

Title 6: Economic Development

Part 2: Minority and Small Business

Part 2 Chapter 1: Minority Surety Bond Guarantee Program

Rule 1.1 Overview. Mississippi Code Section 69-2-13(5) directs the Mississippi Development Authority (MDA) “to develop a program which will assist minority business enterprises by guaranteeing bid, performance, and payment bonds which such minority businesses are required to obtain in order to contract with federal and state agencies or political subdivisions of the state.” A Loss Reserve Fund of \$2,000,000 was appropriated with authority for an additional \$1,000,000 to guaranty private surety bonds guaranteed under the Minority Surety Bond Guaranty Program.

Source: Miss. Code Ann. § 69-2-13(5) (Rev. 2005)

Rule 1.2 Purpose. The Minority Surety Bond Guaranty Program strives to increase minority participation in construction and building trades contracts with federal, state, and local units of government, and their subsidiaries. Often minority firms are unable to compete for this business because they cannot obtain the bid, performance, and payment bonds required for government contracts. The Minority Surety Bond Guaranty Program assists these firms through surety bond guaranties and technical assistance to internal management. The goal of the Minority Surety Bond Guaranty Program is to help minority and women contractors establish a bond line with a surety company with a partial guarantee from the state. This will provide to the contractors an opportunity to form a relationship with a surety company thereby enabling them to obtain bond lines without a state guarantee. With successful completion of contracts guaranteed under the program, coupled with management and technical assistance directed by the program administrator and others, it is projected that minority contractors will grow in experience, management skills and the financial stability sufficient to obtain surety bonding on their own.⊘

Source: Miss. Code Ann. § 69-2-13(5) (Rev. 2005)

Rule 1.3 Contractors. A contractor/applicant must meet the following criteria:

- A. Be in the construction or building trades business.
- B. Be a certified business enterprise, Minority-Owned Business Enterprise (MBE) or Woman-Owned Business Enterprise (WBE) through the Minority and Small Business Development Division (MSBDD) of MDA.
- C. Have been in business at least one year prior to application.
- D. Have its principal place of business located in the state of Mississippi.
- E. Meet experience and financial standards appropriate to the contract.
- F. Agree to subcontract no more than seventy-five (75%) of a qualified contract.
- G. Show reasonable evidence of inability to secure bonding in the general market.
- H. At the discretion of the Surety Bonding Committee, agree to attend instructional courses designed by the Mississippi Development Authority's Minority & Small Business Development Division and the selected surety company to meet general requirements

leading to independence in securing bonding and contractor licensing. The committee may waive all or selected courses based on an assessment of the level of competency of the participant. The classes will be conducted over a 13-week period (one 3 hour class per week). The courses will be conducted by professionals in the related fields of expertise and include the following:

- Week 1: Business Planning and Organization
- Week 2: Risk Management
- Week 3: Estimating
- Week 4: Dispute Management
- Week 5: Scheduling
- Week 6: Occupational Safety
- Week 7: Finance and Business Management
- Week 8: Conflict Resolution
- Week 9: Contract Management
- Week 10: Surety Bonding
- Week 11: Equipment Management
- Week 12: Written Communication
- Week 13: General Contractors State Licensing Preparation
- Optional: Contractor Exam Review

The courses will be available statewide through utilizing the resources of the Mississippi Community Colleges and Universities and other resource partners. The courses will be provided at a nominal cost to the participant. For course completion, no more than three absences will be permitted, not including the optional session (Exam Review).

Source: Miss. Code Ann. § 69-2-13(5) (Rev. 2005)

Rule 1.4 Types of Bonds.

- A. Bid Bond: Guarantees that the bidder on a contract will enter into the contract and furnish the required payment and performance bond.
- B. Payment and Performance Bond: Guarantees payment from the contractor to the person who furnishes labor, material, equipment and/or supplies for use in the performance of the contract. The bond also guarantees that the contractor will perform the contract in accordance with its terms.

