

STATE OF MINNESOTA
SMALL BUSINESS FINANCE AGENCY

In the Matter of the Proposed
Rules of the Minnesota Small
Business Finance Agency Relating
to Amendment of the General
Provisions Section of Existing
Rules of the Agency and the
Making of Business Loans.

STATEMENT OF NEED
AND REASONABLENESS

The Minnesota Small Business Finance Agency ("Agency") presents herein its statement of the need for and reasonableness of its proposed rules relating to the amendment of the general provisions section of its existing rules and the adoption of rules for the making of business loans. The above-captioned rules are new rules and amendments to existing rules. The Agency's existing rules were adopted by the Agency on April 22, 1981.

The authority of the Agency to adopt these rules and the need for and reasonableness of the proposed rules are as follows:

I. Authority Of The Agency To Promulgate And Adopt Rules

Minn. Stat. § 362.53, subd. 4 (1980) empowers the Agency to adopt, amend and repeal rules not inconsistent with the provisions of Minn. Stat. §§ 362.132 and 362.50 to 362.53 as necessary to effectuate its corporate purposes.

II. Rules Amending The General Provisions Section Of The Agency's Existing Rules

4 MCAR §§ 14.001, 14.005 and 14.006

The Agency proposes to amend the general provisions section of its existing rules by amending 4 MCAR § 14.001 and by adding two new rules, 4 MCAR §§ 14.005 and 14.006. The amendment to 4 MCAR § 14.001 is reasonable and necessary to reflect the fact that the scope of the Agency's rules now will include the providing of Business Loans. The addition of 4 MCAR § 14.005, a general provision with respect to the making of a material misrepresentation or the omission of a material fact in a loan application, is reasonable and necessary to

assure that the information upon which the Agency makes its decisions in connection with the funding of its loan programs is complete and accurate. The requirement that information be updated and corrected by the applicant is reasonable and necessary to protect the Agency from a change in circumstance, subsequent to the filing of an application, which should be considered in the decisions to approve an application, to fund a loan or to sell notes and bonds. Section 14.006 is added to clarify the Agency's intent that the provisions of these rules and their application to particular persons or circumstances be interpreted as being severable from one another, such that a finding of invalidity as to any provision or the application thereof would not affect the validity of the remainder of the rules.

III. Rules Relating To The Making Of Business Loans

The Agency proposes to adopt a new set of rules to implement a program for the making of business loans. The Agency's enabling legislation, Minn. Stat. § 362.52 (1980), provides that the Agency may make, purchase or participate in the making of pollution control loans and business loans. The Agency, having previously adopted 4 MCAR §§ 14.010 to 14.012 to implement a pollution control loan program, now proposes to adopt a program to permit the sale of the Agency's notes and bonds for the purpose of making business loans.

4 MCAR § 14.020

Proposed section 14.020 provides a summary and overview of the procedures involved in applying for and obtaining Agency approval of a business loan. Subsections A through C trace the processing of a loan from the submission of the application to the Agency through the review and acceptance of the application by the Executive Director to the final Agency determination as to whether the loan should be funded. These subsections are a necessary and reasonable summary of the loan application process for the benefit of the public.

Subsection D of proposed section 14.020 is a substantive provision which is reasonable and necessary to set forth the process for approval of a loan once the Agency has determined that a project should be funded. This subsection provides for the adoption of a preliminary resolution after the Agency has determined to fund a loan. Subsection D is intended to make it clear to the public that Agency acceptance of a loan application for funding is subject to numerous contingencies and that loans are only made at the time that the Agency, having considered factors such as market conditions, sells its notes on bonds. This subsection also reflects the authority given to the Agency under Minn. Stat. §§ 362.53, subd. 11 and 462A.08 to 462A.13 (1980) to enter into contracts, and to place certain contractual provisions in its authorizing resolutions, as a condition to making any loan.

4 MCAR § 14.021

Proposed section 14.021 establishes a reasonable and necessary procedure for submission of an application for a business loan and review and approval of the application by the Agency.

Subsection A requires the submission of a loan application on forms prepared by the Agency. This requirement is reasonable and necessary to assure that necessary information is submitted in a uniform manner to assist in the administrative processing of each loan application.

Subsection B provides a reasonable time period within which an application must be completed after the applicant receives notice from the Agency's Executive Director that the application is deficient. This subsection is necessary to assure that business loan applications contain current information which properly reflects the eligibility of the business and the proposed project for funding by the Agency. As both the eligibility of a business for loan funding by the Agency as a small business and the economic feasibility of a project can change in a short period

of time, sixty days is a reasonable period within which to require an applicant to complete a deficient application.

