day other than a Saturday, Sunday, or any other day on which commercial banks in Louisiana are required or authorized to be closed.

CDFI-Community Development Financial Institution—has the meaning given that term under section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994.

CDFI Investment Area—as defined by Treasury for the SSBCI Program, are generally low-income, high-poverty geographies that receive neither sufficient access to capital nor support for the needs of small businesses, including minority-owned businesses.

Collateral Deposit Account—the interest bearing account or certificate of deposit opened with lender in the name of LEDC pledged as collateral for an accepted eligible loan.

Corporation—the Louisiana Economic Development Corporation (LEDC).

CSP—the Collateral Support Program.

CSP Application— program application for the collateral support request where the lender and borrower each sign and agree to abide by the assurances and certifications as required by the U.S. Treasury.

CSP Collateral Analysis Form—form completed by the lender evaluating the borrower's collateral value position.

CSP Claim Form—form completed by the lender to LEDC in the event of a default and subsequent loan loss.

Default—delinquent in making payment, when due, of any installment of principal or interest on any note, for a period of more than 90 days.

Eligible Borrower—a Louisiana business enterprise which meets all requirements of federal law and the CSP.

Eligible Loan—a loan (or a line of credit) that meets the criteria for an eligible loan under the CSP in effect at the time the loan is registered and for which each of the assurances, representations and warranties set forth in the CSP is true and correct.

Enrolled Loan—a loan (or a line of credit loan) which has been approved for acceptance in the CSP and in which the loan instruments have been fully executed.

Financial Institution—also referred to herein as a *Bank, Financial Lending Institution, Lending Institution, Commercial Lending Entity, or Lender*—includes any insured depository institution, insured credit union, or community development financial institution, as those terms are defined in section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702).

LED—the Louisiana Department of Economic Development (LED).

LEDC—the Louisiana Economic Development Corporation (LEDC).

LEDC CSP Loan and Deposit Agreement—the loan and deposit agreement ("deposit agreement"), to be executed by LEDC and the lender, for the deposit of cash collateral by LEDC with the lender, as security for a portion of the loan accepted under this program.

Lender—an insured depository institution, insured credit union, or community development financial institution, as those terms are each defined in section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702) which is experienced in the making of loans to businesses of the type provided for under the CSP, has an office and business operations in the State of Louisiana, and is regulated by the Office of the Comptroller of the Currency (including by merger, the Office of Thrift Supervision), the Federal Reserve Board, the Louisiana Department of Finance or similar regulatory agency. All participating lenders must execute a lender Participation Agreement with LEDC; and is the entity that will make or originate the accepted eligible loan with the eligible borrower under this program.

Lender Insider—an executive officer, director, or principal shareholder of the lender, or a member of the immediate family of an executive officer, director or principal shareholder of the lender, or a related interest of such executive officer, director, principal shareholder or member of the immediate family. For the purposes of this provision, the terms *executive officer, director, principal shareholder, immediate family,* and *related interest* shall have the respective meaning ascribed thereto in Federal Reserve Act Sections 22(g) and (h), Federal Reserve Board Regulation O and applicable Office of the Comptroller of the Currency or Office of Thrift Supervision.

Loan—any temporary advance or provision of money to an eligible borrower by the participating lender for a business purpose, usually for a limited term and requiring the payment of interest along with the repayment of the loaned funds under the CSP, that is evidenced by a promissory note that obligates the borrower to repay the advance. When used herein, the word loan includes a line of credit loan.

Loss—any principal amount due and not paid at a time the lender determines in a manner consistent with its normal method and timetable for making such determinations that a qualified loan is uncollectible and is to be charged off as a loss. The amount included in the loss shall not exceed the unpaid principal balance of the enrolled loan.

Master Lender CSP Participation Agreement—agreement between lender and LEDC accepting the lender as an approved CSP participating lender whereby the Participating lender agrees to program assurances and certifications as required by the U.S. Treasury.

Net Proceeds of the Loan—the gross loan amount less costs incurred in issuing the loan which are paid by the borrower out of the gross loan amount.

Participating Lender—a financial institution that has executed an agreement with the Louisiana Economic Development Corporation (LEDC) to participate in the program.

Program—the collateral support program.

Small and Emerging Business—a Louisiana business certified as a Small and Emerging Business (SEB) by the Louisiana Department of Economic Development's Small Business Services.

Small Business Concern—for purposes of size eligibility for this program will be limited to businesses with 100 employees or less.

Socially and Economically Disadvantaged Individual (SEDI) Owned Business—

a. business enterprises that certify that they are owned and controlled by individuals who have had their access to credit on reasonable terms diminished as compared to others in comparable economic circumstances, due to their:

i. membership of a group that has been subjected to racial or ethnic prejudice or cultural bias within American society;

ii. gender;

iii. veteran status;

iv. limited English proficiency;

v. physical handicap;

vi. long-term residence in an environment isolated from the mainstream of American society;

vii. membership of a federally or state-recognized Indian tribe;

viii. long-term residence in a rural community;

ix. residence in a U.S. Territory;

x. residence in a community undergoing economic transitions (including communities impacted by the shift towards a net-zero economy or deindustrialization); or

xi. membership of another *underserved community* as defined in Executive Order 13985;

b. business enterprises that certify that they are owned and controlled by individuals where residences are in CDFI investment Areas, as defined by Treasury for the SSBCI Program;

c. business enterprises that certify that they will operate a location in a CDFI Investment Area, as defined by treasury for the SSBCI Program; or

d. business enterprises that are located in CDFI investment areas, as defined by the U.S. Treasury for the SSBCI Program.

Very Small Business—a business with fewer than 10 employees; may include independent contractors and sole proprietors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1461 (June 2022, LR 48:1906 (July 2022).

§9105. Application Process

A. Any applicant/borrower(s) applying for either a loan or a line of credit will be required first to contact a CSP participating financial lending entity that is willing to entertain, originate, process and service such a loan or line of credit with the prospect of an LEDC cash collateral deposit, and the participating lender will then contact LEDC for qualification and shall submit a complete application to LEDC for its review, approval and acceptance. The financial lender shall also submit to LEDC the lender's assurances, certifications, representations and warranties, and shall be responsible for obtaining and submitting to LEDC assurances of eligibility, including certifications, representations and warranties from each borrower, all as required by the American Rescue Plan Act of 2021 and the SSBCI.

B. Information submitted to LEDC with the application representing the applicant/borrower's business plan, financial position, financial projections, personal financial statements and background checks will be kept confidential to the extent allowed under the Louisiana Public Records Law, R.S. 44:1 et seq. Confidential information in the files of LEDC and its accounts acquired in the course of its duty will be used solely by and for LEDC.

C. The following CSP submission and review policies shall be followed.

1. The participating lender is expected to use its best efforts to provide small Louisiana businesses, SEDI, with the maximum practicable opportunity to participate in the CSP.

2. The participating lender shall request approval from LEDC to become an approved participating lender under the CSP by executing a master lender participation agreement.

3. The borrower's completed Louisiana Economic Development Corporation CSP loan packet must be submitted by the lender to LEDC to include:

a. borrowers completed CSP application and related information and materials.

b. small and emerging businesses (SEBs) applying for assistance under the program will have to submit a copy of the certification from the Louisiana Department of Economic Development's Small Business Services, along with the request for financial assistance.

c. businesses applying for consideration as a SEDI owned business will have to self-certify under conditions in Subparagraph a-c as noted above in §9103 under SEDI-owned business definition.

d. the participating lender shall submit to LEDC its complete analysis and evaluation, proposed loan structure, and commitment letter to the borrower. LEDC staff may do its own review and evaluation of the application packet. The participating lender shall submit to LEDC the same pertinent data that it submitted to the lending institution's loan committee, whatever pertinent data the lending institution can legally supply.

e. lender's and borrower's signed assurances and certifications as required by the U.S. Treasury.

4. LEDC staff will review the application and analysis, and then approve and accept or disapprove and reject the application, if the dollar amount of the loan is within the staff's board approved authority, or make recommendations to the board committees and to the board for approval and acceptance or disapproval and rejection.

5. The LEDC's board of directors, or the board's designated committee, will review only the completed applications and related materials submitted by LEDC staff and may approve and accept or disapprove and reject applications for approval or acceptance or the designated board committee may simply make recommendations to the LEDC board for its decision.

6. The applicant/borrower(s) or their designated representative(s), and the loan officer or a representative of the lender shall be required to attend the LEDC's board of directors meeting wherein the application will be considered by the board; but shall not be required to attend meetings of the LEDC Staff or the designated board committee, unless the LEDC requests their presence.

7. LEDC's board of directors, or the board's designated committee that has considered the application has the final approval and acceptance or disapproval and rejection authority for such applications; except for those loans which shall be within the staff's authority to approve or disapprove, as established by the LEDC board, the staff shall have the final approval and acceptance or disapproval and rejection authority, unless the board overrules the staff's decision.

8. The lender will be notified within three to five business days by mail or e-mail of the outcome of the application process.

9. Funds approved for each CSP application will have a reservation period of 90 calendar days from the approval date.

a. If an approved CSP loan does not close within 90 calendar days from the final LEDC approval date, the reservation period will expire and funds will be released to the general program fund to be used for other CSP requests, unless an extension has been approved by LEDC board or its designated committee, or LEDC staff.

b. Once a reservation period has expired, a lender will need to re-apply and start the application and review process over with a new or up-dated application.

D. The following CSP Loan Closing Policies shall be followed by the lender.

1. An LEDC CSP Loan and Deposit Agreement, including LEDC's terms, and any stipulations or requirements, will be mailed or e-mailed by LEDC staff to the lender for review within five business days of approval and acceptance by either LEDC Staff, LEDC's board of directors, or the board's designated committee.

2. Lender shall notify LEDC of its loan closing five business days prior to the closing date.

3. LEDC will open and pledge an interest bearing collateral deposit account (a certificate of deposit) with the lender in LEDC's name, as follows:

a. the cash collateral deposit provided to the lender will be funded in two phases; 50 percent of the approved collateral deposit support will be funded at the time of the loan closing (within two business days) and the remaining approved collateral deposit support will be deposited within 30 calendar days after LEDC is notified by lender in writing of a default against the lender's loan and a request for the additional funding.

4. At the loan closing, lender will execute the LEDC CSP loan and deposit agreement, and will return the signed original to LEDC with the loan documents.

5. Immediately following the loan closing the lender will furnish to LEDC copies of all fully executed loan documents.

E. Loan Purpose Requirements and Prohibitions. In addition to the application process provisions provided above, and in connection with each and any loan (including a line of credit loan) that the participating lender requests be approved and accepted by LEDC to be enrolled under this program, the lender shall also be responsible for obtaining and providing LEDC with the lender's application assurances and certifications as well as application assurances and certifications from each applicant/borrower stating that the loan proceeds shall not be used for any impermissible purpose under the SSBCI program, and the loan proceeds shall be used for an *eligible business purpose*, as that term is defined in §9107.A hereinafter; and additionally:

1. The loan proceeds shall be used for a business purpose. A business purpose includes, but is not limited to, start-up costs, working capital, business procurement, franchise fees, equipment, inventory, as well as the purchase, construction, renovation or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of business purpose excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership, the purchase of securities; and lobbying activities as defined in section 3(7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended.

2. The loan proceeds will not be used to:

a. repay any delinquent federal or state income taxes unless the borrower has a payment plan in place with the relevant taxing authority; or

b. repay taxes held in trust or escrow, e.g. payroll or sales taxes; or

c. reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance; or

d. to purchase any portion of the ownership interest of any owner of the business.

