

Enrolled
House Bill 2266

Sponsored by Representative LIVELY; Representatives BYNUM, CAMPOS, DEXTER, GOMBERG, GRAYBER, KROPF, MEEK, NERON, PRUSAK, RUIZ, SOLLMAN, WILLIAMS (Pre-session filed.)

CHAPTER

AN ACT

Relating to business assistance; and declaring an emergency.

Whereas Oregonians are committed to dismantling historic systemic barriers and investing in our economy and our people and future generations as it relates to accessible capital for all communities of color and underserved businesses; and

Whereas it is the intention of this legislation to begin to bridge the gap of the economic inequities in historically underserved and marginalized communities; and

Whereas Oregon's small businesses are the backbone of our economy, which includes many Black, Indigenous, Latino, Latina, Latinx, Asian, Pacific Islander, Native American and tribal communities throughout the state; and

Whereas the Racial Justice Council's priority is to promote economic development and empowerment through grounding racial justice and providing access to capital specifically for minority-owned businesses and underserved entrepreneurs that will result in building equitable access to capital and reduce barriers of collateral requirements in efforts to enable mobility and opportunity towards a safe, secure and resilient quality of life in Oregon; now, therefore,

Be It Enacted by the People of the State of Oregon:

SECTION 1. Purpose. It is the purpose of sections 1 to 7 of this 2021 Act that the State of Oregon shall make awards to qualified lending institutions to fund lenders' loan loss reserve accounts for the purpose of increasing lending to business owners and entrepreneurs who currently lack access to capital to start or grow their businesses.

SECTION 2. Definitions. As used in sections 1 to 7 of this 2021 Act, unless the context requires otherwise:

(1) "Loan loss reserve account" or "account" means an account created by a lender for the deposit of moneys awarded to the lender under section 3 of this 2021 Act out of which the lender may reimburse itself for losses incurred due to defaults on qualified loans.

(2) "Prime rate" means the primary credit rate of the discount window program of the United States Federal Reserve System.

(3) "Qualified business" or "qualified borrower" means a person that:

(a) Operates a business in Oregon; or

(b) Attests to a qualified lender that the person will use proceeds from a qualified loan to establish a business in Oregon.

(4) "Qualified lender" means a lender that:

(a) Is certified as a community development financial institution by the Community Development Financial Institutions Fund at the United States Department of the Treasury;

(b) Is a nonprofit corporation as defined in ORS 307.130;

(c) Is an economic development district in Oregon designated by the Economic Development Administration of the United States Department of Commerce;

(d) Is affiliated with a local government as defined in ORS 174.116; and

(e) Has a physical presence in Oregon and at least five years of lending experience.

(5)(a) "Qualified loan" means a loan made, or an operating line of credit extended, by a lender to a qualified business for which the principal losses are reimbursable from moneys in the lender's loan loss reserve account.

(b) "Qualified loan" does not mean a loan:

(A) With a variable interest rate.

(B) With an origination fee that exceeds 1.5 percent, and with an annual interest rate that exceeds the lesser of 18 percent or the prime rate plus 7 percent.

(C) For working capital for a term exceeding seven years.

(D) For capital assets for a term exceeding the useful life of the assets.

(E) That includes, in whole or in part, the refinancing of an existing loan made by the lender to the borrower.

(F) That includes, in whole or in part, the refinancing of an existing personal loan not used for business purposes.

(G) For the purchase of real property that is not used for the business operations of the borrower.

(H) For the purchase of owner-occupied residential housing or for the construction, improvement or purchase of residential housing owned or to be owned by the borrower.

(6) "RFP" means a request for proposal.

SECTION 3. RFP process for awards to lenders; lender requirements; approval criteria.

(1)(a) The Oregon Business Development Department shall, in accordance with this section, make awards to lenders to fund the lenders' loan loss reserve accounts.

(b) The awards shall be made, through a competitive RFP process administered by the department.

(c) Of the moneys awarded as a result of any RFP process, not more than 10 percent of available funds may be awarded to any single lender.

(2) The department shall evaluate proposals according to the following criteria:

(a) The number and value of loans closed by the lender during the five-year period immediately preceding the date of submission of the lender's proposal;

(b) The projected loan production over the performance period of the award, including the projected number of loans, the proposed principal amount of qualified loans that the lender would not make but for the moneys awarded, and the jobs to be created and retained by qualified borrowers;

(c) How the award would increase the lender's capacity to make loans to rural or underserved entrepreneurs;

(d) The past performance of loans made by the lender;

(e) The extent to which the lender:

(A) Provides technical assistance and financial literacy services to underserved borrowers; or

(B) Partners with providers of technical assistance and financial literacy services to underserved borrowers;

(f) How the lender's proposed outreach, application process, underwriting criteria and loan terms are designed to reduce historic barriers to borrowers' access to loan capital;

(g) How the lender plans to ensure that the loans originated by the lender under the program are made to borrowers in regionally diverse and rural areas of this state; and

(h) Any other criteria the department considers necessary or useful for evaluating a proposal.

