

CHAPTER 55
TARGETED SMALL BUSINESS FINANCIAL ASSISTANCE PROGRAM

[Prior to 7/19/95, see 261—Ch 27]

261—55.1(15) Targeted small business financial assistance program (TSBFAP). The purpose of the targeted small business financial assistance program is to assist in the creation and expansion of women- and minority-owned small businesses within the state of Iowa.

261—55.2(15) Definitions. As used in connection with the targeted small business financial assistance program, the following terms have the meanings indicated:

“*Annual gross income*” means total sales, before deducting returns and allowances but after deducting corrections and trade discounts, sales taxes and excise taxes based on sales, as determined in accordance with generally accepted accounting principles.

“*Department*” or “*IDED*” means Iowa department of economic development.

“*Participating lender*” means a financial institution participating in a project assisted by the targeted small business financial assistance program.

“*Persons with a disability*” means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. “Disability” does not include any of the following:

1. Homosexuality or bisexuality.
2. Transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.
3. Compulsive gambling, kleptomania, or pyromania.
4. Psychoactive substance abuse disorders resulting from current illegal use of drugs.

“*Major life activity*” includes functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, breathing, learning, or working.

“*Small business*” means any enterprise which is located in this state, which is operated for profit and has an average annual gross income of less than \$3 million. The average annual gross income of the business is based on the prior three years.

“*Targeted small business (TSB)*” means a small business as defined in this rule, which is 51 percent or more owned, operated, and actively managed by one or more women, minority persons, or persons with a disability. As used in this definition, “minority person” means an individual who is a Black, Hispanic, Asian or Pacific Islander, American Indian or Alaskan native.

261—55.3(15) Eligibility requirements.

55.3(1) Residence. An applicant must be a resident of Iowa to be eligible to apply for assistance. Applicants may be asked to provide necessary documentation to prove legal residency.

55.3(2) Business location. The business, or proposed business, must be located in the state of Iowa.

55.3(3) Targeted small business. An applicant may apply only on behalf of a business which meets the targeted small business definition. A business must be certified as a “targeted small business” by the department of inspections and appeals prior to application for financial assistance under this program.

55.3(4) Who may apply. Only persons who are owners (i.e., at least 51 percent owners and operators) of a targeted small business are eligible to apply. (This restriction does not prevent such individuals from receiving help in preparing an application from a city, county, areawide planning organization, community college, small business development centers, private sector service providers or other similar agencies.)

55.3(5) Other program requirements. All applicants for financial assistance shall comply with the requirements of 261—Chapter 80.

261—55.4(15) Loan and grant program.

55.4(1) Application procedures. Application materials may be obtained from the IDED business finance bureau or any small business development center (SBDC).

55.4(2) Maximum funding levels. In no case shall an award exceed \$25,000, nor in the case of a loan shall the interest rate charged exceed 5 percent per annum or be less than 0 percent per annum. Under no circumstances shall the targeted small business financial assistance program fund 100 percent of a project.

55.4(3) Forms of financial assistance available. The following types of financial assistance may be awarded under this program:

a. Direct loan. The term of loan shall not exceed five years; the interest rate shall not exceed 5 percent per annum.

b. Grant. Grant funds shall only be awarded in instances where the grant will leverage a significant amount of other financing, such as conventional or SBA financing packages. Leveraged financing shall be considered significant when at least \$2 of leveraged funds are provided for every \$1 in grant funds. The applicant must be able to demonstrate a cash investment of at least 10 percent in the project.

55.4(4) Eligible uses of funds. Awards of funds under this program shall be used for legitimate business expenses, including, but not limited to, the following purposes: purchase of equipment and furnishings, inventory, purchase of and improvements to land and buildings and specific operating expenses.

55.4(5) Ineligible uses of funds. Targeted small business financial assistance funds shall not be used to refinance existing debt. Existing debt in the context of this rule does not include interim financing for allowable program purposes intended as a bridge loan obtained after the date of the targeted small business award. Neither shall the department award funds to facilitate financing of a project which would consist solely of relocation of an existing business within Iowa. IDED may waive this limitation if the business demonstrates to IDED that it faces unusual circumstances which make the relocation necessary for the business's continued viability.