3. The borrower is not:

a. an executive officer, director, or principal shareholder of the financial institution lender; or

b. a member of the immediate family of an executive officer, director, or principal shareholder of the financial institution lender; or

c. a related interest of any such executive officer, director, principal shareholder, or member of the immediate family.

NOTE: For the purposes of these three borrower restrictions, the terms *executive officer, director, principal shareholder, immediate family,* and *related interest* refer to the same relationship to a financial institution lender as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part.

4. The borrower is not:

a. a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil, investments in stock market, and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business; or

NOTE: Permissible borrowers include state-designated charitable, religious, or other non-profit or eleemosynary institutions, government-owned corporations, consumer and marketing cooperatives, and faith-based organizations provided the loan is for a business purpose as defined above.

b. a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company certified as a community development financial institution; or

c. a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants; or

d. a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); this category of business includes direct and indirect marijuana businesses, as defined in SBA Standard Operating Procedures 50 10 6; or

e. a business engaged in gambling enterprises, unless the business earns less than 33 percent of its annual net revenue from lottery sales.

5. No principal of the borrowing entity has been convicted of a sex offense against a minor (as such terms are defined in §111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification, *principal* is defined as if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20 percent or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity."

6. The corporation shall not knowingly approve any CSP request if the applicant/borrower has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit or any legal proceeding involving a criminal violation other than misdemeanor traffic violations. Nor should they approve any CSP request if the applicant/borrower or his/her/its principle management has a criminal record showing convictions for any criminal violations other than misdemeanor traffic violations in which the applicant/borrower or his/hers/its principle management has not been reinstated into society.

F. The financial institution lender must also provide to LEDC with the application, in connection with each loan to be enrolled under this Chapter 91 Program, and assurances affirming:

1. the loan has not been made in order to place under the protection of the approved state Capital Access Program (CAP) prior debt that is not covered under the approved state CAP and that is or was owed by the borrower to the financial institution lender or to an affiliate of the financial institution lender;

2. the loan is not a refinancing of a loan previously made to that borrower by the financial institution lender or an affiliate of the financial institution lender;

3. no principal of the financial institution lender has been convicted of a sex offense against a minor (as such terms are defined in §111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)). For the purposes of this certification, *principal* is defined as if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

4. The borrower business structure either is a sole proprietor qualified to do and doing business in Louisiana, or is a for-profit corporation, partnership, limited liability company, limited liability partnership, joint venture, cooperative, non-profit entity with an eligible business purpose as defined above or other entity which is registered and authorized to conduct business in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1462 (June 2022, LR 48:1908 (July 2022).

§9107. Eligibility/Ineligibility for Participation in this Program

A. This program is for loans (including lines of credit) for an eligible business purpose, having a principal amount of $1,000,000 or less, to eligible borrowers doing business in Louisiana having 100 employees or less at the time the loan is enrolled in this program. An *eligible business purpose* includes but is not limited to: start-up costs; working capital; business procurement; franchise fees; and acquisition of

equipment, inventory, or services used in the production, manufacturing, or delivery of a business's goods or services, or the purchase, construction, renovation, or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of *eligible business purpose* excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership for investment or leasing; the purchase of securities; and lobbying activities as defined in Section 3 (7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended.

B. The loan should be a new extension of credit to the borrower, and shall not be used to support existing extensions of credit, including but not limited to prior loans, lines of credit, or other borrowings that were previously made available as a part of a state small business credit enhancement program; no portion of the loan shall be used for any guaranteed or unguaranteed portion of a Small Business Administration (SBA) guaranteed loan or any other federal loan without prior written consent of the U.S. Treasury; and SBA guaranteed loans shall not be purchased through this program.

C. In connection with the business purpose for the requested loan the applicant/borrower(s) shall create or retain in this State at least one new permanent full-time job.

D. The following businesses shall be eligible for participation in this program, except for those ineligible businesses and purposes hereinafter shown:

1. small business concerns organized as a sole proprietorship qualified to do and doing business in Louisiana, or either a for profit corporation, partnership, limited liability company, limited liability partnership, joint venture, cooperative, non-profit entity with an eligible business purpose as defined above, or other entity which is registered and authorized to conduct business in the state of Louisiana that maintain an office in Louisiana;

2. small and emerging businesses (SEBs) certified by LED's small business services that maintain an office in Louisiana;

3. small businesses owned by socially and economically disadvantaged individuals (SEDI);

4. funding requests for any eligible business purpose may be considered, except for the following ineligible businesses or purposes:

a. restaurants (except for regional or national franchises), grills, cafes, fast food operations, motorized vehicle, trailer, curb-side, sidewalk or street vender food operations, and any other business or project established for the principal purpose of dispensing cooked food for consumption on or off the premises that have been in business less than two years;

b. bars, saloons, daiquiri shops, operations for the sale of alcoholic popsicles and other alcoholic food items, packaged liquor stores, including any other business or project established for the principal purpose of dispensing, packaging, or distributing alcoholic beverages;

c. any business or establishment which has gaming or gambling as its principal business;

d. any business or establishment which has consumer or commercial financing or lending activities as its business;

e. any business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants;

f. any business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as stock market investments, dealing in commodities futures, wildcatting for oil, and other speculative activities;

g. any business engaged in activities that are prohibited by applicable federal, state or local law in the jurisdiction where the business is located or conducted. (Included in these activities is the production, servicing, or distribution of products that are to be used in connection with any illegal activity, such as but not limited to selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution); this category of business includes direct and indirect marijuana businesses, as defined by SBA Standard Operating Procedures 50 10 6; or

h. funding for the acquisition, renovation, or alteration of a building or property for the principal purpose of real estate speculation, rental, or any other passive real estate investment purposes;

i. funding for the purpose of establishing a park, theme park, amusement park, or camping facility;

j. funding for the principal purpose of refinancing existing debt; a refinancing of a loan previously made to the borrower by the lender or an affiliate of the lender; or a loan made in order to place under the CSP prior debt that is not covered under the CSP and that is or was owed by the borrower to the lender or to an affiliate of the lender;

k. funding for the purpose of buying out any stockholder or equity holder by another stockholder or equity holder in a business; for the purpose of purchasing any portion of the ownership interest of any owner of a business; or for buying out any family member or reimbursing any family member;

l. funding for the purpose of reimbursing funds owed to any owner, including any equity injection or injection of capital for the business's continuance;

m. funding for paying any person to influence or attempt to influence any agency, elected official, officer or employee of a state or local government in connection with lobbying activities, the making, award, extension, continuation, renewal, amendment, or modification of any state or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. §1352;

n. funding for paying any costs incurred in connection with:

i. any defense against any claim or appeal of the United States Government, any agency or instrumentality thereof (including the U.S. Department of Treasury), against the state of Louisiana, or

ii. any prosecution of any claim or appeal against the United States Government, any agency or instrumentality thereof (including the U.S. Department of Treasury), which the state of Louisiana instituted or in which the state of Louisiana has joined as a claimant;

o. funding to be used to pay any delinquent federal or state income taxes, as well as any taxes held in trust or escrow, such as payroll taxes or sales taxes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1465 (June 2022, LR 48:1910 (July 2022).

§9109. General Lender Provisions

A. The Louisiana Economic Development Corporation will be guided by the following general principles in approving or accepting loans or lines of credit under this program.

1. The corporation shall confirm that the financial institution lender has sufficient commercial lending experience and financial and managerial capacity to participate in this program. The corporation may utilize, among other resources, the lender's most recent call report or audited financial statement showing the percentage of commercial loans in its portfolio.

2. The corporation shall not knowingly approve any loan (or line of credit loan) if the applicant/borrower has presently pending or outstanding any claim or liability relating to failure or inability to pay promissory notes or other evidence of indebtedness, state or federal taxes, or a bankruptcy proceeding; nor shall the corporation approve any loan if the applicant/borrower has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit or any legal proceeding involving a criminal violation other than misdemeanor traffic violations. Further, the corporation shall not approve any loan if the applicant/borrower or his/her/its principle management has a criminal record showing convictions for any criminal violations other than misdemeanor traffic violations in which the applicant/borrower or his/her/its principle management has not been reinstated into society.

3. The terms or conditions imposed and made part of any loan (or line of credit) authorized by vote of the corporation's board, or its designated board committee, or LEDC staff shall not be amended or altered by any member of the board or employee of the LEDC or the Department of Economic Development except by subsequent vote of approval by the board, or designated board committee at the next meeting of the board or committee in open session with full explanation for such action.

4. Each participating lender shall be required to have a meaningful amount of its own capital resources at risk in each small business loan included in this program. Such lenders shall bear at least 20 percent or more of the loss from a small business loan default. The LEDC accepted loan (including line of credit loan) enrolled into this program shall not be sold, assigned to, or participated with other lenders (within lender's 20 percent risk interest, as described above), or otherwise transferred by lender without the prior written consent of the LEDC board.

5. The corporation shall not subordinate its position to other creditors.

B. Interest Rates. On all loans (or lines of credit), the interest rate is to be negotiated between the borrower and the lender, but shall not exceed the National Credit Union Administration's (NCUA) interest rate ceiling for loans made by federal credit unions as described in 12 U.S.C. § 1757(5)(A)(vi)(I) and set by the NCUA board. Further, on all loans and lines of credit, the interest rate shall not exceed the lesser interest rate of either: the National Credit Union Administration (NCUA) interest rate ceiling, that established by the Federal Credit Union Act (FCUA), that established by the Office of the Comptroller of the Currency (OCC), or applicable state legislation that may be enacted.

C. Borrower's Collateral

1. The value of the borrower's collateral shall be determined according to the lender's normal lending criteria and policy. The borrower is required to provide collateral to the loan as the intent of the CSP is to enhance loan collateral for qualified small business borrowers exhibiting a shortfall in collateral as required by the lender and who would not otherwise be able to obtain financing on acceptable terms and conditions.

2. The collateral position may be negotiated, but it shall be no less than a sole second position.

3. Borrower's Collateral Value Determination

a. Lender shall be required to verify the collateral value using commonly accepted collateral coverage standards.

b. The appraiser must be certified by a recognized organization in the area of the collateral.

c. The appraisal shall not be more than 90 days old, except in the instance of real estate which shall not be more than six months old.

4. Acceptable collateral from the borrower may include, but shall not be limited to, the following:

a. fixed assets—business real estate, buildings, fixtures;

b. business equipment, machinery, inventory;

c. accounts receivable with supporting aging schedule; but not to exceed 80 percent of receivable value.

5. Unacceptable borrower collateral may include, but shall not be limited to the following:

a. stock in applicant/borrower company and/or related companies;

b. personal items or borrower's primary residence;

c. intangibles; including but not limited to, digital currency such as cryptocurrency and non-fungible tokens (NFTs);

d. leasehold improvements.

6. Personal guarantees may be offered and accepted but will not count toward the value of the collateral; if to be used, signed and dated personal financial statements of the guarantors must also be submitted to LEDC.

D. Equity Requirements

1. Equity requirements shall be determined according to the lender's normal credit criteria and policy, but in no case shall the equity position be less than 10 percent.

2. Equity is defined to be:

a. cash;

b. paid-in capital;

c. paid-in surplus and retained earnings; or

d. partnership capital and retained earnings.