(3)(a) After reviewing proposals submitted in response to an RFP, the department shall reject or accept proposals and determine the amount awarded for each accepted proposal.

(b) As soon as practicable after the awards are finalized, the department shall notify the lenders that submitted proposals of the results and offer the awards to the lenders whose proposals are accepted.

SECTION 4. Agreements with lenders; terms. (1) The Oregon Business Development Department shall enter into a written agreement with each lender that accepts an award offered under section 3 of this 2021 Act.

(2) A written agreement entered into pursuant to this section must:

(a) Provide for the creation of a loan loss reserve account by the lender for the deposit of moneys awarded under section 3 of this 2021 Act out of which the lender may be reimbursed for principal losses incurred due to defaults on qualified loans;

(b) Provide that, notwithstanding ORS chapter 293 or 295, the lender shall establish and maintain the loan loss reserve account with a financial institution, as defined in ORS 706.008, in accordance with such policies as the department may adopt;

(c) Require the lender to designate, when a loan is made, whether the loan is a qualified loan;

(d) Provide that, upon default on a qualified loan, the lender shall, subject to subsection (3) of this section, liquidate the borrower's assets and exhaust all lawful remedies for the benefit of the lender before the lender may recover the outstanding principal balance of the loan from the lender's loan loss reserve account;

(e) Provide that the liability of the State of Oregon and the department under the written agreement is limited to the amount of moneys awarded and credited to the lender's loan loss reserve account; and

(f) Require the lender to file an annual report in accordance with section 5 of this 2021 Act.

(3)(a) Notwithstanding the requirement under subsection (2)(d) of this section to liquidate a borrower's assets and exhaust all lawful remedies, the department, upon request of a lender, may waive the lender's obligations under subsection (2)(d) of this section if:

(A) The original principal amount of the loan was not greater than \$25,000; and

(B) The borrower had a personal net worth not greater than \$75,000 at both the time of application and the time of default.

(b) A lender that does not comply with subsection (2)(d) of this section or paragraph (a) of this subsection shall be considered to have breached the written agreement the lender entered into pursuant to subsection (1) of this section. The department, at its sole discretion, may take assignment of the loan and pursue collection efforts under subsection (2)(d) of this section.

(4) Qualified lenders that accept awards under section 3 of this 2021 Act shall, within 10 years following the date on which the written agreement entered into pursuant to subsection (1) of this section becomes binding, originate qualified loans with a total principal amount equal to at least four times the amount of the moneys awarded.

SECTION 5. Annual reporting by lenders. (1) Not later than July 31 of each year, each lender awarded moneys under section 3 of this 2021 Act shall, during the term of the written agreement entered into under section 4 of this 2021 Act, provide a report to the Oregon Business Development Department, on a form prescribed by the department, for the period beginning on July 1 of the immediately preceding year and ending on June 30 of the current year.

(2) With respect to qualified loans made by the lender, the report shall include, but not be limited to, the following information:

(a) The number and total principal amount of all qualified loans made by the lender;

(b) For each qualified loan, the following information:
(A) The term and amortization of the loan; and
(B) The purpose of the loan;
(c) The number of loans that were declined and the primary reasons for declining them;
and

(d) Any other information required under rules adopted by the department.
(3) With respect to qualified borrowers, the report shall set forth:
(a) The businesses that qualified borrowers conduct in this state;
(b) The cities and counties in which qualified borrowers use the qualified loan proceeds;
(c) The number of individuals employed by the qualified businesses;
(d) Demographic data voluntarily reported by qualified borrowers, including, but not limited to, whether a qualified business is owned by a woman, a minority individual, a veteran of any branch of the Armed Forces of the United States, the National Guard or other reserve component, a low income person or a person operating the business in a rural area of this state; and

(e) Outreach conducted by the lender to rural and underserved communities.
(4) The department may require any lender to include in the report financial information that is identifiable with, or from, the financial records of a borrower.

