

Proposed Rules  
of the  
Tennessee Department of Treasury

Chapter 1700-6  
Small and Minority-Owned Business  
Assistance Program

Presented herein are proposed rules of the Tennessee Department of Treasury submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed in the Treasury Department, State Treasurer's Office on the 1<sup>st</sup> Floor of the State Capitol located at 600 Charlotte Avenue, Nashville, Tennessee 37243, and in the Department of State, 8<sup>th</sup> Floor, Tennessee Tower, William Snodgrass Building, 312 8<sup>th</sup> Avenue North, Nashville, Tennessee 37243, and must be signed by twenty-five (25) persons who will be affected by the rules, or submitted by a municipality which will be affected by the rules, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the proposed rules, contact: Mary Krause, General Counsel, Tennessee Treasury Department; 10<sup>th</sup> Floor, Andrew Jackson State Office Building; Nashville, Tennessee 37243; (615) 741-7063.

The text of the proposed rules is as follows:

New Rules

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1700-6-1-.01 In General.

- (1) Purpose. Chapter 830 of the Tennessee Public Acts of 2004 created within the Tennessee Treasury Department the Small and Minority-Owned Business Assistance Program. By rule, the Department is to develop an assistance program for small and minority-owned businesses, as defined in §65-5-112, which may include loans, technical assistance and services, and consulting and educational services. The Program is funded from the Small and Minority-Owned Business Assistance Program Fund. It is the legislative intent that the Department use the assistance provided by this program to support outreach to new, expanding, and existing businesses in Tennessee that do not have reasonable access to capital markets and traditional commercial lending facilities.

Authority: T.C.A. § § 65-5-113, and 65-5-112.

1700-6-1-.02 Definitions. The following definitions shall apply to these rules:

- (1) “Act” means Chapter 830 of the Tennessee Public Acts of 2004.
- (2) “Applicant” means a Qualifying Business that has filed an Application for Program Assistance.
- (3) “Application” means the form required of an Applicant for Program Assistance, which requests a Loan, and/or Program Services.
- (4) “Department” means the Tennessee Treasury Department.
- (5) “Gross Receipts” means the annual total revenue exclusive of deductions.
- (6) “Ineligible Business” means a church, non-profit organization, insurance company, real estate contractor, real estate developer, night club and any similar entertainment-oriented business, a business that does not create or provide jobs, and a business not incorporated or located in Tennessee.
- (7) “Loan” means a loan for a specific Project for which the Applicant has requested Program Assistance. The following shall be considered acceptable purposes for which a Loan may be made under the Loan Program: acquisition of machinery and equipment; working capital; supplies and materials; inventory; and other business-related activity as approved by the Program Administrator. A line of credit shall be considered a Loan under the Program. Lending for the acquisition of real estate shall be excluded from the Program.
- (8) “Minority-Owned Business” means a business that is solely owned, or at least fifty-one percent (51%) of the assets or outstanding stock of which is owned, by an individual who personally manages and controls the daily operations of such business, and who is impeded from normal entry into the economic mainstream

because of race, religion, sex, or national origin. Any business certified as a minority-owned business from the Governor's Office of Diversity Business Enterprise or the United States Small Business Administration shall be considered a minority-owned business for purposes of the Program. Certification from other recognized entities such as Minority Purchasing Councils and Airport Authorities may be acceptable at the discretion of the Program Administrator.

- (9) "Program" means the Small and Minority-Owned Business Assistance Program created by the Act. The Program includes the following components: Loans, and Program Services.
- (10) "Program Administrator" means the organization selected pursuant to Rule 1700-6-1-.04 below to administer the Program.
- (11) "Program Assistance" means Loans, and Program Services as described in these Rules.
- (12) "Program Fund" means the Small and Minority-Owned Business Assistance Program Fund created by the Act.
- (13) "Program Services" mean services that include, but are not limited to, technical assistance, education and consulting services provided under the Program to Qualifying Businesses that may or may not be making Application for a Loan. The Program Administrator shall be responsible for providing Program Services to Qualifying Businesses except that Program Services under the Loan Program shall be provided pursuant to Rule 1700-6-1-.13 below.
- (14) "Project" means the business activity as proposed by the Applicant in the Application and the approved purpose of the Loan. Loans will only be made on behalf of Applicants for Loans that initially finance a Project. The refinancing of any existing debt shall not be considered eligible for a Loan.
- (15) "Qualifying Business" means a sole proprietorship, a partnership, a limited liability partnership, a limited liability corporation, or any other incorporated entity which satisfies the following definitions under these Rules: is not an Ineligible Business; is either a Small Business or a Minority-Owned Business; is eligible to do business in Tennessee; and is located in and maintains operations in Tennessee at the time Program Services are requested and for the term that Program Services are provided. A material change in any of the foregoing qualifications may be cause for denial or revocation of any Program Assistance.
- (16) "Qualified Organization" means an organization whose central purpose is economic development. Such organizations specifically include, but are not limited to, organizations qualified as Community Development Entities by the United States Treasury Department and organizations licensed and regulated by the Federal Small Business Administration as a 301(d) Small Business

