

Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY
REVIEW COMMISSION**

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency:

The Pennsylvania Minority Business Development Authority

(2) Agency Number: 4-99

Identification Number:

IRRC Number: **3151**

(3) PA Code Cite: 12 Pa. Code Chapter 81

(4) Short Title: Minority Business Development Authority

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Timothy M. Anstine, 717-720-7312, tianstine@pa.gov

Secondary Contact:

(6) Type of Rulemaking (check applicable box):

☐ Proposed Regulation

☒ Final Regulation

☐ Final Omitted Regulation

☐ Emergency Certification Regulation;

☐ Certification by the Governor

☐ Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

PMBDA, which provides loans and other financial assistance to help socially and economically disadvantaged persons, promulgated its existing regulations in 1975. This regulation amends those sections of PMBDA's existing regulations which impede PMBDA's ability to be responsive and flexible to its target market, and others which do not reflect PMBDA's current practices. Specifically:

1. Section 81.111(a)(6) is amended to eliminate the requirement that the applicant must commit to "full time" management of the company. Instead, the applicant will be required to maintain complete control of the enterprise. This will allow the PMBDA to fund start-up businesses when the applicant will have another job until the new enterprise can financially support a full-time manager;
2. Section 81.111(a)(7) is amended to eliminate the requirement that to be eligible, the applicant must commit to work full-time in the enterprise for which he is seeking a loan, and if he is otherwise employed must terminate employment prior to or at the time of closing. This will also allow the PMBDA to fund start-up businesses when the applicant will have another job until the new enterprise can financially support a full-time manager;
3. Section 81.112(a)(3) is amended to eliminate the requirement of an escrow account for project funds provided by other sources;
4. Section 81.122 is amended to eliminate the requirement that applications be submitted through PMBDA's regional offices (which no longer exist);
5. Section 81.124 is amended to eliminate the requirement of credit life insurance and assignments of

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life insurance policies as loan collateral. Life insurance can be difficult and/or very expensive to obtain;

6. Section 81.131 is amended to eliminate detailed requirements as to loan amounts, interest rates, job creation criteria, and to allow PMBDA to establish these parameters through guidelines to be published in the Pennsylvania Bulletin;
7. Section 81.143 is amended to eliminate the requirement of a 6.00% monthly late charge; and
8. Section 81.144 is amended to eliminate the requirement of the use of an escrow fund for loan closings.

(8) State the statutory authority for the regulation. Include specific statutory citation.

This regulation is promulgated under the authority of section 9 of the act of July 22, 1974 (P.L. 598, No. 206) (73 P.S. § 390.9), known as the Pennsylvania Minority Business Development Authority Act (the "Act").

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No, this regulation is not mandated by any federal or state law, court order, or federal regulation. PMBDA wishes to amend its regulations to allow it to be more effective in accomplishing its mission.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

This regulation is needed to remove requirements from PMBDA's regulations that prevent the Act from achieving its goal. Removing these requirements will allow a greater number of socially and economically disadvantaged persons to utilize funding through PMBDA, thus increasing the effectiveness of the program.

The regulation will benefit all of PMBDA's potential and actual future borrowers which include business enterprises that are owned or controlled by one or more socially or economically disadvantaged persons who are residents of this Commonwealth. It is impossible to predict the number of these persons.

The changes to Sections 81.111, 81.112, 81.122, 81.124, 81.131, 81.143 and 81.144 are being sought because they impose requirements on loans that PMBDA may not want to impose on a particular borrower. For example, there would be no need for PMBDA to require an assignment of a life insurance policy if other collateral was available. These are decisions are best made by PMBDA on a case-by-case basis.

The changes to Section 81.111 are necessary because it may be impossible for an eligible applicant to commit only to the enterprise for which they wish to receive a loan; it may be necessary for them to be employed otherwise until the business is successful enough to sustain the eligible applicant as their only

employment.

The change to Section 81.112 is being made because requiring the use of an escrow fund for funds provided from other sources is unnecessary and only serves as another barrier for eligible applicants.

The change to Section 81.122 is necessary because PMBDA no longer has regional offices.