Source: Miss. Code Ann. § 69-2-13(5) (Rev. 2005)

Rule 1.5 Qualifying Governmental Agencies. Examples of governmental agencies whose construction contracts qualify:

- A. Federal Agencies:
 - (i). U.S Post Office
 - (ii). U. S. Army Corp of Engineers
 - (iii). Department of Housing and Urban Development
 - (iv). U.S. Military
- B. State Agencies:

- (i). Universities and Community Colleges
- (ii). Department of Transportation
- (iii). Bureau of Buildings, Grounds, and Real Property Management
- C. Local Governments and Subsidiaries:
 - (i). Cities, towns and counties
 - (ii). Public housing authorities
 - (iii). Public Schools
 - (iv). Public Facilities
 - (v). Roads and Bridges
 - (vi). Other Related Public Infrastructure

Source: Miss. Code Ann. § 69-2-13(5) (Rev. 2005)

Rule 1.6 Guaranty Amounts. For a Mississippi Development Authority approved firm, the Minority Surety Bond Guaranty Program offers bond guaranties up to \$175,000 for a company new to the program. After reevaluation, the maximum guaranty amount increases to \$250,000 in the company's second year of participation providing that there has been no default and the company remains eligible. The Mississippi Development Authority may guarantee up to ninety (90%) of specified bond amounts up to the applicable maximum.

Source: Miss. Code Ann. § 69-2-13(5) (Rev. 2005)

Rule 1.7 Costs. There is no charge for bid bonds through the Mississippi Development Authority or the surety company. For payment and performance bonds, there is an administrative charge of .6% per thousand dollars to Mississippi Development Authority.

Source: Miss. Code Ann. § 69-2-13(5) (Rev. 2005)

Rule 1.8 Default. The definition of surety losses is the responsibility of the Surety and the Mississippi Development Authority as detailed in applicable Bond Guaranty Agreement documents.

Source: Miss. Code Ann. § 69-2-13(5) (Rev. 2005)

Rule 1.9 Application. To apply for bonding assistance through the Minority Surety Bond Guaranty Program, a business will first contact the Minority & Small Business Development Division or one of the Mississippi Contract Procurement Center Regional Offices for applications and/or technical assistance in submitting certification and bonding applications. Bonding applications are then forwarded to participating Underwriters and Sureties. The application packages will include the following and must be submitted for each bonding request:

- A. Bond Application
- B. Project Data Sheet
- C. Complete Submission of Document Check List Items

Source: Miss. Code Ann. § 69-2-13(5) (Rev. 2005)

Part 2 Chapter 2: Minority Enterprise Division Appeals Procedure

Rule 2.1 Scope. This procedure is the exclusive method for seeking administrative review of adverse action taken by Minority Business Enterprise Division, a division of the Mississippi Development Authority.

Source: Miss. Code Ann. § 69-2-13(5) (Rev. 2005)

Rule 2.2 Appealable Actions. An applicant/participant may appeal the following adverse actions taken by MBED - a denial of program admission and/or a denial of renewal of program admission. However, an adverse action is only appealable if MBED's decision is based solely on a negative finding of social disadvantage, economic disadvantage, ownership, control or any combination of these four criteria. An adverse action that is based, even in part, on failure to meet any other eligibility criterion is not appealable and is the final decision of the agency.

Source: Miss. Code Ann. § 69-2-13(5) (Rev. 2005)

Rule 2.3 Notice. The applicant/participant shall be advised in writing of the grounds on which MBED based its action. The notice will be sent by certified mail return receipt requested. The notice of action shall also include a statement indicating that the applicant/participant has the right to request reconsideration or if applicable, to appeal the action under the provisions of Section 2 above.

Source: Miss. Code Ann. § 69-2-13(5) (Rev. 2005)

Rule 2.4 Request. An applicant/participant may request reconsideration by MBED of any adverse action regardless of whether the adverse action is appealable under Section 2 above. Such request must be in writing to the Director of Minority Business Enterprise Division, Mississippi Development Authority, P.O. Box 849, Jackson, Mississippi 39205-0849. The Director of MBED must receive the request for reconsideration within twenty (20) calendar days from the date the Notice of Adverse Action was mailed. The request must specify the matter(s) to be reconsidered and include any additional information the applicant/participant wishes to be considered.