3. No research, development expense nor intangibles of any kind will be considered equity.

E. Limit on the Amount of LEDC's cash collateral deposit. For small business loans or lines of credit under this program, the corporation's loan cash collateral deposit shall be:

1. no greater than 50 percent, and not to exceed $250,000, of the total principal amount of the loan (or line of credit) for loans or lines of credit amounts equal to or less than $500,000;

2. no greater than 25 percent, and not to exceed $250,000, of the total principal amount of the loan (or line of credit) for loans or lines of credit amounts greater than $500,000, but not to exceed $1,000,000.

F. Terms

1. Maturity, collateral, and other loan terms shall be negotiated between the borrower and the lender, and the LEDC shall have an opportunity to approve the terms of such loans prior to the closing; but loan term periods with regard to various types of loans shall be limited as follows:

a. for equipment term loans, term periods may extend for up to and not exceed five years.

b. for Revolving Lines of Credit (RLOC), term periods may extend for up to and not exceed three years.

c. for Non-Revolving Lines of Credit (NRLOC), term periods may extend for up to and not exceed two years.

d. for business real estate term loans, term periods may extend for up to and shall not exceed five years.

G. LEDC Program Fees

1. LEDC may charge a $100 application fee, unless the board of directors, the board's designated committee, or LEDC staff waives the application fee.

2. Depending on the applicant/borrower's equity position in the business, LEDC will charge a collateral deposit program fee of up to 2 percent on the collateralized loan deposit amount, unless the board, the board's designated committee, or LEDC staff waives the collateral deposit program fee.

H. Use of Loan Funds (including Line of Credit Funds)

1. Loan funds shall be used for business purposes, including but not limited to the purchase of fixed assets, including buildings that will be owner occupied to the extent of at least 51 percent by the borrower for its own business purposes.

2. Loan funds may be used for the purchase of business equipment, machinery, or inventory.

3. Loan funds may be used for a line of credit for business accounts receivable or inventory.

4. Debt restructure may be considered by LEDC, but will not be considered when the debt:

a. exceeds 25 percent of the total loan;

b. pays off a creditor or creditors who are inadequately secured;

c. provides funds to pay off a debt to principals of the borrower business; and/or

d. provides funds to pay off family members.

5. Loan funds may not be used to buy out stockholders or equity holders of any kind, by any other stockholder or equity holder.

6. Loan funds may not be used to purchase any speculative investment or for real estate development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1466 (June 2022), LR 48:1911 (July 2022).

§9111. General Agreement Provisions

A. Master Lender CSP Participation Agreement

1. The lender shall conduct all of the customer/borrower interaction, and shall be responsible for the proper administration and monitoring of the loan (or line of credit), including monthly invoicing, collections, and loan workouts, and the proper liquidation of the collateral in the event of a default.

2. The lender shall agree to underwrite each loan (including line of credit) using its normal underwriting

criteria and will perform a credit analysis of the borrower for each loan, assuming full responsibility for credit and ongoing security of the loan and will follow prudent industry loan underwriting processes and will determine that the collateral support to be provided under the CSP will be instrumental in order for the lender to make the loan. Lender will also determine that the amount required for deposit to the LEDC's collateral deposit account does not exceed the amount necessary to provide sufficient collateral for the loan.

3. The lender shall be responsible for the preparation of all loan (including line of credit) documents to be used in connection with such loans made and accepted under this program.

4. The lender shall rely solely on the funds deposited with the lender by LEDC in the cash collateral deposit account (the principal amount, but not the accrued interest on the deposit which is not included as a portion of the security for the unpaid principal due on the loan) provided as security for the repayment of the agreed percentage of the principal amount of the unpaid principal balance due on the loan made and accepted under this program. The lender shall indemnify and hold harmless the LEDC, the state of Louisiana, including any commissioners, directors, participants, officers, agents, employees and contractors (collectively, the "Indemnified Person(s)") who shall not be liable to the lender for any reason arising out of or related in any way to the loan, the loan documents or the participation agreement, against all claims, costs and expenses. This Section shall survive the payment in full of the loan, any return or draw upon the cash collateral deposit for the loan, or any termination of the applicable deposit agreement or other loan documents.

5. The LEDC accepted loan (including line of credit) enrolled into this program shall not be sold, assigned, participated with other lenders (within lender's 20 percent risk interest, as provided above in §9109.A.4), or otherwise transferred by lender without the prior written consent of the LEDC board.

6. Loan delinquency will be defined according to the lender's normal lending policy. Notification of delinquency will be made to the corporation in writing by lender submitting a completed, signed and dated CSP banker loan status monthly report within five business days after the end of the month/reporting period as stated in the Master lender CSP participation agreement.

7. If default by borrower continues for more than 90 calendar days in making payment, when due, of any installment of principal or interest on any note, the lender may demand in writing to LEDC to fully fund the deposit account by submitting a completed, signed and dated claim form notifying LEDC of the default reasonably describing the circumstances of the default. LEDC will deposit the remaining cash deposit of 50 percent of the current principal balance within 30 days after LEDC receives the written demand. Once the full collateral support deposit is requested for the deposit account, the lender may begin their standard collection and liquidation process.

8. All collection efforts, legal and liquidation processes shall be handled by the lender. In all collection efforts, legal and liquidation processes through foreclosure or otherwise, the lender will sell the collateral, handle the legal proceedings and documents, and absorb all expenses associated with these activities. All servicing actions, including collections, shall be the responsibility of the holder who shall follow accepted standards of loan servicing and collection employed by prudent lenders generally.

9. Thereafter, should any funds remain in the deposit account after the withdrawal and application of such funds, the remaining amount on deposit shall be returned by lender to LEDC, plus all interest accrued on the deposit account, which accrued interest on LEDC's deposit account is not included as a portion of the collateral securing the loan.

B. LEDC CSP Loan and Deposit Agreement

1. The LEDC CSP loan and deposit agreement shall provide for the pledge by LEDC of cash collateral to the lender under this collateral support program (CSP). On or about the closing of the loan documents, LEDC shall deposit with the lender cash collateral in an amount not to exceed 50 percent of the principal amount of the loan, and not to exceed a maximum of $250,000, on loan amounts no greater than $500,000; or LEDC shall deposit with the lender cash collateral in an amount not to exceed 25 percent of the principal amount of the loan, and not to exceed a maximum of $250,000, on loan amounts greater than $500,000 but less than $1,000,000, accepted by LEDC under this program to be placed in an interest bearing account or certificate of deposit (the LEDC CSP loan and deposit account or deposit account) in the name of LEDC to be maintained with the lender until the loan has been repaid, or the deposited funds are applied to the payment of not to exceed 25 percent or 50 percent (depending on the principal amount of the loan) or $250,000 of the outstanding unpaid principal balance (but not the interest, lender fees or costs of collection) due on the loan; and thereafter, should any funds remain in the deposit account after the application of such funds, the remaining amount shall be returned by lender to LEDC, plus all interest accrued on the deposit account which is not included as a portion of the collateral securing the loan.

2. The corporation's cash collateral deposit shall be no greater than 25 percent or 50 percent (depending on the principal amount of the loan) for qualifying loan amounts not to exceed $250,000 of the total original principal amount of the loan (or line of credit). LEDC's cash collateral deposit shall be pledged by LEDC to provide security for the payment of the agreed percentage of the principal amount of the loan or line of credit, not including interest due thereon. The lender shall retain an at risk position on each loan (or line of credit) of at least 20 percent of the original principal amount of the loan, or as payments are made and funds from other efforts are applied to the loan, and the principal amount is thereby reduced, lender's risk shall be likewise

reduced to 20 percent of the unpaid principal balance remaining due, plus all interest accrued on the loan.

3. There may be from time to time, in the event LEDC elects to do so, a reduction of the LEDC's cash collateral deposit in proportion to the principal reduction of the amortized portion of the loan or line of credit; or if no principal reduction has occurred in any annual period of the loan (or line of credit), a reduction in the cash collateral deposit amount may be made in proportion to the remaining life of the loan or line of credit.

4. The LEDC's cash collateral deposit will secure and cover up to no more than 25 percent or 50 percent (depending on the principal amount of the Loan) on the unpaid balance on the principal amount owed only. The remaining 50 percent of the approved collateral support deposit will be deposited with the lender within 30 days of the time that LEDC receives the completed, signed and dated claim form as mentioned in §9111.A.7 above.

5. The corporation's cash collateral deposit account shall not be cross-pledged nor cross-collateralized with any other loan.

C. Reporting

1. Reporting will be required by all lenders under this program as required by the U.S. Treasury under the SSBCI program and as required by the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1467 (June 2022), LR 48:1912 (July 2022).

§9113. Confidentiality

A. Confidential information in the files of the corporation and its accounts acquired in the course of its duty is to be used solely for the corporation. The corporation is not obliged to give out any credit rating or confidential information regarding the applicant/borrower. (See Louisiana Attorney General's Opinion #82-860.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1468 (June 2022), LR 48:1914 (July 2022).

§9115. Conflict of Interest

A. No member of the corporation, employee thereof, or employee of the Department of Economic Development, or members of their immediate families shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the corporation for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against the corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1469 (June 2022), LR 48:1914 (July 2022).

§9117. Guidelines

A. The Louisiana Economic Development Corporation (LEDC), or the Louisiana Department of Economic Development, also known as Louisiana Economic Development (LED), as the administrators of this program, may make, create, or issue from time to time Guidelines interpreting, construing, explaining and/or supplementing these Rules; and may revise, supplement, or otherwise change or modify the guidelines at any time with or without notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108 and 51:2312

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, LR 48:1469 (June 2022), LR 48:1914 (July 2022)..

Title 19
CORPORATIONS AND BUSINESS
Part VIII. Small Entrepreneurship (Hudson Initiative) Certification Program
Subpart 1. Certification Program

Chapter 1. General Provisions

§101. Statement of Policy

A. In accordance with the provisions of R.S. 39:2006 and R.S. 51:931, the Department of Economic Development's Small Entrepreneurship (Hudson Initiative) Certification Program [SE (HI) Certification Program] through its designee or its staff administers these regulations which are intended to prescribe the procedures for qualifying and certifying a business as a "small entrepreneurship" to facilitate access to state procurement and public contracts and encourage business opportunities for small entrepreneurships.

B. Certifications that a business is a "small entrepreneurship" are not to be construed as an entitlement for any business locating or located in Louisiana either to such a certification, to any public contract, or to any proceeds from any state contract; and the Secretary of the Department of Economic Development, the director, or his or their designee, the SE (HI) Certification Program, or its designee or staff, shall have the discretion to determine whether or not each particular applicant or application meets the criteria for the certification as provided herein; and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination of such certification status.

C. In no way whatsoever shall the sex, race, birth, age, physical condition, religious beliefs, political ideas, or affiliations of a business' owners or officers be considered as a factor in determining whether a business receives certified status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2006 and R.S. 51:931.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:229 (February 2006).

§103. Purpose

A. The purposes and intent of this program are to provide the maximum opportunity for small entrepreneurships to become so certified as small entrepreneurships and thereby become eligible to participate in a competitive modern business economy, to facilitate their access to state procurement and public contracts, and encourage business opportunities for such small entrepreneurships. These purposes shall be accomplished by providing a program for the certification of a business as a "small entrepreneurship."

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2006 and R.S. 51:931.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:230 (February 2006).

§105. Definitions

A. When used in these regulations, the following terms shall have meanings as set forth below.

Applicant—an individual, firm or business that seeks to be certified as a small entrepreneurship.

Certification—the determination and acknowledgement that a business qualifies for designation as a small entrepreneurship.

Designee—the person designated by the secretary or by the director to act in his absence.

Director—the Director of the Small Entrepreneurship (Hudson Initiative) Certification Program designated by the Secretary of the Department of Economic Development.