The change to Section 81.131 will allow PMBDA to quickly adapt to changing markets by modifying interest rates, loan terms, minimum and maximum loan amounts, job creation requirements, and making changes to program delivery options. By embedding these fundamental elements of financing in regulations, and in effect making them inflexible rules with the force of law, the PMBDA program is frozen in its efforts to flex to changing economic conditions and thus unable to be responsive to its target market (businesses owned by socially and economically disadvantaged persons). It should be noted that the current interest rate provision, which requires that "the interest rate may not be more than one-half of the prevailing prime rate on the date of loan approval and not less than 4%," is an impracticable formula when the prime interest rate is less than 8%. Viable non-regulatory alternatives exist to deal with these matters, namely guidelines and descriptive application materials. Further, a 4% interest rate is only competitive under the right conditions; giving the PMBDA the flexibility to change this interest rate will make PMBA loans more attractive and thus more successful.

The change to Section 81.143 is necessary because the decision to impose monthly late charges should be made by PMBDA based on market conditions and not imposed by regulation. For example, The Pennsylvania Industrial Development Authority currently imposes a 5% late charge, but is not mandated to do so by regulation.

The change to Section 81.144 is being made because requiring the use of an escrow fund during a closing is unnecessary and only serves as another barrier for eligible applicants.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

N/A – Federal standards do not directly apply to the PMBDA, thus there are no provisions within the regulation that are stricter than federal standards.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Some states also have direct funding programs for socially and economically disadvantaged persons as outlined below. However, they are typically much more flexible in nature than Pennsylvania's. Specifically, Ohio and New York allow the business terms to be based on market conditions, whereas, here in Pennsylvania, PMBDA's regulations have made it impossible to adjust the business terms of its

loans to reflect market conditions.

New York:

Website: <http://www.esd.ny.gov/BusinessPrograms/MWBEDevelopmentLending.html>

Interest Rate: (Market) "Interest rates on loans made by the corporation will be structured to reflect market conditions, project feasibility and the applicant's ability to repay." N.Y. Comp. Codes R. & Regs. tit. 21, § 4213.7.

Ohio:

Website: https://development.ohio.gov/bs/bs_ombdlp.htm

Interest Rate: (Market) "Fees, charges, rates of interest, times of payment of interest and principal, and other terms, conditions, and provisions of the loans... shall be such as the director determines to be appropriate and in furtherance of the purpose for which the loans and guarantees are made..." Ohio Rev. Code Ann. § 122.78.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No, this regulation will not affect any other regulation of the promulgating agency or any other state agency.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Executive Director of the Pennsylvania Minority Business Development Authority, reports:

I have received numerous complaints from potential borrowers about the PMBDA interest rate and the fact that the owner has to operate the business full time. When companies call to inquire about the program, their first question is usually the rate of interest. Once we tell them 4%, the company disappears. The only ones that come back are ones that cannot get a bank loan. A medical doctor that wants to establish a dietary supplement manufacturing operation with a partner who is a chemist was not eligible to apply for a PMBDA loan because the program requires that he quit his full-time job and operate the new business full-time. He argued that his full time job would help sustain the new business until it is able to stand on its own.

We have had several approved loans that did not make it to closing because the company could not afford to purchase life insurance in addition to business insurance. A company located in Reading PA (Eagle Helpers In-Home Healthcare) was approved for a \$135,000 loan, but because the company could not afford to purchase life insurance, it opted to rescind the approved loan.

Also, so many minority start-up businesses are not eligible to apply for PMBDA loan because they are unable to create enough jobs for the amount of capital they need to start the business. A small minority establishment like barber shop, hair salon, and daycare are totally excluded from the program because of their inability to create any type of jobs within the first 3 years in operation and the program requires 1 full-time job to be created with every \$15,000 borrowed under the program.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The regulation will benefit all of PMBDA's potential and actual future borrowers which include business enterprises that are owned or controlled by one or more socially or economically disadvantaged persons who are residents of this Commonwealth. It is impossible to predict the exact number of persons who will be affected. However, it is hoped that the regulatory changes will increase the number of persons who will be benefitted by the more flexible program. PMBDA currently has only 46 active loan accounts. Only 1 loan was approved in each of the last two fiscal years. In contrast, 11 new loans were approved in FY2006 and 12 new loans were approved in FY2007.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

