

TITLE 12: ECONOMIC DEVELOPMENT

PART 1: BACK TO BUSINESS MISSISSIPPI GRANT PROGRAM

PART 1 CHAPTER 1: BACK TO BUSINESS MISSISSIPPI GRANT PROGRAM RULES AND REGULATIONS

RULE MAKING AUTHORITY: In Section 7 of the “2020 COVID-19 Mississippi Business Assistance Act” (Senate Bill 2772, 2020 Reg. Session) (the "Act"), the Mississippi Legislature designated the Mississippi Development Authority (“MDA”) to administer the “Back to Business Mississippi Grant Program” (the “Program”) specifically authorizing MDA to “develop regulations, procedures and application forms to govern the administration of the program.”

Source: Senate Bill 2772, 2020 Regular Legislative Session

EMERGENCY RULE MAKING AUTHORITY: COVID-19 is a global pandemic that has reached the State of Mississippi, causing a major impact on the public health, safety, and welfare on the citizens of the state, placing them in imminent peril, including with regard to their economic security and wellbeing. Funding for the program is provided from the State of Mississippi’s allocation of \$1.25 billion from the “Coronavirus Relief Fund” (Title VI, Sec. 601) of the “Coronavirus Aid, Relief, and Economic Security Act” (H.R. 748), signed into law by President Donald J. Trump on March 27, 2020. Mississippi’s allocation is for the federal fiscal year of 2020 and must be expended within a limited time period. Therefore, the Act requires that the Program be available until November 1, 2020, at which time the Governor has authority to transfer those funds to another agency or program. In accordance with Miss. Code Ann. §§ 25-43-3.108 and 25-43-1.104 (Rev. 2006) of the “Mississippi Administrative Procedures Act” and the rules enacted by the Mississippi Secretary of State’s Office, MDA hereby gives notice of the immediate adoption of these Program Rules due to “an imminent peril to the public health, safety or welfare” and pursuant to the authority found in State of Emergency COVID-19” Proclamation issued by Governor Tate Reeves on March 14, 2020. These Rules and Regulations shall become effective immediately upon filing with the Secretary of State's Office.

Source: Senate Bill 2772, 2020 Regular Legislative Session: Miss. Code Ann. §§ 25-43-3.108 and 25-43-1.104 (Rev. 2006).

RULE 1.1 PROGRAM OBJECTIVE AND PURPOSES.

The Program is designed to provide grants to eligible businesses that suffered an interruption to their regular business operations due to COVID-19 and to stimulate growth, economic relief, and recovery among Mississippi small businesses that experienced disruption or closure due to COVID-19. The Program shall comply with applicable federal and state laws, rules, and regulations.

Source: Senate Bill 2772, 2020 Regular Legislative Session.

RULE 1.2 DEFINITIONS

- A. “Act” means to the “2020 COVID-19 Mississippi Business Assistance Act” (Senate Bill 2772, 2020 Reg. Session).
- B. "Applicant" means an Eligible Business or a representative of an Eligible Business that completes and submits an Application for the Program.

- C. "Application" means the online Program Application Form which must be completed by an Eligible Business to qualify for the Program.
- D. "Business Interruption" means those disruptions of regular business operations resulting from required or voluntary closure related to COVID-19 which occurred on or after March 1, 2020.
- E. "Controlling business interest" means the following for each type of Eligible Business:
 - 1. For a for-profit corporation, it means ownership of greater than 50% of shares in the corporation.
 - 2. For a limited liability company, it means a member who has an ownership of greater than 50% of the membership interests or has the power to direct operations of the business without the requirement of consent (as opposed to passive members who may have invested in the business and may obtain revenue from it, but do not generally have any management role in the business).
 - 3. For a partnership, it means that a partner who either owns in excess of 50% of the partnership interests or is a general partner who actively participates in decision making or directs business operations (as opposed to a limited partner who may receive investment revenue but does not generally direct operations or participate in decision making).
 - 4. For a sole proprietorship, it means the sole owner of the Eligible Business.
- F. "Certified Payroll" means a payroll report for the Eligible Business for the week of March 1, 2020 demonstrating number of employees and average hours worked per employee. Employee names may be represented by last name, unique identifier number (such as the last four (4) numbers of employee's social security number) and the average number of hours worked by the employee per week. The Eligible Business may use an average of full time equivalent employees so long as it submits Certified Payrolls for the consecutive number of weeks (not to exceed 26 weeks) before March 1, 2020 over which the Eligible Business has chosen to average hours worked by employees. Certified Payrolls shall not include more than the last four (4) numbers of employees' Social Security numbers, employees' home addresses or other personally identifiable information.
- G. "COVID-19" means the Coronavirus Disease 2019 and the resulting global pandemic.
- H. "Domestic" shall mean the following for each type of Eligible Business as of March 1, 2020:
 - 1. For a for-profit corporation, it means that the business was legally formed in the State of Mississippi and properly filed its Articles of Incorporation with the Mississippi Secretary of State's Office.
 - 2. For a limited liability company, it means that the business was legally formed in the State of Mississippi and properly filed its Certificate of Formation with the Mississippi Secretary of State's Office.

