

NOTICE OF INTENT

Department of Economic Development
Office of Entertainment Industry Development

Louisiana Entertainment Development Fund (LAC 13:III.Chapter 21)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Economic Development proposes to enact program rules for issuance of awards from the fund known as the Louisiana Entertainment Development Fund created by Act 223 of the 2017 Regular Session of the Louisiana Legislature.

Title 13

ECONOMIC DEVELOPMENT

Part III. Financial Assistance Programs

Chapter 21. **Louisiana Entertainment Development Fund**

Subchapter B. Louisiana Filmmaker Matching Grants

§2125. Preamble and Purpose

A. Film festivals, fellowships, filmmaking labs, and other entertainment initiatives designed to champion indigenous filmmaking talent provide vital opportunities for new and aspiring filmmakers to showcase their work and receive feedback, and support the State's long-term goal of achieving an independent, self-supporting filmmaking industry.

B. The purpose of the program is to support filmmakers statewide by providing matching ~~prize~~ funds to existing arts and film organizations with film festivals, film grant programs, fellowships, filmmaking labs, and other entertainment initiatives designed to champion indigenous filmmaking talent as approved by LED, as a means of ensuring a high-quality filmmaker matching grant program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 47:

§2127. Definitions

Applicant—the arts or film organization requesting a matching award from LED under this program.

Award—funding approved under this program for eligible matching funds.

Award Agreement—that agreement or contract hereinafter referred to between the training provider and LED, through which, by cooperative endeavor agreement or otherwise, the parties set forth the amount of the award, the terms, conditions and performance objectives of the award provided pursuant to these rules.

LED—Louisiana Department of Economic Development, or their designee, including any third party administrator engaged by LED.

OEID—Office of Entertainment Industry Development.

Program—the Education Development Grant Program.

Secretary—Secretary of the Department of Economic Development, or designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 47:

§2129. General Principles

- A. The following general principles will direct the administration of the program.
1. Awards are not to be construed as an entitlement for companies, and the secretary has the sole discretion to determine whether or not each particular applicant is eligible and meet the criteria for the award, and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination of the applicants' award status.
 2. Award amounts may vary at the discretion of LED, up to a maximum of \$100,000 per applicant, per year.
 3. LED shall negotiate with each applicant seeking an award based on the individual merits of each project.
 4. Contracts for awards shall contain "clawback" (or refund) provisions to protect the state in the event of a default.
 5. Award funds shall be used for the approved project only.
 6. Awards may be administered by LED through OEID, or LED may use funds to contract with a third party administrator to undertake such activities.
 7. Applications will be accepted on a year round basis, subject to availability of funding in any given year, or as otherwise determined by LED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 47:

§2131. Eligibility

- A. An eligible applicant is a non-profit arts or film organization approved by LED, with a proven track record of organizing film festivals, film grant programs, fellowships, filmmaking labs, or other entertainment initiatives designed to champion indigenous filmmaking talent as approved by LED.
- B. Applicants must demonstrate a track record of successful organization and operations that have been in effect for at least two years. Start-up companies or training providers with less than two years of documented program history or performance shall be ineligible for this program, unless evidence of funding can be provided from established arts, film or entertainment organizations, as approved by LED
- C. An applicant shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to its failure or inability to pay its obligations; including state or federal taxes, or bankruptcy proceedings, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company has a previous contract with LED in which the company is in default and/or is not in compliance.
- D. Applicants must be in full compliance with all state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 47:

§2133. Criteria

- A. LED will consider various factors when determining which proposal will be funded. Among the factors which may be taken into account in the review of the award requests are the following;
1. needs of the entertainment industry;
 2. disbursement of funding statewide;
 3. unique or innovative nature of the proposed project;

4. availability of other federal, state, local or private funding programs for the project;
5. the terms of the “clawback” (or refund) provisions, in the event of a default;
6. evidence of likely success of project;
7. availability of funding; and
8. best interest of the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 47:

§2135 Application Procedure

A. The applicant(s) must submit an application to LED, or if a third party administrator has been engaged, as otherwise directed by LED, which may be in letter form or in a more formal application format, as directed by LED, which shall contain, but not be limited to the following:

1. an overview of the arts organization, its history, and the business climate in which it operates;
2. a preliminary budget, overall description of the proposed film initiative, and funding to be provided;
3. information evidencing eligibility;
4. an articulation of any relevant factors in §2133; and
5. any additional information required to make a determination of qualification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 47:

§2137. General Award Provisions

A. In the event the Secretary determines, in his discretion, that an award would be appropriate, an award agreement shall demonstrate the intent and commitments of the applicant and LED to enter into an award agreement consistent with the Constitution and laws of the state of Louisiana and with these rules.

