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SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

[Docket No. SBA-2023-0010]

RIN: 3245-AH83

Microloan Program; Changes to the Microloan Program under the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act

AGENCY: U. S. Small Business Administration (SBA).

ACTION: Direct final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is amending its Microloan Program regulations to reflect statutory changes to the Microloan Program contained in the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act. The changes increase the total amount an Intermediary may borrow under the Microloan Program per year and in aggregate, expand eligibility for Intermediaries to receive a bonus grant and add the necessary definitions, and revise the eligible base grant award amount for Intermediaries under certain circumstances. This direct final rule conforms the regulations to the Act by adopting the new statutory requirements without change.

DATES: This rule is effective [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further action, unless significant adverse comment is received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If significant adverse comment is received, SBA will publish a timely withdrawal of the rule in the *Federal Register*.

ADDRESSES: You may submit comments, identified by docket number SBA-2023-0010, by any of the following methods:

(1) Federal Rulemaking Portal: <http://www.regulations.gov>, following the specific instructions for submitting comments;

(2) Email: Daniel.Upham@sba.gov; or (3) Mail/Hand Delivery/Courier: Daniel Upham, Chief, Microenterprise Development Division, 409 3rd Street, SW, 8th Floor, Washington, DC 20416.

SBA will post all comments on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.regulations.gov>, please submit the information to Daniel Upham, Chief, Microenterprise Development Division, 409 3rd Street, SW, 8th Floor, Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make the final determination as to whether to publish the information.

FOR FURTHER INFORMATION CONTACT: Daniel Upham, Microenterprise Development Division, (202) 205-7001 or Daniel.Upham@sba.gov.

SUPPLEMENTARY INFORMATION:

A. General Information

The U.S. Small Business Administration (SBA) is amending its Microloan rules to reflect statutory changes from section 329 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Pub. L. 116-260), enacted December 27, 2020 (the Economic Aid Act). SBA's Microloan Program is authorized by section 7(m) of the Small Business Act, (15 U.S.C. 636(m)) and 13 CFR part 120, subpart G. The Microloan Program provides loans up to \$50,000 to help small businesses and certain not-for-profit childcare centers start up and expand. SBA provides funds to specially designated intermediary lenders, which are nonprofit community-based organizations with experience in lending as well as management and technical assistance. These intermediaries administer the Microloan Program for eligible borrowers.

SBA is amending §§ 120.701, 120.706, and 120.712 to incorporate Microloan Program changes required by the Economic Aid Act. The specific regulatory changes are detailed below in the section-by-section analysis.

B. Section-by-Section Analysis

1. § 120.701 Definitions

Section 329 of the Economic Aid Act established two new definitions: “Economically Distressed Area” and “Rural Area.” To recognize these additions, the definitions for the Microloan Program are revised.

2. 120.706 What are the terms and conditions of an SBA loan to an Intermediary?

The Economic Aid Act permanently increased the maximum amount an Intermediary may borrow from SBA to \$3,000,000 per year, with an aggregate outstanding limit of \$7,000,000. The maximum amount an Intermediary may borrow during its first year of participation remains \$750,000.

3. 120.712 How does an Intermediary get a grant to assist Microloan borrowers?

The Economic Aid Act provides a new minimum base grant amount of 25 percent of an Intermediary’s total outstanding SBA loan balance applicable in fiscal years in which the amount appropriated for TA grants is sufficient to provide all Intermediaries with a grant equal to 25 percent or more of their total outstanding SBA loan balances. In these fiscal years, the maximum base grant amount is 30 percent of an Intermediary’s total outstanding SBA loan balance. Intermediaries eligible for bonus grants may receive an additional grant for a total eligible maximum grant amount of 35 percent of the total outstanding SBA loan balance. SBA has revised paragraph (a) to reflect these statutory changes.

Currently, Intermediaries that maintain a portfolio of Microloans averaging \$10,000 or less are eligible for a bonus grant equal to 5 percent of the Intermediary’s total

outstanding SBA loan balance. The Economic Aid Act expands eligibility for bonus grants to: (a) Intermediaries that provide not less than 25 percent of their Microloans to small businesses located in or owned by one or more residents of an economically distressed area and (b) Intermediaries with a Microloan portfolio of which at least 25 percent is serving rural areas. SBA has revised paragraph (c) to include these two additional bonus grant eligibility criteria.

C. Compliance with Executive Orders 12866, 12988, 13132, 13175, and 13563, the Congressional Review Act (5 U.S.C. 801-808), the Paperwork Reduction Act (44 U.S.C., Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601-612).

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this direct final rule does not constitute a significant regulatory action under Executive Order 12866.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have preemptive effect. The final rule will have retroactive effect to the enactment date of the statutory amendment. These changes will become effective December 28, 2020.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. The direct final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. Therefore, SBA determined that this direct final rule has no federalism implications warranting preparation of a Federalism Assessment.

Executive Order 13175

In accordance with Executive Order 13175, SBA has determined this rulemaking does not include policies that have Tribal implications.

Executive Order 13563

Executive Order 13563, Improving Regulation and Regulatory Review (January 18, 2011), requires agencies to adopt regulations through a process that involves public participation, and to the extent feasible, base regulations on the open exchange of information and perspectives from affected stakeholders and the public as a whole. SBA has developed this rule in a manner consistent with these requirements. This direct final rule makes statutorily required changes.

Congressional Review Act, 5 U.S.C. 801–808

The Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804(2).

Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA has determined that this direct final rule would not impose any new reporting or recordkeeping requirements.

Regulatory Flexibility Act (5 U.S.C. 601–612)

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, including small businesses. According to the RFA, when an agency issues a rule, the agency must prepare an analysis to determine whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, the RFA allows an agency to certify a rule in lieu of preparing an analysis if the rulemaking is not expected to have a significant impact on a substantial number of small entities.