Investment Company, also known as a Specialized Small Business Investment Company.

- (17) “Reasonable Access” means, unless otherwise indicated, a Minority-Owned Business meeting the criteria of a Qualifying Business shall be considered not to have reasonable access to capital markets and traditional commercial lending facilities.
- (18) “Small Business” means a Qualifying Business with annual gross receipts of less than four million dollars (\$4,000,000).
- (19) “Treasurer” means the Tennessee State Treasurer.

Authority: T.C.A. § § 65-5-113, and 65-5-112.

1700-6-1-.03 Administration of the Program.

- (1) In General. The Program shall be administered by a Program Administrator. The Program’s general approach to each area of Program Assistance is as follows:
  - (a) Loans. The Program will loan funds at below market rates to selected Qualified Organizations. Qualified Organizations shall be responsible for originating and servicing loans and for referring Qualifying Businesses to the Program Administrator for needed Program Services.
  - (b) Program Services. The Program Administrator will develop a network of service providers to support Qualifying Businesses seeking Program Assistance.

Authority: T.C.A. § 65-5-113.

1700-6-1-.04 Program Administrator.

- (1) In General. The Program shall be administered by an organization selected through a competitive procurement process. The specific terms of administration shall be contained within a contract executed by the selected organization and the Department.
- (2) Selection. The procurement process shall be based on the evaluation of proposals submitted. At a minimum, the organization selected shall have a demonstrated knowledge and experience of at least three years in providing and/or coordinating the types of program assistance to the Qualifying Businesses as envisioned under the Program.
- (3) General Duties. The general duties of the Program Administrator shall include, but shall not be limited to, the following:

- (a) Loan Program. The Program Administrator shall assist the Department with the selection of Qualified Organizations to whom Program Funds will be loaned for re-lending to Qualifying Businesses.
- (b) Program Services. The Program Administrator shall coordinate the selection of entities to provide Program Services to Qualifying Businesses.
- (c) Marketing. The Program Administrator shall coordinate all marketing efforts of the Program. At the request of the Department of Economic and Community Development and the Governor's Office of Diversity Enterprise, the Program Administrator shall provide information relative to the Program.
- (4) Reporting. As specified in the contract, the Program Administrator shall report to the Department, which has the ultimate responsibility and authority over the Program.

Authority: T.C.A. § 65-5-113.

1700-6-1-.05 Allocation of Funds.

- (1) Intent. It is the intent that the Program be designed with consideration of fair distribution of Program Assistance. To effectuate this intent, Program Assistance is to be fairly distributed among the geographic divisions of the State, with a maximum of forty percent (40%) of such assistance allocated to any grand division. For purposes of this provision, loans to Qualified Organizations shall be included within the grand division where the Qualified Organization maintains its principal office.

Authority: T.C.A. § 65-5-113.

1700-6-1-.06 Referral Preference.

- (1) A Qualifying Business referred to the Program Administrator or to a Qualified Organization from the Department of Economic and Community Development or the Governor's Office of Diversity Enterprise shall be given the highest priority for Program Funds available for Loans, and Program Services.

Authority: T.C.A. § 65-5-113.

1700-6-1-.07 Accountability.

- (1) The Department shall annually summarize Program activities in a report to the General Assembly. Such report shall also include the financial statements of the Program.

Authority: T.C.A. § 65-5-113.

1700-6-1-.08 Authority Over Program Fund.

