

CHAPTER 53
COMMUNITY ECONOMIC BETTERMENT PROGRAM

[Prior to 1/14/87, Iowa Development Commission[520] Ch 8]

[Prior to 7/19/95, see 261—Ch 22]

[Former Ch 53, "Economic and Research and Development Grants," rescinded IAB 7/19/95, effective 8/23/95]

261—53.1(15) Purpose. The purpose of the community economic betterment program is to assist communities and rural areas of the state with their economic development efforts and to increase employment opportunities for Iowans by increasing the level of economic activity and development within the state. The program structure provides financial assistance to businesses and industries which require assistance in order to create new job opportunities or retain existing jobs which are in jeopardy. Also, the program may provide comprehensive management assistance to businesses involved with the CEBA program. Assistance may be provided to encourage:

1. New business start-ups in Iowa;
2. Expansion of existing businesses in Iowa; or
3. The recruitment of out-of-state businesses into Iowa.

261—53.2(15) Definitions.

"Agreement expiration date" means the date the CEBA agreement expires.

"Applicant" means a city, county, or merged area school which requests state financial assistance on behalf of a business or a local development organization.

"Average county wage" means the average the department calculates using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report as provided by the Iowa workforce development department, audit and analysis section. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

"Average regional wage" means the wage calculated by the department using a methodology in which each particular county is considered to be a geographic center of a larger economic region. The wage threshold for the central county is calculated using the average wage of that county, plus each adjoining Iowa county, so that the resulting figure reflects a regional average that is representative of the true labor market area. In performing the calculation, the greatest importance is given to the central county by "weighting" it by a factor of four, compared to a weighting of one for each of the other adjoining counties. The central county is given the greatest importance in the calculation because most of the employees in that central county will come from the same county, as compared to commuters from other adjoining counties.

"Base economic activities" means those business activities which result in a net increase in the production of goods or services within the state. This would occur if a majority of the company's products or services were new, were sold outside the state, or were sold within the state in place of items previously purchased outside the state.

"Board" means the department of economic development board established under Iowa Code section 15.103.

"Business" means a sole proprietorship, partnership or corporation organized for profit or not-for-profit under the laws of the state of Iowa or another state, under federal statutes, or under the laws of another country.

"Business start-up" means a business which has not been in operation for more than two years prior to the date of the CEBA application.

"Buydown" means participation by the state in a conventional loan to an assisted business by lowering either the effective principal or interest of the loan.

"CEBA" refers to the community economic betterment account funded by Iowa Code section 15.32(2).

"Committee" means the community economic betterment review committee described in rule 53.3(15).

“Community base employment” means the total number of full-time equivalent jobs the business employs at the time of application for CEBA funds less any jobs retained as a direct result of the CEBA project.

“Community builder program” means the community builder program as defined in 261—Chapter 80.

“Comprehensive management assistance” means provision of technical business assistance through the use of department staff or professional business services provided by a public or private organization.

“Department” means the Iowa department of economic development created by Iowa Code section 15.105.

“Direct job” means a job created or retained by the business receiving CEBA funds and reflected on its employment payroll records.

“Director” means the director of the Iowa department of economic development.

“Entrepreneurial development” means the promotion of small business ownership through the provision of technical management expertise.

“Equity-like investment” means the provision of assistance in such a manner that the potential return on investment to the provider varies according to the profitability of the company assisted. This includes but is not limited to: royalty arrangements; warrant arrangements; or other similar forms of investments.

“Float loan” means a short-term loan (maximum of 30 months) from obligated but unexpended CEBA funds.

“Full-time equivalent job” means the equivalent of employment of one person for 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year.

“Grant” means an award of assistance with the expectation that, with the fulfillment of the conditions of the award, repayment of funds is not required.

“Job attainment goal” means the total number of jobs created and job retention pledged by the recipient in addition to the business’s community base employment.

“Job creation” means new permanent full-time equivalent (FTE) positions added to a business’s normal operations, over and above the number of FTE positions the business had at the time of application for CEBA funds.

“Job retention” means existing full-time equivalent permanent positions, at the time of application, kept in continuous employment by the business as a direct result of CEBA assistance.