This rule only makes conforming amendments to the regulations due to recent legislation on the Microloan Program and does not implement new agency policies. The

amendment will affect small entities; however, SBA has determined that the amendment will not have a significant economic impact on a substantial number of such entities.

D. Justification for Direct Final Rule – Administrative Procedure Act

In general, SBA publishes a rule for public comment before issuing a final rule in accordance with the Administrative Procedure Act. 5 U.S.C. 553. The Administrative Procedure Act provides an exception to this standard rulemaking process, however, where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest.

SBA is publishing this rule as a direct final rule because public participation is unnecessary. SBA believes that this rule is routine and non-controversial since it merely implements changes required by statute, and SBA anticipates no significant adverse comments to this rulemaking. This rule will be effective on the date shown in the DATES section unless SBA receives significant adverse comment on or before the deadline for comments. Significant adverse comments are comments that provide strong justifications why the rule should not be adopted or for changing the rule. SBA does not expect to receive any significant adverse comments because it is adopting statutory changes.

If SBA receives any significant adverse comments, it will publish a document in the *Federal Register* withdrawing this rule before the effective date. If SBA receives no significant adverse comments, the rule will be effective 45 days after publication without further notice.

List of Subjects in 13 CFR Part 120

Definitions, Economically Distressed Area, Grant, Intermediary, Microloan, Rural Area, Terms and Conditions.

For reasons set forth in the preamble, the SBA amends 13 CFR part 120 as follows:

PART 120 – MICROLOAN PROGRAM

1. The authority citation for 13 CFR part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h) and (m), and note, 636m, 650, 657t, and note, 657u, and note, 687(f), 696(3), and (7), and note, and 697, 697a and e, and note; Pub. L. 116–260, 134 Stat. 1182.

Subpart G—Microloan Program

2. Revise § 120.701 to read as follows:

§ 120.701 Definitions.

Deposit account is a demand, time, savings, passbook, or similar account maintained with an insured depository institution (not including an account evidenced by a Certificate of Deposit).

Economically Distressed Area is a county or equivalent division of local government of a State in which the small business concern is located, in which, according to the most recent data available from the Bureau of the Census, Department of Commerce, not less than 40 percent of residents have an annual income that is at or below the poverty level.

Grant is a Federal award of money, or property in lieu of money (including cooperative agreements) to an eligible grantee that must account for its use. The term does not include the provision of technical assistance, revenue sharing, loans, loan guarantees, interest subsidies, insurance, direct appropriations, or any fellowship or other lump sum award.

Insured depository institution means any federally insured bank, savings association, or credit union.

Intermediary is an entity participating in the Microloan Program which makes and services Microloans to eligible small businesses and which provides marketing, management, and technical assistance to its borrowers. It may be:

- (1) A private, nonprofit community development corporation or other entity;
- (2) A consortium of private, nonprofit community development corporations or other entities;
- (3) A quasi-governmental economic development entity, other than a state, county, municipal government or any agency thereof; or
- (4) An agency of or a nonprofit entity established by a Native American Tribal Government.

Microloan is a short-term, fixed interest rate loan of not more than \$50,000 made by an Intermediary to an eligible small business.

Non-Federal sources are sources of funds other than the Federal Government and may include indirect costs or in-kind contributions paid for under non-Federal programs. Community Block Development Grants are considered non-Federal sources.

Rural Area is any political subdivision or unincorporated area:

- (1) In a nonmetropolitan county (as defined by the Secretary of Agriculture) or its equivalent thereof; or
- (2) In a metropolitan county or its equivalent that has a resident population of less than 20,000 if the Small Business Administration has determined such political subdivision or area to be rural.

Specialized Intermediary is an Intermediary which maintains a portfolio of Microloans averaging \$10,000 or less.

3. Amend § 120.706 by revising paragraph (a) to read as follows:

§ 120.706 What are the terms and conditions of an SBA loan to an Intermediary?

(a) *Loan amount.* An Intermediary may not borrow more than \$750,000 in the first year of participation in the program, or more than \$3,000,000 in any subsequent year. An Intermediary's obligation to SBA may not exceed an aggregate of \$7 million, subject to statutory limitations on the total amount of funds available per state.

* * * * *

4. Amend §120.712 by revising paragraphs (a) and (c) to read as follows:

§ 120.712 How does an Intermediary get a grant to assist Microloan borrowers?

(a) *General.* (1) Except as provided in (a)(2) of this section, an Intermediary is eligible to receive a base grant of not more than 25 percent of the outstanding balance of all SBA loans to the Intermediary.

(2) In fiscal years in which the amount appropriated for grants is sufficient to provide all Intermediaries with a base grant equal to 25 percent or more of their total outstanding SBA loan balances, then the amount of base grants to eligible Intermediaries will be equal to at least 25 percent of the outstanding balance of all SBA loans to the Intermediary and not more than 30 percent of such balance.

(3) The Intermediary must contribute, solely from non-Federal sources, an amount equal to 25 percent of the grant. Contributions may be made in cash or in kind.

* * * * *

(c) *Intermediaries eligible to receive additional bonus grant monies.* An Intermediary may receive an additional SBA grant equal to five percent of the outstanding balance of all loans received from SBA (with no obligation to contribute additional matching funds) if the Intermediary:

(1) Is a Specialized Intermediary;

(2) Provides not less than 25 percent of its loans to small business concerns located in or owned by one or more residents of an Economically Distressed Area; or

(3) Maintains a portfolio of Microloans of which at least 25 percent is serving

Rural Areas.

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Isabella C. Guzman,
Administrator.

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