

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed Emergency After Notice

Rule making related to revolving loan programs

The Iowa Energy Center Board hereby amends Chapter 403, “Iowa Energy Center,” and Chapter 405, “Alternate Energy Revolving Loan Program,” and adopts a new Chapter 406, “Energy Infrastructure Revolving Loan Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 15.120.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2021 Iowa Acts, Senate File 619.

Purpose and Summary

Pursuant to 2021 Iowa Acts, Senate File 619, division XII, the Iowa Energy Center shall not initiate any new loans under the Alternate Energy Revolving Loan Program (AERLP) after June 30, 2021. The legislation further directs the Iowa Energy Center to establish and administer an Energy Infrastructure Revolving Loan Program (EIRLP). The purpose of the new program is to provide financial assistance to projects used for, or useful for, electricity or gas generation, transmission, storage, or distribution; electric grid modernization; energy-sector workforce development; emergency preparedness for rural and underserved areas; the expansion of biomass, biogas, and renewable natural gas; innovative technologies; and the development of infrastructure for alternative fuel vehicles. This rule making amends existing rules relating to the Iowa Energy Center Board and the AERLP and adopts new rules for implementing the new program.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 25, 2021, as **ARC 5878C**. No public comments were received.

After consultation with Board members and potential applicants for the program, the following two changes from the Notice have been made in Item 6:

1. Remove foreign-owned businesses from the list of ineligible borrowers in subrule 406.4(2).
2. Include borrower labor related to site preparation, construction, or installation as an eligible cost and clarify that other/unrelated employee salaries are not eligible costs in rule 261—406.6(15,476).

The changes allow for a greater variety of projects to access the program.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the Board finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on September 30, 2021, because this rule making creates a new financial assistance program for the benefit of energy infrastructure projects.

Adoption of Rule Making

This rule making was adopted by the Board on September 30, 2021.

Fiscal Impact

These rules may increase interest income compared to the AERLP, which did not assess interest on awarded loans. These rules also allow loan forgiveness, which was not allowable under the AERLP.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making became effective on September 30, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule **261—403.2(15)**, definition of “Internet site,” as follows:

“Internet site” means the information and related content maintained by the authority and found at www.iowaeconomicdevelopment.com www.iowaeda.com. “Internet site” may include content at affiliated sites whose content is integrated with that site, ~~including the Iowa energy center website.~~

ITEM 2. Amend paragraph **403.3(5)“a”** as follows:

a. Meetings of the board are held at the call of the chairperson or when two members of the board request a meeting. The board generally meets quarterly at the authority’s offices ~~located at 200 East Grand Avenue in Des Moines, Iowa.~~ By notice of the regularly published meeting agendas, the board and its committees may hold regular or special meetings at other locations within the state. Meeting agendas are available on the authority’s ~~website~~ Internet site.

ITEM 3. Amend subrule 403.3(6) as follows:

403.3(6) Committees. The board may, from time to time, establish advisory committees for purposes of overseeing the center, its programs, and its operations. Such committees include but are not limited to the following:

a. A grant committee, the purpose of which shall be to assist the board in making and administering awards of grants under the center’s programs.

(1) to (4) No change.

(5) Meetings of the grant committee are held at the call of the chairperson.

b. A loan committee, the purpose of which shall be to assist the board in making and administering loan awards under the center’s programs, including the alternate energy revolving loan program and energy infrastructure revolving loan program.

(1) to (4) No change.

(5) Meetings of the loan committee are held at the call of the chairperson.

ITEM 4. Rescind and reserve rule **261—405.6(15)**.

ITEM 5. Adopt the following **new** rule 261—405.8(15):

261—405.8(15) Applicability after June 30, 2021.

405.8(1) Pursuant to 2021 Iowa Acts, Senate File 619, the authority shall not initiate any new loans under the alternate energy revolving loan program after June 30, 2021.

405.8(2) To the extent allowed by other provisions of law, the rules adopted in this chapter shall continue to apply to agreements entered into on or before June 30, 2021.

ITEM 6. Adopt the following **new** 261—Chapter 406:

CHAPTER 406

ENERGY INFRASTRUCTURE REVOLVING LOAN PROGRAM

261—406.1(15,476) Definitions.

“Affiliates” means any entity which directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another entity or person. “Control” as used in this definition means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an enterprise through ownership, by contract or otherwise. A voting interest of 10 percent or more creates a rebuttable presumption of control.

“Authority” means the economic development authority created in Iowa Code section 15.105.

