WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Technology-Related Assistance Revolving Loan Fund For Individuals With Disabilities Board TITLE NUMBER: 193

CITE AUTHORITY W. Va. Code 29-24-5(a)(3)

AMENDMENT TO AN EXISTING RULE: YES____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ________

TITLE OF RULE BEING AMENDED: ________

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 1

TITLE OF RULE BEING PROPOSED: Rules Governing Operation of Technology-Related Assistance Revolving Loan Fund

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

David R. Ice

Authorized Signature

Secretary, Education + the Arts

$3.20

TITLE 193
LEGISLATIVE RULES
WEST VIRGINIA TECHNOLOGY-RELATED ASSISTANCE REVOLVING LOAN FUND FOR INDIVIDUALS WITH DISABILITIES

SERIES 1

RULES GOVERNING OPERATION OF TECHNOLOGY-RELATED ASSISTANCE REVOLVING LOAN FUND

193-1-1. General.

1.1. Scope. This rule applies to the procedures and standards applicable to the West Virginia Technology-Related Assistance Revolving Loan Fund For Individuals With Disabilities, a statewide program for making loans from a revolving fund to qualified borrowers to improve the independence of or to otherwise assist disabled West Virginia residents in becoming more productive members of the community. The West Virginia Technology - Related Assistance Revolving Loan Fund For Individuals With Disabilities board may make loan funds available to qualified borrowers for approved purposes in accordance with this rule.

1.2. Authority. West Virginia Code 29-24-5(a)(3).

1.3. Filing Date.

1.4. Effective Date.

193-1-2. Description of Program. The Legislature of West Virginia has created and established the West Virginia Technology-Related Assistance Revolving Loan Fund For Individuals With Disabilities from which the board shall make available loans ranging from a minimum of $500.00 to a maximum of $5,000.00 for the purchase of technology-related devices or directly related services that will assist the borrowers with disabilities to overcome barriers of daily living.

193-1-3. Terms of Program Loans. Program loans are subject to the following requirements:

(a) Collateral. The Board may require such collateral as may be available, including, in appropriate cases, a security agreement in personal property, or personal guarantees. Except as specifically approved by the Board, in its sole discretion, collateral shall be located within the State of West Virginia.

(b). No Refinancing. The Board may not enter into a loan agreement with an eligible borrower to refinance any existing indebtedness.

193-1-4. Eligibility. (a). The borrower shall use the loan proceeds for the purchase of technology-related devices or services which will:

1. Assist him or her to be independent through the purchase; and

2. Assist him or her to become a more independent member of the community and improve his or her quality of life within the community.

(b). An applicant who has previously been rejected for a loan under the Technology-Related Assistance Revolving Loan Fund For Individuals With Disabilities may not reapply unless the new application represents a significant change from the rejected application. The Board shall determine whether or not to accept a new application.

(c). No more than 20% of all available loan funds are to be provided to nonprofit entities in a single year.

193-1-5. Application Procedure and Contents. (a). An individual may obtain an application form from the Board and shall submit the completed application to the Board. The Board shall assist or otherwise provide for assistance to any applicant who requires assistance in completing the loan application documents. The application shall include the following information:

1. Certification from the applicant that the applicant meets all eligibility requirements;

2. Satisfactory evidence of the applicant's net income and net worth;

3. A statement including the cost, description and intended use of the technology-related device or service that the applicant proposes to purchase;

4. A statement of contributing sources of financing for the device or service if required by the Board; and

5. Proof of disability of the applicant or the intended user if required by the Board. The proof may include a statement from a physician indicating how the applicant's disability affects one or more major life activities. The Board may also require an assistive technology evaluation prior to consideration of the loan application.