- (1) The Program Fund shall be retained as a segregated account in the State Treasury.
- (2) With regard to Loan Guarantees in existence prior to the effective date of these Rules, a reserve shall be created in the Program Fund to support outstanding Loan Guarantees. This reserve shall equal one hundred percent (100%) of outstanding Loans Guarantees.

Authority: T.C.A. § 65-5-113.

1700-6-1-.09 Loan Program.

- (1) In General. The Program will loan funds at no cost to selected Qualified Organizations. Qualified Organizations shall be responsible for originating and servicing loans, and for coordinating with the Program Administrator for needed Program Services to Qualifying Businesses receiving loans from such organizations. Selected Qualified Organizations may retain the interest rate earnings to finance their cost for operations and to earn a profit. Qualified Organizations shall be competitively selected, with no more than two (2) organizations selected for each grand division of the State. In making a determination of the number of Qualified Organizations to be selected, primary consideration will be given to assure that geographic coverage is sufficient to service the Program.
- (2) As principal and interest is repaid to a Qualified Organization, the principal amount may be retained by the Qualified Organization to be used for new loans to other Qualifying Businesses, provided the Qualified Organization adheres to Program requirements.
- (3) Loan Conditions of Program to Qualified Organizations.
  - (a) Interest Rate. The Program shall lend Program Funds to selected Qualified Organizations at no interest cost.
  - (b) Loan Amount. The maximum amount available to be loaned to a Qualified Organization for the purpose of being loaned to Qualifying Businesses shall be established in the contract between the Department and the Qualified Organization.
  - (c) Term. Loans to Qualified Organizations shall be for a term of ten (10) years and shall be renewable for additional five (5) year terms, at the option of the Treasurer.

- (d) Funds Drawdown. Selected Qualified Organizations may initially draw down \$300,000 for making loans to Qualifying Businesses. After the initial draw down, a Qualified Organization may draw down blocks of \$100,000 or more to replenish loans made to Qualifying Businesses until the maximum amount available pursuant to the contract is received. Replenishment shall be net of loans made to Qualifying Businesses and the receipt of repayment of loan principal by Qualifying Businesses.
  - (e) Repayment of Loans to Program Fund. The repayment of loan principal may be deferred until the end of the loan term. In the event of a loan default by a Qualifying Business, upon presentation of proof by the Qualified Organization of diligent attempts for collection to the Program Administrator, the Qualified Organization may be released from repayment of the loan to the Program. Efforts shall include attempts to collect collateral and assets acquired by Program Funds.
  - (f) Loan Review. Loans made with Program Funds are subject to quality assurance reviews by the persons designated by the Department. Qualified Organizations shall cooperate with such reviews.
- (4) In furtherance of the legislative intent that the Program serve businesses in Tennessee that do not have reasonable access to capital markets and traditional commercial lending facilities, it is acknowledged that loan losses will occur. It is expected that the loan losses will exceed industry standards.

Authority: T.C.A. § 65-5-113.

1700-6-1-.10 Qualified Organization.

- (1) The Qualified Organization shall use Program Funds to make Loans to Qualifying Businesses for the purpose of starting and expanding their businesses. The Program Administrator shall disburse the funds to Qualified Organizations across all areas of the State of Tennessee, thereby expanding opportunities for Qualifying Businesses throughout Tennessee.
- (2) Selection of Qualified Organizations.
  - (a) Process. The Program Administrator shall assist the Department with the selection of Qualified Organizations. Such selection shall be a competitive process. Factors to be considered in such selection shall include, but are not limited to:
    - 1. Qualifications. Selected organizations must have individuals who have demonstrated qualifications in lending activities.

2. Experience. Selected organizations should reflect a history of lending activities of the type envisioned for the Program. Organizations should be able to demonstrate their track record of originating loans to Qualifying Businesses and the level of success in repayment of such loans.
3. Loan Servicing. Selected organizations must have a demonstrated ability and history of successfully servicing loans of the type envisioned for the Program.
4. Commitment to adhere to Program Requirements. Selected organizations must indicate a commitment and ability to comply with the Program intent and requirements, including reporting.
5. Underwriting practices. Selected Qualified Organizations shall utilize underwriting practices based upon the need of the Program's target group (small and minority-owned businesses). Based on the intent of the Program, traditional underwriting practices may not address needs of this target group.