Source: Miss. Code Ann. § 69-2-13(5) (Rev. 2005)

Rule 2.5 Review. Upon receipt of a request for reconsideration, MBED will review the request and any information provided, conduct further inquiry if necessary, including but not limited to an in-person discussion with the applicant/participant, and submit its decision in writing, certified mail return receipt requested, to the applicant/participant within fifteen (15) days. A timely received request for reconsideration tolls the twenty (20) day time period for appeal of an adverse action. Upon receipt of an adverse reconsideration decision, the applicant/participant may submit a petition for appeal if the decision is based on appealable matters pursuant to Section 2 above.

Source: Miss. Code Ann. § 69-2-13(5) (Rev. 2005)

Rule 2.6 Procedure for Petition for Appeal.

A. The applicant/participant petitioning for appeal, must file its petition in writing with the Director of Minority Business Enterprise Division, Mississippi Development Authority, P. O. Box 849, Jackson, Mississippi 39205-0849 not later than twenty (20) calendar days from the date the notice of adverse action was mailed; or within twenty (20) calendar days from the date the decision on a Request for Reconsideration under Section 4 above was mailed. The petitioner must specify within its petition for appeal the grounds upon which administrative review of the decision is sought. The petition must clearly indicate the type of remedy requested and name the contact representative for the petitioner. A hearing shall be held only if the petitioner specifically requests a hearing in its petition for appeal. If no petition for review of an appealable adverse action is filed within the above stated time, the decision shall become final.

B. MBED shall acknowledge the receipt of the request for appeal within seven (7) calendar days of receipt. Such acknowledgement shall designate the review officer.

C. Filing of a petition for appeal shall not stay the effect of the MBED's adverse action.

Source: Miss. Code Ann. § 69-2-13(5) (Rev. 2005)

Rule 2.7 Review Officer. The review officer shall be an independent and impartial officer other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section. The review officer may, however, be an employee of the MDA.

Source: Miss. Code Ann. § 69-2-13(5) (Rev. 2005)

Rule 2.8 Procedure for Hearing on Appeal.

A. The petitioner may refute the grounds on which MBED based its action in person and/or by written documentation submitted to the review officer. In order to be considered, all written documentation of the petitioner and MBED must be filed with the review officer with a copy to the opposite party not later than thirty (30) calendar days after the mailing of the acknowledgement of appeal.

B. The petitioner may retain legal counsel at its own expense. A hearing shall be held by the review officer in addition to, or in lieu of, a review of written information submitted by the petitioner only if so specified in the petition of appeal. The review officer shall set a hearing date which date shall not be later than thirty (30) calendar days from the date of mailing of the acknowledgement of appeal, unless the parties agree to a later date. Failure of the petitioner or its counsel to appear at a scheduled hearing shall constitute waiver of the hearing. A representative of MBED shall be allowed to attend the hearing to present evidence, respond to the petitioner's testimony and to answer questions posed by the review officer.

C. Any hearing shall be conducted in such a manner that all parties have a fair and reasonable opportunity to present witnesses and other evidence pertinent to the issues. In conducting the hearing, the review officer shall not be bound by common law or by statutory rules of evidence or by technical or formal rules of procedures, but may conduct the hearing in such a manner as best to ascertain the rights of the parties. However,

hearsay evidence (if presented) shall not be the sole basis for the determination of facts by the review officer. The review officer may also ask questions to clarify issues, limit the examination or cross-examination of witnesses to keep the hearing focused on the issue, and recess/reconvene the hearing if necessary.

D. If any party to the appeal wishes to have stenographic notes of the proceedings, that party shall be solely responsible for payment of a court reporter for that service; the review officer shall, on request, engage a court reporter for this purpose. An audio tape recording shall be made of the proceedings and may be duplicated and/or transcribed at the expense of either party requesting it.

E. It shall be the responsibility of each party to secure the attendance of such witnesses as deemed necessary to present the case; any expense connected with that attendance shall be borne by the party responsible for the attendance of that witness. The review officer shall not have power to subpoena witnesses or documents.

