

June 9, 2022

RE: Small Business Loan Guaranty Program (SBLGP) – Summary Report

To Whom It May Concern:

The Department of Economic Development hereby announces its plan to proceed with rule-making by finalizing the Small Business Loan Guaranty Program (SBLGP) Rules, originally published as a Notice of Intent in the April, 2022 *Louisiana Register* on pages 1138-1142.

A public hearing was held on May 25, 2022. No member of the public attended and no written comments were received by LED.

After consideration of all input, LED therefore proposes to **proceed as is with no further changes**. Subject to legislative oversight by either the House or Senate Committees on Commerce, the Department intends to submit for final publication as a Rule in the July 2022 *Louisiana Register*.

As always, we welcome your consideration and I can be reached at ph#342-5406 with any questions.

Sincerely,



Stephanie Le Grange
Staff Attorney

cc: Senate, Committee on Commerce, Consumer Protection, and International Affairs
House of Representatives, Committee on Commerce

Family Impact Statement

The proposed Rule is not anticipated to have an impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Statement

The proposed Rule is not anticipated to have an impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services as described in HCR 170 of the 2014 Regular Legislative Session.

Small Business Analysis

The purpose of this program is to utilize federal SSBCI funds to strengthen state programs that support private financing to small businesses with less than 500 employees. Voluntary participation in the program could also cause a direct economic impact on some very small businesses that have no more than 10 employees, if meeting certain criteria. However, the benefit from additional funding received, at a nominal cost of some additional planning and paperwork associated with the application process and reporting requirements should provide a positive impact to any small businesses that choose to apply to the program.

Public Comments

Interested persons should submit written comments on the proposed Rules to Shamelda Pete through the close of business on Tuesday, May 24, 2022 at Department of Economic Development, 617 North Third Street, 11th Floor, Baton Rouge, LA 70802 or via email to Shamelda.Pete@la.gov.

Public Hearing

A meeting for the purpose of receiving the presentation of oral comments will be held at 1:30 p.m. on Wednesday, May 25, 2022 in the Griffon Conference Room at the LaSalle Building, 617 North 3rd Street, Baton Rouge, LA 70802.

Anne G. Villa
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: SSBCI Micro Lending Program ARPA 2021

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no incremental costs or savings to state or local governmental units due to the implementation of these rules, since they will be managed by existing staff under the current budget. The proposed rule establishes program guidelines for the Micro Lending Program for the State Small Business Credit Initiative (SSBCI) authorized by the American Rescue Plan Act (ARPA) of 2021, otherwise known as "SSBCI Venture Capital ARPA 2021".

Louisiana anticipates receiving over \$74 M with incentives which could bring total Federal funding for the SSBCI program to \$113 M, of which a portion will be devoted to the Micro Lending program. The current estimate is \$9 M for this program. These Federal funds may be utilized for any additional administrative costs in connection with the new program.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no expected direct impact or effect on revenue collections or state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

SSBCI funds are Federal funds (Department of the US Treasury) intended to support new and existing small businesses as a response to the economic effects of the COVID-19 pandemic. US Treasury guidance for SSBCI funds also states that these funds will support socially and economically disadvantaged individuals (SEDIs).

Louisiana anticipates receiving over \$74 M with incentives which could bring total Federal funding for the SSBCI program to \$113 M, of which a portion will be devoted to the Micro Lending program. The current estimate is \$9 M for this program. The program will require adherence to the application procedures which will involve submission of paperwork by the applicants. However, recipients will benefit by obtaining access to capital made available to them through the program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The long term effects of the overall SSBCI program could be significant. The program should result in a significant amount of additional capital being deployed in Louisiana over the program's existence, due to the potential to leverage Federal SSBCI funds to attract private capital matches. The impact of this additional capital could be extensive, particularly for new and existing small businesses and SEDIs.

Anne G. Villa
Undersecretary
2204#064

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office

~~NOTICE OF INTENT~~ **RULE**

Department of Economic Development Office of Business Development and Louisiana Economic Development Corporation

Small Business Loan Guaranty Program (SBLGP) (LAC 19:VII.Chapter 1)

The Department of Economic Development, Office of Business Development and the Louisiana Economic Development Corporation, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., R.S. 36:104, 36:108 and 51:2312, hereby ~~give notice of their intent to~~ amend Rules for the Small Business Loan Guaranty Program ("SBLGP").