55.4(6) Threshold criteria. Applicants for funds under the targeted small business financial assistance program must meet the following minimum criteria before their application will be considered complete and eligible for ranking:

a. The business must be certified as a "targeted small business" by the department of inspections and appeals before applying for funding. In order to be certified as a targeted small business, a business owner must be a woman, a targeted minority, or a person with a disability and have established at least 51 percent ownership of the business, and be actively involved in the day-to-day management of the business. (The targeted business owner must have the expertise or related experience in order to be considered actively involved in the day-to-day management of the business.)

b. After the TSB has been awarded a loan or grant, the TSB must continue to be a certified TSB for the life of the loan or grant. Failure to meet this requirement may result in the loan or grant being called and due within 30 days. This will include all principal, interest and any penalties that have been assessed. If recertification occurs within 30 days of the date of the notice, the original terms will be reinstated.

55.4(7) Submittal process. All applications and related informational materials shall be submitted on forms prescribed by IDED. Completed applications shall be submitted to: Targeted Small Business Financial Assistance Program, Bureau of Business Finance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

55.4(8) Review process. All completed TSB applications are reviewed by the program manager on an ongoing basis. Applications are reviewed for completeness. If additional information is required, the program manager shall send the applicant notice to submit additional information. The

applicant shall then have three weeks from the date of the IDED letter to submit the requested information.

Application requests are initially rated for funding by IDED staff. They are then reviewed on a monthly basis by a loan review committee. The loan review committee is an advisory committee established by these rules to assist the department in the evaluation of applications. The committee is comprised of private sector representatives experienced in small business management and operation. The loan review committee membership shall consist of five private sector representatives. A quorum is three members. It requires the vote of at least three committee members to recommend action on an application to the director. If less than a quorum of the advisory committee is present at a meeting, an application will be forwarded to the director without a recommendation from the advisory committee. Recommendations by the committee are submitted to the director of the department of economic development for final approval, denial or deferral. The committee may recommend to approve, deny, or defer an application.

55.4(9) Rating factors. Applicants must score a minimum of 60 out of a possible 100 points in order to be recommended for funding. Points are awarded based on the information contained in the application according to the following criteria:

a. Business plan (20 points possible). Factors considered include: Does the application contain significant information regarding the product or service to be offered? Has the applicant provided sufficient documentation to support/justify the cash flow assumptions, e.g., third-party documentation regarding market size, annual sales and competition?

b. Financial plan (20 points possible). Factors considered include: Does the application contain comprehensive two-year cash flow projections which show the viability of the business? Does the application provide completed personal financial information and information on other funding sources?

c. Financial need (20 points possible). Factors considered include: the applicant's personal liquid assets and the applicant's ability or inability to secure a loan from conventional sources (i.e., bank, savings and loan, credit union, SBA).

d. Marketing plan (5 points possible). Factors considered include: Does the application contain sufficient information to ascertain that the applicant fully understands who the customers are and how to effectively reach them?

e. Management expertise and related experience (20 points possible). Factors considered include: Does the applicant have education or work experience that is relevant to the proposed business? Does the application document previous business training or management experience?

f. Loan repayment (10 points possible). Factors considered include: Does the application document the business's ability to service its debt?

g. Nontraditional (5 points possible). Factors considered include: Is the proposed business category one in which TSBs have traditionally been underrepresented as owners?

55.4(10) Negotiations of funds awarded.

a. The department reserves the right to negotiate the amount, term, interest rate, and other conditions of the loan or grant prior to award.

b. The department may decline to award funds to a business if there is a negative credit report (e.g., bankruptcy, foreclosure, tax liens).

55.4(11) Award process. Upon approval by the director, the applicant business will receive an award letter which shall state the amount of award, conditions of the award, any security agreements, and the amount of monthly loan repayments.

55.4(12) Contract. Following notification of award, contracts are prepared for execution between the business owner and IDED. After execution of the contract, the business owner may request disbursement of funds, on the form prescribed by IDED. The time frame between final award date and disbursement of funds will generally be one to two months.

55.4(13) Deferral process. Applications may be deferred only one time by the loan review committee. If all additional information requested is received within the three-week time frame, the application will be considered on the following month's agenda. If information is not received in a

timely manner, second consideration will be delayed by 30 days. No application will be held for over 60 days. If the request for additional information is not answered, the application will be denied.

55.4(14) *Reapplication.* Upon denial by the director, an applicant cannot resubmit an application for funding under the targeted small business financial assistance program for 90 days (3 months) from the date of IDED's denial letter.

55.4(15) *Default.* When a loan is in default for a period of 60 days, the IDED shall notify the office of the attorney general and request appropriate action.