“Board” means the governing board of the Iowa energy center established pursuant to Iowa Code section 15.120(2).

“Borrower” means an applicant for the program that is approved for a loan or forgivable loan.

“Energy infrastructure” means the same as defined in Iowa Code section 476.46A(3) “a” as enacted by 2021 Iowa Acts, Senate File 619, section 33.

“Iowa energy center” or *“IEC”* means the Iowa energy center created within the economic development authority pursuant to Iowa Code section 15.120.

“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 conditions of the award.

“Loan committee” means the committee of the board established to review loan applications pursuant to 261—paragraph 403.3(6) “b.”

“Program” means the energy infrastructure revolving loan program administered pursuant to Iowa Code section 476.46A as enacted by 2021 Iowa Acts, Senate File 619, section 33, and this chapter.

“Project” means an activity or set of activities directly related to energy infrastructure, and proposed in an application by a borrower, that will result in the accomplishment of the goals of the program.

261—406.2(15,476) Policies and procedures handbook. The authority will prepare a policies and procedures handbook for the program for approval by the board. The board will review the policies and procedures handbook at least once annually and will establish its priorities for program funds. The policies and procedures shall include the amount of program funds to be allocated for each application cycle, scoring criteria to be used if the demand for loans exceeds the amount allocated for any application cycle, and the applicable interest rate or rates for approved loans. The policies and procedures handbook may include additional limitations and expectations for specific eligible project types.

261—406.3(15,476) Loan amounts and terms.

406.3(1) The minimum loan amount is \$50,000 per project.

406.3(2) The board shall not lend more than 75 percent of total project costs for any project type. For purposes of determining the amount the board may lend pursuant to this subrule, total project costs include eligible costs pursuant to subrule 406.6(1) as well as feasibility studies, engineering and final design, permitting and regulatory costs, or other costs determined by the board to be necessary to the development of energy infrastructure. The board may determine a higher percentage of funds that must

be matched by the borrower that is applicable to specific project types as outlined in the policies and procedures approved pursuant to rule 261—406.2(15,476).

406.3(3) The board shall not issue a loan that exceeds the value of the collateral provided.

406.3(4) The board will accept security for a loan. The following forms of collateral will be accepted:

- a. Real property.
- b. Dedicated certificate of deposit.
- c. Irrevocable letter of credit.
- d. Corporate guarantee.
- e. Utility revenue or reserve funds, if applicable.
- f. Other forms of collateral if approved by the board, and only if the forms of collateral listed in paragraphs 406.3(4) “a” to “e” are inadequate.

406.3(5) The board may consider the borrower’s credit rating in determining what form of collateral is acceptable.

406.3(6) The duration of the loan shall not be more than 15 years. If applicable, the board may consider the projected payback date of the project in determining the duration of the loan.

406.3(7) The interest rate shall not exceed the Wall Street Journal prime rate as of the date of approval.

261—406.4(15,476) Eligible and ineligible borrowers.

406.4(1) *Eligible borrowers.* Eligible borrowers include:

- a. Businesses incorporated or organized in Iowa or authorized to do business in Iowa, including businesses operated as sole proprietorships with a registered trade name;
- b. Rural electric cooperatives; and
- c. Municipal utilities.

406.4(2) *Ineligible borrowers.* Ineligible borrowers include:

- a. A business that is not located in or operating in Iowa. A business that will be located and operating in Iowa upon completion of an eligible project may be eligible.
- b. An individual or an organization with a history of defaulted loans or compliance violations with other state programs or rules.
- c. Regents institutions.
- d. Community colleges.
- e. State agencies.
- f. Cities, except municipal utilities that are eligible borrowers pursuant to paragraph 406.4(1) “c.”
- g. Counties.
- h. School districts.
- i. Nonprofit organizations.

261—406.5(15,476) Eligible and ineligible projects.

406.5(1) A proposed project must meet the following criteria to be eligible for a loan under this program:

- a. The project shall be located in Iowa or be for the primary use or benefit of Iowans. If any portion of the project is located outside of Iowa, the applicant bears the burden of demonstrating that the project as a whole will be for the primary use or benefit of Iowans.
- b. The project shall develop energy infrastructure as defined in Iowa Code section 476.46A(3) “a” as enacted by 2021 Iowa Acts, Senate File 619, section 33.
- c. The borrower shall be the owner, contract purchaser, lessee, or other interest holder of the real property where the project is located.

406.5(2) A project that generates energy for use only at a borrower’s personal residence is not an eligible project.

261—406.6(15,476) Eligible and ineligible costs.