The persons who will have to comply with the regulation are all the potential and actual future borrowers from PMBDA, which include business enterprises that are owned or controlled by one or more socially or economically disadvantaged persons who are residents of this Commonwealth. It is impossible to predict the number of these persons. However, it is hoped that the regulatory changes will increase the number of persons who will be benefitted by the more flexible program. PMBDA currently has only 46 active loan accounts. Only 1 loan was approved in each of the last two fiscal years. In contrast, 11 new loans were approved in FY2006 and 12 new loans were approved in FY2007.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The regulation will have a positive financial and economic impact on the borrowers of the PMBDA as PMBDA funding becomes easier to attain by those borrowers.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

Making it easier to obtain financing from PMBDA will allow PMBDA to more effectively accomplish its task of alleviating and overcoming the many barriers to business opportunity that have too long handicapped socially and economically disadvantaged persons, and its task of providing assistance, financial and otherwise, which will contribute to well-balanced National and State economies by facilitating the acquisition or maintenance of ownership of business enterprises by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

There are no real costs or adverse effects from making PMBDA financing more widely available. PMBDA's loan program is funded by special appropriation and the fund is revolving. Thus, the regulations as currently written are costly and have adverse effects anytime they prevent the PMBDA from funding a worthy business enterprise.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulation will not impose any costs on, or result in any savings to, the regulated community.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulation will not impose any costs on, or result in any savings to, local governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulation will not impose any costs on, or result in any savings to, state government.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

This regulation does not impose any new legal, accounting, consulting, reporting, or recordkeeping requirements on any party.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Costs	N/A	N/A	N/A	N/A	N/A	N/A
REVENUE LOSSES:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 07.01.12-06.30.13	FY -2 07.01.13-06.30.14	FY -1 07.01.14-06.30.15	Current FY 07.01.15-03.01.16
Pennsylvania Minority Business Development Authority Loan Program	\$227,676.07	\$274,280.40	\$294,657.91	\$183,418.28

(Operating Expenses)				
Pennsylvania Minority Business Development Authority Loan Program (Loan Disbursements)	0	\$626,654.00	\$18,092.00	\$818,816.00

* includes expenses realized for uncollectable loans.

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

This regulation will not have an adverse impact on small businesses. Rather, many small businesses will have access to funding they did not have before the various barriers were removed from the regulation.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

PMBDA was formed for the specific purpose of alleviating and overcoming the many barriers to business opportunity that have too long handicapped socially and economically disadvantaged persons, and providing assistance, financial and otherwise, which will contribute to well-balanced National and State economies by facilitating the acquisition or maintenance of ownership of business enterprises by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages. These changes to the regulations will enable PMBDA to better achieve its goal as funding becomes more accessible for socially and economically disadvantaged persons.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

It should first be pointed out that the proposed regulation amends existing regulations to make them less burdensome to PMBDA and its borrowers. No alternative regulatory provisions were considered or even possible in order to deal with the regulatory restrictions which have crippled the program. This regulation allows PMBDA to set its loan terms by action of its Board of Directors, as authorized under 73 P.S. § 390.8(b), rather than be bound by the terms set out in the regulations, which are rigid and difficult to change. The loan terms being offered would be set forth in guidelines published by PMBDA which are available to the general public on the www.newpa.com website. This is the same process used by other loan programs, such as the Pennsylvania Industrial Development Authority. The loan terms for a particular loan are set forth in the commitment letter issued to a borrower after the PMBDA board

approves the loan, and become part of the loan agreements that PMBDA enters into with its borrowers.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

N/A – This regulation will not have an adverse impact on small business; thus, no regulatory flexibility analysis was done.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data is not the basis for this regulation.

(29) Include a schedule for review of the regulation including:

- | | |
|---|---------------------------|
| A. The date by which the agency must receive public comments: | July 18, 2016 |
| B. The date or dates on which public meetings or hearings will be held: | ____ N/A ____ |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | First Quarter of 2017 |
| D. The expected effective date of the final-form regulation: | 90 days after publication |
| E. The date by which compliance with the final-form regulation will be required: | 90 days after publication |
| F. The date by which required permits, licenses or other approvals must be obtained: | ____ N/A ____ |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its

implementation.