“Loan” means an award of assistance with the requirement that the award be repaid with term, interest rate, and other conditions specified as part of the award. A deferred loan is one for which the payment for principal, interest, or both, is not required for some specified period. A forgivable loan is one for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions.

“Loan guarantee” means a guarantee of all or part of a loan made by a commercial lender. Payment of all or a portion of the loan guarantee would occur if the business defaults on its repayment of the loan, provided the lender has exhausted standard legal remedies in an attempt to secure repayment from the borrower.

“New business opportunity” means an economic activity performed by a start-up or recruited business that meets the definition of subrule 53.9(1).

“New product development” means an economic activity performed by an existing Iowa business through expansion or diversification and meets the definition of subrule 53.9(1).

“*Project*” means the activity, or set of activities proposed by the recipient, resulting in accomplishing the goals of the CEBA program, and which will require state assistance to accomplish.

“*Project expiration date*” means the date when the recipient must complete all project expenditures and have fulfilled the job attainment goal. In the case of small business gap financing projects, it is three years from the date of award. In the case of venture projects, new business opportunities or new product development projects, it could be up to five years.

“*Recipient*” means a business which receives assistance through the CEBA program and in return agrees to provide a specified number of new direct jobs, or retain a specified number of direct jobs within the state, or receives assistance through CEBA’s comprehensive management assistance.

“*Retail business*” means a business whose operation consists predominantly of the purchase of a product for sale to the final user or consumer who would not be purchasing for resale.

“*Service business*” means a business which produces and sells a thing of value which is not a tangible product.

“*Small business*” refers to a business which meets the size criteria for a small business as defined by the U.S. Small Business Administration and as published from time to time in the Federal Register.

“*Twenty-eight E (28E) agreement*” means an intergovernmental agreement formed according to Iowa Code chapter 28E.

“*Venture project*” means an economic activity performed by a start-up or early-stage company.

261—53.3(15) Board and committee. The chairperson of the board shall appoint a five-member project review committee to review applications requesting CEBA funding. The committee shall be composed of five board members, one of whom shall be either the board chairperson or the vice chairperson. The director shall be a nonvoting ex officio member of an active committee. A quorum of three committee members is necessary for taking action and at least three members shall concur before making recommendations to the board.

261—53.4(15) Eligible applicants. Only cities, counties, and merged area schools are eligible to apply to the department for funding under this program. Applicants which are awarded funds will pass those funds on to the recipient or approved recipient’s vendor.

261—53.5(15) Provision of assistance.

53.5(1) Eligible projects. Projects eligible for CEBA funding include, but are not limited to, the following:

1. Building construction or reconstruction;
2. Acquisition of land;
3. Equipment purchases;
4. Operating and maintenance expenses;
5. Clearance, demolition and removal of buildings to develop sites;
6. Infrastructure improvements directly related to new employment;
7. Road construction projects directly supporting and assisting economic development;
8. Funds for guaranteeing business loans made by commercial lenders; and
9. Technical management assistance for businesses that are applying for or have received CEBA funding.

53.5(2) Forms of assistance. Assistance for projects may be provided in any of the following forms:

1. Principal buydowns to reduce the principal of a business loan;
2. Interest buydowns to reduce the interest on a business loan;
3. Forgivable loans;
4. Loans and loan guarantees, including short-term (float) loans. Float loans may only be made for projects where the department obtains an irrevocable letter of credit from an acceptable financial institution on behalf of the company in an amount equal to or greater than the principal amount of the loan;
5. Equity-like investments;
6. Cost reimbursement for technical/professional management services.

261—53.6(15) Application for assistance.

53.6(1) General policies.

a. An applicant may submit as many different applications as it wishes at any time. However, if the department is reviewing two or more applications from the same applicant at the same time, it may ask the applicant to rank them in the order preferred by the applicant;

b. Only one applicant may apply for any given project;

c. No single project may be awarded more than \$1 million unless at least two-thirds of the members of the board approve the award. However, this restriction will not apply after the first \$10 million has been credited to the CEBA program in any given year. This restriction does not apply to the float loan described in 53.5(2)“4.”

d. No single project may be awarded a forgivable loan of more than \$500,000.

e. No single project may be awarded more than \$500,000 unless all other applicable CEBA requirements and each of the following criteria is met:

(1) The business has not closed or substantially reduced its operation in one area of the state and relocated substantially the same operation in the community. This requirement does not prohibit a business from expanding its operation in the community if existing operations of a similar nature in the state are not closed or substantially reduced.

