

PROPOSED REGULATION OF THE EMPLOYMENT SECURITY

DIVISION OF THE DEPARTMENT OF EMPLOYMENT,

TRAINING AND REHABILITATION

LCB File No. R084-14

July 10, 2014

EXPLANATION – Matter in *italics* is new; matter in brackets [omitted material] is material to be omitted.

AUTHORITY: §§1-4, NRS 612.607.

A REGULATION relating to unemployment compensation; providing for the repayment of unexpended money from certain grants disbursed to nonprofit private entities for the purpose of making loans for certain start-up businesses of veterans and senior citizens; revising provisions relating to the conditions for the approval of certain loans for such start-up businesses; revising provisions relating to interest paid on certain loans for such start-up businesses; revising conditions under which a nonprofit private entity may be entitled to reimbursement for the costs of administering such loans; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation to establish a program to provide grants of money to a nonprofit private entity to make loans to veterans and senior citizens to start small businesses. (NRS 612.607)

Existing regulations set forth guidelines for the application for, and awarding of, grants to nonprofit private entities for the purpose of making loans for certain start-up businesses of veterans and senior citizens. (NAC 612.677) **Section 1** of this regulation provides that the Administrator may require a nonprofit private entity to repay money from such a grant that has not been expended in compliance with the terms of the grant.

Existing regulations set forth certain conditions for the approval of such a small business start-up loan by a nonprofit private entity. (NAC 612.679) **Section 2** of this regulation revises the conditions by increasing the amount of a loan which may be approved and by revising the prohibitions against the approval of a loan to an applicant who has a specified relationships with the person who is responsible for approving the loan on behalf of the nonprofit private entity.

Existing regulations establish guidelines for the repayment of such a small business start-up loan and interest accruing thereon. (NAC 612.683) **Section 3** of this regulation revises the calculation for the accrual of that interest and authorizes the Administrator to require a nonprofit private entity to use a portion of such interest to make additional loans under certain circumstances.

Existing regulations provide that a nonprofit private entity may be entitled to reimbursement for the administrative costs of administering a loan under certain circumstances. (NAC 612.685) **Section 4** of this regulation revises the terms of this entitlement to include the condition that interest received by the nonprofit private entity be insufficient to pay the administrative costs of administering a loan.

Section 1. NAC 612.677 is hereby amended to read as follows:

612.677 1. A nonprofit private entity that applies for a grant pursuant to the program must do so in the manner prescribed by the Administrator. The Administrator:

(a) Shall, at a minimum, require the submission of the financial statements of the nonprofit private entity for the 3 years immediately preceding the date of the application; and

(b) May require the nonprofit private entity to demonstrate, to the satisfaction of the Administrator, fiduciary responsibility, principles of accounting practices and fiscal mechanisms consistent with safeguarding public funds and the public interest.

2. Any grant which is awarded to a nonprofit private entity is subject to audit and review by the Division.

3. The Administrator may require a nonprofit private entity to repay any grant money that has not been expended in compliance with the terms under which the grant was awarded.

Sec. 2. NAC 612.679 is hereby amended to read as follows:

612.679 1. A nonprofit private entity which administers the disbursement of money received as a grant pursuant to the program may approve an individual loan of up to ~~[\$5,000]~~

\$15,000 to a start-up business without the approval of the Administrator. The Administrator may waive the loan limit prescribed in this subsection for a loan not exceeding ~~[\$10,000.]~~ **\$20,000**.

2. A loan may not be made to:

(a) An applicant for a loan by the person responsible for approving the loan on behalf of the nonprofit private entity if the person approving the loan has a dating relationship with the applicant or ~~[is a relative of the applicant within the third degree of consanguinity or affinity;~~

~~—(b) A start-up business owned wholly or in part by any person who is an employee of the nonprofit private entity or under a contract of service to the nonprofit private entity; or~~

~~—(c)] :~~

(1) Is the spouse or domestic partner of the applicant;

(2) Is a member of the household of the applicant;

(3) Is related to the applicant, or to the spouse or domestic partner of the applicant, by blood, adoption, marriage or domestic partnership within the third degree of consanguinity or affinity;

(4) Employs the applicant, the spouse or domestic partner of the applicant or a member of the household of the applicant;

(5) Has a substantial and continuing business relationship with the applicant; or

(6) Has any other commitment, interest or relationship with the applicant that is substantially similar to a commitment, interest or relationship described in subparagraphs (1) to (5), inclusive; or

(b) A start-up business which has not complied with the provisions of chapter 76 of NRS or which fails to demonstrate compliance with applicable requirements governing contributions or industrial insurance pursuant to the provisions of chapter 612 or 616C of NRS.