PMBDA intends to continually monitor its regulations to ensure their effectiveness.

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WITH THE LEGISLATIVE REFERENCE BUREAU**

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<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>By: _____ (Deputy Attorney General)</p> <p>_____ Date of Approval</p> <p><input type="checkbox"/> Check if applicable. Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p>Department of Community and Economic Development (Agency)</p> <p>Document/Fiscal Note No.4-99 Date of Adoption: _____</p> <p>By: <u>Cathy O'Connell</u></p> <p>Title: Executive Director of PMBDA (Executive Officer, Chairman or Secretary)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>By: <u>Marisa H. J. Lehn</u></p> <p>SEP 28 2016 _____ Date of Approval</p> <p>(Deputy General Counsel) (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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FINAL-FORM RULEMAKING

TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT

Part III. BUSINESS FINANCING

SUBPART D. MINORITY LENDING

CHAPTER 81. MINORITY BUSINESS DEVELOPMENT AUTHORITY

PREAMBLE

By this order, the Pennsylvania Minority Business Development Authority (“PMBDA”), under the authority of section 9 of the act of July 22, 1974 (P.L. 598, No. 206) (73 P.S. §§ 390.1-390.18), known as the Pennsylvania Minority Business Development Authority Act (“Act”), hereby amends Title 12 of the Pennsylvania Code, Chapter 81, sections 81.111, 81.112, 81.122, 81.124, 81.131, 81.143 and 81.144, to read as set forth in Annex A.

Introduction

The Act was promulgated for the express purposes of (i) alleviating and overcoming the many barriers to business opportunity that have too long handicapped socially and economically disadvantaged persons, and (ii) providing assistance, financial and otherwise, which will contribute to well-balanced National and State economies by facilitating the acquisition or maintenance of ownership of business enterprises by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages. 73 P.S. § 390.2. The Act creates PMBDA, a body corporate and politic with a 16-member board of directors composed of four cabinet officers, eight persons appointed by the Governor, and four persons appointed by the General Assembly. In 1975 PMBDA promulgated regulations, now codified at 12 Pennsylvania Code Chapter 81, which describe in detail PMBDA’s lending and financial assistance programs, covering such topics as purpose of the program, eligible applicants and projects, application procedures, amount and terms of loans and other financial assistance, loan closing procedures, default procedures, late charges, and the procedures to be used for examinations and investigations conducted by PMBDA.

Analysis

The regulation amends those sections of PMBDA’s existing regulations that impede PMBDA’s ability to be responsive and flexible to its target market. Specifically:

1. Section 81.111(a)(6) is amended to eliminate the requirement that the applicant must commit to “full time” management of the company. Instead, the applicant will be required to maintain complete control of the enterprise. This will allow PMBDA to fund start-up businesses when the applicant will have another job until the new enterprise can financially support a full-time manager;
2. Section 81.111(a)(7) is amended to eliminate the requirement that to be eligible, the applicant must commit to work full-time in the enterprise for which he is seeking a loan, and if he is otherwise employed must terminate employment prior to or at the time of closing. This will also allow PMBDA to fund start-up businesses when the applicant will have another job until the new enterprise can financially support a full-time manager;
3. Section 81.112(a)(3) is amended to eliminate the requirement of an escrow account for project funds provided by other sources;
4. Section 81.122 is amended to eliminate the requirement that applications be submitted through PMBDA’s regional offices (which no longer exist);
5. Section 81.124 is amended to eliminate the requirement of credit life insurance and assignments of life insurance policies as loan collateral. Life insurance can be difficult and/or very expensive to obtain;
6. Section 81.131 is amended to eliminate detailed requirements as to loan amounts, interest rates, job creation criteria, and to allow PMBDA to establish these parameters through policies to be published from time to time in the Pennsylvania Bulletin;
7. Section 81.143 is amended to eliminate the requirement of a 6.00% monthly late charge; and
8. Section 81.144 is amended to eliminate the requirement of the use of an escrow fund for loan closings.