(2) The business must provide and pay at least 80 percent of the cost of a standard medical and dental insurance plan or its equivalent for all full-time employees working at the facility in which the new investment occurred.

(3) The business shall agree to pay a median wage for new full-time jobs of at least 130 percent of the average wage in the county in which the community is located. This requirement may be waived by the department in the case of a float loan described in 53.5(2)“4” if the net value of the award is determined by the department to be less than \$500,000.

f. No more than \$100,000 may be awarded to a business start-up unless that business’s average starting wage equals or exceeds 90 percent of the average county wage, 90 percent of the average regional wage, or \$9.50, whichever is lowest, and over 50 percent of the business’s employees’ wages are at or above the 90 percent level or \$9.50, whichever is lower.

g. To be eligible for assistance the business shall provide for a preference for hiring residents of the state or the economic development area, except for out-of-state employees offered a transfer to Iowa or the economic development area.

h. All applicants for financial assistance shall comply with the requirements of 261—Chapter 80.

i. To be eligible for assistance, applicants shall meet the following wage threshold requirements:

(1) Project positions shall have an average starting wage of at least 90 percent of the average county wage, 90 percent of the average regional wage, or \$9.50, whichever is lowest.

(2) Fifty percent or more of the jobs to be created or retained shall have an average starting wage of at least 90 percent of the average county wage, 90 percent of the average regional wage, or \$9.50, whichever is lowest.

(3) If the applicant is a business start-up, project positions shall have an average starting wage of at least 80 percent of the average county wage, 80 percent of the average regional wage, or \$9.50, whichever is lowest, and over 50 percent of the business's employees' wages shall be at or above the 80 percent level or \$9.50, whichever is lower.

(4) The \$9.50 wage scale referenced in this rule shall be adjusted annually by calculating the percent increase or decrease in average Iowa hourly earnings level for all production and nonproduction workers in the private sector from the month of June of the previous year to June of the current year. This report is compiled by the Iowa workforce development department.

(5) Where the community can document to the department's satisfaction that a significant differential exists between the actual local county wage (as determined by a local employer survey) and the average county wage or average regional wage, the department may substitute the community survey results for the average county wage or average regional wage for consideration in a specific project. Qualification of a project would not be anticipated unless the starting project wage was clearly above the survey wage.

(6) The department may approve a project where the starting project wage is less than the average county wage or average regional wage under the following conditions:

1. The starting wage is associated with a training period which is of relatively short duration, as documented by the business; and

2. The wages will exceed 90 percent of the average county wage, 90 percent of the average regional wage, or \$9.50 at the conclusion of the training period as documented by the business; and

3. CEBA funds will be released only at the conclusion of the training period when the average county or average regional wage is achieved.

j. A business receiving moneys from the department for the purpose of job creation shall make available 10 percent of the new jobs created for PROMISE JOBS program participants.

53.6(2) Ineligible applications. The department will not rate and rank ineligible applications. An application may be ruled ineligible if:

a. It is submitted by an ineligible applicant, or

b. The project consists of a business relocation from within the state unless unusual circumstances exist which make the relocation necessary for the business's viability, or

c. CEBA funds comprise more than 50 percent of the project's financing, or

d. The CEBA application is not properly signed by the applicant and the business, or

e. The project fails to meet the wage threshold requirements under subrule 53.6(1), or

f. The business has a record of violations of the law over a period of time that tends to show a consistent pattern. The business shall provide the department with a report detailing violations of law within the most recent consecutive three-year period prior to application. Consistent with Iowa Code section 15A.1(3), violations of environmental protection statutes, regulations or rules shall be reported for the most recent consecutive five-year period prior to application. If the department finds that a business has a record of violations of the law that tends to show a consistent pattern, the business shall not be eligible under this program. Violations of law include, but are not limited to, environmental and worker safety statutes, rules and regulations. A business shall not be ineligible if the department finds that the violations did not seriously affect the public health or safety, or the environment, or if they did, that there were mitigating circumstances.