3. An applicant for a loan pursuant to this section must submit to the nonprofit private entity a business plan which clearly identifies and explains the intended use of the loan in the manner prescribed by the nonprofit private entity.

4. An applicant for a loan may not have more than one loan which is obtained pursuant to this section and which is in repayment, except that a borrower who has repaid such a loan pursuant to NAC 612.683 may apply for another loan for the purposes of expanding the business if the business still qualifies as a start-up business.

5. Any legally organized business entity which receives a loan from a nonprofit private entity pursuant to this section:

(a) May use the money for business-related costs, including, without limitation, costs associated with the start-up of the business and licensing and permitting; and

(b) May not, in any manner, use any portion of the money for expenses commonly considered personal in nature.

6. As used in this section ~~[, “dating”]~~:

(a) *“Dating relationship”* has the meaning ascribed to it in NAC 284.0533.

(b) *“Domestic partner”* has the meaning ascribed to it in NRS 281A.085.

(c) *“Domestic partnership”* has the meaning ascribed to it in NRS 281A.086.

(d) *“Household”* has the meaning ascribed to it in NRS 281A.100.

Sec. 3. NAC 612.683 is hereby amended to read as follows:

612.683 1. Except as otherwise provided in subsection ~~3.~~ 4, both principal and interest on a loan made under the program must be repaid to the nonprofit private entity not later than 4 years after the date on which the loan is made. The nonprofit private entity administering the loan must establish a payment schedule and agreement with the borrower. The schedule and agreement must provide that:

(a) The first year of repayment of a loan is free from interest. ~~;~~

(b) ~~[A]~~ *From the beginning of the second year of repayment of a loan, a* loan which is not repaid in full by the end of the first year is subject to ~~[an interest rate of 5]~~ *a maximum rate of interest not higher than the maximum rate of interest set forth in this paragraph on the outstanding balance of the loan until the loan is paid in full. For the purposes of this paragraph, the maximum rate of interest is a rate of interest equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1 or July 1, as the case may be, immediately preceding the date of the beginning of the second year of repayment of the loan, plus 2.25 percent simple interest per annum ~~[and]~~, with the amount of this maximum rate of interest adjusted accordingly on each January 1 and July 1 thereafter until the loan is paid in full.*

(c) The failure of the borrower to repay the principal and interest on the loan may result in collection proceedings to the extent allowable under the applicable laws and regulations of this State.

2. ~~[Any]~~ *Except as otherwise provided in subsection 3, any* interest earned by the nonprofit private entity pursuant to subsection 1:

- (a) Must be deposited in a separate account established and maintained by the nonprofit private entity for the purpose of administering loans; and
 - (b) Must not be commingled with any other money.
3. *If the Administrator determines that a nonprofit private entity has earned and collected interest in excess of the amount of money which is necessary for the purpose of administering loans, the Administrator may require that the amount of the excess be used to issue additional loans.*

4. The Administrator may forgive the outstanding balance of a loan if:
- (a) The Administrator determines that the loan was not secured either in whole or in part by fraud or misrepresentation of the borrower;
 - (b) The borrower demonstrates an inability to repay the loan; and
 - (c) The recovery of the loan would be against equity and good conscience, as determined by the Administrator.

Sec. 4. NAC 612.685 is hereby amended to read as follows:

612.685 1. ~~[A]~~ *If the amount of interest collected by a nonprofit private entity is insufficient for the purpose of administering loans pursuant to subsection 2 of NAC 612.683, the nonprofit private entity may be entitled to reimbursement for administrative costs incurred as a result of administering a loan under the program, but any such reimbursement must not exceed 10 percent of the total amount of all grants awarded to the nonprofit private entity for the purposes of making loans under the program.*

2. A claim for reimbursement pursuant to subsection 1 must be made:

- (a) In accordance with generally accepted accounting principles; and

(b) On a form prescribed by the Administrator.