SECTION 6. Release; repayment. (1)(a) A lender shall be released from any obligation under a written agreement entered into under section 4 of this 2021 Act, and may use for any purpose whatever any balance in the lender's loan loss reserve account, if the lender has:

(A) Performed under the written agreement entered into with the Oregon Business Development Department for at least 10 years;

(B) Attained during the 10-year period, as required under section 4 (3) of this 2021 Act, a ratio of four-to-one of total principal amount of qualified loans made by the lender to the amount of moneys awarded to the lender under section 3 of this 2021 Act; and

(C) Complied with the annual reporting requirements under section 5 of this 2021 Act.

(b) A release under this section does not absolve a lender of any contractual obligations owed to a qualified borrower under a qualified loan agreement.

(2) A lender shall repay to the department for deposit in the General Fund the balance of moneys awarded to the lender under section 3 of this 2021 Act in the lender's loan loss reserve account if the department determines that:

(a) The lender has not made a qualified loan for 24 consecutive months;

(b) The lender has become insolvent or has ceased lending operations in Oregon;

(c) The lender has failed to perform in any material way under the written agreement entered into with the department pursuant to section 4 of this 2021 Act;

(d) The lender made material misrepresentations in the RFP submitted under section 3 of this 2021 Act or in an annual report required under section 5 of this 2021 Act; or

(e) The lender or the lender's loan loss reserve account portfolio has been sold, transferred or assigned, in whole or part.

SECTION 7. Biennial report by the Oregon Business Development Department. On or before September 15 of each even-numbered year, the Oregon Business Development Department shall submit, in the manner required under ORS 192.245, to the interim committees of the Legislative Assembly related to economic development, a report that sets forth the following information:

(1) The number and total dollar amount of RFPs received under section 3 of this 2021 Act;

(2) The number of awards and the amount of moneys awarded under section 3 of this 2021 Act;

(3) Information described in section 3 (2)(b) of this 2021 Act from the approved proposals;

(4) Aggregated lender and qualified borrower data, including demographic data reported by lenders under section 5 (3)(d) of this 2021 Act;

(5) The aggregate performance of qualified loans;

(6) The average interest rate, term and amount of qualified loans;

(7) The cities and counties in which qualified borrowers use the qualified loan proceeds; and

(8) Any other information the department considers necessary or useful to include in the report.

SECTION 8. Appropriation. There is appropriated to the Oregon Business Development Department, for the biennium beginning July 1, 2021, out of the General Fund, the amount of \$10,000,000, for the purpose of implementing sections 1 to 7 of this 2021 Act.

SECTION 9. Program evaluation; recommendations. (1) Not later than September 15, 2029, the interim committees of the Legislative Assembly related to economic development shall evaluate the effectiveness of the lenders' loan loss reserve account program established under sections 1 to 7 of this 2021 Act and develop recommendations for legislation, including appropriations.

(2) In making the evaluation under subsection (1) of this section, the interim committees shall:

(a) Consult with the Oregon Business Development Department and with lenders that have entered into written agreements with the department under section 4 of this 2021 Act and made qualified loans and with any other persons the interim committees consider necessary or useful; and

(b) Consider the biennial reports submitted by the department under section 7 of this 2021 Act and any other information the interim committees consider necessary or useful.

SECTION 10. Section captions. The section captions used in this 2021 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2021 Act.

SECTION 11. As used in sections 11 to 15 of this 2021 Act:

(1) "Eligible business" means one of the following businesses as defined in ORS 200.005 that is operated for profit and has been certified by the Certification Office for Business Inclusion and Diversity under ORS 200.055 at the time an application is referred on behalf of the business to the Oregon Business Development Department under section 13 of this 2021 Act:

(a) A disadvantaged business enterprise;

(b) A minority-owned business;

(c) A woman-owned business;

(d) A business that a service-disabled veteran owns; or

(e) An emerging small business.

(2) "Prime rate" means the primary credit rate of the discount window program of the United States Federal Reserve System.

(3) "Technical assistance provider" means a small business development center established under ORS 285B.165 to 285B.171 or a culturally specific business association or chamber that provides one-on-one business counseling services.

SECTION 12. (1) The Oregon Business Development Department shall develop and implement a program to make loans to eligible businesses.

(2) Loans made under the program may be for the following amounts:

(a) For eligible businesses that have operated for less than two years, up to \$100,000.

(b) For eligible businesses that have operated for two years or more, up to \$250,000.

(3)(a) The term of a loan may not exceed 10 years.

(b)(A) Interest on a loan shall be charged at the prime rate plus two percent.

(B) Notwithstanding subparagraph (A) of this paragraph, the rate of interest may be increased for risk based on the loan-to-value ratio.

- (c) Loans shall be subject to business underwriting standards used in secondary markets.
- (d) To the extent possible, loans must be secured by business and personal assets.
- (e) Loans shall require standard commercial loan documentation, including reasonable provisions related to default that the department may adopt by rule.