53.6(3) Procedures.

- a. Applications may be submitted at any time.
- b. Applications should be submitted to: Division of Business Development, Department of Economic Development, CEBA Program, 200 East Grand Avenue, Des Moines, Iowa 50309. Application forms and instructions are available at this address or by calling (515)242-4819.
- c. Application contents. Required contents of application will be described within the application package itself.
- d. Each eligible application will be reviewed by the department. The department may request additional information from the applicant or the proposed recipient, or perform other activities to obtain needed information.
- e. The department will rate and rank applications according to the criteria in rule 53.7(15). Additionally, for small business gap financing applications the department will use rule 53.8(15), or for new business opportunities, new product development, or venture project applications the department will use rule 53.9(15). The department will present its recommendations on rating and ranking to the committee. The committee will present its recommendations to the board. The board will have final authority in the rating and ranking of applications. The board will also make the final decision to approve, reject, table, defer, or refer an application to another funding program. The department may negotiate with the applicant or proposed recipient concerning dollar amounts, terms, or any other elements of the application package. The board may offer an award in a lesser amount or structured in a manner different than requested.

53.6(4) Emergency applications. Applications are sometimes made for projects which require an immediate decision on CEBA assistance in order to be successful. In the event evidence is presented to the department that this situation exists, the board may hold a telephonic meeting or otherwise process the application in an accelerated manner. If approved, the project must commence within 45 days of the date of approval; failure to begin within 45 days may be grounds for the termination of the award.

261—53.7(15) Selection criteria. In ranking applications for funding, at least the following criteria shall be considered:

53.7(1) Relating to local/business involvement:

- a. The proportion of local match to be provided as compared to the local resources.
- b. The proportion of private contribution to be provided, including the involvement of financial institutions.
- c. The need of the business for financial assistance from governmental sources. More points shall be awarded to a business for which the department determines that governmental assistance is most necessary to the success of the project.
- d. The level of need of the political subdivision.
- e. The impact of the proposed project on the economy of the political subdivision and the state.
- f. The certification of a community builder program for the community.
- g. The expected recapture of these funds.

53.7(2) Relating to job creation/retention:

- a. *The total number of jobs to be created or retained.* When rating a project, the department shall only consider those positions which meet the wage threshold requirements defined in subrule 53.6(1).
- b. *The quality of jobs to be created.* In rating the quality of the jobs, the department shall award more points to those jobs that have a higher wage scale, a lower turnover rate, are full-time, career-type positions, or have other related factors. Those applications that have average starting wage scales which are 10 percent or more below that of the average county wage or average regional wage shall be given an overall score of zero. Business start-ups shall be given a score of zero only if their wage scales are 20 percent or more below that of the average county wage or average regional wage.

53.7(3) Relating to business activity:

- a. The size of the business receiving assistance. The department shall award more points to small businesses as defined by the U.S. Small Business Administration.
- b. The potential for future growth in the industry represented by the business being considered for assistance.
- c. The impact of the proposed project on competitors of the business.
- d. The capacity of the proposed project to create products by adding value to agricultural commodities.
- e. The degree to which the proposed project relies upon agricultural or value-added research conducted at a college or university, including a regents institution, community college, or a private university or college.

261—53.8(15) Small business gap financing.

53.8(1) Additional criteria. Applications under this component shall be for businesses that meet the SBA definition of a small business. All geographic locations of the business will be used to determine the total number of employees. The criteria in rule 53.7(15) will be used for evaluating applications under this component.

53.8(2) Application form. Applicants applying for assistance under this component shall use the general business financial assistance application form provided by the department. The department may, at its option, transfer requests to a different financial assistance program, including but not limited to:

- a. The new business opportunities or new product development components of CEBA;
- b. EDSA (economic development set-aside program);
- c. BDFC (business development finance corporation program); or
- d. PFSA (public facilities set-aside program).