55.4(16) *Misuse of funds.* A person receiving funds under the TSB financial assistance loan program may be subject to criminal penalties under Iowa Code section 15A.3 if it is determined that the person knowingly made a false statement in writing to procure economic development assistance from the state.

55.4(17) *Comprehensive management assistance and entrepreneurial development.*

a. Limitation. Comprehensive management assistance and entrepreneurial development is limited to businesses or individuals that have been awarded TSB funding.

b. Use of funds. Assistance is available only in the form of technical or professional assistance. This may be accomplished by use of department staff or department-contracted professional services in assisting the business to develop:

1. Management skills;
2. Inventory controls;
3. Financial controls;
4. Marketing plans;
5. Personnel assistance; or
6. Other related business assistance.

c. Determination of assistance. The administrator for the division of business development shall have the authority to approve contracts for management assistance. The maximum of case management assistance shall not exceed \$2,500 per business or individual.

261—55.5(15) Loan guarantee program.

55.5(1) *Loan guarantee program description.* This program is intended to allow a targeted small business to obtain a loan guarantee from a local lender for eligible uses in an amount not to exceed \$40,000. Following the department's approval of the application, the targeted small business loan guarantee program will guarantee the financial institution up to 75 percent of the loan amount.

Applicants must meet the credit evaluation of the lending institution. The lending institution shall make credit risk evaluations and otherwise make the decision, based on sound lending practices, of whether or not to extend credit to the business.

After the decision to extend credit has been made by the participating lender, the lender shall forward the application to IDED. The department will review and rank the loan applications and, for approved applications, enter into a loan guarantee agreement with the participating lender guaranteeing payment to the lender in the event the project goes into default.

55.5(2) *Application procedure.* Eligible applicants for targeted small business loan guarantees must apply directly to participating lenders using the application form available from IDED.

Each application shall include, at a minimum, the following: name(s) and address(es) of the applicant and participating lender, amount of loan, amount of loan guarantee requested, and certification of compliance with state law and lending practices.

55.5(3) *Loan criteria.*

a. Evaluation. It is the lender's responsibility to make a sound and fair evaluation of a project and creditworthiness. The participating lender shall evaluate each application for a targeted small business loan guarantee to ensure that the following criteria are met:

(1) The applicant shall show evidence that it is able to operate the business successfully. This shall include an overall business management plan including, but not limited to, the following:

- New business.

1. A generalized projection of revenues and expenses for the three-year period beginning the month of anticipated loan closing;
2. Capital formation plans, if any, other than from the targeted small business loan guarantee program;
3. To the extent possible, identification and analysis of risks;
4. Plans for record keeping, personnel and financial management;
5. Plans for marketing; and
6. Personal financial information/history.
 - Existing business.
 1. Record-keeping process in place at time of application;
 2. Tax returns for three prior years (personal and business);
 3. Quarterly financial statements (balance sheet and income); and
 4. Annual personal financial statements.

(2) IDED shall have the authority to obtain access to the financial records, ownership identity, and other information it may deem necessary regarding the business.

(3) The applicant shall have enough capital in the business so that, with assistance from the targeted small business loan guarantee program, the applicant will be able to operate the business on a financially sound basis. The applicant shall provide the participating lender, and IDED, access to its financial records including, but not limited to, information concerning the identity of all persons having an ownership interest in the small business, its capital structure, and its present and projected debt structure.

(4) The loan shall be so secured or of sound value as to reasonably ensure repayment. The participating lender may require any collateral, security or mortgage documents or other filings or protection as are reasonably necessary to insure security subject to the limitations of 55.5(3)“b.”

(5) The business’s past earnings record and future prospects shall indicate an ability to repay the loan out of income from the business. The applicant shall provide a summary of past earnings and future earnings prospects for the business and allow the participating lender reasonable access to its books and records.

b. Guarantee amount and term. No guarantee shall exceed the lesser of 75 percent or \$40,000 of the principal of a loan made to a targeted small business. The term of the guarantee is the lesser of the length of the loan or five years. The term may be extended for an additional year upon a showing of good cause. The lender shall not acquire any preferential security, surety, or insurance to protect the unguaranteed interest in a loan.

55.5(4) *Minority and women contractors.* Businesses awarded funds under this program shall, to the fullest extent possible, attempt to utilize minority and women contractors, suppliers, and professionals in performance of any project funded by a loan guaranteed under the targeted small business finance program.

55.5(5) *Loan eligibility and purposes.* A targeted small business loan guarantee shall be used for legitimate business expenses, including, but not limited to, purchase of and improvement to land and buildings, equipment and furnishings, working capital, inventory, supplies, or operating expenses.