(b) Match Preferred. In selecting Qualified Organizations, preference shall be given to organizations that are able to match funding provided through the Program.

(c) The specific responsibilities and requirements of the Qualified Organization shall be contained within the contract executed by the selected organization and the Department.

(3) Reporting.

(a) Qualified Organizations. Each selected Qualified Organization shall provide a monthly written report to the Program Administrator as specified in the contract. The report may contain summary information on the amount of funds disbursed during the period, the amount of interest and principal repaid during the period, and the balance of the Program Fund's loan with such organization. The report may also list the companies or individuals receiving loans with Program Funds along with, for each company, the original principal amount, the remaining principal owed, the monthly payment amount broken down into principal and interest, the current payment due date, the amount and date of the last payment, and such other information as the Program Administrator deems necessary. The report may also contain a listing, along with appropriate data, of companies or individuals that have principal or interest payments in arrears, as well as other comparable information that may be approved by the Department.

(b) Program Administrator. The Program Administrator shall provide a monthly written report to the Department, which summarizes the activities of each

Qualified Organization, including totals for all organizations combined. Within such report, the Program Administrator shall identify any instances of non-compliance with Program requirements or contractual provisions. The Program Administrator shall report other information that may be requested by the Department.

Authority: T.C.A. § 65-5-113.

1700-6-1-.11 Criteria for Loans to Qualifying Businesses.

- (1) When evaluating Applications for Loans, the Qualified Organizations shall follow prudent lending practices. The following additional criteria shall apply:
  - (a) Maximum Loan Amount. The maximum Loan amount shall be one hundred twenty-five thousand dollars (\$125,000).
  - (b) Loan Interest Rate. The interest rate that may be charged on Loans made with Program Funds may be a fixed rate or a variable rate, provided that any such variable interest rate shall not exceed the maximum rate.
  - (c) Maximum Loan Interest Rate. The maximum interest rate that may be charged on Loans made with Program Funds is 2% over the “Prime Rate” as published in the Wall Street Journal on the day the Loan is made.
  - (d) Minimum Loan Interest Rate. The minimum interest rate that may be charged on Loans made with Program Funds is 2% below the “Prime Rate” as published in the Wall Street Journal on the day the Loan is made.
  - (e) Fees. Late charges, as permitted by Tennessee law, may be imposed. Other fees, including an Application fee, may be imposed provided such fees are not unreasonable.
  - (f) Term. The recommended repayment periods for Loans are as follows:
    1. For equipment, the lesser of five (5) years or useful life;
    2. For working capital, supplies, and inventory, three (3) years; and
    3. For other business-related activity, the lesser of five (5) years or useful life.
  - (g) Collateral and Security. Both business and personal collateral may be taken as security for a Loan and may include real property, tangible personal property, accounts receivable, certificates of deposit, and other intangibles. However, to the extent possible, assets acquired with Loan proceeds shall be used to secure the Loan.

- (h) Guaranty Agreement. Personal guarantees from all principal owners shall be obtained. Principal owners are those who have a twenty percent (20%) or more ownership interest in the company.
- (i) Change of Ownership. If at any time during the term of the Loan the Qualifying Business ceases to be used to provide services, or the Qualifying Business sells, ceases to own, assigns, transfers, or otherwise disposes of all or any part of the Qualifying Business, it is the responsibility of the Qualifying Business to notify the Qualified Organization prior to the change of ownership. The Qualified Organization shall take such action as it deems appropriate in accordance with provisions of the Loan documents.
- (j) Title Insurance. The Qualified Organization may require the Applicant to provide a Loan Policy of Title Insurance (i) issued by a title insurance company, (ii) for an amount equal to the maximum principal amount of the Loan, (iii) insuring the Program, (iv) evidencing that on the date of closing, interests in the property on or in which the Qualifying Business is located, as well as any properties offered as collateral, are vested in the appropriate party, and (v) containing only standard exceptions and encumbrances approved by the Qualified Organization. The Qualified Organization may require the title insurance policy to be accompanied by a survey and title to the property and showing that there are no easements or encroachments upon or other matters pertaining to the property, except those deemed acceptable to the Qualified Organization. In Applications where the Qualifying Business is to be housed in a leased facility, the Qualified Organization may require the Applicant to provide a fully executed lease agreement.
- (k) Insurance. The Qualified Organization may require the Applicant, owners, and/or key managers to obtain and assign to the Program life insurance in the amount of the Loan. The Qualified Organization may also require business interruption insurance, hazard and casualty insurance, flood insurance, homeowner's insurance, and other appropriate forms of insurance.
- (l) Appraisals. The Qualified Organization may require appraisals by qualified appraisers for each property offered as collateral for the Loan.
- (m) Other. The Qualified Organization may require environmental audits as well as other documents at its reasonable discretion.