Firm—a business that seeks to be or that has been certified as a small entrepreneurship.

Full Time—employed and working in the firm at least 35 hours per week on a regular basis.

Program—the Small Entrepreneurship (Hudson Initiative) Certification Program [SE (HI) Certification Program] in the Department of Economic Development.

Secretary—the Secretary of the Department of Economic Development.

Small Entrepreneurship (SE)—any business or firm organized for profit, including any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity which meets all of the criteria for certification by the Secretary of the Department of Economic Development as specified in R.S. 39:2006(A), as it may be amended from time to time. A nonprofit organization is not a small entrepreneurship for purposes of this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2006 and R.S. 51:931.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:230 (February 2006).

Chapter 3. Certification

§301. Eligibility Requirements for Certification

A. A small entrepreneurship (SE) is a firm independently owned and operated; not dominant in its field of operations, which shall be determined by consideration of the business' number of employees, volume of business, financial resources, competitive status, and ownership or control of materials, processes, patents, license agreements, facilities, and sales territory; is owned by and has officers who are citizens or legal residents of the United States, all of whom are domiciled in Louisiana, and who maintain the principal business office in Louisiana; and together with its affiliate entities, has fewer than 50 full-time employees with average annual gross receipts not exceeding $10,000,000 per year for construction operations and $5,000,000 per year for non-construction operations, for each of the previous three tax years. Eligibility requirements include meeting all of the criteria specified in R.S. 39:2006(A), as it may be amended from time to time. In order to participate and continue to participate in the program, an individual or firm must meet and continue to meet all such eligibility requirements or criteria.

B. Small Entrepreneurship (SE). For purposes of the program, an individual or legal entity that meets all of the criteria specified in R.S. 39:2006(A), as it may be amended from time to time, may be certified as a small entrepreneurship.

C. Requirement for Certification. Applicants for certification as a small entrepreneurship must submit to the SE (HI) Certification Program office of the Department of Economic Development a written application, on a form prepared by the SE (HI) Certification Program, or its designee or staff, providing financial and other background information, and certifying as to the applicant's eligibility requirements or criteria as specified in R.S. 39:2006(A), as it may be amended from time to time, including an affidavit signed, dated, and notarized attesting to the correctness of the information provided and to the authenticity of all supporting documentation or information which may be provided by the applicant pursuant to the request of the SE (HI) Certification Program, or its designee or staff; and if requested by the SE (HI) Certification Program, or its designee or staff, the applicant must also furnish, within a reasonable time as established by the SE (HI) Certification Program, or its designee or staff, applicant's most recent financial statements, federal and state tax returns, a copy of its most recently filed Louisiana Department of Labor (LDOL) ES-4 form, and any other appropriate supporting documentation or information as may be requested or required by the SE (HI) Certification Program, or its designee or staff.

D. Any records, writings, accounts, reports, documents, financial information, tax information, proprietary business information and other materials that are in their nature considered to be confidential and are designated as confidential or proprietary by those firms, businesses or individuals submitting, delivering or transmitting the same, pursuant to request, for the purposes of allowing the SE (HI) Certification Program, or its designee or staff, to investigate and/or examine these firms, businesses or individuals pertaining to its statutory duties, shall be considered and maintained as confidential and proprietary information within the meaning of R.S. 44:4(3). The SE (HI) Certification Program, its designee and staff, shall use all reasonable precautions to maintain such confidentiality and they are not to disclose such confidential information to any third party except as permitted or as required by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2006 and R.S. 51:931.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:230 (February 2006), amended LR 38:2740 (November 2012).

§303. Responsibility for Applying

A. It is the responsibility of any individual or business wishing to participate in the program to complete the appropriate written application and required certification process. Failure to provide complete, true, accurate or timely any requested additional supporting information may result in the rejection of the application.

B. Application and certification materials will be distributed by the SE (HI) Certification Program, or its designee or staff, upon written or verbal request. Written or verbal requests for application and certification materials should be directed to the SE (HI) Certification Program office in the Department of Economic Development in Baton Rouge.

C. Certification as a small entrepreneur (SE) also does not constitute compliance with any other laws or regulations and does not relieve any firm of its obligations under other laws or regulations. Certification as a small entrepreneurship also does not constitute any determination by the SE (HI) Certification Program, its designee or staff, that the firm is a responsible one according to R.S. 39:1505 or R.S. 39:1601, or that the firm is capable of performing any work of any kind.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2006 and R.S. 51:931.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:231 (February 2006).

§305. Certification Application Procedure

A. The applicant must submit an application to the SE (HI) Certification Program office in the Department of Economic Development in Baton Rouge, containing a signed, dated, and notarized affidavit attesting to the correctness of the information provided in the application and to the authenticity of all supporting documentation or information which may be provided by the applicant pursuant to the request of the SE (HI) Certification Program, or its designee or staff, and attesting to the applicant's eligibility requirements or criteria as specified in R.S. 39:2006(A), as it may be amended from time to time.

B. The SE (HI) Certification Program, through its designee or staff, shall review the application, and if it is

found to be incomplete or if further information is needed (such as, for example, applicant's most recent financial statements, federal and state tax returns, a copy of its most recently filed Louisiana Department of Labor (LDOL) ES-4 form, and any other appropriate supporting documentation or information as may be requested or required by the SE (HI) Certification Program, or its designee or staff), the SE (HI) Certification Program designee or staff will contact the applicant business and request such additional information. If the applicant does not respond with the further requested information within 15 days, the application will be denied. If the application is found to be sufficient, or if the application along with the additional information provided is found to be sufficient, a determination shall be made by the SE (HI) Certification Program, or its designee or staff, as to whether or not the applicant business will be certified as a small entrepreneur.

C. The director, or his designee, shall notify the applicant in writing of the decision whether or not to grant such SE certification; and if such SE certification is to be granted, a written certification as to such status in appropriate form, as determined by the director or his designee, shall be provided to the applicant business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2006 and R.S. 51:931.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:231 (February 2006).

§307. Duration of Certification; Graduation through Growth,

A. The amount of time that a firm may be granted certification by the SE (HI) Certification Program is unlimited until the firm graduates by growing to exceed the eligibility requirements for certification, or is terminated from the program by LED.

B. Retention of the firm in the program depends upon the passing of time, the firm's growth and progress toward successfulness and the attainment of its business goals, its compliance with all reporting requirements, willingness and ability to cooperate with and follow through on recommendations of the SE (HI) Certification Program designee or staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2006 and R.S. 51:931.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:231 (February 2006), amended LR 38:2740 (November 2012).

§309. Verification of Eligibility; Annual Reports; Evaluation

A. Verification of Eligibility. The SE (HI) Certification Program, or its designee or staff, may take any reasonable means at any time to confirm an applicant's eligibility or a certified firm's continued eligibility, such as by investigation, letter, telephone, contact with other governmental and/or state agencies, including but not limited to the Department of Labor, and any other persons, companies, suppliers, or by either announced or unannounced site inspections.

B. Annual Reports. By letter, or on forms which may be identified or prescribed by the SE (HI) Certification Program, or its designee or staff, certified businesses shall continue to report annually and at times specified by the SE (HI) Certification Program, or its designee or staff, their financial position and attainment of the business' performance goals. Failure to report or failure to report on a timely basis, as required annually or as otherwise requested by the SE (HI) Certification Program, or its designee or staff, shall result in the business' termination of its SE certification and from the program.

C. Notification of Changes. To continue participation, a certified firm shall provide the SE (HI) Certification Program, or its designee or staff, with a written statement of any changes in its address, telephone number, ownership, control, financial status, major changes in the nature of the operation, or any other appropriate supporting documentation or information as may be requested or required by the SE (HI) Certification Program, or its designee or staff, including, if requested by the SE (HI) Certification Program, or its designee or staff, updated financial information, federal and state tax returns, copies of DOL ES-4 forms, and including an affidavit (signed, dated, and notarized) attesting to the authenticity of all of the aforesaid supporting documentation and attesting to the applicant's eligibility or the certified business' continued eligibility requirements or criteria as specified in R.S. 39:2006(A), as it may be amended from time to time. Failure to do so may be grounds for the firm's termination of eligibility and certification, and termination from the program.

D. Evaluation. The SE (HI) Certification Program, or its designee or staff, as necessary, shall evaluate and continue to evaluate the information provided and/or otherwise obtained to determine a business' progress, growth and dominance in its field of operations, number of employees, volume of business, areas of improvement, the firm's financial resources, competitive status, ownerships, status of owners and officers, and generally the firm's continued eligibility for its continued SE certification and continued participation in the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2006 and R.S. 51:931.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:231 (February 2006), amended LR 38:2741 (November 2012).

§311. Deception Relating to Certification of a Small Entrepreneurship

A. Any individual or business found guilty of deception relating to certification of a Small Entrepreneurship (SE) will be denied its SE certification, or have its already approved certification revoked and shall be discharged from the program, and will not be eligible to reapply under the business name involved in the deception or under any business with which such individual(s) or business may be associated or affiliated.

B. In the event an applicant or certified business knowingly files a false statement in its application or in any other filing, the applicant or the certified business and/or its representatives may be guilty of the offense of filing false public records, and may be subject to the penalty provided for in R.S. 14:133. In the event an applicant or a certified business and/or its representative is reasonably believed to have filed a false statement in its application or any other filing, the SE (HI) Certification Program, or its designee or staff, is authorized to notify the district attorney of East Baton Rouge Parish, Louisiana, and may also notify any other appropriate law enforcement personnel, so that an appropriate investigation may be undertaken with respect to the false statement and the application of any state funds to the application for other filing.

C. The SE (HI) Certification Program or its designee or staff shall have and retain the right, and shall have the authority, but not the obligation, to require and/or conduct full investigations, at any time and from time to time, including but not limited to full financial and performance audits of any applicant, certified business or SE firm, including all relevant accounts, records and documents of the individual or business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2006 and R.S. 51:931.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:232 (February 2006).

§313. Departmental Listing; Availability

A. The department shall maintain a listing of all certified small entrepreneurships which shall be updated monthly. The listing shall be available on the Internet and shall also be available in written form upon written request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2006 and R.S. 51:931.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:232 (February 2006).

§315. Departmental Reporting

A. The department shall report annually to the commissioner of administration with respect to the graduation rates for businesses which grew to exceed the eligibility requirements for certification in the most recently concluded fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2006 and R.S. 51:931.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:232 (February 2006).

Title 19
CORPORATIONS AND BUSINESS
Part VIII. Small Entrepreneurship (Hudson Initiative) Certification Program
Subpart 2. Procurement

Chapter 11. General Provisions

§1101. Purpose

A. The state of Louisiana's Small Entrepreneurship (Hudson Initiative) Program, hereinafter called SE (HI), was created to provide additional opportunities for Louisiana-based small entrepreneurships, hereinafter called SE's, to participate in contracting and procurement with the state of Louisiana. By formalizing existing practices and implementing new procedures, the SE (HI) will allow the state of Louisiana to target more effectively certified SE participation and create opportunities relating to the state's contracting and procurement. Shown below are the key features of the SE (HI).

B.1. The SE (HI) is a goal-oriented program, encouraging state agencies to contract with certified SE's as well as encouraging contractors who receive contracts from the state to use good faith efforts to utilize certified SE's. The SE (HI) is a race and gender-neutral program. SE (HI) participation is restricted to Louisiana-based certified SE's in accordance with rules promulgated by the Louisiana Department of Economic Development.

a. The state will establish annual goals for certified SE participation in state procurement and public contracts. Contract goals will vary based on contracting and subcontracting opportunities, availability of certified SE's, and price competitiveness.

b. To participate, SE's must be certified by the Louisiana Department of Economic Development. Certification is based on a firm's gross revenues, number of employees, and other criteria as specified by Act 440 of the 2005 Legislative Session.

c. The SE (HI) has guidelines for counting certified SE participation.

d. The SE (HI) incorporates several procedures to help implement the initiative.