53.8(3) Scoring. The criteria noted in rule 53.7(15) are incorporated into the scoring system as follows:

a. Local effort compared with local resources. Maximum — 20 points. This includes assistance from the city, county, community college, chambers of commerce, economic development groups, utilities, or other local sources, compared to the resources reasonably available from those sources. The form of local assistance compared to the form of CEBA assistance requested will be considered (e.g., in-kind, grant, loan, forgivable loan, job training, tax abatement, tax increment financing). The dollar amount of local effort and the timing of the local effort participation as compared to the dollar amount and timing of the requested CEBA participation will also be considered. Conventional financing, inadequately documented in-kind financing, and local infrastructure projects not specifically directed at the business are not considered local effort.

b. Community need. Maximum — 10 points. This includes considerations such as unemployment rates, per capita income, major closings and layoffs, declining tax base, etc.

c. Private contribution compared with CEBA request. Maximum — 30 points. The greater the contribution by the assisted business, the higher the score. Conventional financing will be considered a private contribution. Contribution in the form of “new cash equity” by the business owner will result in a higher score.

d. Certified community builder community. Maximum — 10 points. A community will receive 10 points upon completion and subsequent certification by the department of a plan prepared in accordance with 261—Chapter 80.

- e. Extra points if small business, as defined by SBA. Maximum — 10 points.

f. Project impact on the state and local economy.

(1) Cost/benefit analysis. Maximum — 40 points. This factor compares the amount requested to the number of jobs to be created or retained as defined in paragraph 53.7(2)“*a*” and the projected increase in state and local tax revenues. Also considered here is the form of assistance (e.g., a forgivable loan will receive a lower score than a loan).

(2) Quality of jobs to be created. Maximum — 40 points. Higher points to be awarded for:

Higher wage rates;

Lower turnover rates;

Full-time, career-type positions;

Relative safety of the new jobs;

Health insurance benefits;

Fringe benefits;

Other related factors.

(3) Economic impact. Maximum — 40 points. Higher points to be awarded for base economic activities, e.g.:

Greater percentage of sales out of state, or import substitution;

Higher proportion of in-state suppliers;

Greater diversification of state economy;

Fewer in-state competitors;

Potential for future growth of industry;

Consistency with the state strategic plan for economic development prepared in compliance with Iowa Code section 15.104(2);

Increased value to agricultural commodities;

Degree of utilization of agricultural or value-added technology research from an Iowa educational institution;

A project which is not a retail operation.

Maximum preliminary points for project impact — 120 points.

(4) Final impact score. Maximum — 120 points. Equal to preliminary impact score multiplied by a reliability factor (as a percent).

(NOTE OF EXPLANATION — Rating factors in 53.8(3)“*f*”(1) to (3) attempt to measure the expected impact of the project, if all predictions and projections in the application turn out to be accurate. Up to that point in the rating system, no attempt has been made to judge the feasibility of the business venture, the reliability of the job creation and financial estimates, the likelihood of success, the creditworthiness of the business, and whether the project would occur without state assistance. An attempt to analyze projects against these factors is also important. In order to incorporate this judgment into the rating system, the Preliminary Impact Score (Maximum of 120 points) is multiplied by a “reliability and feasibility factor” to obtain a final impact score, 53.8(3)“*f*”(4). This factor will range from 0 to 100 percent, depending upon the department’s judgment as to the likelihood of the projections turning out as planned. If, in the department’s judgment, the project would proceed whether it was funded or not, it will be assigned a zero percent on the reliability and feasibility factor and the final impact score will be zero. This is consistent with the intent of the program to use funds only where state assistance will make a difference.)

The maximum total score possible is 200 points.

Projects that score less than 120 points in rule 53.8(15) will not be recommended for funding by the staff to the committee.

53.8(4) *Project period.* Projects funded under rule 53.8(15) are considered to have a project period of three years for meeting job attainment goal and other related performance goals.

The recipient shall maintain the pledged jobs for 90 days beyond the project expiration date or will be subject to penalties as provided for in rule 53.13(15).

261—53.9(15) New business opportunities, new product development, and venture project components.

53.9(1) *Additional criteria and targeting for new business opportunities and new product development components.* The criteria in rule 53.7(15) will be used for evaluating applications under these components. Applications for these components must be for businesses that show the following characteristics:

- a. The industry is one targeted within the state's strategic plan; or
- b. The resulting economic activity is underrepresented in the state's overall economic mix; and
- c. The project offers a quality economic opportunity to Iowans.