The amendments will allow PMBDA to quickly adapt to changing markets by modifying interest rates, loan terms, minimum and maximum loan amounts, job creation requirements, and making changes to program delivery options. By embedding these fundamental elements of financing in regulations, and in effect making them inflexible rules with the force of law, the PMBDA program is frozen in its efforts to flex to

_____. The Commission met on _____ and [deemed] approved the regulation in accordance with Section 5.1(e) of the Act.

Effective Date/Sunset Date

- (a) The regulation will take effect 90 days after publication in the Pennsylvania Bulletin.
- (b) The regulation will be monitored on a regular basis and updated as needed.

Contact Person

For an explanation of this regulation contact Timothy M. Anstine, Deputy Chief Counsel, Department of Community and Economic Development, 400 North Street, 4th Floor, Harrisburg, PA 17120, 717-720-7312.

Findings and Order

The Pennsylvania Minority Business Development Authority finds:

- (1) That public notice of intention to adopt the regulation has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§1201 and 1202).
- (2) That the regulation is necessary and appropriate for the Pennsylvania Minority Business Development Authority's lending program.

The Pennsylvania Minority Business Development Authority, acting under the authorizing statute, orders:

- (1) That the regulations of the Pennsylvania Minority Business Development Authority set forth at Title 12 of the Pennsylvania Code, Chapter 81, sections 81.111, 81.112, 81.122, 81.124, 81.131, 81.143 and 81.144, are amended to read as set forth at ____ Pa. B. ____, as amended by Annex A hereto.

- (2) That the Pennsylvania Minority Business Development Authority shall submit this order, ____ Pa. B. ____ and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to legality as required by law.

(3) That the Pennsylvania Minority Business Development Authority shall submit this order, Annex A and the Regulatory Analysis Form to the Independent Regulatory Review Commission, the House Commerce Committee, and the Senate Community, Economic and Recreational Development Committee as required by law.

(4) That this order shall take effect 90 days after publication in the Pennsylvania Bulletin.

By the Pennsylvania Minority Business Development Authority

Cathy Onyeaka

Executive Director

ANNEX A

TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT

PART III. BUSINESS FINANCING

SUBPART D. MINORITY LENDING

CHAPTER 81. MINORITY BUSINESS DEVELOPMENT AUTHORITY

Subchapter A. GENERAL PROVISIONS

§ 81.111. Eligible applicants.

(a) To be eligible to apply for a loan, a loan guarantee or another form of assistance under the program established by the act, an applicant shall meet the following criteria, by submitting the information in the form that the Authority requires:

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

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

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

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

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

(6) The applicant shall [commit to full time management and control of the enterprise] maintain complete control over the management of the enterprise.

[(7)] (7) The applicant, if he is a natural person, shall commit to work full-time in the enterprise for which he is seeking a loan, and if he is otherwise employed shall terminate employment prior to or at the time of closing.]

[(8)] (7) The applicant shall pledge and maintain real and personal property as collateral, in the form and amount necessary to reasonably assure payment of the loan in the event of default or bankruptcy.

[(9)] (8) The applicant shall demonstrate that he and the enterprise to receive the loan have the ability to meet existing and projected debt service, including the debt service required to repay the loan of the Authority.

[(10)] (9) The applicant, if he is a natural person, shall be at least 18 years of age.

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

[(12)] (11) The applicant shall show, through experience, training or education, or a combination thereof, that he is capable of performing the responsibilities in connection with the ownership, management or control of the enterprise.

[(13)] (12) The applicant and the enterprise may not be involved as a debtor in a bankruptcy proceeding.

(b) The Board may consider the financial net worth of an individual applicant in making its decision to approve or disapprove an application.

§ 81.112. Eligible projects.

(a) To be eligible for a loan, loan guarantee or another form of assistance under the program established by the act, a project shall meet the following criteria, based upon information that the Authority may require:

* * *

(3) At least 25% of the eligible project costs shall be contributed in cash from sources other than the Authority. [and funds from sources other than commercial lenders or public lending bodies shall be placed in an escrow account along with Authority funds.]

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

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

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

* * *

§ 81.122. Applications, review and requirements.

(a) *Submission of application.* An application shall be submitted to the [designated regional office of the Authority. Regional office representatives shall determine whether an application is completed and shall forward completed applications to the] Authority's central office in Harrisburg. An application shall be deemed to be filed on the day it is received in Harrisburg, as evidenced by a date affixed on the face of the application. [If Harrisburg is the designated regional office, an application shall be deemed to be filed on the day the application is determined to be complete, as evidenced by a date affixed on the face of the application.]