3. For a limited partnership, it means that the business was legally formed in the State of Mississippi with its Certificate of Formation filed with the Mississippi Secretary of State's Office.
 4. For a general partnership, it means that a partner owning 50.1% or more of the partnership interests resides in Mississippi and the business' principal place of business and general operations are in the State of Mississippi.
 5. For a sole proprietorship, it means that the owner resides in Mississippi and the business' principal place of business and general operations are in the State of Mississippi.
- I. "EIDL" means the U.S. Small Business Administration Economic Injury Disaster Loan.
 - J. "EIDL Emergency Advance" means the maximum funds of Ten Thousand Dollars (\$10,000.00) which the U.S. Small Business Administration advanced to EIDL applicants.
 - K. "Eligible Business" means for-profit corporations, limited liability companies, partnerships, and sole proprietorships (including duly formed professional iterations of such entities) which meet the following eligibility criteria:
 1. Was Domestic as of March 1, 2020;
 2. Is in good standing with the Secretary of State (if applicable);
 3. Suffered a Business Interruption or incurred other Eligible Expenses;
 4. Has a Controlling Interest owned by one or more Mississippi residents, whether individual resident citizens or Mississippi Domestic business entities;
 5. Filed Mississippi taxes for tax year 2018 or 2019, or, for an eligible business formed on or after January 1, 2020, intends to file Mississippi taxes for tax year 2020, unless exempt under Section 27-7-29, Section 27-13-63 or other applicable provision of law;
 6. Has customers or employees coming to its physical premises, conducts business on customer premises, or has an owner who is an active participant in the day-to-day operations of the business;
 7. Had no more than fifty (50) full-time equivalent employees as of March 1, 2020;
 8. Is not a subsidiary of a business with more than fifty (50) full-time equivalent employees, is not part of a larger business enterprise with more than fifty (50) full-time equivalent employees and is not owned by a business with more than fifty (50) full-time equivalent employees;
 9. Does not exist for the purpose of advancing partisan political activities, does not directly lobby federal or state officials as provided in Sections 5-8-1 through 5-8-23, and has not employed or otherwise worked with a lobbyist as defined in Section 5-8-3 in any way at any time during 2020;

10. Does not derive income from passive investments without active participation in business operations; and
 11. Is not under a bankruptcy order and does not have a pending bankruptcy filing at the time the Application is submitted. An Applicant that files for bankruptcy while the Application is pending shall notify MDA and withdraw its Application under the Program.
- L. "Eligible Expense" means a cost incurred by an Eligible Business due to public health measures or Business Interruption.
1. Eligible Expenses due to public health measures may consist of those costs incurred by the Eligible Business to meet public health requirements or recommendations enacted, adopted, required, or issued by the Mississippi Department of Health, the Centers for Disease Control, state or federal regulatory authorities, and/or local, state or federal executive authorities due to COVID-19. Eligible Expenses in this category include:
 - i. Costs to create social distancing measures;
 - ii. Costs to clean or disinfect areas due to COVID-19;
 - iii. Purchasing personal protective equipment for employees or customers;
 - iv. Contactless equipment
 - v. Equipment, items or other expenses to screen employees or customers to ensure they are not positive for COVID-19;
 - vi. Equipment or items designed to track employees or customers who have tested positive for COVID-19;
 - vii. Necessary re-opening expenses; and
 - viii. Expenses to facilitate teleworking.
 2. Eligible Expenses due to Business Interruption include:
 - i. Mortgage interest;
 - ii. Rent;
 - iii. Payroll; or
 - iv. Utilities.

