

116J.881 SMALL BUSINESS LOAN GUARANTEE PROGRAM.

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have the meanings given.

(b) "Borrower" means a small business receiving an eligible loan under this section.

(c) "Commissioner" means the commissioner of employment and economic development.

(d) "Eligible loan" means a loan to a small business to be used for business purposes exclusively in Minnesota, including: construction; remodeling or renovation; leasehold improvements; the purchase of land and buildings; business acquisitions, including employee stock ownership plan financing; machinery or equipment purchases, maintenance, or repair; expenses related to moving into or within Minnesota; and working capital when the working capital is secured by fixed assets.

(e) "Loan guarantee" means a guarantee of 70 percent of the loan amount provided by a QED lender. The guaranteed portion of the loan must not exceed \$1,500,000.

(f) "Loan guarantee trust fund" means a dedicated fund established under this section for the purpose of compensation for defaulted loan guarantees and for program administration.

(g) "Loan purchaser" means an institutional investor that purchases, holds, and services small business loans on a nonrecourse basis from QED lenders participating in the small business loan guarantee program.

(h) "Qualified economic development lender" or "QED lender" means a public entity or a private nonprofit economic development organization whose headquarters is located in Minnesota with not less than three years of active lending experience that provides financing to small businesses in partnership with banks and other commercial lenders, and that originates subordinated loans to small businesses for sale to the secondary market.

(i) "Secondary market" means the market in which loans are sold to investors, either directly or through an intermediary.

(j) "Small business" means a business employing no more than 500 persons in Minnesota.

(k) "Subordinated loan" means a loan secured by a lien that is lower in priority than one or more specified other liens.

Subd. 2. Loan guarantee program. A small business loan guarantee program to support the origination and sale of eligible subordinated loans to the secondary market by providing a credit enhancement in the form of a partial guarantee of small business loans that are made to Minnesota businesses by a QED lender is created in the Department of Employment and Economic Development. A loan guarantee shall be provided for eligible loans under this section only when a bank or other commercial lender provides at least 50 percent of the total amount loaned to the small business. The loan guarantee shall apply only to the portion of the loan that was made by the QED lender.

Subd. 3. Required provisions. Loan guarantees under this section for loans to be sold on the secondary market by QED lenders shall provide that:

(1) principal and interest payments made by the borrower under the terms of the loan are applied by the loan purchaser to reduce the guaranteed and nonguaranteed portion of the loan on a proportionate basis. The nonguaranteed portion shall not receive preferential treatment over the guaranteed portion;

(2) the loan purchaser shall not accelerate repayment of the loan or exercise other remedies if the borrower defaults, unless:

- (i) the borrower fails to make a required payment of principal or interest;
- (ii) the commissioner consents in writing; or
- (iii) the loan guarantee agreement provides for accelerated repayment or other remedies.

In the event of a default, the loan purchaser may not make a demand for payment pursuant to the guarantee unless the commissioner agrees in writing that the default has materially affected the rights or security of the parties, and finds that the loan purchaser is entitled to receive payment pursuant to the loan guarantee;

(3) there is a written commitment from one or more secondary market investors to purchase the loan, subject to the provision of a state loan guarantee;

(4) the QED lender has timely prepared and delivered to the commissioner, annually by the date specified in the loan guarantee, an audited or reviewed financial statement for the loan, prepared by a certified public accountant according to generally accepted accounting principles, and documentation that the borrower used the loan proceeds solely for purposes of its Minnesota operations;

(5) the commissioner has access to the original loan documents prior to approval of the state credit enhancement to facilitate the sale of the loan to the secondary market;

(6) the QED lender maintains adequate records and documents concerning the original loan so that the commissioner may determine the borrower's financial condition and compliance with program requirements; and

(7) orderly liquidation of collateral securing the original loan is provided for in the event of default, with an option on the part of the commissioner to acquire the loan purchaser's interest in the assets pursuant to the loan guarantee.

Subd. 4. Loan guarantee trust fund established. A loan guarantee trust fund account in the special revenue fund is created in the state treasury to pay for defaulted loan guarantees. The commissioner shall administer this fund and provide annual reports concerning the performance of the fund to the chairs of the standing committees of the house of representatives and senate having jurisdiction over economic development issues.

Subd. 5. Limitation. At no time shall total outstanding loan guarantees for loans sold to the secondary market exceed five times the amount on deposit in the loan guarantee trust fund.

Subd. 6. Guarantee fee. Participating QED lenders shall pay a fee to the fund of 0.25 percent of the principal amount of each guaranteed loan upon approval of each loan guarantee. The guarantee fee, along with any interest earnings from the trust fund, shall be used only for the administration of the small business loan guarantee program and as additional loan loss reserves.

Subd. 7. Loan guarantee application. The commissioner shall prepare a form for QED lenders to use in applying for loan guarantees under this section. The form shall include the following information:

(1) the name and contact information for the QED lender, including the name and title of a contact person;

(2) the names of the financial institutions, including the names and titles of contact persons, that are participating in the total financing being provided to the small business borrower, along with the dollar amount of the loan provided by the financial institution;

(3) the percentage and dollar amount of the subordinated debt loan provided to the Minnesota small business by the QED lender; and

(4) the loan guarantee amount that is requested from the program.

Subd. 8. **Notice and application process.** Subject to the availability of funds under subdivision 4, the commissioner shall publish a notice regarding the opportunity for QED lenders to originate loans for which the loan guarantee may be secured as the loans are prepared for sale to the secondary market. The commissioner shall decide whether to provide a loan guarantee for each loan based on:

(1) the completeness of the loan guarantee application;

(2) the availability of funds in the loan guarantee trust fund; and

(3) execution of agreements that satisfy requirements established in subdivision 3.

History: *1Sp2011 c 4 art 2 s 3*