Title 19

CORPORATION AND BUSINESS

Part VII. Louisiana Economic Development Corporation

Subpart 1. Small Business Loan Guaranty Program Chapter 1. Loan Guaranty Policies

§101. Purpose

A. ...

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. ...

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), re-promulgated 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:

§103. Definitions

Line of Credit—Repealed.

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.

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.

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:

§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. - C.1. ...

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. - 10. ...

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. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of 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:

§107. Eligibility/Ineligibility for Participation in this Program

A. - B. ...

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 - 4. ...

a. restaurants (except for regional or national franchises), including grills, cafes, fast food operations, motorized vehicle, trailer, curb-side, sidewalk or street vendor 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. - e. ...

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. - i. ...

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 48:

§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. ...

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

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

2- 3. ...

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 Louisiana Economic Development Corporation, LR 38:995 (April 2012), LR 40:LR: (January 2018), LR 48:

§111. General Guaranty Agreement Provisions

A. - A.2 ...

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. - 5. ...

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. - 3 ...

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. ...

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. – C.2. ...

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:

Family Impact Statement

The proposed Rule is not anticipated to have an impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Statement

The proposed Rule is not anticipated to have an impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services as described in HCR 170 of the 2014 Regular Legislative Session.

Small Business Analysis

The purpose of this program is to strengthen state programs that support private financing to small businesses with less than 500 employees. Voluntary participation in the program could cause a direct economic impact on some very small businesses that have no more than 10 employees, if meeting certain criteria. However, the benefit from additional funding received, at a nominal cost of some additional planning and paperwork associated with the application process and reporting requirements should provide a positive impact to any small businesses that choose to apply to the program.

Public Comments

Interested persons should submit written comments on the proposed Rules to Kelly Raney through the close of business on Tuesday, May 24, 2022 at Department of Economic Development, 617 North Third Street, 11th Floor, Baton Rouge, LA 70802 or via email to Kelly.Raney@la.gov.

Public Hearing

A meeting for the purpose of receiving the presentation of oral comments will be held at 1:30 p.m. on Wednesday, May 25, 2022 in the Griffon Conference Room at the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Anne G. Villa
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Small Business Loan Guaranty Program (SBLGP)

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no incremental costs or savings to state or local governmental units due to the implementation of these

rules, since they will be managed by existing staff under the current budget. The proposed rule amends program guidelines for the existing Small Business Loan Guaranty Program ("SBLGP"), including the primary change of increasing the guaranty percentage from 75% to 80% and lowering the value of collateral required for SEB's to 80%. This program will likely be used in conjunction with the new SSBCI loan guaranty program

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no reductions in revenues to the State General Fund (Direct) to the extent that entities take advantage of this program. Based on LED historical data, LEDC has awarded 1 loan for \$1.2M since 2011. The proposed rule changes will not affect local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

The program will require adherence to the application procedures which will involve submission of paperwork by the applicants. However, recipients will benefit by obtaining access to capital made available to them through the program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The long term effects of this state program, in conjunction with the SSBCI program could be significant. The program should result in a significant amount of additional capital being deployed in Louisiana over the program's existence, due to the potential to leverage Federal SSBCI funds to attract private capital matches. The impact of this additional capital could be extensive, particularly for SEB's.

Anne G. Villa
Undersecretary
2204#065

Evan Brasseaux
Interim Deputy Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 118—Statewide Assessment Standards and Practices (LAC 28:XI.Chapter 53)

In accordance with the provisions of R.S. 17:6(A)(10) and the Administrative Procedure Act (APA), R.S. 49:953(B)(1) et seq., the Board of Elementary and Secondary Education (BESE) proposes to amend LAC 28:XI:Subpart 3 in Bulletin 118—*Statewide Assessment Standards and Practices*. The aforementioned revisions are in response to a request by the Board at the October 2019 meeting directing BESE staff to work with the Louisiana Department of Education (LDE) staff to recommend policy revisions to Bulletins allowing for certification notations and/or possible license censure options. Bulletin 118 revisions align test security policy and further clarifies terminology related to assessment proctors, scoring, irregularities, cheating and security violations that may clarify terminology and impact educator credentials. These proposed revisions do not amend any test security process or procedure. The purpose of these changes is to define terminology more specifically.