Eligible Expenses due to Business Interruption are each only allowed for a two (2) month period.

3. Eligible Expenses shall not include the following:
 - i. Lost profits;
 - ii. Damages that have been or will be covered by insurance;

- iii. Costs that have been or will be reimbursed by any other federal or state program;
 - iv. Reimbursement for donated items or services;
 - v. Workforce bonuses other than Hazard Pay or overtime;
 - vi. Severance pay;
 - vii. Legal settlements; and
 - viii. Other costs deemed ineligible expenses under the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the "Coronavirus Relief Fund."
- M. "Full-time equivalent employee" means, with respect to any month, an individual employed by a business (including any temporary employee from a third-party staffing service) who works on average at least 30 hours of service per week. For part-time employees, a full-time equivalent employee is one who, accumulating the hours worked per week, add up to a total of at least 30 hours of service per week.
- N. "Hazard Pay" means additional pay for performing hazardous duty or work involving physical hardship in each case which is related to COVID-19.
- O. "Lobbyist" means, subject to the exemptions set forth in Miss. Code Ann. § 5-8-7::
- 1. An individual who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, for the purpose of lobbying;
 - 2. An individual who represents a legislative or public official or public employee, or who represents a person, organization, association or other group, for the purpose of lobbying;
 - 3. A sole proprietor, owner, part owner or shareholder in a business who has a pecuniary interest in legislative or executive action, who engages in lobbying activities; or
 - 4. Any individual described in subparagraphs 1 through 3 who is employed by or has contracted with any agency, legislative or public official or public employee, or any other public entity for the purpose of providing any type of consulting or other similar service but also engages in any type of lobbying activities.
- P. "Lobby" means:
- 1. Influencing or attempting to influence legislative or executive action through oral or written communication;
 - 2. Solicitation of others to influence legislative or executive action; or

3. Paying or promising to pay anything of value directly or indirectly related to legislative or executive action.
- Q. "MDA" means the Mississippi Development Authority.
 - R. "MDOR COVID-19 Relief Payment Fund" means that program created and authorized by the Act providing a one-time \$2000 payment to certain businesses.
 - S. "Minority business enterprise" means a socially and economically disadvantaged small business concern performing a commercially useful function which is owned and controlled by one or more minorities or minority business enterprises certified by the Mississippi Development Authority, at least fifty percent (50%) of whom are resident citizens of the State of Mississippi. Except as otherwise provided, for purposes of the Program, the term "socially and economically disadvantaged small business concern" shall have the meaning ascribed to such term under the Small Business Act, 15 USC Section 637(a), or women, and the term "owned and controlled" means a business in which one or more minorities or minority business enterprises certified by MDA own sixty percent (60%) of the ownership interests, or, in the case of a corporation, sixty percent (60%) of the voting stock, and control sixty percent (60%) of the management and daily business operations of the business.
 - T. "Mississippi resident" means that the individual has his or her permanent physical residence in the State of Mississippi with the intention of remaining there indefinitely or of returning there permanently when temporarily absent from Mississippi.
 - U. "PPP" means the U.S. Small Business Administration Paycheck Protection Program.
 - V. "Program" means the "Back to Business Mississippi Grant Program," which was established by the Act.
 - W. "Rules" means these rules as authorized by the Act.

Source: Senate Bill 2772, 2020 Regular Legislative Session.

RULE 1.3 GRANT AWARDS. Applicant must elect one (1) of three (3) methods to determine the grant award (base payment, base payment with full-time equivalent employee calculation, or base payment with Itemizing Eligible Expenses).

