

ADOPTED REGULATION OF THE EMPLOYMENT SECURITY
DIVISION OF THE DEPARTMENT OF EMPLOYMENT,
TRAINING AND REHABILITATION

LCB File No. R128-09

Effective April 20, 2010

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

AUTHORITY: §§1-12, NRS 612.607.

A REGULATION relating to economic development; establishing a program to provide grants to nonprofit private entities to be used to make loans to veterans and senior citizens to start small businesses; establishing provisions for the administering and repayment of loans made under the program; establishing criteria for the qualification of nonprofit private entities to receive grants under the program; and providing other matters properly relating thereto.

Section 1. Chapter 612 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 12, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Program” means the program established pursuant to section 6 of this regulation.*

Sec. 4. *“Start-up business” means a small business that has been in operation for 6 months or less.*

Sec. 5. *“Veteran” has the meaning ascribed to it in 38 U.S.C. § 101(2).*

Sec. 6. *The Administrator shall establish a program to disburse grants of money to nonprofit private entities organized under the provisions of chapter 81 or 82 of NRS to be used exclusively to assist start-up businesses which are at least majority owned and controlled by one or more veterans or one or more senior citizens.*

Sec. 7. 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.

Sec. 8. 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 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.*

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) 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 section 9 of this regulation 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 relationship" has the meaning ascribed to it in NRS 284.0533.

Sec. 9. 1. *Except as otherwise provided in subsection 3, 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 loan which is not repaid in full by the end of the first year is subject to an interest rate of 5 percent simple interest per annum; and*
- (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 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. 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. 10. 1. *A 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.*

Sec. 11. *The Administrator shall ensure that all loans made under the program are disbursed by qualified nonprofit private entities. Qualifications must be identified using information submitted by the nonprofit private entity pursuant to section 7 of this regulation. In determining whether a nonprofit private entity is qualified to receive a grant under the program, the Administrator may consider, without limitation:*

- 1. The experience and past performance of the nonprofit private entity in delivering training and counseling in the areas of financial services;*
- 2. The experience and past performance of the nonprofit private entity in the management of public funds or loans;*
- 3. The ability of the nonprofit private entity to provide services on a statewide or regional basis;*
- 4. Evidence of an established lending process, including, without limitation, underwriting guidelines and collection policies and procedures for delinquent accounts;*
- 5. The length of time the nonprofit private entity has been providing financial services to the public or private sector; and*
- 6. The aging of the current loan portfolio of the nonprofit private entity.*

Sec. 12. *1. A nonprofit private entity which administers a loan shall establish a process by which an applicant may appeal the denial of an application for a loan under the program. The appeal process must provide for the creation of a panel or committee that is responsible for holding regular meetings in a manner sufficient to ensure the timely resolution of any appeal filed with the nonprofit private entity.*

2. Any records relating to an appeal described in subsection 1 must be made available to the Division for inspection.

State of Nevada
Department of Employment, Training and Rehabilitation
Employment Security Division

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
LCB FILE R128-09

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 612, Sections 2-12.

- 1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

Public Workshop/Meeting

In compliance with NRS 233B.061 and NRS 612.305, a public workshop and meeting was held on September 30, 2009, at the Legislative Building, 401 S. Carson Street, Room 2135, Carson City, Nevada, to consider the adoption of a new regulation under Chapter 612 of the Nevada Administrative Code. The meeting was also video conferenced to the Grant Sawyer Building, 555 East Washington Avenue, Room 4401, Las Vegas, Nevada. Notice of the meeting was mailed on September 15, 2009, to all individuals on the Employment Security Division mailing list. Notice was posted at the principle Employment Security Division office in Carson City, as well as Employment Security Division field and Nevada JobConnect offices throughout the state. In addition, the notice was submitted to the Legislative Counsel Bureau, the Nevada State Library, and all main county libraries in the state, and was posted on the web sites of the Department of Employment, Training and Rehabilitation and the Legislative Counsel Bureau. The meeting was also noticed in three newspapers, the Reno Gazette journal, Nevada Appeal and the Las Vegas Review Journal.