Source: Miss. Code Ann. § 69-2-13(5) (Rev. 2005)

Rule 2.9 Recommendation. After conducting de novo review of the materials submitted by the parties and of the evidence taken at the hearing, if any, the review officer shall make a written recommendation to the Executive Director of the Mississippi Development Authority (MDA). The written recommendation will be issued to the Executive Director within twenty days (20) after the hearing is completed or, if no hearing is held, after submission of any written documentation permitted by Section 7(a) above. The recommendation of the review officer shall contain specific reason(s) why the denial or termination decision should be upheld or overturned. A copy of the recommendation will be sent to petitioner and to the Director of MBED by certified mail return receipt requested.

Source: Miss. Code Ann. § 69-2-13(5) (Rev. 2005)

Rule 2.10 Executive Director Review.

A. After review solely on the record, the Executive Director may adopt the recommendation of the review officer or may issue a differing decision. The Executive Director will issue his decision within fifteen (15) calendar days of receipt of the recommendation of the review officer. A decision adopting the recommendation of the review officer need not contain any additional reasoning.

B. The decision of the Executive Director shall be sent by certified mail return receipt requested to the petitioner and to the Director of MBED. The decision of the Executive Director is final.

Source: Miss. Code Ann. § 69-2-13(5) (Rev. 2005)

Rule 2.11 Remand. In the event an appealable adverse action is overturned as a result of an appeal the Executive Director of MDA may direct, the disposition to be made by MBED of the application, renewal or termination; or the application may be remanded to MBED for further action consistent with the decision of the Executive Director. MBED will indicate what steps, if any, must be taken to complete or reinstate certification.

Source: Miss. Code Ann. § 69-2-13(5) (Rev. 2005)

Rule 2.12 Immunity. Nothing in the appeal procedure shall be construed as a waiver of the immunities from suit conferred upon the State of Mississippi, MDA, or any of its employees, officers, agents or designees, under the Eleventh Amendment of the United States Constitution and the Constitution and laws of the State of Mississippi.

Source: Miss. Code Ann. § 69-2-13(5) (Rev. 2005)

Part 2 Chapter 3: Minority Business Enterprise Loan (MBE) and Micro-Loan (MBEM) Programs

Rule 3.1 MBE Overview. The Mississippi Business Enterprise Loan Program, administered by the Mississippi Development Authority, combines state and private lending sources to assist new and existing minority business in gaining access to needed capital in the form of direct low-interest rate loans. The State of Mississippi amount ranges from \$35,001 to \$250,000 with the potential of \$500,000 with 50% match from another lending source or entity.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.2 Eligibility. To be eligible for funding under the program, the Minority Business Enterprise must be a socially and economically disadvantaged small business concern. The business must be organized for profit, perform a commercially useful function and be owned or controlled by one or more minorities or women.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.3 Definitions. For purposes of this program, the term “socially and economically disadvantaged small business concern” shall have the meaning ascribed to such term under the Small Business Act (15 U.S.C.S., Section 637 (A)) and shall include all women. MBE Loan applicants, regardless of race or gender, must be determined to be socially and economically disadvantaged due to diminished capital and credit opportunities as compared to others in the same business area that are not socially disadvantaged.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.4 Ability to Repay. All applicants must be credit worthy and demonstrate the ability to repay the loan, must be in compliance with all state and federal regulatory agencies, and must not be in default on any previous loans from the state or federal government. No minority business will be eligible if it is:

- A. A charitable institution or nonprofit organization
- B. A newspaper, magazine, radio, television broadcasting company or similar enterprise through which editorial opinions are expressed
- C. Engaged in the business of lending, directly or indirectly

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.5 Proper Use of Loan Proceeds. MBE loan proceeds may be used to finance costs associated with the creation or expansion of a minority business, including fixed assets, working capital, start-up costs, rental payments, interest expense during construction and professional fees related to the project.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.6 Borrower Investment Requirement for a New Business. When loan proceeds are used to start a new business or to purchase an existing business, the total project cost is the amount required to establish or acquire that business. The borrower must inject a minimum of five percent (5%) equity into the project in the form, of cash of tangible assets such as land, building or equipment.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.7 Borrower Requirements to Expand an Existing Business. When loan proceeds are used to expand an existing business, the total project cost will be the total funds required to complete the proposed expansion. Assets owned by the business prior the expansion are not to be included in the project cost, unless it can be clearly documented that assets acquired prior to the application were purchased as a part of the expansion project. Existing business assets may be used as collateral for the loan.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.8 When Loans are Unavailable. MBE loans are not available under the following circumstances:

- A. To pay off existing debts for consolidation purposes;
- B. If the direct or indirect purpose or result would be to pay off creditors of applicants who are inadequately secured or in a position to sustain a loss;
- C. If the assistance would, directly or indirectly, provide or replenish funds for payment, distribution, or as a loan to owners, partners, or stockholders of the Minority Business and would not change the ownership interest of the business (does not apply to ordinary compensation for services rendered in the course of business);
- D. If the loan funds would provide or free funds for speculation in any kind of property;
- E. If the assistance would finance the acquisition, construction, improvement or operation of real property which is to be held primarily for sale or investment, or;
- F. If the assistance would finance vehicles.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.9 Terms of MBE Loan(s). The maximum term of the MBE loan shall be seven (7) years for working capital, ten (10) years for machinery and equipment, and fifteen (15) years for land and building. If loan proceeds are to be used for a combination of working capital, machinery and equipment, or land and building, then a blended term may be used that is proportionate to the use of the funds and to the collateral securing the loan.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.10 Proper Use of MBE Loan Funds. MBE loan funds may be used to fund fifty percent (50%) of total project that consist of borrowed costs or \$250,000, whichever is less. The minimum total project eligible for consideration is \$15,001. Any project requests of \$35,000 or less may be eligible for funding under the Minority Micro-Loan Program as outlined below. A combination of state funds may be used to finance project costs; however, the combination of these funds may not exceed 50% of the total project that is borrowed.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.11 Interest Rate on MBE Loan(s). The minimum interest rate, which may be charged to the minority business on MDA's portion of the MBE loan, is two percent (2%) below the Federal Reserve Discount Rate, and the maximum is two percent (2%) above the discount rate. Should the interest rate change from the date of commitment to the date of closing, the interest rate quoted in the commitment will prevail.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.12 Collateral on MBE Loan(s). Collateral on MBE loans made by the qualified entity should normally be subordinated to the senior lender.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.13 Fees on MBE Loan(s). The qualified entity may charge an origination fee of up to 1% on the first \$250,000 loaned. Additional fees paid by the borrower in connection with the closing of the MBE loan are limited to attorney fees and other associated closing costs that may not exceed \$750. These fees may be paid from proceeds. Should extenuating circumstances cause fees to exceed these stated amounts, written justification should be provided along with the settlement sheet.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.14 MBEM Overview. The Mississippi Business Enterprise Micro-Loan Program provides a funding source for businesses needing financing for small projects. Loan amounts for projects range from \$2,000 to \$35,000 with an owner's equity injection (i.e. cash, tangible equity such as land, building(s) or equipment) of five percent (5%).

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.15 Terms of MBEM Loan(s). The terms allowed are determined by the loan amount and should relate to the type of collateral offered. Terms should not exceed three (3) years for loans of \$2,000 to \$5,000, four (4) years for loans of \$5,001 to \$10,000, five (5) years for loans of \$10,001 to \$15,000, and seven (7) years for loans of \$15,001 to \$35,000.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.16 Proper Use of MBE Micro-Loan Funds. MBE Micro-Loan funds may be used to finance up to 100% of total projects of \$2,000 to \$35,000. All borrowers must have at least 5% equity in the project. These funds are not intended to be used as gap financing and proceeds shall not be utilized with any other financing.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.17 Interest Rate on MBE Micro-Loan(s). The interest rate to be charged is four percent (4%) over the Federal Reserve Discount Rate, fixed for the term of the loan. Should the interest rate change from the date of commitment to the date of closing, the interest rate quoted in the commitment will prevail.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.18 Collateral on MBE Micro-Loan(s). Collateral shall include a first lien on all assets acquired with loan proceeds. Collateral may also include liens on other business and/or personal assets as deemed necessary to adequately secure the loan.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.19 Qualified Entity Involvement in Approval of MBE Micro-Loans. The qualified entity's Board of Directors may choose to appoint an in-house loan committee comprised of staff members of the Qualified Entity to approve micro-loan applications. MDA will require a copy of the board minutes authorizing the in-house committee prior to the submission of loan applications.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.20 Fees on MBE Micro-Loan. The qualified entity may charge an origination fee of up to 1% of the loan amount. At the option of the qualified entity, a minimum fee of \$100 may be established. Additional fees paid by the borrower in connection with the closing of the MBE Micro-Loan are limited to attorney fees and other associated closing costs. These fees may be paid from loan proceeds.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.21 Application Submission. Applications may be submitted by mail or facsimile to MDA. A credit report and a personal financial statement of each owner of the minority business must accompany the application. All other documentation as indicated on the application form shall be retained on file with the qualified entity.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.22 Application Requirements. All qualified entities will provide applicants under this program an application packet that includes the MBE loan application, a summary of the loan