2. These procedures are designed to maximize the initiative's success, including:

a. assisting certified SE's and contractors by providing information, practical advice, and support;

b. strongly encouraging joint ventures and/or alliances among certified SE's and larger firms;

c. assisting in developing a mentoring program for certified SE's with appropriate private sector businesses and individuals;

d. requiring bidders and proposers to provide written assurance of certified SE participation in their bids and proposals;

e. providing workshops and training sessions to acquaint certified SE's with state procurement and public contract proposal and bidding practices, including problems frequently encountered by certified SE's during the proposal/bid process and generally while doing work for the state;

f. maintaining an updated certified SE directory and source list(s) on the Internet to help identify qualified and available certified SE's; and

g. making the state's central procurement website (LaPac) available for agencies to indicate that a particular procurement has been designated for SE participation.

3. For designated contracts, the SE (HI) requires good-faith efforts by contractors to use certified SE's in contract performance. The SE (HI) has procedures in place to determine whether contractors are meeting this requirement of good-faith efforts. Contractors are required to document their efforts to obtain certified SE participation. A contract award may be denied or an existing contract may be terminated if the state becomes aware that the contractor in fact failed to use good-faith efforts. The state recognizes that availability, subcontracting capabilities, and price competitiveness are relevant factors in determining whether a contractor has used good-faith efforts to subcontract with certified SE's.

4. The state may impose sanctions on a contractor who fails to make good-faith efforts or on an SE that was found to be guilty of deception relating to certification. Sanctions may include a suspension from doing business with the state for up to three years. Procedures are in place to provide an opportunity for due process for any contractor or SE prior to the suspension.

5. The SE (HI) is race and gender neutral. The SE (HI) shall not be used to discriminate against any person, company, or group of persons or companies. It is the policy of the state to prohibit discrimination based on race, gender, religion, national or ethnic origin, age, disability, or sexual orientation. Contractors and/or certified SE's that violate the state's non-discrimination mandate in the operations of the SE (HI) will be subject to sanctions.

C. The state utilizes various purchasing methods to acquire goods and services, including requests for proposals (RFP), invitations to bid (ITB), and purchase orders. The state determines which purchasing method to use based upon

statutes and regulations applicable to the nature of the procurement.

1. The state will monitor the progress of the SE (HI), reviewing participation reports, community input, recommendations, and operational efficiency. Annual reports will be made to the House Committee on Appropriations and the Senate Committee on Finance addressing the number of contracts awarded to certified SE's, the number of contracts that included a good faith SE subcontracting plan, and the dollar value of SE contracts.

2. Nothing in the SE (HI) should be construed to give a proposer/bidder a property interest in an ITB, RFP, or contract prior to the state's award of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1044 (June 2006).

§1103. Mission and Policy Statement

A. Act 440 of the 2005 legislative session enacted R.S. 39:2001 et seq., and R.S. 51:931, creating the Small Entrepreneurship (Hudson Initiative) Program for the state of Louisiana. As enacted, the SE (HI) is a goal-oriented program, encouraging the state to contract with certified SE's as well as encouraging the state's contractors to use good-faith efforts to utilize Louisiana-based certified SE's as subcontractors.

B. It is the mission of the state to promote trade and economic development. It is the state's policy to promote economic development and business opportunities for all sectors of our community. Certified SE's need to be given an opportunity to participate in a fair portion of the total purchases and contracts for property, services, and construction for the state. Therefore, the state establishes the SE (HI) to ensure opportunities for certified SE's to participate in the state's contracting and procurement opportunities and ultimately to enhance the stability of Louisiana's economy.

C. As a matter of policy, the state recognizes and requires competitive pricing, qualifications, and demonstrated competencies in the selection of contractors. The SE (HI) is designed to create opportunities, while requiring competitiveness and quality of work. As such, it allows the state to target more effectively and strive to increase certified SE participation in the state's contracting and procurement activities. In its operations, the SE (HI) will assist the state in its mission of promoting economic development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1045 (June 2006).

§1105. Scope

A. These procedures apply to all state departments, prime contractors, subcontractors, and certified SE's involved with SE (HI) contracts. These procedures do not apply to agency expenditures for amortization of debt, debt service, depreciation, employee benefits, per diem, relocation expenses, salaries, postage, and transfer of charges. These procedures do not apply to contracts for sole source items, contracts with other governmental entities, and those contracts that are prohibited by federal law from inclusion in these procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1045 (June 2006).

Chapter 13. Procedures

§1301. Operational Procedures

A. The procedures herein are established to govern the program components of the SE (HI) including, without limitation, program compliance, specific implementation measures, purchasing methods, reporting of certified SE participation, imposition of sanctions, and dispute resolution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1045 (June 2006).

§1303. Objectives

A. The overall objectives for this program are:

1. to implement the policy of the SE (HI) to promote economic development and business opportunities for all sectors throughout the state;

2. to ensure opportunities for certified SE's to participate in all phases of the state's contracting activities;

3. to stimulate participation of Louisiana-based certified SE's with the state and create opportunities through the state's contracting and procurement;

4. to encourage certified SE's to seek work from prime contractors when qualified and work is available;

5. to formalize existing procurement and contracting practices and implement new procurement and contracting procedures to assist more effectively certified SE participation;

6. to carry out the mandate of the state as enacted by Act 440 of the 2005 Legislative Session;

7. to ensure nondiscriminatory practices in the use of certified SE's for state contracts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1045 (June 2006).

§1307. Reserved.

§1309. Overall Annual SE (HI) Goals and Agency Participation Levels

A. Overall Annual Goals. Overall annual goals for SE (HI) participation for the state will be set each year by the commissioner of administration as a percentage increase based on prior year activity.

B. Individual Agency Participation Levels. The commissioner of administration will provide guidance on how agencies will determine participation levels. The criteria used to set individual agency participation levels may include but not be limited to certified SE capacity, certified SE availability, nature of the contract, past experiences with SE (HI) participation, recognized industry composition, and subcontracting opportunities. No quotas or set-asides will be used in implementing the SE (HI).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1045 (June 2006).

§1311. Purchasing Methods

A. The state utilizes various purchasing methods to acquire goods, services, major repairs and public works including requests for proposals (RFP), invitations to bid (ITB), and purchase orders. The procurement method to be used is based upon statutes and regulations applicable to the nature of the procurement.

B. Nothing in the SE (HI) should be construed to give a proposer/bidder a property interest in an ITB, RFP, or contract prior to the state's award of the contract.

C. Agencies will participate in the program by using any or all of the following procurement methods:

1. purchasing directly from a certified SE within the agency's discretionary procurement authority for goods, operating services, major repairs, construction and personal, professional and consulting services;

2. issuing an order to a certified SE (prime contractor or distributor) on statewide contract;

3. using an ITB process to award a contract either to a certified SE or to a bidder who can demonstrate a good faith plan to use certified SE's as subcontractors in performing the prime contract. To be responsive to the ITB the bidder must be either a certified SE or be able to demonstrate its good faith subcontracting plan:

a. good faith subcontracting plans in an invitation to bid:

i. the ITB will require the bidder to certify that the bidder is either a certified SE or that the bidder has a good faith subcontracting plan;

ii. the following describes the process a non-certified SE bidder shall follow in order to comply with the requirement for a good faith subcontracting plan:

(a). the bidder has or will use the SE (HI) certification list maintained by the Department of Economic Development to provide notice of the potential subcontracting opportunities to three or more certified SE's capable of performing the subcontract. Notification must be provided to the certified SE's no less than five working days prior to the date of bid opening;

(b). written notification is the preferred method to inform certified SE's. This written notification may be transmitted via fax and/or e-mail;

(c). written notification must include:

(i). the scope of work;

(ii). information regarding the location to review plans and specifications (if applicable);

(iii). information about required qualifications and specifications;

(iv) bonding and insurance information and/or requirements (if applicable);

(v). contact person;

(d). the successful bidder must be able to provide written justification of the selection process if a certified SE was not selected;

b. post audits may be conducted. In the event that there is a question as to whether the low bidder's good faith subcontracting plan was complied with, the prime contractor must be able to provide supporting documentation to demonstrate its good faith subcontracting plan was actually followed (i.e., phone logs, fax transmittals, letters, e-mails). If it is at any time determined that the contractor did not in fact perform its good faith subcontracting plan, the contract award or the existing contract may be terminated;

4. using a request for proposals (RFP) process to award a contract to a certified SE or to a proposer demonstrating a good faith effort to use certified SE's as subcontractors:

a. if an agency decides to issue an RFP to satisfy its SE (HI) goal, the procurement process will include either of the following:

i. require that each proposer either be a certified SE, or have made a good faith subcontracting effort in order to be responsive; or

ii. reserve 10 percent of the total RFP evaluation points for otherwise responsive proposers who are themselves a certified SE or who have made a good faith effort to use one or more SE's in subcontracting;

b. in evaluating proposals, the evaluation committee will follow the scoring criteria set forth in the RFP. In its evaluation process, the evaluation committee will not give additional points for SE participation beyond the designated amount set forth in the RFP;

c. good faith subcontracting in a request for proposal:

i. proposers alleging to have made a good faith subcontracting effort may be required in the RFP to verify their good faith subcontracting plan. A good faith effort can be evidenced by many things including those listed below:

(a). the proposer divided the contract work into reasonable lots or portions;

(b). the proposer used the SE (HI) certification list maintained by the Department of Economic Development to provide notice to three or more certified SE's of the potential subcontracting opportunities available in performance of the prime subcontract. Notification must have been provided to the certified SE's no less than five working days prior to the submission of the proposal;

(c). the notification from the proposer was in writing. This written notification may have been transmitted via fax and/or e-mail;

(d). the written notification gave the SE's complete information regarding the potential subcontract including such things as:

(i). the scope of work;

(ii). information regarding the location to review plans and specifications (if applicable);

(iii). information about required qualifications and specifications;

(iv). bonding and insurance information and/or requirements (if applicable);

(v). contact person;

ii. an RFP under Clause 4.a.i shall require all proposers who are not certified SE's to certify they made a good faith subcontracting effort in their proposals;

iii. an RFP under Clause 4.a.ii may require that proposals include a proposed schedule of certified SE participation that lists the names of potential certified SE subcontractors, a description of the work each would perform, and the dollar value of each proposed certified SE subcontract;

iv. an RFP under Clause 4.a.ii may require that proposers provide documentation to demonstrate their good faith subcontracting effort (i.e., phone logs, fax transmittal logs, letters, e-mails) in order to receive any reserved points;

v. proposers responding to RFP's under either Clauses 4.a.i or 4.a.ii may be asked to provide written justification of the subcontractor selection process if a certified SE is not used as a subcontractor;

d. if at any time the state determines that the contractor did not in fact make a good faith effort, the contract award or the existing contract may be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1046 (June 2006).

§1313. Procedures for Counting Small Entrepreneurship Participation

A. The state may count towards its SE (HI) goals the total dollar value of the contract awarded to the certified SE, if the certified SE is the prime contractor.

B. The state may count the total dollar value of a contract that is subcontracted to a certified SE.

C. The state may count towards its SE (HI) goals the total dollar value of a contract awarded to a joint venture, of which a certified SE is a part. The joint venture must provide an affidavit stating the amount of work actually performed by the certified SE.