- 2. The number of persons who:**
 - (a) Attended the workshop: 5**
 - (b) Testified at the workshop: 0**
 - (c) Submitted to the agency written comments: 0**

A total of 5 persons attended the workshop, all were staff members.

The Employment Security Division Administrator, Cynthia Jones, testified at the workshop regarding Career Enhancement Program funding and an overview of the proposed regulations.

Small Business Workshop

In compliance with NRS 233B.0608 and NRS 233B.0609, the Department of Employment, Training and Rehabilitation assessed whether the proposed regulation amendment would impose a significant economic burden upon small business. Assembly Bill 338 which was introduced

during the 2009 Legislative Session by Assemblywoman Kathy McClain and was subsequently passed authorizes the Employment Security Division to provide grants to nonprofit entities to be used to make loans to veterans and senior citizens for the purpose of starting a small business.

Nevada Revised Statute 612.607(a) requires that the Administrator of the Unemployment Compensation Division “establish and administer an employment training program which must foster job creation, minimize unemployment costs of employers and meet the needs of employers for skilled workers by providing training to unemployed persons; and (b) Establish or provide support for job training programs in the public and private sectors for training, retraining or improving the skills of persons employed in this state.” This program is more commonly known as Nevada’s Career Enhancement Program and is funded by employers at the rate of .05 percent of the wages paid by employers in addition to their regular unemployment insurance tax.

Currently, the majority of the Career Enhancement Program (CEP) funds are used to provide employment and training services through the Nevada JobConnect offices statewide. Additionally, some CEP funding is made available to entities to serve incumbent and unemployed workers and is awarded based on a competitive process in which entities respond to a request for proposal. Nevada Job Connect offices also utilize Career Enhancement Program funds to serve unemployed individuals by providing them with short-term training opportunities and other supportive services that will assist in getting a job seeker back into the workforce as quickly as possible.

The passage of Assembly Bill 338 requires the division to amend Nevada Administrative Code 612 by adding the followings provisions:

1. The ESD Administrator may establish a program to disburse grants of money to non-profit organizations that are to be used exclusively to assist the start-up of small businesses unconditionally owned and controlled by one or more eligible Veterans of the United States Military or one or more individuals meeting criteria of being senior citizens.

The new program authorized under Assembly Bill 338 will be funded by the existing Career Enhancement Program and will not require an additional tax assessment. As a result, the agency indicated that no small business impact had been created as the new program will be funded through existing resources.

The number of persons who:

- (a) Attended the workshop: 3**
- (b) Testified at the workshop: 0**
- (c) Submitted to the agency written comments: 0**

Cynthia A. Jones, Administrator of the Employment Security Division of the Department of Employment, Training, and Rehabilitation, presided and was accompanied by two staff members. No one testified at the workshop. No written or verbal comments were received.

Public Hearing

In compliance with NRS 233B.0603, a public hearing was held on January 15, 2010, at the auditorium of the Department of Employment, Training and Rehabilitation, 500 E. Third Street, Carson City, Nevada. The hearing was also video conferenced to the Southern office of the Department of Employment, Training and Rehabilitation, 2800 E. St. Louis Avenue, Conference Room C, Las Vegas, Nevada. A copy of the proposed regulation and Notice of Intent to Adopt a Regulation were submitted to the Legislative Counsel Bureau and the Nevada State Library on December 10, 2010, providing at least 30 days notice of the Employment Security Division's intention to adopt the regulation. The notice included a copy of the proposed regulation and contained a statement of the need and purpose of the regulation. It further specified a time and location for a public hearing, at which interested individuals would be given the opportunity to present their views, or submit any evidence to that effect. Notice was posted at the principal office of the Employment Security Division in Carson City, as well as numerous offices of the Employment Security Division and Nevada JobConnects throughout the state. Notice of the public hearing was mailed on December 11, 2009 to all individuals on the Employment Security Division mailing list, submitted to all main county libraries in the state and was posted on the web sites of the Department of Employment Training and Rehabilitation and the Legislative Counsel Bureau. The meeting was noticed in three newspapers. They were the Reno Gazette Journal, Nevada Appeal and the Las Vegas Review Journal.