Subsection C requires the Executive Director to determine whether a completed application may be subject to funding by the Agency based on determinations that the applicant is an owner, as defined in the Act, and that the proposed loan will be used to finance eligible expenditures under the Act. It is reasonable and necessary that the Agency rely on its Executive Director to make the initial determination of loan eligibility. However, it is also reasonable and necessary to provide an applicant who disagrees with the Executive Director's administrative decision with a means of obtaining review of that decision by the Agency. Therefore, subsection F of this rule sets forth a reasonable and necessary procedure whereby a rejected loan application may, upon timely request, be placed before the Agency board for review at its next regularly scheduled meeting for which the agenda has not already been established.

Subsection D, setting forth a list of the kinds of costs that may normally be funded through the proceeds of an agency loan, is reasonable and necessary to advise the public as to permissible use of loan proceeds. This subsection lists the more common expenditures permitted under section 362.50, subd. 9 of the Act and under applicable tax laws. The provision that expenditures which might adversely affect the exemption from federal income taxation of interest on the Agency's evidences of indebtedness be considered not eligible for funding is reasonable and necessary to preserve the economic viability of the Agency's loan programs. This provision recognizes that the principal advantage to a small business which seeks an agency loan is the more favorable interest rates available in the market place in financing tax exempt indebtedness. It is therefore reasonable to assure that loan proceeds are not used in such a manner as might adversely affect the tax exempt status of the Agency's indebtedness.

Subsection E of this rule is reasonable and necessary to set forth a procedure for the approval or disapproval of loan applications by the Executive Director and notification of the Executive Director's action to the applicant. Section 362.51, subd. 10 of the Act specifically authorizes the designation of an executive director to assist the Agency in the administration of its duties. Subsection E(1) provides that approved applications are processed in accordance with proposed rule 14.023. Subsection E(2) provides that where the Executive Director determines an applicant is not an owner as defined in the Act, the application must be rejected. This procedure is reasonable and necessary as the Act does not permit the funding of a loan to such a business. Finally, subsection E(3) provides that where certain of the costs identified in the application are determined to be ineligible by the Executive Director, the application may be amended and submitted to the Agency board for approval. Failure to amend within 30 days will result in rejection of the application.

4 MCAR § 14.022

Proposed section 14.022 provides that the Agency shall prepare application forms upon which all business loan applications shall be submitted. It is reasonable and necessary to require the submission of applications on uniform application forms to assure that necessary information is presented in such a manner as to assist in the administrative review of loan applications as to eligibility under the Act.

4 MCAR § 14.023

Proposed section 14.023 sets forth the procedure by which loan applications which have been approved by the Executive Director are to be evaluated by the Agency.

The first paragraph of this rule provides that when an application is approved by the Agency, the Agency shall pass a preliminary resolution giving the project preliminary approval. This provision is reasonable and necessary to preserve the federal

income tax exemption for the interest on any bonds or notes the Agency may sell, in conformity with the requirements of applicable federal tax regulations. Treas. Reg. § 1.103-8(a)(5) provides that prior to construction or acquisition of a project the issuer of tax exempt notes or bonds must take formal action toward bond issuance. The adoption of a preliminary resolution, which expresses a current intention to issue notes or bonds or to fund a loan, is reasonable and necessary to meet this requirement.

The second paragraph of proposed section 14.023 is reasonable and necessary to set forth the substantive criteria that the Agency will assess in evaluating the feasibility and desirability of funding a particular loan. These criteria, A through H, are reasonable and necessary for the following reasons:

A. The Act requires that an applicant be an owner, that is a person engaged in a small business, before the Agency can fund a loan;

B. As the only source of payment for the Agency's obligations is the borrower, it is reasonable to require that the borrower be capable of paying principal and interest over the life of the loan;

C. It is reasonable to require that a project be economically feasible over the life of a loan as the project will constitute security for repayment of the loan and is subject to foreclosure in the event of default;

D. The requirement that a project create or maintain jobs sufficient to justify a loan is based on section 362.51, subd. 2 which states that a purpose of the Act is to increase and maintain career and job opportunities;

E. It is necessary that a project be of sufficient feasibility to make the Agency's bonds marketable or no bond proceeds will be available to fund a loan;

F. Consideration of whether a project will be of economic advantage to the state and whether the increased

demands upon public facilities and energy sources can be met is in keeping with the purposes of the Act as set forth in Minn. Stat. § 362.51, subd. 2 (1980);

G. As a purpose of the Act is to create and maintain jobs, rather than merely to relocate them, it is reasonable and necessary to consider the overall impact of a transfer of employment from one area of the state to another;

H. Finally, it is reasonable and necessary to require the Agency to consider such other criteria as the purposes of the Act may make applicable to the evaluation of a particular project.

Dated:

June 15, 1981

Kent E. Eklund

KENT E. EKLUND
Vice Chairman
Small Business Finance Agency