D. The state may count toward its SE (HI) goals the total dollar value of the contract if the RFP contemplated awarding 10 percent of the total evaluation points to a proposer who demonstrated good faith efforts to use certified SE's as subcontractors, but was unsuccessful in doing so.

E. The state may count toward its SE (HI) goals the total dollar value of those contracts in which the contractor has provided a good faith subcontracting plan as part of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1047 (June 2006).

§1315. Certification Procedures

A. Certification procedures are in accordance with rules and regulations promulgated by the Louisiana Department of Economic Development. (LAC 19:VII.Subpart A)

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1047 (June 2006).

§1317. Implementation Procedures

A. In an effort to maximize the SE (HI)'s success, the following procedures will be implemented to maximize opportunities for certified SE participation.

1. The Division of Administration and state departments/agencies are responsible for the direct operation and direct implementation of the SE (HI).

2. Each department/agency of the state shall choose an initiative coordinator. The person chosen to be initiative coordinator shall be the person serving as the undersecretary of the department or the business manager for an agency. The initiative coordinator or his designee shall be responsible for acting as a business advisor to work directly with certified SE's and contractors to provide information, assistance, and support. The Division of Administration and state departments/agencies will undertake various tasks to make the program workable, including the following:

a. provide information to certified SE's on the state's organization and contractual needs and offer

instructions on procurement policy, procedures, and general RFP/ITB requirements;

b. provide workshops and training sessions at least twice each year for certified SE's on challenges frequently encountered by certified SE's during bid/proposal process and generally when doing work for the state;

c. enhance the existing state's procurement and financial database to identify certified SE's for historical and reporting purposes;

d. hold pre-bid and pre-proposal seminars to explain bid and proposal requirements, including an explanation of the forms that must be submitted with the response or proposal;

e. conduct outreach activities;

f. conduct internal information workshops to inform and acquaint the state employees responsible for state procurement and public contracts with the goals and objective of the state's SE (HI) initiative and to sensitize them to the problems of SE's;

g. inform certified SE's of ITB's and RFP's related to their capabilities by placing notices on the state's central procurement website, LaPac.

3. The state will encourage the formation of joint ventures/alliances among certified SE's and larger firms to provide opportunities for certified SE's to gain experience.

4. The state will encourage a mentoring program between large businesses and certified SE's to share information and experiences.

5. In RFP's requiring the compliance of a good faith subcontracting plan the state may require proposers to submit information on their business relationships and arrangements with certified SE subcontractors at the time of proposal review. Agreements between a proposer and a certified SE subcontractor in which the certified SE subcontractor promises not to provide subcontracting quotations to other proposers shall be prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1047 (June 2006).

§1319. Legal Remedies

A. Legal remedies will be in accordance with applicable procurement statutes including contract controversies, suspension and/or debarment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1047 (June 2006).

§1321. Reporting Procedures

A. The commissioner of administration is charged with the preparation of an annual report on the progress of the SE (HI) in the most recently ended fiscal year. The commissioner must present the report to the House Committee on Appropriations and the Senate Committee on Finance by the fifteenth day of January each year. Therefore, information for the commissioner's report regarding an agency's achievement of SE (HI) goals must be submitted to the commissioner no later than the first day of October each year. Each agency is required to report for the preceding fiscal year:

1. total number and dollar value of all contracts awarded in whole or in part to certified SE's;

2. number of contracts and the value of the contracts that included a good faith certified SE subcontracting plan;

3. number of actual agency staff that attended Division of Administration training for SE (HI) and the number of certified SE's that attended workshops and training sessions.

B. On-line forms for consistency in reporting will be provided on the commissioner's home page. A new "activity code" will be established in ISIS to track expenditures related to SE (HI). Agencies that do not use ISIS must develop their own mechanism to capture SE (HI) expenditures in order to provide reporting information to the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2001, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 32:1047 (June 2006).

Title 19
CORPORATIONS AND BUSINESS
Part IX. The Veteran Initiative
Subpart 1. Certification Program

Chapter 1. General Provisions

§101. Statement of Policy

A. The Department of Economic Development, through its designee or its staff, shall administer these regulations for the Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships Certification Program, which are intended to prescribe the procedures for qualifying and certifying a business as a "Veteran-owned small entrepreneurship" or "Service-connected disabled veteran-owned small entrepreneurship" to facilitate access to state procurement and public contracts and encourage business opportunities for small entrepreneurships.

B. Certifications that a business is a "veteran-owned small entrepreneurship" or "service-connected disabled veteran-owned small entrepreneurship" are not to be construed as an entitlement for any business locating or located in Louisiana either to such a certification, to any public contract, or to any proceeds from any state contract; and the Secretary of the Department of Economic Development, the Director, or his or their designee, the SE (VI) Certification Program, or its designee or staff, shall have the discretion to determine whether or not each particular applicant or application meets the criteria for the certification as provided herein; and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination of such certification status.

C. In no way whatsoever shall the sex, race, birth, age, religious beliefs, political ideas, or affiliations of a business's owners or officers be considered as a factor in determining whether a business receives certified status.

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 39:2006, R.S. 39:2171 et seq. and R.S. 51:931.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:471 (March 2010).

§103. Purpose

A. The purposes and intent of this program are to provide the maximum opportunity for Small Entrepreneurships to become so certified as "Veteran-owned small entrepreneurship" or "Service-connected disabled veteran-owned small entrepreneurship" and thereby become eligible to participate in a competitive modern business economy, to facilitate their access to state procurement and public contracts, and encourage business opportunities for such small entrepreneurships. These purposes shall be accomplished by providing a program for the certification of a business as "veteran-owned small entrepreneurship" or "service-connected disabled veteran-owned small entrepreneurship."

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 39:2006, R.S. 39:2171 et seq. and R.S. 51:931.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:471 (March 2010).

§105. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 39:2171 et seq., unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Applicant—an individual, firm or business that seeks to be certified as a "Veteran-owned small entrepreneurship" or "Service-connected disabled veteran-owned small entrepreneurship."

Certification—the determination and acknowledgement that a business qualifies for designation as a "veteran-owned small entrepreneurship" or "service-connected disabled veteran-owned small entrepreneurship."

Designee—the person designated by the secretary or by the director to act in his absence.

Director—the Director of the Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships Certification Program (the Veteran Initiative) designated by the Secretary of the Department of Economic Development.

Firm—a business that seeks to be or that has been certified as a "veteran-owned small entrepreneurship" or "service-connected disabled veteran-owned small entrepreneurship."

Full Time—employed and working in the firm at least 35 hours per week on a regular basis.

Program—the Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships Certification Program (the Veteran Initiative) in the Department of Economic Development.

Secretary—the Secretary of the Department of Economic Development.

Service-Connected Disabled Veteran-owned Small Entrepreneurship (SDVSE)—any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity which has not less than 51 percent ownership by a veteran of the United States Armed Forces with a state-connected disability, and meets the criteria for certification by the secretary of the department of Economic Development, pursuant to R.S. 39:2176. Service-connected disability will be ascertained with appropriate documents from the United States Department of Veterans Affairs or the Louisiana Department of Veterans Affairs.

Small Entrepreneurship (SE)—any business or firm organized for profit, including any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity which meets all of the requirements for certification by the Secretary of the Department of Economic Development as specified in R.S. 39:2006(A).

Veteran-Owned Small Entrepreneurship (VSE)—any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity which has not less than fifty-one percent ownership by a veteran of the United States Armed Forces, and meets the criteria for certification by the secretary of the Department of Economic Development, pursuant to R.S. 39:2176.

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 39:2006, R.S. 39:2171 et seq. and R.S. 51:931.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:471 (March 2010).

Chapter 3. Certification

§301. Eligibility Requirements for Certification

A. Eligibility. An applicant for certification must meet two sets of requirements:

1. an applicant must establish that it is a "service-connected veteran-owned small entrepreneurship" (SDVSE) or a "veteran-owned small entrepreneurship" (VSE), by providing appropriate documentation from the United States Department of Veterans Affairs or the Louisiana Department of Veterans Affairs; and

2. shall meet all the requirements for a small entrepreneurship (SE):

a. independently owned and operated;

b. not dominant in its field of operation, which shall be determined by consideration of the business's number of employees, volume of business, financial resources, competitive status, and ownership or control of materials, processes, patents, license agreements, facilities, and sales territory; and

c. together with any of its affiliates, has fewer than 50 full-time employees with average annual gross receipts not exceeding $10,000,000 per year for construction operations and $6,000,000 per year for non-construction operations, for each of the previous three tax years.

B. Any records, writings, accounts, reports, documents, financial information, tax information, proprietary business information and other materials that are in their nature considered to be confidential and are designated as confidential or proprietary by those firms, businesses or individuals submitting, delivering or transmitting the same, pursuant to request, for the purposes of allowing the SE (VI) Certification Program, or its designee or staff, to investigate and/or examine these firms, businesses or individuals pertaining to its statutory duties, may be considered and maintained as confidential and proprietary information, to the extent permitted under Louisiana Public Records.

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 39:2006, R.S. 39:2171 et seq., and R.S. 51:931.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:472 (March 2010), amended LR 38:2741 (November 2012), LR 44:1857 (October 2018).

§303. Responsibility for Applying

A. It is the responsibility of any individual or business wishing to participate in the program to complete the appropriate written application and required certification process. Failure to provide complete, true, accurate or timely any requested additional supporting information may result in the rejection of the application.

B. Application and certification materials will be distributed by the SE (VI) Certification Program, or its designee or staff, upon written or verbal request. Written or verbal requests for application and certification materials should be directed to the SE (VI) Certification Program office in the Department of Economic Development in Baton Rouge.

C. Certification as a (SDVSE) or (VSE) also does not constitute compliance with any other laws or regulations and does not relieve any firm of its obligations under other laws or regulations. Certification also does not constitute any determination by the SE (VI) Certification Program, its designee or staff, that the firm is a responsible one according to R.S. 39:1505 or R.S. 39:1601, or that the firm is capable of performing any work of any kind.

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 39:2006, R.S. 39:2171 et seq., and R.S. 51:931.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:472 (March 2010).

§305. Certification Application Procedure

A. Applicants for certification must submit to the SE (VI) Certification Program office:

1. a written application;

2. supporting financial and other background information;

3. a statement certifying that the applicant meets the eligibility requirements or criteria as specified in R.S. 39:2176(A);

4. an affidavit signed, dated, and notarized attesting to the correctness of the information provided and to the authenticity of all supporting documentation or information provided; and

5. if requested, the applicant must also furnish, within a reasonable time, applicant's most recent financial statements, Federal and State tax returns, a copy of its most recently filed Louisiana Department of Labor (LDOL) ES-4 form, and any other appropriate supporting documentation or information as may be requested or required by the SE (VI) Certification Program, or its designee or staff.

B. The SE (VI) Certification Program, through its designee or staff, shall review the application, and if it is found to be incomplete or if further information is needed (such as, for example, applicant's most recent financial statements, Federal and State tax returns, a copy of its most recently filed Louisiana Dept. of Labor (LDOL) ES-4 form, and any other appropriate supporting documentation or information as may be requested or required by the SE (VI) Certification Program, or its designee or staff), the SE (VI) Certification Program designee or staff will contact the applicant business and request such additional information. If the applicant does not respond with the further requested information within 15 days, the application will be denied. If the application is found to be sufficient, or if the application along with the additional information provided is found to be sufficient, a determination shall be made by the SE (VI) Certification Program, or its designee or staff, as to whether or not the applicant business will be certified.