There were no verbal or written comments received.

The number of persons who:

- (a) Attended the hearing: 5**
- (b) Testified at the hearing: 0**
- (c) Submitted to the agency written comments: 0**

A total of five people attended the public hearing. Cynthia A. Jones, Administrator of the Employment Security Division of the Department of Employment, Training, and Rehabilitation, presided over the hearing. Four staff members from the Department of Employment, Training and Rehabilitation attended the meeting along with Cynthia Jones. No staff members provided testimony during the hearing. No written comments were received.

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comment was solicited from affected businesses in the same manner as for the public, as indicated above. In addition a small business workshop was conducted to address any issues that small business owners might have.

Copies of the minutes from the meeting/workshop, the small business workshop, the public hearing, as well as this summary, may be obtained from Joyce Golden, Employment Security Division, 500 East Third Street, Carson City, Nevada 89713, (775) 684-3909 and are also being made available on the Department's web site at www.nvdetr.org.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulation was adopted without change. The public expressed no opposition, either verbally or in written statements, to adopting the new regulation as written.

5. The estimated economic effect of the adopted regulation on the businesses that it is to regulate and on the public. These must be stated separately, and each case must include:

(a) Both adverse and beneficial effects: and

(b) Both immediate and long-term effects.

Business

- (a) Assembly Bill 338 which was introduced during the 2009 Legislative Session by Assemblywoman Kathy McClain and was subsequently passed authorizes the Employment Security Division to provide grants to nonprofit entities to be used to make loans to veterans and senior citizens for the purpose of starting a small business.

Nevada Revised Statute 612.607(a) requires that the Administrator of the Unemployment Compensation Division “establish and administer an employment training program which must foster job creation, minimize unemployment costs of employers and meet the needs of employers for skilled workers by providing training to unemployed persons; and (b) Establish or provide support for job training programs in the public and private sectors for training, retraining or improving the skills of persons employed in this state.” This program is more commonly known as Nevada’s Career Enhancement Program and is funded by employers at the rate of .05 percent of the wages paid by employers in addition to their regular unemployment insurance tax.

Currently, Career Enhancement Program funds are made available to entities to serve incumbent and unemployed workers and are awarded based on a competitive process in which entities respond to a request for proposal. Nevada Job Connect offices also utilize Career Enhancement Program funds to serve unemployed individuals by providing them with short-term training opportunities and other supportive services that will assist in getting a job seeker back into the workforce as quickly as possible.

This program is funded by a .05% payroll assessment collected in conjunction with Unemployment Insurance taxes that fund Nevada’s Career Enhancement program. No tax increase will be realized as the new program will be supported using existing resources.

- (b) The immediate effect of the passage of this regulation will be to allow the Department of Employment, Training and Rehabilitation to administer the program established pursuant to Assembly Bill 338 to provide grants to nonprofit entities to be used to make loans to veterans and senior citizens to start small businesses; to establish provisions for

the administering and repayment of loans made under the program; and to establish criteria for the qualification of non-profit private entities to receive grants under the program.

Public

- (a) There are no anticipated adverse effects on the public. It is anticipated that the adopted regulations will benefit the public by provide grants to nonprofit entities to be used to make loans to veterans and senior citizens to start small businesses; to establish provisions for the administering and repayment of loans made under the program; and to establish criteria for the qualification of non-profit private entities to receive grants under the program.
- (b) The immediate effect on the public is to foster the start up of small businesses primarily owned by senior citizens or Veterans which will increase economic activity in the state of Nevada by promoting business start ups. Small business provides employment opportunities for Nevada citizens, thus stimulating the economy.

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of this regulation.

7. A description of any regulations of other state or government agencies that the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The proposed regulation does not overlap or duplicate regulations of other state or government agencies.

8. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

There are no federal regulations that regulate the same activity.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount of the agency expects to collect and the manner in which the money will be used.

The regulation does not provide for a new fee or increase an existing fee.