- A. All Eligible Businesses are entitled to receive, as long as funds allow, a base payment of One Thousand Five Hundred Dollars (\$1,500.00).
- B. All Eligible Businesses may apply for possible additional compensation, resulting in a maximum grant award of Twenty Five Thousand Dollars (\$25,000.00), by either:
 - a. Claiming an additional Five Hundred Dollars (\$500.00) for each full-time equivalent employee employed by the Eligible Business as of March 1, 2020, or
 - b. Itemizing Eligible Expenses on the Application.
- C. It shall be the obligation of the Eligible Business to demonstrate how any claimed expense meets the requirements to be deemed an Eligible Expense, including its relation to the Business Interruption and/or public health measures undertaken in response to COVID-19.

- D. The total grant payment will be reduced by the amount of any PPP funds, EIDL Emergency Advance funds, MDOR Covid-19 Relief Payment Program and business interruption insurance proceeds received by the Eligible Business; however, The Act provides that the grant payment will not be reduced by more than half (subject to paragraph 1.3 (E) of the Rules). In no event shall the maximum payment exceed \$25,000.
- E. Notwithstanding Paragraph 1.3 (D) of the Rules, if the Eligible Business has received funds or confirmation that it will receive funds from other state or federal programs (including PPP funds, EIDL Emergency Advance funds or a payment from the MDOR COVID-19 Relief Payment Fund) or insurance proceeds to cover the same Eligible Expenses claimed in the Application, federal law may require the grant amount be reduced beyond the one half reduction established in the Act.
- F. All Applicants will be required to disclose if they have applied for but not yet received PPP funds, EIDL Emergency Advance funds or if they have made a business interruption insurance claim. Future receipt of any of these funds may result in Applicant paying back some or all of grant funds received.

Source: Senate Bill 2772, 2020 Regular Legislative Session.

Rule 1.4 Repayment of Funds. By submitting an Application, each Applicant will acknowledge and agree under penalty of perjury that the submission of any false, fraudulent, or materially misleading information in the Application or in support of the Application will result in immediate disqualification and penalties under state and federal law. If such information is discovered following an award of grant funds, the Applicant and anyone acting as a representative of the Applicant will be prosecuted to the fullest extent of the law and shall repay all grant funds received.

Source: Senate Bill 2772, 2020 Regular Legislative Session.

RULE 1.5 PRIORITY ELIGIBLE BUSINESSES.

- A. Any Eligible Business may submit an Application at the beginning of the Application period. All Applications will be taken online through a web portal at MDA's website <https://www.backtobusinessms.org>. Reasonable accommodations will be made, on request, to enable disabled individuals to participate fully in the process and to enjoy all program benefits for which they qualify.
- B. For the first twenty-one (21) days of the Program, MDA will only consider and review applications from Eligible Businesses that did not receive a PPP loan and/or an EIDL Emergency Advance, reimbursement under any federal program for the expenses that will be reimbursed by a grant under the Program, or compensation from an insurance company for an interruption of business.
- C. At least Forty Million Dollars (\$40,000,000.00) in Program funds are reserved for awards to Eligible Businesses constituting Minority Business Enterprises during the first sixty (60) days of the Application period.

Source: Senate Bill 2772, 2020 Regular Legislative Session.

RULE 1.6 APPLICATIONS.

- A. All Applicants must provide the following information in the Application:
1. Business name as registered with Mississippi Secretary of State (if registered);
 2. DBA or tradename (if applicable);
 3. Type of business entity;
 4. Date of formation/creation;
 5. Business address;
 6. Taxpayer identification Number (EIN, SSN);
 7. Mississippi Secretary of State Business ID number (if applicable);
 8. Business phone number;
 9. Primary contact;
 10. Email address;
 11. A tax return filed for the Eligible Business for 2018 and/or 2019. If the Eligible Business formed on or after January 1, 2020 a return will not be required. Those entities that do not file tax returns in the name of the Eligible Business (e.g. single member LLCs, sole proprietorships and certain partnerships) will submit the Schedule C to the appropriate individual tax return.
 12. Number of full time equivalent employees (as determined by these Rules) as of March 1, 2020;
 13. Regardless of method of award elected by Applicant, confirmation and description of the impact of COVID-19 on the Applicant;
 14. A list of requested information below for every individual who is a Controlling Owner to include:
 - i. Owner name;
 - ii. Title of owner;
 - iii. Percentage owned;
 - iv. Taxpayer identification number;
 - v. Address of owner;
 - vi. An identification of the owners who are Mississippi residents; and
 - vii. An indication of any owner who is a participant in the Applicant's active day-to-day operations.
 15. Confirmation of and information regarding the Minority Business Enterprises status of Applicant (as applicable);