C. The director, or his designee, shall notify the applicant in writing of the decision whether or not to grant such certification; and if certification is to be granted, a written certification as to such status in appropriate form, as determined by the director or his designee, shall be provided to the applicant business.

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 39:2006, R.S. 39:2171 et seq., and R.S. 51:931.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:472 (March 2010).

§307. Duration of Certification; Graduation through Growth

A. The amount of time that a firm may be granted certification by the SE (VI) Certification Program is unlimited until the firm graduates by growing to exceed the eligibility requirements for certification or is terminated from the program by LED.

B. Retention of the firm in the program depends upon the passing of time, the firm's growth and progress toward successfulness and the attainment of its business goals, its compliance with all reporting requirements, willingness and ability to cooperate with and follow through on recommendations of the SE (VI) Certification Program designee or staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 39:2006, R.S. 39:2171 et seq., and R.S. 51:931.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:473 (March 2010), amended LR 38:2741 (November 2012).

§309. Verification of Eligibility; Annual Reports; Evaluation

A. Verification of Eligibility. The SE (VI) Certification Program, or its designee or staff, may take any reasonable means at any time to confirm an applicant's eligibility or a certified firm's continued eligibility, such as by investigation, letter, telephone, contact with other governmental and/or state agencies, including but not limited to the Department of Labor, and any other persons, companies, suppliers, or by either announced or unannounced site inspections.

B. Annual Reports. By letter, or on forms which may be identified or prescribed by the SE (VI) Certification Program, or its designee or staff, certified businesses shall continue to report annually and at times specified by the SE (VI) Certification Program, or its designee or staff, their financial position and attainment of the business' performance goals. Failure to report or failure to report on a timely basis, as required annually or as otherwise requested by the SE (HV) Certification Program, or its designee or staff, shall result in the business' termination of its SE certification and from the program.

C. Notification of Changes. To continue participation, a certified firm shall provide the SE (VI) Certification Program, or its designee or staff, with a written statement of any changes in its address, telephone number, ownership, control, financial status, major changes in the nature of the operation, or any other appropriate supporting documentation or information as may be requested or required by the SE (VI) Certification Program, or its designee or staff, including, if requested by the SE (VI) Certification Program, or its designee or staff, updated financial information, federal and state tax returns, copies of DOL ES-4 Forms, and including an affidavit (signed, dated, and notarized) attesting to the authenticity of all of the aforesaid supporting documentation and attesting to the applicant's eligibility or the certified business' continued eligibility requirements or criteria as specified in R.S. 39:2006A, as it may be amended from time to time. Failure to do so may be grounds for the firm's termination of eligibility and certification, and termination from the program.

D. Evaluation. The SE (VI) Certification Program, or its designee or staff, as necessary, shall evaluate and continue to evaluate the information provided and/or otherwise obtained to determine a business' progress, growth and dominance in its field of operations, number of employees, volume of business, areas of improvement, the firm's financial resources, competitive status, ownerships, status of owners and officers, and generally the firm's continued eligibility for its continued certification and continued participation in the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 39:2006, R.S. 39:2171 et seq., and R.S. 51:931.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:473 (March 2010), amended LR 38:2741 (November 2012).

§311. Deception Relating to Certification

A. Any individual or business found guilty of deception relating to certification will be denied its certification, or have its already approved certification revoked and shall be discharged from the program, and will not be eligible to reapply under the business name involved in the deception or under any business with which such individual(s) or business may be associated or affiliated.

B. In the event an applicant or certified business knowingly files a false statement in its application or in any other filing, the applicant or the certified business and/or its representatives may be guilty of the offense of filing false public records, and may be subject to the penalty provided for in R.S. 14:133. In the event an applicant or a certified business and/or its representative is reasonably believed to have filed a false statement in its application or any other filing, the SE (VI) Certification Program, or its designee or staff, is authorized to notify the District Attorney of East Baton Rouge Parish, Louisiana, and may also notify any other appropriate law enforcement personnel, so that an appropriate investigation may be undertaken with respect to the false statement and the application of any state funds to the application for other filing.

C. The SE (VI) Certification Program or its designee or staff shall have and retain the right, and shall have the authority, but not the obligation, to require and/or conduct full investigations, at any time and from time to time, including but not limited to full financial and performance audits of any applicant, certified business or firm, including all relevant accounts, records and documents of the individual or business.

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 39:2006, R.S. 39:2171 et seq., and R.S. 51:931.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:473 (March 2010).

§313. Departmental Listing; Availability

A. The department shall maintain a listing of all certified "veteran-owned small entrepreneurships" or "service-connected disabled veteran-owned small entrepreneurships" which shall be updated monthly. The listing shall be available on the Internet and shall also be available in written form upon written request.

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 39:2006, R.S. 39:2171 et seq., and R.S. 51:931.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:474 (March 2010).

§315. Departmental Reporting

A. The department shall report annually to the Commissioner of Administration with respect to the graduation rates for businesses which grew to exceed the eligibility requirements for certification in the most recently concluded fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 39:2006, R.S. 39:2171 et seq., and R.S. 51:931.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 36:474 (March 2010).

Title 19
CORPORATIONS AND BUSINESS
Part IX. The Veteran Initiative
Subpart 2. Procurement

Chapter 11. General Provisions

§1101. Purpose

A. The Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships (The Veteran Initiative), hereinafter called LAVET, was created to provide additional opportunities for Louisiana-based veteran and service-connected disabled veteran-owned small entrepreneurships, hereinafter called VSE's and DVSE's, respectively, to participate in contracting and procurement with the State of Louisiana. By formalizing existing practices and implementing new procedures, the LAVET will allow the State of Louisiana to target more effectively certified VSE and DVSE participation and create opportunities relating to the state's contracting and procurement. Shown below are the key features of the LAVET.

B.1. The LAVET is a goal-oriented program, encouraging state agencies to contract with certified VSE's and DVSE's as well as encouraging contractors who receive contracts from the state to use good faith efforts to utilize certified VSE's. The LAVET is a race and gender-neutral program. LAVET participation is restricted to Louisiana-based VSE's and DVSE's certified in accordance with rules promulgated by the Department of Economic Development.

a. The state will establish annual goals for both certified VSE and DVSE participation in state procurement and public contracts. Contract goals will vary based on contracting and subcontracting opportunities, availability of certified VSE's and DVSE's, and price competitiveness.

b. To participate, VSE's and DVSE's must be certified by the Department of Economic Development. Certification is based on a firm's gross revenues, number of employees, and other criteria as specified by Act 167 of the 2009 Regular Legislative Session.

c. The LAVET has guidelines for counting certified VSE and DVSE participation.

d. The LAVET incorporates several procedures to help implement the Initiative.

2. These procedures are designed to maximize the Initiative's success, including:

a. assisting certified VSE's and DVSE's and contractors by providing information, practical advice, and support;

b. strongly encouraging joint ventures and/or alliances among certified VSE's and DVSE's and larger firms;

c. assisting in developing a mentoring program for certified VSE's and DVSE's with appropriate private sector businesses and individuals;

d. requiring bidders and proposers to provide written assurance of certified VSE and/or DVSE participation in their bids and proposals;

e. providing workshops and training sessions to acquaint certified VSE's and DVSE's with state procurement and public contract proposal and bidding practices, including problems frequently encountered by certified VSE's and DVSE's during the proposal/bid process and generally while doing work for the state;

f. maintaining an updated certified VSE and DVSE directory and source list(s) on the internet to help identify qualified and available certified VSE's and DVSE's; and

g. making the state's central procurement website (LaPac) available for agencies to indicate that a particular procurement has been designated for VSE and/or DVSE participation.

3. For designated contracts, the LAVET requires good-faith efforts by contractors to use certified VSE's and/or DVSE's in contract performance. The LAVET has procedures in place to determine whether contractors are meeting this requirement of good-faith efforts. Contractors are required to document their efforts to obtain certified VSE and/or DVSE participation. A contract award may be denied or an existing contract may be terminated if the state becomes aware that the contractor in fact failed to use good-faith efforts. The state recognizes that availability, subcontracting capabilities, and price competitiveness are relevant factors in determining whether a contractor has used good-faith efforts to subcontract with certified VSE's and/or DVSE's.

4. The state may impose sanctions on a contractor who fails to make good-faith efforts or on a VSE or DVSE that was found to be guilty of deception relating to certification. Sanctions may include a suspension from doing business with the state for up to 3 years. Procedures are in place to provide an opportunity for due process for any contractor, VSE, or DVSE prior to the suspension.

5. The LAVET is race and gender neutral. The LAVET shall not be used to discriminate against any person, company, or group of persons or companies. It is the policy

of the state to prohibit discrimination based on race, gender, religion, national or ethnic origin, age, disability, or sexual orientation. Contractors, certified VSE's, and/or certified DVSE's that violate the state's non-discrimination mandate in the operations of the LAVET will be subject to sanctions.

C. The state utilizes various purchasing methods to acquire goods and services, including requests for proposals (RFP), invitations to bid (ITB), and purchase orders. The state determines which purchasing method to use based upon statutes and regulations applicable to the nature of the procurement.

1. The state will monitor the progress of the LAVET, reviewing participation reports, community input, recommendations, and operational efficiency. Annual reports will be made to the House Committee on Appropriations and the Senate Committee on Finance addressing the number of contracts awarded to certified VSE's and DVSE's, the number of contracts that included a good faith VSE and/or DVSE subcontracting plan, and the dollar value of VSE and DVSE contracts.

2. Nothing in the LAVET should be construed to give a proposer/bidder a property interest in an ITB, RFP, or contract prior to the state's award of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 36:507 (March 2010).

§1103. Mission and Policy Statement

A. Act 167 of the 2009 Regular Legislative Session enacted R.S. 39:2171 et seq., creating the Louisiana Initiative for Veteran and Service-Connected Disabled Veteran-Owned Small Entrepreneurships (The Veteran Initiative) for the State of Louisiana. As enacted, the LAVET is a goal-oriented program, encouraging the state to contract with certified VSE's and DVSE's as well as encouraging the state's contractors to use good-faith efforts to utilize Louisiana-based certified VSE's and DVSE's as subcontractors.

B. It is the mission of the state to promote trade and economic development. It is the state's policy to promote economic development and business opportunities for all sectors of our community. Certified VSE's and DVSE's need to be given an opportunity to participate in a fair portion of the total purchases and contracts for property, services, and construction for the state. Therefore, the state establishes the LAVET to ensure opportunities for certified VSE's and DVSE's to participate in the state's contracting and procurement opportunities and ultimately to enhance the stability of Louisiana's economy.

C. As a matter of policy, the state recognizes and requires competitive pricing, qualifications, and demonstrated competencies in the selection of contractors. The LAVET is designed to create opportunities, while requiring competitiveness and quality of work. As such, it allows the state to target more effectively and strive to increase certified VSE and DVSE participation in the state's contracting and procurement activities. In its operations, the LAVET will assist the state in its mission of promoting economic development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 36:508 (March 2010).

§1105. Scope

A. These procedures apply to all state departments, prime contractors, subcontractors, certified VSE's and certified DVSE's involved with LAVET contracts. These procedures do not apply to agency expenditures for amortization of debt, debt service, depreciation, employee benefits, per diem, relocation expenses, salaries, postage, and transfer of charges. These procedures do not apply to contracts for sole source items, contracts with other governmental entities, and those contracts that are prohibited by federal law from inclusion in these procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 36:508 (March 2010).