program criteria, eligibility requirements, a summary of the application process, loan closing procedures, and applicable fees. All MBE loan requests shall be submitted to MDA on the approved Minority Business Enterprise Loan Application. This application is intended to be completed by the qualified entity with information provided by the applicant. The qualified entity's board or designated loan committee shall first have approved all loans submitted to MDA for consideration. At a minimum, the composition of the Board of Directors shall include an individual with current banking experience, an individual owning a for-profit, commercial enterprise, a minority individual with current experience in banking or business ownership and a female with current banking or business ownership experience.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.23 Notification of Approval. When an application has been approved, MDA will notify the Qualified Entity in writing. Upon receiving MDA'S approval, the qualified entity may submit a request for payment form. MBE loan proceeds not disbursed by the Qualified Entity within sixty (60) days of receipt must be returned unless an extension is granted by MDA or be subject to interest penalties.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.24 Reporting Requirements. Each qualified entity will be required to file status reports with MDA as of December 31 and June 30 of each year summarizing project information and fund uses. These reports are due on January 31 and July 30.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 3.25 Audits. An independent audit of grant funds received in connection with this program shall be submitted to MDA annually. This audit shall include a reconciliation of all bank accounts where MBE funds are being held on deposit.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Part 2 Chapter 4: Mississippi Capital Access Contract Loan Program (MS CAP)

Rule 4.1 Overview. The Mississippi Capital Access Program, administered by the Mississippi Development Authority (MDA), is designed to increase the availability of financing for borrowers who for various reasons might have difficulty in obtaining conventional loans. The essential element of the program is a loan secured by proceeds of a public contract ("Contract Loan"). The loan will be made on the basis of a construction contract with a public entity having been awarded to the borrower.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 4.2 Definitions. For the purpose of this program, the "socially and economically disadvantaged" shall have the meaning ascribed to such term under the Small Business Act (15 U.S.C., Section 637[a] and shall include woman. Businesses qualifying as minority or women

owned must sign a notarized affidavit indicating ownership.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 4.3 Proper Use of CAP Loans. Contract loans may be used for cost associated with a construction project or construction related contract being used as collateral for each loan. A properly notarized “letter to redirect funds” may be substituted in lieu of a contract with certain governmental agencies. Such letters must be pre-approved by the Mississippi Development Authority. In the event the contract involves a subcontractor, the subcontractor may also apply for the Capital Access Contract Loan. In this case, the prime contractor or other qualified entities must agree to pay the subcontractor’s loan amount directly to the lending institution. The maximum amount that may be loaned to anyone borrower is the greater of \$75,000.00 or 75% of the contract amount. This loan program has a limit of three loans per borrower. The loan may not be used in conjunction with any other State finance program. The Mississippi Development Authority may at its discretion require control of use and disbursement of funds on these loans. The applicant will be responsible for the cost of all fees associated with the loan.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 4.4 Improper Use of CAP Loans. Capital Access Contract Loans are not available under the following circumstances:

- A. To pay off existing debt for consolidation purposes;
- B. If the direct or indirect purpose or result would be to pay off creditors of applicants who are inadequately secured or in a position to sustain a loss;
- C. If the assistance would, directly or indirectly, provide or replenish funds for payment, distribution, or a loan to owner, partners, or stockholders of the Small Business and would not change the ownership interest of the business (does not apply to ordinary compensation for services rendered in the course of business);
- D. If the loan funds would provide funds for speculation in a any kind of property; or if the assistance would finance the acquisition, construction, improvement, or operation of real property which is to be held primarily for sale or investment;
- E. If the loan is for construction or purchase of residential housing.