1. The award agreement will specify the amount of the award, the terms and conditions of the award, the performance objectives expected of the applicant and the compliance requirements in exchange for the award. Under the agreement, LED or its designated third party administrator will oversee the progress of the project.
2. Award funds will be disbursed to the applicant on an as-needed reimbursement basis following submission of required documentation to LED or its third party administrator, sufficient to demonstrate compliance, as set forth in the award agreement between the parties.
3. In the event a party to the award agreement fails to meet its performance objectives as specified in its award agreement with LED, LED shall retain the rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the applicant in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state, as determined by LED.

4. In the event an applicant knowingly files a false statement in its application or in subsequent compliance documentation, the applicant may be guilty of the offense of filing false public records, and may be subject to the penalty provided in R.S. 14:133.

5. LED shall retain the right, for itself, for the Legislative Auditor, and for the Division of Administration, to require and/or conduct financial and performance audits of a project, including all relevant documents of the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6007.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Entertainment Industry Development, LR 47:

Subchapter C. Loan Guarantee Program—Reserved.

Subchapter D. Deal Closing Fund Reserved.

Family Impact Statement

The proposed Rule is not anticipated to have an impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Statement

The proposed Rule is not anticipated to have an impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services as described in HCR 170 of the 2014 Regular Legislative Session.

Small Business Analysis

All entities requesting funding from this program must provide documents sufficient to show eligibility for and compliance with all requirements for funding. A handful of small businesses, mainly non-profit entities or entertainment organizations may be impacted, but the benefit from additional matching award funding, at a nominal cost of some additional planning and paperwork associated with the application process, reports and invoices for reimbursement should provide a positive impact to any small businesses that choose to apply to the program.

Public Comments

Interested persons should submit written comments on the proposed Rules to Chris Stelly through the close of business on Friday, April 24, 2020 at Department of Economic Development, 617 North 3rd Street, 11th Floor, Baton Rouge, LA 70802 or via email to chris.stelly@la.gov.

Public Hearing

A meeting for the purpose of receiving the presentation of oral comments will be held at 3 p.m. on Monday, April 27, 2020 at the La Salle Building, La Belle Room, 617 North Third Street, Baton Rouge, LA 70802.

Anne G. Villa
Undersecretary, LED

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be an increase in expenditures of the Department of Economic Development (LED) as a result of the rules promulgated to provide guidelines and application procedures for the Louisiana Economic Development Fund (Fund) created by Act 223 of 2017.

Act 223 of 2017 created the Louisiana Entertainment Development Fund for education development initiatives,

matching grants for Louisiana filmmakers, a loan guarantee program, and a deal closing fund. Expenditures of the LED will consist of grant awards to non-profit arts or film organizations with a proven track record of organizing film festivals, film grant programs, fellowships, filmmaking labs, or other entertainment initiatives designed to champion indigenous filmmaking talent, as approved by LED. These awards may provide additional funding for indigenous filmmaker initiatives. Award amounts may vary at the discretion of the Department, with a maximum of \$100,000 per applicant, per year.

Administration of the awards will be carried out utilizing existing staff and resources at LED. Administration may also be handled by a third-party administrator (TPA). Should LED hire a TPA, administrative fees would be up to 10% of any award.

There may also be an increase in expenditures of those non-profit arts or film organizations to the extent that they successfully participate in the competitive grant program.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be an increase in revenues of the Department of Economic Development (LED).

Act 223 of 2017 provides that for film projects that apply to LED after July 1, 2017, a transfer fee of 2% of the tax credit transfer value is placed in the fund. A total of 25 percent is allocated to the Louisiana Department of Revenue (LDR) for administrative purposes and 75 percent to the Department of Economic Development for education development initiatives, matching grants for Louisiana filmmakers, a loan guarantee program, and a deal closing fund. The Department of Economic Development will see increased revenues as a result of this transfer fee. The Department estimates annual revenues as high as \$2.7 M could be generated based on the maximum transfer rate. However, actual total collections to date are approximately \$1.8 M. Since the transfer fee projections are occurring under the auspices of the \$150 M credit issuance and \$180 M claims caps, aggregate revenues for the state will not be affected.

Those non-profit arts or film organizations that organize film festivals, film grant programs, fellowships, filmmaking labs, or other entertainment initiatives designed to champion indigenous filmmaking talent may see an increase in their revenue as a result of the grant award, to the extent that they successfully participate in the competitive grant program.

The proposed rule change will not affect local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)

Non-profit arts or film organizations may benefit from additional revenues should they choose to participate in the LED grant program. The cost to these entities may include the cost of some additional planning and paperwork requirements associated with the application process, reports, and invoices for reimbursement. Those Louisiana businesses, including small businesses (mainly non-profit entities) in the entertainment industry will benefit from better trained and more productive filmmakers. Louisiana residents will benefit from enhanced employment opportunities in the Louisiana entertainment industry

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The program's goal is to make workers more employable in the Louisiana entertainment industry. The competitiveness of Louisiana businesses should be enhanced as employees become better equipped to adapt to the demands of this industry.