55.5(6) *Ineligible uses.* The department shall not issue a loan guarantee to facilitate refinancing of existing debt. Existing debt in the context of this rule does not include interim financing obtained after the date of a targeted small business loan guarantee award. The department shall not issue a loan guarantee to facilitate financing of a project which would consist of relocation of an existing business within Iowa.

55.5(7) *Lender responsibilities.* Participating lenders shall take affirmative action to encourage certified targeted small businesses to apply for loans which would be guaranteed under the targeted small business finance program. Lenders shall assist applicants in preparation of loan applications and supporting documentation and in determination of financial feasibility of proposed targeted small business ventures. Lenders shall prepare the targeted small business loan guarantee applications and shall submit them for consideration and action to the department. Lenders shall perform all

necessary and standard loan servicing activities for each loan secured by a targeted small business loan guarantee.

55.5(8) Administration of loans. Participating lenders shall hold the loan instrument and shall receive all payments of principal and interest. The participating lender (noteholder) shall not, without prior consent of the department:

- a. Make or consent to any substantial changes in the terms of any loan instrument;
- b. Make or consent to releases of security or collateral on the loan;
- c. Accelerate the maturity of the note;
- d. Sue upon any loan instrument;
- e. Waive any claim against any borrower, cosigner, guarantor, obligor, or standby creditor arising from any of the loan documents. All loan servicing actions shall be the responsibility of the participating lender, who shall follow accepted standards of loan servicing employed by prudent lenders.

55.5(9) Events of default. After a loan is in default for a period of 60 days, the lender shall within 10 days notify IDED of the default and recommend a course of action.

55.5(10) Default and eligibility for payment. A default is not eligible for payment until the lender has satisfied all administrative and legal remedies for settlement of the loan and the loan has been reduced to judgment by the lender. After the default has been reduced to judgment and the guarantee paid from the loan reserve account, the department is entitled to an assignment of the judgment. The attorney general may take all appropriate action to enforce the judgment or may enter into an agreement with the lender or the department to provide for enforcement. Upon collection of the amount guaranteed, any excess collected shall be applied first to principal and then to interest and be paid to the lender or to the department as their respective interests may appear.

55.5(11) Costs of collection. The participating lender is responsible for all costs and fees, including, but not limited to, attorney's fees associated with the collection of loans and reducing any default to judgment.

55.5(12) Sharing of repayment proceeds and collateral. All repayments, security or guarantee of any nature, including without limitation, rights of setoff and counterclaim, which the lender or the department jointly or severally may at any time recover from any course whatsoever or have the right to recover on any guaranteed loan, shall repay and secure the interest of the lender and the department in the same proportion as such interest bears respectively to the guaranteed loan.

55.5(13) Reserve account. The department shall establish a loan reserve account from funds provided for this program, from which any default on a guaranteed loan shall be paid. In administering the program, the department shall not guarantee loan values in excess of the amount credited to the reserve account and only money set aside in the loan reserve account may be used for the payment of a default. Each time a loan guarantee is approved by the department, the amount of value of the loan guarantee will be transferred into the loan reserve account set up for that purpose. As funds in the reserve account become unencumbered due to the repayment of loans, the department may transfer money between the reserve and the TSBFAP account. The reserve account shall at all times be actuarially sound.

55.5(14) Waiver. The department may waive or vary particular provisions of these rules to conform to requirements of the federal government in connection with a small business loan with respect to which federal assistance, insurance, or guaranty is sought, provided the waiver does not conflict with applicable state laws.

261—55.6(15) Award agreement. Upon approval of an award, IDED staff shall prepare an agreement between IDED and the business which at a minimum shall include the conditions of the award, the responsibilities of both parties, and potential actions in instances of noncompliance.

261—55.7(15) Monitoring and reporting for loan, grant, and loan guarantee programs.

55.7(1) Monitoring. IDED reserves the right to monitor the recipient's records to ensure compliance with the terms of the award. The department retains the authority to request information on

the condition of the business at any time during the life of the loan to determine the status of the project. IDEED staff will contact the loan or grant recipient within 90 days of the award and as frequently as conditions may warrant during the life of the loan or grant.

55.7(2) Management assistance. The department may require a program recipient to consult with designated small business service providers for assistance with various aspects of the management and operation of the business.

These rules are intended to implement Iowa Code sections 15.102 and 15.247.

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