6. The Board shall refer all applications received, together with any supporting documentation, to its Application Committee. The Application Committee shall consist of four members of the Board who are appointed by the chairperson. At least one of the members of the Application Committee shall be an individual with a disability or have a family member who has a disability. The Application Committee shall consider the following in recommending approval or rejection of an application for a loan:

(a). Whether an applicant is eligible for a loan;

(b). Whether the loan proceeds will be put to an eligible use;

(c). Whether the proposed loan is an efficient use of loan funds;

(d). Whether any other financing sources may be used to supplement the loan;

(e). Whether there are sufficient assets to provide adequate collateral for the loan;

(f). Whether the application is complete and the applicant has supplied all information necessary for financial review and analysis of the application;

(g). The applicant's ability to repay the loan; and

(h). The adequacy of security provided for the loan.

7. In considering the factors set forth in paragraph 6, the Board shall determine the appropriate weight to give to each factor in each case.

8. The Board's Application Committee shall determine whether and when an application is complete and its decision is final. When the Application Committee determines that a loan application is complete and ready for review, it shall then request a credit report from the appropriate credit bureau. The Application Committee shall not consider the absence of a credit history a negative factor in it's evaluation of an application nor is the absence grounds, in and of itself, for the Board to deny an application for a loan.

193-1-6. Recommendation to the Board. (a). After the application is complete and the applicant has had an opportunity to support the application with any further information requested by the Application Committee or which the applicant determines will further support the loan request, the Application Committee shall prepare an analysis of each application. The analysis shall be presented to the Board within fifteen business days of the Board's receipt of the applicant's credit check. The analysis shall contain the following:

(1). A loan summary;

(2). A statement of the strengths and weaknesses of the proposed loan; and

(3). Any other information as the Board may require.

(b). Based on the analysis, the Application Committee shall recommend approval or denial of the loan application, then forward that recommendation as follows:

(1). If the Application Committee recommends approval of the loan, the Application Committee shall forward to the Board the complete loan application. The Application Committee shall include a certification that it has reviewed the loan and considered each of the criteria in this rule, and shall include the basis for its recommendation;

(2). If the Application Committee recommends denial of the loan, it shall forward the complete loan application and statement of its basis for the recommendation directly to the Board for a final determination;

(3). The Board shall notify the applicant within three business days of its decision regarding the application and provide a statement of the basis of its findings by either:

(a). Issuing a loan commitment, including terms and conditions of the loan; or

(b). Issuing a letter of rejection, which shall include an explanation for the rejection and a notification of the right to appeal as provided in this rule.

193-1-7. Board Action. (a). A quorum of at least four active Board members is necessary for Board action. No Board member may participate in a vote on an application where that member has a direct or indirect pecuniary interest in the outcome of the vote.
The Application Committee is responsible for insuring that the action of the Board is carried out.

(b). No loan commitment is effective until the applicant and any co-applicants or guarantors have signed it and agreed to its terms.

193-1-8. Default. (a). A loan is in default when any payment is 30 days past due or upon the occurrence of any event of default as defined in the loan documents. When a loan is in default, the Board shall notify the borrower that the borrower has 30 days in which to cure the default. If the borrower fails to cure the default within 30 days, the Board shall take all appropriate action provided under law and the loan documents. In determining the appropriate action, the Board shall consider:

(1). The impact of enforcement and collection on the borrower; and

(2). The likelihood that the loan will be repaid if a waiver or extension is granted.

(b). If the Board determines that the loan should be enforced and collected, the borrower shall be given final notice of the default or defaults and acceleration of the loan and shall be given an additional grace period of 30 days in which to pay the amount outstanding, and shall be notified that if the borrower fails to make payment in full, the Board will proceed to enforce its rights under the loan documents. In the event that a borrower defaults on a loan, the Board may repossess the assistive device financed. The Board may utilize or otherwise dispose of any repossessed assistive devices.

(c). The Board may apply payments or other monies received on loans which are in default first to expenses of collection and preservation of collateral, second to accrued interest, and third to outstanding principal.

193-1-9. Requests for Reconsideration. In the event that the application is rejected by the Board, the applicant may make a request for reconsideration of the application to the Board. An applicant shall direct requests to the chairperson of the Board, or his or her designee, stating why the decision should be modified or reversed. An applicant shall submit a request for reconsideration within 20 calendar days of the date of the rejection letter. A reconsideration shall be heard at a meeting of the Board. The Board shall base its reconsideration on the record before the Board on the date of rejection. The decision of the Board is final.