Each loan made under the Capital Access Contract Loan Program must be approved by the Mississippi Development Authority.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 4.5 Eligibility. An eligible Financial Institution is any commercial bank, savings bank, or association domiciled or qualified to do business in the State and other types of financial institutions, including but not limited to Small Business Investment Corporations, (Hereafter referred to as “Financial Institution”). For the purpose this loan program, the participating Financing Institutions will be those that have qualified to participate in the Capital Access Loan Program.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 4.6 Eligible Businesses. Businesses, which are eligible to participate in the Capital Access Program, must fall into one of the following categories:

- A. A Small Business, which is defined as any independently owned and operated for-profit, commercial enterprise domiciled in the State with less than 50 full-time employees. Owner(s) must have completed the Model Contractor Development Program or completed the small business training programs offered through the Entrepreneur Center; or
- B. A Small Disadvantaged Business, which is publicly owned with at least 51 % of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and whose management and daily operation is controlled by one or more such individuals; or
- C. A Minority Business that meets the definition of a minority or woman owned business. A minority or woman owned business is a business enterprise, which is socially and economically disadvantaged and owned and operated by one or more women or eligible minorities. The business must be organized for profit and perform a commercially useful function.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 4.7 Sole Proprietorship Restriction. If the Small Business is a sole proprietorship, the owner must be a resident citizen of the State of Mississippi and if the business is a corporation or partnership, at least 51 % of the owners must be resident citizens of Mississippi.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 4.8 Ability to Repay. The small business must be credit-worthy and demonstrate the ability to repay the loan, the ability to successfully fulfill the contract being used as collateral, must be in compliance with all state and federal regulatory agencies, and must not be in default on any previous debt or obligation with the state or federal government.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 4.9 Ineligible Small Businesses. Small Businesses that are not eligible for assistance under this program are:

- A. Charitable institution or nonprofit enterprise; or
- B. Newspaper, magazine, radio, television broadcasting company, or similar enterprise through which editorial opinions are expressed; or
- C. Businesses engaged in lending, directly or indirectly;
- D. Immediate relatives of any current staff or board members of a Financial Institution.
- E. Immediate relative is defined as a spouse, parent, child or sibling of the applicant.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 4.10 Use of Loan Proceeds. MS CAP may be used to finance costs associated with the creation or expansion of a Small Business, including fixed assets, working capital, start-up costs, rental payments, interest expense during construction, and professional fees related to the

project. The maximum amount that may be loaned to anyone borrower is \$150,000. The Loan may not be used in conjunction with any other State finance program.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 4.11 Restriction on Use. The Financial Institution sets the terms and conditions of the MS CAP loan. However, the funds cannot be used to pay off:

- A. Existing debt and/or creditors; or
- B. Consolidation purposes;
- C. Construction or purchase of residential housing; or real property that is held primarily for sale or investment.

Each MS CAP Loan must be approved by MDA to qualify for the program.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 4.12 Contribution Outline.

- | | |
|---------------------------|---|
| A. Small Business | A minimum of 1.5% of the loan amount;
A maximum of 3.5% |
| B. Financial Institutions | Will match the amount deposited by the Small Business
(The Financial Institution may recover all or part of its
contribution from the Small Business in the form of loan
proceeds or cash injection) |
| C. Capital Access Program | Will match the total amount contributed by the Financial
Institution and the Small Business. |

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 4.13 Loan Terms. The interest rate on this loan program shall be 0%. The length of the secured contract shall dictate the length of the loan.

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)

Rule 4.14 Applications. Interested borrowers should contact a participating financial institution and for any additional information pertaining to the Mississippi Capital Access Program, please contact:

MISSISSIPPI DEVELOPMENT AUTHORITY
Financial Resources Division
Post Office Box 849
Jackson, MS 39205
Telephone: (601) 359-3552 or Fax: (601) 359-3619

Source: Miss. Code Ann. § 57-69-5 (Rev. 2008)