* * *

§ 81.124. Additional conditions.

In addition to the other requirements in this chapter, the following criteria shall also be met:

* * *

[(4) Applicants, or their principals, shall have credit life insurance in the full amount of the loan or loan guarantee, or shall execute a collateral assignment of a life insurance policy in the full amount of the loan or loan guarantee, naming the Authority as assignee.]

[(5)] (4) An applicant shall have business insurance in an amount sufficient to safeguard business assets and to provide adequate financial protection to the Authority if the applicant suffers a loss due to certain insurable calamities. The Authority shall be named loss payee on the policies.

[(6)] (5) The sureties and guarantees of the principal and anyone else shall remain in effect for the entire period of the loan.

[(7)] (6) The applicant shall submit reports and provide information required by the Authority.

[(8)] (7) There may be no changes of expenditures of loan funds among categories without the prior written approval of the Authority.

* * *

§ 81.131. Amount and terms of loans.

The Authority shall from time to time establish the terms of its loans, to include such matters as the interest rate, length of loan term, maximum amount of loans, and requirements for creation or preservation of jobs, which shall be published as a notice in the Pennsylvania Bulletin.

[(a)] *Maximum amount of loan.*

(1) The maximum amount of a loan for a project may not exceed \$250,000, except as otherwise provided in paragraphs (2)—(4).

(2) If a project is located within an Enterprise Zone as designated by the Department or is located within a redevelopment area, the maximum amount of a loan may not exceed \$350,000, except as otherwise provided in paragraphs (3) and (4).

(3) If a project involves an industrial enterprise, a manufacturing enterprise, advanced technology, a regional or National franchise, international trade, or business acquisitions, and meets the requirements of § 81.125 (relating to additional conditions for certain loans), the maximum amount of a loan may not exceed \$500,000, except as otherwise provided in paragraph (4).

(4) If a project, which meets the criteria in paragraph (3), is located within an Enterprise Zone as designated by the Department or is located within a redevelopment area, the maximum amount of a loan may not exceed \$750,000.

(b) *Interest rate.* The loan shall be at an interest rate to be determined by the Board, but the interest rate may not be more than one-half of the prevailing prime rate on the date of loan approval and not less than 4%.

(c) *Creation or preservation of jobs.*

(1) For every \$15,000 in loan proceeds of \$100,000 or less, a project shall create or preserve at least one permanent full-time job, or the equivalent in part-time jobs. The jobs shall be created or preserved, without exception, within 3 years of the date that any amount of the proceeds from the loan are first disbursed to the loan recipient.

(2) For every \$15,000 in loan proceeds over \$100,000, a project shall create at least one permanent full-time job or the equivalent in part-time jobs. The jobs shall be created, without exception, within 3 years of the date that any amount of the proceeds from the loan are first disbursed to the loan recipient.

(3) If a project fails to meet its job projections within 3 years from the date of closing due to factors within the control of the enterprise, the Board may reset the interest charged on the loan at a rate not to exceed double the amount of the original interest rate.

(4) For purposes of this section, the phrase “the equivalent in part-time jobs” means at least 35 total hours per week of part-time labor.

(d) *Limitation on loans.* An applicant may not request nor receive more than the maximum loan amount set forth in subsection (a)(1) and (2) within 1 year of the date of the loan closing.]

§ 81.143. Late charges.

The Authority will assess late charges when payments under the loans are delinquent. [These charges will be assessed on a monthly basis and accrue at a rate of not less than 6.0% of each monthly payment which is in default.]

§ 81.144. Loan closing.

[(a) Loan closing.] The Authority will allow a 90-day period from the date of the commitment letter for borrowers to meet the conditions and requirements of the commitment letter for closing. One 90-day extension may be granted by the Executive

Director beyond this period but shall be reported to the Board at its next meeting following the action with an explanation of the extension.

[(b) *Escrow*. Loan proceeds shall be placed in an escrow account under terms and conditions established by the Authority. The Authority will arrange for loan closings to be held at, and escrow accounts to be held by, financial institutions controlled by minority groups, whenever feasible and consistent with good lending practices.]