53.9(2) *Additional criteria for venture projects.* The criteria in rule 53.7(15) will be used for evaluating applications under this component. Applications for this component shall also meet the following criteria:

- a. The business requesting CEBA assistance must be a start-up or early-stage company; and
- b. The business must accept the assistance as an equity-like investment; and
- c. The CEBA assistance is limited to \$100,000.

53.9(3) *Applications.* Applicants applying for assistance under these components shall use the general business financial assistance application form provided by the department. The department may, at its option, transfer requests to a different financial assistance program, including but not limited to:

- a. Small business gap financing component of CEBA;
- b. EDSA (economic development set-aside program);
- c. BDFC (business development finance corporation program); or
- d. PFSA (public facilities set-aside program).

53.9(4) *Rating system.* The rating system for proposed projects will be as follows:

- a. Local effort (as defined in 53.8(3)“a”). Maximum — 20 points;
- b. Private contributions as compared to CEBA request (as defined in 53.8(3)“c”). Maximum — 20 points;
- c. Certified community builder community (as defined in 53.8(3)“c”). Maximum — 10 points;
- d. Extra points if small business, as defined by the SBA. Maximum — 10 points;
- e. Project impact, as defined in 53.8(3)“f” and 53.8(4). Maximum — 120 points;
- f. Potential for future expansion of the industry in general. Maximum — 20 points. This factor awards additional points for those projects that tend to show a greater potential for expansion of that industry within Iowa.

The maximum total score possible is 200 points.

Projects that score less than 120 points in rule 53.9(15) will not be recommended for funding by the staff to the committee.

53.9(5) Project period. Projects funded under rule 53.9(15) are considered to have up to a maximum five-year project period.

The recipient shall maintain the pledged jobs for 90 days beyond the project expiration date or will be subject to penalties as provided for in rule 53.13(15).

261—53.10(15) Comprehensive management assistance and entrepreneurial development.

53.10(1) Eligible applicants. Application for comprehensive management assistance is limited to:

a. Businesses that have either previously received a CEBA award or have a CEBA application under current review by the department; or

b. Businesses requesting assistance in meeting the regulatory requirements of other government agencies.

53.10(2) 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:

a. Entrepreneurial management skills;

b. Employment hiring, recruiting, or personnel assistance;

c. Inventory controls;

d. Financial controls;

e. Marketing plans; or

f. Other related business assistance.

53.10(3) Determination of assistance. The administrator for the department's division of financial assistance shall have the authority to approve contracts for management assistance for up to \$25,000. Board approval shall be required to approve any contract(s) for assistance which exceeds \$25,000 for any one business in any fiscal year.

261—53.11(15) Award process. Every applicant will be notified in writing of the disposition of their application within two weeks of final department action on it. Successful applicants will be required to sign an agreement, along with the recipient, with the department which clarifies the applicant's responsibility to provide funds to the recipient in return for the jobs created by the recipient. Applicants may be requested to obtain mortgages, liens, or other security from the recipient in return for the provision of funds. The agreement will also define the applicant's responsibilities for oversight of the project, reporting to the department, and other responsibilities. Certain other activities may be required of applicants or recipients before funds may be obtained from the department. Requirements will be specified in the agreement between the department, applicant, and recipient.

Prior to the release of funds by the department all known required environmental permits must be granted and regulations met. Also, if the recipient has, within three years of application for assistance, acquired or merged with an Iowa corporation or company, the recipient shall make a good faith effort to hire the workers of the merged or acquired company.

The applicant and the recipient must execute the CEBA agreement within 180 days from the date of award. If the agreement is not signed by that date the department may recommend to the board that the award be rescinded and the funds deobligated, unless the applicant or recipient has received prior written permission from the department to exceed the time frame for an agreed upon time period.

261—53.12(15) Administration of projects—financial management.

53.12(1) Audits. All contracts made under the CEBA program are subject to audit in accordance with applicable state and federal laws. Recipients shall be responsible for the procurement of audit services and for the payment of audit costs. Audits may be performed by the state auditor's office or by a qualified independent auditor.

53.12(2) Program income.

a. Applicants and recipients may be required to return to the department any interest earned on awarded funds.

b. The recipients shall record the receipt and expenditure of revenues related to the program (such as taxes, special assessments, levies, fines, etc.) as part of the CEBA program expenditures.