406.6(1) Eligible costs. Examples of project costs that are eligible for financial assistance include, but are not limited to:

- a. Real and personal property comprising a project.
- b. Materials and equipment required for necessary site preparation, construction and installation of a project.
- c. Labor for site preparation, construction and installation of a project.
- d. Costs associated with maintenance, operation or repair of a project during the term of the loan.

406.6(2) Ineligible costs. Examples of project costs that are not eligible for financial assistance include, but are not limited to:

- a. Administrative costs or employee salaries of the borrower or any affiliates that are not associated with site preparation, construction and installation of a project.
- b. Costs incurred prior to the committee's recommendation to approve a loan. Costs incurred prior to the committee's recommendation may be eligible for assistance if the borrower demonstrates the necessity to begin incurring costs sooner.
- c. Feasibility studies.
- d. Engineering and final design.
- e. Permitting or regulatory costs.
- f. Other costs that the board determines to be ineligible.

261—406.7(15,476) Application process.

406.7(1) Application forms shall be available at iowagrants.gov.

406.7(2) Applications will be accepted only during the established application periods identified by the authority on its Internet site at www.iowaeda.com.

406.7(3) Authority staff will review applications for completeness, eligibility, and whether the proposed project meets the financial and technical requirements of the Iowa energy center. The authority or board may engage outside reviewers to complete technical, financial, or other reviews of applications beyond the expertise of the board and authority staff.

406.7(4) Authority staff will recommend applications to the loan committee established by the board. The Iowa energy center may request additional information from applicants to process each loan application. The loan committee will review the applications and staff recommendations and then make recommendations to the board. The board will approve, defer, or deny applications for loans. Authority staff may negotiate the amount, terms, and other conditions of each loan before an award is approved.

406.7(5) The board will accept loan applications on a rolling basis. The board will make funding decisions at least once each quarter.

261—406.8(15,476) Administration.

406.8(1) Notice of approval or denial. The authority will notify applicants in writing of the board's approval or denial of an application. If the application is approved, the notice will include any conditions and terms of the loan.

406.8(2) Contract. After notifying the borrower of an award, the authority will offer a contract to the borrower. The contract shall be between the Iowa energy center and the borrower. An award shall not constitute a binding contract.

406.8(3) Transmittal. The borrower must execute and return the contract to the authority within 90 days of the transmittal of the final contract from the authority. Failure to do so may be cause for the board to terminate the award.

406.8(4) Disbursement of funds. Borrowers shall submit requests for disbursement of funds on the forms provided by the authority.

406.8(5) Amendment. Any substantive change to the scope of work for a project or request to renegotiate loan terms shall require an amendment to the contract. The board may consider requests for loan forgiveness if the borrower demonstrates forgiveness is necessary to avoid a negative material impact on the project or potential default. The borrower shall request amendments in writing. No

amendment shall be valid until approved by the board. The authority may execute nonsubstantive or ministerial changes to the contract without board approval.

406.8(6) *Closeout.* Upon contract expiration or project completion, the authority shall initiate project closeout procedures.

406.8(7) *Record keeping and retention.* Borrowers shall retain all financial records, supporting documents and all other records pertinent to the loan for three years after the contract is closed or the loan is put in default and is not cured.

406.8(8) *Reporting and compliance.* The borrower shall complete all reports required by the contract executed pursuant to subrule 406.8(2). The authority reserves the right to conduct site visits of all awarded projects to ensure the projects were built as proposed and to provide verification of ongoing operation. The authority will monitor all loans to ensure that loan proceeds have been spent as identified in the contract and that all other sources of financing have been committed to the project.

406.8(9) *Default.*

a. At any time during the project or the repayment of the loan, the authority may find that a borrower is in default under the terms of the loan contract. The authority will take prompt, appropriate, and aggressive debt collection action to recover any funds misspent by borrowers.

b. If the authority determines that a borrower is in default, the authority may seek recovery of the loan plus interest or other penalties, negotiate alternative payment schedules, suspend or discontinue collection efforts and take other action as the authority deems necessary.

c. The authority shall attempt to collect the amount owed. Any negotiated settlement, write-off, or discontinuance of collection efforts is subject to final review by and approval of the board.

d. If the authority refers a defaulted contract to outside counsel for debt collection, then the terms of the contract between the authority and the outside counsel regarding the scope of counsel's authorization to accept settlements shall apply.

These rules are intended to implement Iowa Code section 15.120 and section 476.46A as enacted by 2021 Iowa Acts, Senate File 619.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/20/21.