**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL**

September 30, 2016

Honorable Kim L. Ward, Chair
Community, Economic and Recreational Development Committee
Senate of Pennsylvania
Room 168 Main Capitol Building
Harrisburg, PA 17120

Dear Senator Ward:

Pursuant to Section 5a of the Regulatory Review Act, 71 P.S. §745.5a, enclosed for your review is a Final-Form Regulation of the Pennsylvania Minority Business Development Authority. The regulation submitted will amend Chapter 81 of Title 12 of the Pennsylvania Code.

Also enclosed is a regulatory analysis form pertaining to the regulation.

No public comments were received during the public comment period.

Concurrently with delivery of the regulation to you, the regulation has also been submitted to the Independent Regulatory Review Commission for its review in accordance with the Regulatory Review Act.

Sincerely,

A handwritten signature in black ink, appearing to read "T Anstine".

Timothy M. Anstine
Deputy Chief Counsel/Assistant Counsel

Enclosures

cc: Barry Wickes, Legislative Liaison, DCED
George D. Bedwick, Chairman, IRRC



**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL**

September 30, 2016

Honorable Lawrence M. Farnese, Jr., Minority Chair
Community, Economic and Recreational Development Committee
Senate of Pennsylvania
Room 543 Main Capitol Building
Harrisburg, PA 17120

Dear Senator Farnese:

Pursuant to Section 5a of the Regulatory Review Act, 71 P.S. §745.5a, enclosed for your review is a Final-Form Regulation of the Pennsylvania Minority Business Development Authority. The regulation submitted will amend Chapter 81 of Title 12 of the Pennsylvania Code.

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Sincerely,

A handwritten signature in black ink, appearing to read "T Anstine".

Timothy M. Anstine
Deputy Chief Counsel

Enclosures

cc: Barry Wickes, Legislative Liaison, DCED
George D. Bedwick, Chairman, IRRC



**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL**

September 30, 2016

Honorable Adam Harris, Chair
Commerce Committee
Pennsylvania House of Representatives
Room 115 Ryan Office Building
Harrisburg, PA 17120

Dear Representative Harris:

Pursuant to Section 5a of the Regulatory Review Act, 71 P.S. §745.5a, enclosed for your review is a Final-Form Regulation of the Pennsylvania Minority Business Development Authority. The regulation submitted will amend Chapter 81 of Title 12 of the Pennsylvania Code.

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Sincerely,

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Timothy M. Anstine
Deputy Chief Counsel/Assistant Counsel

Enclosures

cc: Barry Wickes, Legislative Liaison, DCED
George D. Bedwick, Chairman, IRRC



**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL**

September 30, 2016

Honorable Thomas W. Curtis
Minority Chair
Commerce Committee
Pennsylvania House of Representatives
Room 214 Irvis Office Building
Harrisburg, PA 17120

Dear Representative Curtis:

Pursuant to Section 5a of the Regulatory Review Act, 71 P.S. §745.5a, enclosed for your review is a Final-Form Regulation of the Pennsylvania Minority Business Development Authority. The regulation submitted will amend Chapter 81 of Title 12 of the Pennsylvania Code.

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Concurrently with delivery of the regulation to you, the regulation has also been submitted to the Independent Regulatory Review Commission for its review in accordance with the Regulatory Review Act.

Sincerely,

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Timothy M. Anstine
Deputy Chief Counsel

Enclosures

cc: Barry Wickes, Legislative Liaison, DCED
George D. Bedwick, Chairman, IRRC

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 4-99

SUBJECT: Minority Business Development Authority

AGENCY: DEPARTMENT OF COMMUNITY & ECONOMIC DEVELOPMENT

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
- a. With Revisions b. Without Revisions

2016 SEP 30 AM 10:45

RECEIVED
HPPC

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

HOUSE COMMITTEE ON COMMERCE

MAJORITY CHAIR Representative Adam Harris

MINORITY CHAIR Representative W. Curtis Thomas

*SENATE COMMITTEE ON COMMUNITY, ECONOMIC &
RECREATIONAL DEVELOPMENT*

MAJORITY CHAIR Senator Kim L. Ward

MINORITY CHAIR Senator Lawrence Farnese Jr.

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

September 30, 2016