Authority: T.C.A. § 65-5-113.

1700-6-1-.12 Conflicts of Interest.

- (a) Participation in the Program by any member of the Department, employees of a Qualified Organization or the Program Administrator staff shall be governed by the provisions of T.C.A. §12-4-101 et seq.

- (b) No member of the Department, employees of a Qualified Organization or the Program Administrator staff shall be directly interested, as defined in T.C.A. § 12-4-101(a)(1), in any Qualifying Business for which the Qualified Organization is considering a Loan for the duration of his or her tenure.
- (c) Any member of the Department, employees of a Qualified Organization or the Program Administrator staff who is indirectly interested, as defined in T.C.A. §12-4-101(b), in any Qualifying Business for which the Qualified Organization is considering a Loan must disclose such interest in writing to the Department and shall refrain from participation in any discussion or activity in connection with such Application for a Loan. This disclosure shall be set forth in the official records held by the Qualified Organization.
- (d) Any violations of this Rule 1700-6-1-.12 shall be subject to the penalties specified in T.C.A. § 12-4-102.

Authority: T.C.A. § § 65-5-113, 12-4-101, and 12-4-102.

1700-6-1-.13 Program Services.

- (1) The Program shall also provide Program Services in the form of technical assistance, education and consulting services to Qualifying Businesses that may or may not be making Application for Loans under the Program. Program Services shall include, but shall not be limited to, financial counseling, assistance with the packaging of loan proposals, developing strategies for improved cash flow management, implementing internal financial management systems, and strategic planning, conducting pertinent training workshops and seminars, certifying Qualifying Businesses and identifying procurement opportunities with state, federal, and local government systems.
- (2) All providers of Program Services shall be selected on a competitive basis. Program service providers shall have a demonstrated record of providing assistance to small and minority-owned businesses.
- (3) General training and educational services funded through the Program shall be coordinated by the Program Administrator. Annually, the Program Administrator shall develop and submit to the Department for approval a proposed training program that includes, but is not limited to, strategic planning, and conducting pertinent training workshops and seminars. The proposal, which may be modified by the Department, shall include the budget required to fund the training program. Upon approval by the Department, the Program Administrator shall implement the program.
- (4) Service provided to specific Qualifying Businesses. Upon the request (application) of a Qualifying Business, the Program Administrator may refer such

business to an appropriate program service provider. The Program will only be liable for services rendered pursuant to a referral from the Program Administrator. Once services are delivered, the service provider will invoice the Program Administrator who will invoice the Program for payment. To the extent possible, Qualifying Businesses shall agree to repay not less than fifty percent (50%) of the cost for receiving Program Services. This cost may be funded through the Loan Program.

Authority: T.C.A. § 65-5-113.

Legal Contact who will approve final copy: Mary Krause, General Counsel  
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Nashville, Tennessee 37243  
(615) 741-7063

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Nashville, Tennessee 37243  
(615) 741-7063

Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:

\_\_\_\_\_  
Dale Sims, State Treasurer

I certify that this is an accurate and complete copy of the proposed rules lawfully promulgated and adopted by the Tennessee Treasury Department on the \_\_\_\_ day of May, 2006.

\_\_\_\_\_  
Dale Sims, State Treasurer

The Secretary of State is hereby instructed that, in the absence of a petition for rulemaking hearing being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of thirty (30) days after the publication date of the issue of the Tennessee Administrative Register in which these proposed rules are published.

\_\_\_\_\_  
Dale Sims, State Treasurer

Subscribed and sworn to before me this the \_\_\_\_ day of May, 2006.

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Notary Public

My commission expires on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

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Paul G. Summers  
Attorney General and Reporter

The proposed rules set out herein were properly filed in the Department of State on the 30<sup>th</sup> day of June, 2006, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 27<sup>th</sup> day of October, 2006.