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant

July 14, 1998

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Janice Holland
Division of Rehabilitation Services
P.O. Box 50890
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Technology-Related Assistance Revolving Loan Fund for Individuals with Disabilities, 193CSR1**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
   (a) as originally filed ____
   (b) as modified by the agency ____

2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. ____

3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. ____

4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. X

The Committee also adopted an amendment to the proposed rule which would lower the maximum interest rate which may be charged from 21% per year to 12% per year. In the Committee's opinion, the maximum interest rate was too high.

If the first page of this form indicates that your agency has agreed to modify the proposed rule in accordance with a motion adopted by the Committee, your agency should consult with the Committee's counsel on the preparation of the modifications. By **Thursday, July 23, 1998** , your agency must file **1 copy** of your modified rule with the Secretary of State's office and **10 copies** with the LRMRC.

Please disregard this notice if you have already filed your final, modified rule. Committee rules state that a copy of this letter must be on file for each agency filing a rule.

Very truly yours,

Teri Anderson

Teri Anderson
Administrative Assistant

LRMRC:tla

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Technology-related Assistance Revolving Loan Fund for Individuals With Disabilities Board

Subject: Technology-related Assistance Revolving Loan Fund for Individuals With Disabilities, 193CSR1

PERTINENT DATES

Filed for public comment: November 21, 1997
Public comment period ended: December 24, 1997
Filed following public comment period: February 9, 1998
Filed LRMRC: February 9, 1998
Filed as emergency: November 21, 1997; Effective January 2, 1998

Fiscal Impact:

ABSTRACT

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 describes the program.

Subsection 2.1 states that it is the general purpose of the Fund to make loans in amounts from $500 to $5,000 to borrowers with disabilities to overcome barriers of daily living.

Subsection 2.2 sets forth the definitions from the Code in their entirety.

Subsection 2.3 basically states that the Board has the powers and duties given to it by the statute.

Subsection 2.4 sets forth statutory provisions regarding the terms of the loans. It also allows the Board to require collateral for a loan and prohibits loaning money to refinance any indebtedness of an eligible borrower.

Subsection 2.5 sets forth eligibility requirements. In addition to repeating the Code provisions, it provides that not more than 20% of all available loan funds are to be provided to nonprofit entities in a single year.

Subsection 2.6 relates to applications and their processing. It sets forth information which must be contained in the application. It also provides for review of the application by an Application Committee and sets forth the factors to be considered by the Application Committee in recommending approval or rejection of a loan. It requires the Application Committee to prepare and submit its analysis to the Board within 15 business days of the Board's receipt of the applicant's credit check. The Board is to notify the applicant of its decision within 3 business days of receiving the Application Committee's recommendation.

This subsection also provides for the collection on loans where there is a default.

AUTHORITY

Statutory authority: W.Va. Code, §29-24-5, which provides, in part, as follows:

> (a) The board has the following powers, duties and responsibilities:
> ...(3) Propose rules for legislative promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code for the transaction of its business and to carry out the purposes of this article. Such rules shall include: (A) Guidelines, procedures, reporting requirements, accountability measures and such other criteria as the board deems appropriate and necessary to fulfill its governance responsibility under this article if it elects to contract with a nonprofit, consumer-driven organization to carry out the purposes of this article; (B) an appeals process with regard to the administration of the fund; and (C) rules governing the operation of the fund, including, but not limited to, eligibility of receipt of funds and all other matters consistent with and necessary to accomplishing the purpose of this fund;...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

The proposed rule contains a lot of unnecessary repetition of the Code and needs to be pared down to about two pages.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

State Capitol - Room MB-49
Charleston, West Virginia 25305
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Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant

September 23, 1998

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Janice Holland
Division of Rehabilitative Services
P.O. Box 50890
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Technology-Related Assistance Revolving Loan Fund for Individuals with Disabilities, 193CSR1**

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