(4) An eligible business may use the proceeds of a loan made pursuant to this section for equipment, inventory, fixtures and working capital or other business-related expenses other than capital costs.

SECTION 13. (1) The Oregon Business Development Department shall prescribe the form and manner in which the owner of an eligible business may apply for a loan under the loan program developed and implemented under section 12 of this 2021 Act.

(2) The application must, at a minimum, require the inclusion of:

(a) Documentation showing that the business for which application is made is an eligible business;

(b) A nonrefundable application fee of \$200; and

(c) Any other information or documentation the department requires.

(3)(a) The owner of an eligible business interested in applying for a loan under the loan program must seek assistance from a technical assistance provider.

(b) The technical assistance must include a review of the application form and associated documents and other materials for completeness and accuracy.

(4)(a) If a technical assistance provider determines in its sole discretion that the application of an eligible business is complete and accurate and deserves consideration by the department, the provider shall refer the application to the department.

(b) If a technical assistance provider refers an application under this section that is approved by the department, the department shall request periodic reports from the provider on the status of the eligible business after receipt of the loan proceeds.

(c) If a technical assistance provider determines that an application is not complete or accurate or does not deserve to be referred to the department for consideration in its present form, the technical assistance provider may, in its sole discretion, work with the owner of the eligible business to amend the application and application materials.

(d) The refusal of a technical assistance provider to refer an application to the department under this section does not give rise to a cause of action of any kind.

(5)(a) After receiving an application referred under this section, the department shall either approve or reject the application and notify the applicant and the technical assistance provider that worked with the applicant of the decision.

(b)(A) Rejection of the application by the department may be appealed through a process adopted by the department by rule.

(B) The owner of an eligible business whose application has been finally rejected with no further right of appeal may contact a technical assistance provider to begin a new application process at any time.

(c) If the department approves the application, the department shall offer a loan agreement to the eligible business on terms that do not conflict with sections 11 to 15 of this 2021 Act.

(6) Upon execution of a loan agreement offered pursuant to subsection (5)(c) of this section:

(a) All third-party expenses that are necessary to close the loan shall be paid:

(A) By the eligible business; or

(B) At the sole discretion of the department, out of the loan proceeds.

(b) Upon payment of third-party expenses under paragraph (a) of this subsection, the department shall pay the balance of the loan proceeds to the eligible business out of funds in the Disadvantaged and Emerging Small Business Loan Fund established under section 14 of this 2021 Act.

SECTION 14. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Disadvantaged and Emerging Small Business Loan Fund. All moneys in the fund are continuously appropriated to the Oregon Business Development Department for the purposes of:

(a) Paying the actual costs of the department in administering the loan program developed and implemented under sections 11 to 15 of this 2021 Act; and

(b) Making loans under the loan program developed and implemented under sections 11 to 15 of this 2021 Act.

(2) The Disadvantaged and Emerging Small Business Loan Fund shall consist of:

(a) Moneys appropriated or otherwise allocated or transferred to the fund by the Legislative Assembly;

(b) Interest earned on moneys in the fund;

(c) Moneys received as repayment of principal and interest on loans made from the fund under sections 11 to 15 of this 2021 Act; and

(d) Moneys or property of any kind received by the department for deposit in the fund from any source.

SECTION 15. (1) On or before September 15 of each year, the Oregon Business Development Department shall submit, in the manner provided in ORS 192.245, to the interim legislative committees related to economic development, a report containing the following information about the loan program developed and implemented under sections 11 to 15 of this 2021 Act:

(a) The number of loans made;

(b) The amounts of the loans made;

(c) Demographic information about the eligible businesses that received loans that is voluntarily given to the department;

(d) The number of referrals from technical assistance providers under section 13 of this 2021 Act;

(e) The number of loan applications that were rejected and the reasons for the rejections;

(f) Demographic information about the eligible businesses whose applications were rejected that is voluntarily given to the department; and

(g) Any other information the department considers significant in evaluating the loan program.

(2) The report may include information from periodic reports provided to the department by technical assistance providers under section 13 (4)(b) of this 2021 Act.

SECTION 16. There is appropriated to the Oregon Business Development Department, for the biennium beginning July 1, 2021, out of the General Fund, the amount of \$10 million for deposit in the Disadvantaged and Emerging Small Business Loan Fund established in section 14 of this 2021 Act, for the purpose of carrying out the provisions of sections 11 to 15 of this 2021 Act.

SECTION 17. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by House June 22, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 24, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State