16. Response as to whether (and if so, how much) the Applicant has applied for and/or received funds from any of the following:

- i. SBA Paycheck Protection Program Loan;
- ii. SBA Economic Injury Disaster Loan;
- iii. SBA EIDL Emergency Advance;
- iv. Other Federal Programs; and
- v. Insurance Proceeds.

17. Determination of whether the Applicant is requesting money based on Itemization of Eligible Expenses or the Employee-based calculation.

- B. Certain additional information will be required for Eligible Businesses itemizing expenses or claiming additional funds based on the number of its Full-time equivalent employees.
- C. In addition to providing answers to these questions, the Applicant must certify to certain required statements, including a statement that it understands and agrees to all provisions of the Program including but not limited to the Act and the Rules. Failure to agree to these certifications and representations will cause the Application to be disqualified.
- D. An Applicant found to be fully or partially noncompliant with grant requirements will be required to return all or a portion of the grant monies received and may result in additional civil and criminal penalties
- E. If the Eligible Business is requesting grant funds beyond the base amount of \$1,500.00 based upon Full-time equivalent employees, then it must submit a Certified Payroll for the Eligible Business for the week of March 1, 2020 as provided in these Rules.
- F. If the Applicant is requesting grant funds beyond the base amount of \$1,500.00 by claiming Eligible Expenses, then it must submit proof of those expenses.

Source: Senate Bill 2772, 2020 Regular Legislative Session.

RULE 1.7 VERIFIED DOCUMENTATION.

The Act requires the Applicant to submit “verified documentation” along with the Application; therefore, the documents must be certified copies or, on their face, appear to be true and correct copies. The Applicant, by and through its representative, must specifically sign under penalty of perjury all of the documents are true and correct and are not false, fraudulent, or materially misleading. All supporting information requested in the Application must be provided.

Source: Senate Bill 2772, 2020 Regular Legislative Session.

RULE 1.8 APPLICATION REVIEW PROCESS.

- A. Applications will be processed in accordance with the priority set forth in Section 1.5 of these Rules.

- B. The amount requested for each grant will be calculated, pursuant to the Act and federal and state law (including the Rules). If the Applicant has requested funding beyond the \$1,500.00 base amount, additional review and calculations will be made as outlined in Section 1.3 of these Rules.
- C. Non-qualifying Applicants will be notified of the disqualification.
- D. A final grant award amount will be determined and notice will be provided to the Eligible Business.
- E. At any point during this process, MDA may contact the Applicant for further information or supplemental documentation.
- F. MDA reserves the right to independently verify any information submitted.

Source: Senate Bill 2772, 2020 Regular Legislative Session.

RULE 1.9 DISBURSEMENT OF FUNDS.

All grant funds will be disbursed by written check in the name of the Eligible Business and mailed to the physical address provided in the Application.

Source: Senate Bill 2772, 2020 Regular Legislative Session.

RULE 1.10 APPEALS PROCESS.

- A. An Applicant may appeal any award or disqualification notice received from MDA by giving written notice within twenty (20) calendar days of the date of the MDA notice of award decision. The appeal must be received by MDA at the address below by the 20th day. If an appeal is not made within the twenty (20) calendar day timeframe, the Applicant will have waived its right to appeal the decision and the original decision shall be deemed final.
- B. Appeals must be written and state with specificity the basis for the Applicant's disagreement with the decision. Appeals are determined solely on the written record. The appeal must address the grounds provided for the award or the MDA's disqualification notice. Furthermore, the appeal must provide copies of all documents, records, papers or other information to support the appeal. In addition, all appeals must be dated and contain the Applicant's name and the name of the authorized Applicant's representative.
- C. To be accepted, the written appeal must be delivered by one of two methods:

By United States Mail to the following address:
 Mississippi Development Authority
 Back to Business Mississippi Grant Program: Appeals
 P.O. Box 849
 Jackson, Mississippi 39205

Or by courier mail or hand delivery to the following:
 Mississippi Development Authority
 Back to Business Mississippi Grant Program: Appeals
 501 North West Street
 Jackson, Mississippi 39201

- D. MDA will review the appeal and all supporting material to determine if the appeal can be resolved based upon the Applicant's submission and Program requirements. If so, a final written determination of the appeal will be issued by MDA.
- E. If the appeal cannot be resolved after the initial review, MDA will forward the appeal for review by an Independent Hearing Officer ("IHO"), to be designated by the Attorney General of Mississippi. MDA will provide the IHO the Eligible Business's file, the appeal and all supporting material provided by the Applicant on appeal, all program requirements and policies, an MDA explanation of the case, and MDA's recommendation (if any). The IHO will review all of the written materials and issue a written decision to MDA. MDA will review and make a final written determination which will be issued by MDA to the Applicant within ten (10) days of the receipt of the IHO's decision.
- F. All appeal determinations made by MDA are final with no further administrative review and are not subject to judicial review.
- G. An Applicant can withdraw the appeal at any time by providing written notice to MDA. Such written notice must be delivered to MDA at the addresses set forth above.
- H. Program requirements established by MDA as dictated by federal and state law may not be waived or abrogated.

Source: Senate Bill 2772, 2020 Regular Legislative Session.

RULE 1.11 FRAUD REFERRALS

In cases in which fraud is suspected or where false or materially misleading information or documentation has been provided by an Applicant and/or an Applicant's representative, a written referral will be made to the Mississippi State Auditor's Office or in certain cases the Office of the United States Attorney. MDA will cooperate fully in such investigations and provide all information and documentation which it has received or gathered on the Applicant and/or the Applicant's representative.

Source: Senate Bill 2772, 2020 Regular Legislative Session.

RULE 1.12 WAIVER. The Rules may be amended by MDA at any time and are further subject to amendment pursuant to any change in the federal law providing for the grant funds and the regulations and guidance implemented related thereto. MDA, in its sole discretion, may temporarily waive any requirement of the Rules to the extent that the result of such waiver promotes the public purpose of the Act and is not prohibited by state or federal law.

Source: Senate Bill 2772, 2020 Regular Legislative Session.

RULE 1.13 AVAILABILITY OF FUNDS. This program is contingent upon the availability of funds as appropriated by the Legislature and provided by the Federal government.

Source: Senate Bill 2772, 2020 Regular Legislative Session.

RULE 1.14 ELECTRONIC CERTIFICATION. The Applicant will be asked to acknowledge the following prior to submission of the Application:

By entering your name above, you are signing this grant application electronically and declaring under penalty of perjury that it is your signature; that you are authorized to electronically sign the grant

application for any entity making the application; and that all information contained in your application and any document provided in support of your application is true and accurate to the best of your knowledge. You furthermore agree your electronic signature is the legal equivalent of your physical signature and serves the same function as signing and dating a document which certifies under oath that all information contained in any document is true and correct.

Any person knowingly submitting information in a document electronically filed with the Mississippi Development Authority that is false or affixing an electronic signature to any document electronically filed with MDA on behalf of another person or entity without the authority to do so shall be guilty of criminal offenses under federal and state law and, upon conviction, shall be punished by imprisonment and/or fines under the laws and regulations of the United States of America and the State of Mississippi. By entering your name above, you are acknowledging your understanding of the foregoing sentence. You are also confirming that you understand that the use of grants shall be subject to audit by the United States Department of Treasury's Office of Inspector General and the Mississippi Office of the State Auditor and that a business found to be fully or partially noncompliant with grant requirements shall return to the State of Mississippi all or a portion of the grant monies received.

Source: Senate Bill 2772, 2020 Regular Legislative Session.

Adopted June 8, 2020.