53.12(3) Record-keeping and retention requirements.

a. Financial records, supporting documents, statistical records, and all other records pertinent to the grant or loan program shall be retained by the applicant. All records shall be retained for three years beyond the grant or loan or longer if any litigation is begun or if a claim is initiated involving the loan or grant covered by the record. In these instances, the records will be retained until the litigation claim has been resolved.

b. Representatives of the department and the state auditor's office shall have access to all books, accounts, documents, records, and other property belonging to or in use by the applicant or recipient pertaining to the receipt of assistance under these rules.

53.12(4) Performance reports and reviews.

a. Recipients will be required to submit semiannual performance reports to the department. The reports will assess the use of funds in accordance with program objectives, the progress of program activities, and compliance with the certifications made in the agreement with the department. Each report must be accompanied by the business's most recent quarterly "Employer's Contribution and Payroll Report," and the business may also be required to submit actual payroll records as part of that report.

b. The department may perform any reviews or field inspections it deems necessary to ensure program compliance, including reviews of recipient performance reports. When problems of compliance are noted, the department may require remedial actions to be taken.

53.12(5) Rescinded, IAB 7/11/90, effective 8/15/90.

261—53.13(15) Default.

53.13(1) At any time prior to or after the project expiration date, the department may, for cause, determine that a recipient is in default under the terms of the agreement. The department may determine that the recipient is in default if any of the following occur:

a. Any material representation or warranty made by the recipient in connection with the application that was incorrect in any material respect when made.

b. There is a material change in the business ownership or structure that occurs without prior written disclosure and the permission of the department.

c. There is a relocation or abandonment of the business or jobs created or retained through the project.

d. Expending CEBA funds for purposes not described in the application or authorized in the agreement.

e. Failure of the recipient to make timely payments under the terms of the agreement, note or other obligation.

f. Failure of the recipient to fulfill its job attainment obligation.

- g.* Failure of the recipient to comply with promised wage or benefit packages.
- h.* Failure to perform or comply with the terms and conditions of the agreement.
- i.* Failure to comply with any applicable state rules or regulations.

53.13(2) Agency actions upon default.

a. The department will take prompt, appropriate, and aggressive debt collection action to recover any funds misspent by recipients.

b. If the department determines that the recipient is in default, the department may seek recovery of all program funds plus interest, assess penalties, negotiate alternative repayment schedules, suspend or discontinue collection efforts, and take other appropriate action as the department deems necessary.

53.13(3) Penalties for failure to meet job attainment goals.

a. Forgivable loans, grants, buydowns, and interest subsidy awards. If the recipient receives this type of award and at the project expiration date does not provide 100 percent of the pledged FTE jobs, the department may require repayment of program funds using the following criteria:

(1) If the recipient fails to achieve at least 50 percent of the job attainment goal, 100 percent of the award will be due as a loan at an annual interest rate as determined periodically by the board. Interest due will be calculated from the date CEBA funds were disbursed to the recipient.

(2) If the recipient achieves more than 50 percent of the job attainment goal, the award will be prorated between the percentage of jobs attained and the percentage of shortfall. The pro-rata amount of the award associated with the percentage of shortfall will be amortized over a two-year period (beginning at the project expiration date) at an annual interest rate as determined periodically by the board. Interest will be charged beginning with the date the recipient received the funds; interest due from the date funds are received to the closeout date will be due immediately.

b. Loan awards. If the recipient receives a loan at a rate that is below the annual interest rate for noncompliance as set periodically by the board, the remaining principal amount of the loan will be prorated between the percentage of jobs attained and the percentage of shortfall. The shortfall principal portion will be amortized over the remaining term of the loan, beginning at the agreement expiration date, at an annual interest rate that is determined periodically by the board. Interest will be charged beginning with the date the recipient received the funds; interest due from the date funds are received to the closeout date will be due immediately. Finally, the pro-rata portion of the loan associated with the percentage of jobs attained will be left at the original rate and term.

c. Loan awards that have a deferred payment period. If the recipient receives a loan at a rate that is below the annual interest rate for noncompliance as set periodically by the board, the remaining principal amount of the loan will be prorated between the percentage of jobs attained and the percentage of shortfall. The shortfall principal portion will be amortized beginning at the agreement expiration date at an annual interest rate that is determined periodically by the board. Interest will be charged beginning with the date the recipient received the funds; interest due from the date funds are received to the closeout date will be due immediately. Finally, the accomplished portion of the loan will be left at the original rate and term.