Chapter 13. Procedures

§1301. Operational Procedures

A. The procedures herein are established to govern the program components of the LAVET including, without limitation, program compliance, specific implementation measures, purchasing methods, reporting of certified VSE and DVSE participation, imposition of sanctions, and dispute resolution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 36:509 (March 2010).

§1303. Objectives

A. The overall objectives for this program are:

1. to implement the policy of the LAVET to promote economic development and business opportunities for all sectors throughout the state;

2. to ensure opportunities for certified VSE's and DVSE's to participate in all phases of the state's contracting activities;

3. to stimulate participation of Louisiana-based certified VSE's and DVSE's with the state and create opportunities through the state's contracting and procurement;

4. to encourage certified VSE's and DVSE's to seek work from prime contractors when qualified and work is available;

5. to formalize existing procurement and contracting practices and implement new procurement and contracting procedures to assist more effectively certified VSE and DVSE participation;

6. to carry out the mandate of the state as enacted by Act 167 of the 2009 Regular Legislative Session;

7. to ensure nondiscriminatory practices in the use of certified VSE's and DVSE's for state contracts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 36:509 (March 2010).

§1307. Reserved

§1309. Overall Annual LAVET Goals and Agency Participation Levels

A. Overall Annual Goals. Overall annual goals for LAVET participation for the state will be set each year by the Commissioner of Administration as a percentage increase based on prior year activity.

B. Individual Agency Participation Levels. The Commissioner of Administration will provide guidance on how agencies will determine participation levels. The criteria used to set individual agency participation levels may include but not be limited to certified VSE and DVSE capacities, certified VSE and DVSE availability, nature of the contract, past experiences with LAVET participation, recognized industry composition, and subcontracting opportunities. No quotas or set-asides will be used in implementing the LAVET.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 36:509 (March 2010).

§1311. Purchasing Methods

A. The state utilizes various purchasing methods to acquire goods, services, major repairs and public works including requests for proposals (RFP), invitations to bid (ITB), and purchase orders. The procurement method to be used is based upon statutes and regulations applicable to the nature of the procurement.

B. Nothing in the LAVET should be construed to give a proposer/bidder a property interest in an ITB, RFP, or contract prior to the state's award of the contract.

C. Agencies will participate in the program by using any or all of the following procurement methods:

1. purchasing directly from a certified VSE or DVSE within the agency's discretionary procurement authority for goods, operating services, major repairs, construction and personal, professional and consulting services;

2. issuing an order to a certified VSE or DVSE (prime contractor or distributor) on statewide contract;

3. using an ITB process to award a contract either to a certified VSE or DVSE or to a bidder who can demonstrate a good faith plan to use certified VSE's and/or DVSE's as subcontractors in performing the prime contract. To be responsive to the ITB the bidder must be either a certified VSE or DVSE or be able to demonstrate its good faith subcontracting plan.

a. Good Faith Subcontracting Plans in an Invitation to Bid

i. The ITB will require the bidder to certify that the bidder is either a certified VSE or DVSE or that the bidder has a good faith subcontracting plan.

ii. The following describes the process a non-certified VSE or DVSE bidder shall follow in order to comply with the requirement for a good faith subcontracting plan.

(a). The bidder has or will use the LAVET certification list maintained by the Department of Economic Development to provide notice of the potential subcontracting opportunities to three or more certified VSE's and/or DVSE's capable of performing the subcontract. Notification must be provided to the certified VSEs and/or DVSE's no less than five working days prior to the date of bid opening.

(b). Written notification is the preferred method to inform certified VSE's and/or DVSE's. This written notification may be transmitted via fax and/or e-mail.

(c). Written notification must include:

(i). the scope of work;

(ii). information regarding the location to review plans and specifications (if applicable);

(iii). information about required qualifications and specifications;

(iv). bonding and insurance information and/or requirements (if applicable);

(v). contact person.

(d). The successful bidder must be able to provide written justification of the selection process if a certified VSE was not selected.

b. Post audits may be conducted. In the event that there is a question as to whether the low bidder's good faith subcontracting plan was complied with, the prime contractor must be able to provide supporting documentation to demonstrate its good faith subcontracting plan was actually followed (i.e., phone logs, fax transmittals, letters, e-mails). If it is at any time determined that the contractor did not in fact perform its good faith subcontracting plan, the contract award or the existing contract may be terminated.

4. using a request for proposals (RFP) process to award a contract to a certified VSE or DVSE or to a proposer demonstrating a good faith effort to use certified VSE's and/or DVSE's as subcontractors;

a. if an agency decides to issue an RFP to satisfy its LAVET goal, the procurement process will include either of the following:

i. require that each proposer either be a certified VSE or RVSE, or have made a good faith subcontracting effort in order to be responsive; or

ii. reserve ten percent of the total RFP evaluation points for otherwise responsive proposers who are themselves a certified as either a VSE or DVSE or who have made a good faith effort to use one or more VSEs and/or DVSE's in subcontracting.

b. In evaluating proposals, the evaluation committee will follow the scoring criteria set forth in the RFP. In its evaluation process, the evaluation committee will not give additional points for VSE or DVSE participation beyond the designated amount set forth in the RFP.

c. Good Faith Subcontracting in a Request for Proposal

i. Proposers alleging to have made a good faith subcontracting effort may be required in the RFP to verify their good faith subcontracting plan. A good faith effort can be evidenced by many things including those listed below.

(a). The proposer divided the contract work into reasonable lots or portions.

(b). The proposer used the LAVET certification list maintained by the Department of Economic Development to provide notice to three or more certified VSE's and/or DVSE's of the potential subcontracting opportunities available in performance of the prime subcontract. Notification must have been provided to the certified VSE's and/or DVSE's no less than five working days prior to the submission of the proposal.

(c). The notification from the Proposer was in writing. This written notification may have been transmitted via fax and/or e-mail.

(d). The written notification gave the VSEs and/or DVSE's complete information regarding the potential subcontract, including such things as:

(i). the scope of work;

(ii). information regarding the location to review plans and specifications (if applicable);

(iii). information about required qualifications and specifications;

(iv). bonding and insurance information and/or requirements (if applicable);

(v). contact person.

ii. A RFP under LAC 19:IX.1311.C.4.a.i shall require all proposers who are not certified VSE's or DVSE's to certify they made a good faith subcontracting effort in their proposals.

iii. A RFP under LAC 19:IX.1311.C.4.a.ii may require that proposals include a proposed schedule of certified VSE and/or DVSE participation that lists the names of potential certified VSE and/or DVSE subcontractors, a description of the work each would perform, and the dollar value of each proposed certified VSE and/or DVSE subcontract.

iv. A RFP under LAC 19:IX.1311.C.4.a.ii may require that proposers provide documentation to demonstrate their good faith subcontracting effort (i.e.: phone logs, fax transmittal logs, letters, e-mails) in order to receive any reserved points.

v. Proposers responding to RFP's under either LAC 19:IX.1311.C.4.a.i or LAC 19:IX.1311.C.4.a.ii may be asked to provide written justification of the subcontractor selection process if a certified VSE or DVSE is not used as a subcontractor.

d. If at any time the state determines that the contractor did not in fact make a good faith effort, the contract award or the existing contract may be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 36:509 (March 2010).

§1313. Procedures for Counting Small Entrepreneurship Participation

A. The state may count towards its LAVET goals the total dollar value of the contract awarded to the certified VSE or DVSE, if the certified VSE or DVSE is the prime contractor.

B. The state may count the total dollar value of a contract that is subcontracted to a certified VSE or a DVSE.

C. The state may count towards its LAVET goals the total dollar value of a contract awarded to a joint venture, of which a certified VSE or DVSE is a part. The joint venture must provide an affidavit stating the amount of work actually performed by the certified VSE or DVSE.

D. The state may count toward its LAVET goals the total dollar value of the contract if the RFP contemplated awarding ten percent of the total evaluation points to a proposer who demonstrated good faith efforts to use certified VSE's and/or DVSE's as subcontractors, but was unsuccessful in doing so.

E. The state may count toward its LAVET goals the total dollar value of those contracts in which the contractor has provided a good faith subcontracting plan as part of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 36:510 (March 2010).

§1315. Certification Procedures

A. Certification procedures are in accordance with rules and regulations promulgated by the Department of Economic Development (LAC 19:VII.Subpart 1).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 36:510 (March 2010).

§1317. Implementation Procedures

A. In an effort to maximize the LAVET's success, the following procedures will be implemented to maximize opportunities for certified VSE and DVSE participation.

1. The Division of Administration and state departments/agencies are responsible for the direct operation and direct implementation of the LAVET.

2. Each department/agency of the state shall choose an initiative coordinator. The person chosen to be initiative coordinator shall be the person serving as the undersecretary of the department or the business manager for an agency. The initiative coordinator or his designee shall be responsible for acting as a business advisor to work directly with certified VSE's and DVSE's and contractors to provide information, assistance, and support. The Division of Administration and state departments/agencies will undertake various tasks to make the program workable, including the following:

a. provide information to certified VSE's and DVSE's on the state's organization and contractual needs and offer instructions on procurement policy, procedures, and general RFP/ITB requirements;

b. provide workshops and training sessions at least twice each year for certified VSE's and DVSE's on challenges frequently encountered by certified VSE's and DVSE's during bid/proposal process and generally when doing work for the state;

c. enhance the existing state's procurement and financial database to identify certified VSE's and DVSE's for historical and reporting purposes;

d. hold pre-bid and pre-proposal seminars to explain bid and proposal requirements, including an explanation of the forms that must be submitted with the response or proposal;

e. conduct outreach activities;

f. conduct internal information workshops to inform and acquaint the state employees responsible for state procurement and public contracts with the goals and objective of the state's LAVET initiative and to sensitize them to the problems of VSE's and DVSE's;

g. inform certified VSE's and DVSE's of ITB's and RFP's related to their capabilities by placing notices on the state's central procurement website, LaPac.

3. The state will encourage the formation of joint ventures/alliances among certified VSE's and DVSE's and larger firms to provide opportunities for certified VSE's and DVSE's to gain experience.

4. The state will encourage a mentoring program between large businesses and certified VSE's and DVSE's to share information and experiences.

5. In RFP's requiring the compliance of a good faith subcontracting plan the state may require proposers to submit information on their business relationships and arrangements with certified VSE and/or DVSE subcontractors at the time of proposal review. Agreements between a proposer and a certified VSE or DVSE subcontractor in which the certified VSE or DVSE subcontractor promises not to provide subcontracting quotations to other proposers shall be prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 36:511 (March 2010).

§1319. Legal Remedies

A. Legal remedies will be in accordance with applicable procurement statutes including contract controversies, suspension and/or debarment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 36:511 (March 2010).

§1321. Reporting Procedures

A. The Commissioner of Administration is charged with the preparation of an annual report on the progress of the LAVET in the most recently ended fiscal year. The Commissioner must present the report to the House Committee on Appropriations and the Senate Committee on Finance by January 15 of each year. Therefore, information for the commissioner's report regarding an agency's achievement of LAVET goals must be submitted to the commissioner no later than October 1 of each year. Each agency is required to report for the preceding fiscal year:

1. total number and dollar value of all contracts awarded in whole or in part to certified VSE's and DVSE's;

2. number of contracts and the value of the contracts that included a good faith certified VSE and/or DVSE subcontracting plan; and

3. number of actual agency staff that attended Division of Administration training for LAVET and the number of certified VSE's and DVSE's that attended workshops and training sessions.

B. On-line forms for consistency in reporting will be provided on the commissioner's home page.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:2171 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review and Office of State Purchasing, LR 36:511 (March 2010).