53.13(4) Penalties for failure to meet promised wage or benefit packages. If the recipient does not meet the wage or benefit package promised in the CEBA award agreement, the department may require repayment of funds proportional to the number of employees which did not meet the wage or benefit package, compared to the promised number of project positions.

53.13(5) Determination of appropriate repayment plan. Upon determination that the recipient has not met the job attainment goals, the department will notify the recipient of the amount to be repaid to the department. If the enforcement of such penalties would endanger the viability of the recipient, the department may extend the term of the loan to ensure payback, stability, and survival of the recipient. The committee will be notified of penalties imposed in either of these manners.

In certain instances, additional flexibility in a repayment plan may be necessary to ensure payback, stability, and survival of the recipient. Flexibility in a repayment plan may include, but is not limited to, deferring principal payments or collecting monthly payments below the amortized amount. In these cases, committee review and approval is necessary before the department may finalize the repayment plan.

261—53.14(15) Standards for negotiated settlements or discontinuance of collection efforts.

53.14(1) The committee may approve negotiated settlements or the discontinuance of collection efforts if it determines that any of the following conditions exist:

- a. The cost of collection would exceed the amount that would be recovered.
- b. The claim is not legally feasible, e.g., the claim cannot be substantiated by the evidence, a statute of limitations has run, there is little likelihood of prevailing in a legal proceeding, the claim has been discharged in bankruptcy.
- c. Other conditions exist that would not allow the recovery of funds.

53.14(2) Board notification. Before collection efforts may be discontinued or a negotiated settlement accepted, the department will first report to the committee the reasons for recommending the acceptance of a negotiated settlement or the discontinuance of collection efforts. The committee will report periodically to the board those projects for which it has approved negotiated settlements or has determined that collection efforts should be suspended or ceased.

261—53.15(15) Miscellaneous.

53.15(1) Amendments. Any substantive change to a funded CEBA program will be considered a contract amendment. Changes could include contract time extensions, budget revisions, and significant alterations of existing activities or beneficiaries. The amendment must be requested in writing. No amendment will be valid until approved by the department.

53.15(2) Annual report. The department shall submit to the governor and the general assembly an annual report setting forth the details of the operation of the program. The report shall cover the operations of the program on a fiscal year basis, from July 1 through June 30.

53.15(3) Appeals. Appeals will be accepted in instances where it is alleged that either staff or board members participated in a decision which was unreasonable, arbitrary, capricious, or otherwise beyond the authority delegated to the agency. Appeals should be addressed to the board chairperson, either directly or through the department.

53.15(4) Extension requests for project expiration date. Extension requests may be approved only when the following conditions apply:

- a. The delay in achievement of proposed job attainment goal was caused by events over which the recipient had no control and could not have reasonably predicted; and
- b. If the extension is approved, there is a reasonable probability that the originally proposed job attainment goal can be achieved;
- c. Projects which do not fit under the above two conditions, and where special consideration can be obtained from the recipient which appear appropriate to the department, may be brought to the committee for disposition.
- d. In no case would the accumulative extensions approved on any project exceed 12 months.

53.15(5) *Extensions based on actual performance.* If the recipient achieves the job attainment goal within 90 days after the project expiration date, the department may consider providing up to a 90-day extension to the project expiration date without committee approval.

53.15(6) *Forms.* The following forms will be used by the department in the administration of the CEBA program:

1. Application for business financial assistance;
2. Application for comprehensive management assistance;
3. Loan agreement;
4. Loan subsidy (buydown) agreement;
5. Loan guarantee agreement;
6. Equity-like agreement;
7. Forgivable loan agreement;
8. Comprehensive management assistance agreement;
9. Applicant program budget and schedule;
10. Applicant semiannual performance report;
11. Applicant request for release of funds; and
12. Applicant final expenditure report.

These rules are intended to implement Iowa Code sections 15.315 to 15.320.

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