

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts new Chapter 80, “Iowa Small Business Loan Program,” Iowa Administrative Code.

These rules implement a new small business loan program to promote the creation and retention of jobs in Iowa’s economy and to assist businesses to be more competitive. The rules establish the process by which a business shall apply for, receive and manage loan funds under this program. The Legislature appropriated to the Department \$5 million for the program, which was created by 2010 Iowa Acts, Senate File 2389, sections 41 through 44.

Because the Legislature deemed the Act of immediate importance and made it effective upon enactment, the rules were Adopted and Filed Emergency and published in the June 30, 2010, Iowa Administrative Bulletin as **ARC 8920B** in conformance with the requirements of Iowa Code chapter 17A. The rules were also published under Notice of Intended Action in the Iowa Administrative Bulletin as **ARC 8919B** on the same date to allow for public comment.

The Department held a public hearing on July 6, 2010; no persons attended. The Department received two comments and input from a member of the Administrative Rules Review Committee. The comments focused on the minimal credit score requirements; what constituted a co-financed loan and how a co-financed loan would impact the credit score requirements; and what would constitute a qualified public or nonprofit business consultant.

The Department made the following changes to the rules published under Notice as **ARC 8919B** and Adopted and Filed Emergency as **ARC 8920B**:

- Clarified the definition of “co-financed loan” in rule 261—80.3(83GA,SF2389);
- Added a definition of “conventional lender” in rule 261—80.3(83GA,SF2389);
- Strengthened the requirement for recipients to secure the loan by exchanging the word “must” for the word “shall” in subrule 80.5(3);
- Provided more explanation about what would constitute unallowable uses in subrule 80.5(5);
- Provided more direction with regard to what constitutes a “qualified consultant” that may assist the small businesses under the program in subrule 80.6(1);
- Provided additional methods by which startup businesses may qualify for a loan under the program in subrule 80.7(2);
- Provided an alternative consideration for business owners who do not meet the minimal credit score requirement in paragraph “c” of subrule 80.8(1);
- By adding new subrules 80.9(3) and 80.9(4), clarified the award and approval process for loans and provided a time frame by which successful applicants must execute loan documents; and
- Made the security requirements under this program consistent with other business finance programs at the Department through modifications to subrule 80.9(5).

Pursuant to Iowa Code section 17A.5(2)“b”(2), these rules became effective upon filing on August 20, 2010. The Board finds that these rules confer a benefit on program recipients by permitting them to apply for consideration under the program with less restrictive rules and that an immediate effective date may allow more of Iowa’s small businesses to participate in the program.

The Iowa Economic Development Board adopted these rules on August 19, 2010.

These rules are intended to implement 2010 Iowa Acts, Senate File 2389, sections 41 through 44.

These rules became effective on August 20, 2010, at which time the Adopted and Filed Emergency rules published as **ARC 8920B** were thereby rescinded.

The following amendment is adopted.

Adopt the following new 261—Chapter 80:

CHAPTER 80
IOWA SMALL BUSINESS LOAN PROGRAM

261—80.1(83GA,SF2389) Purpose. The purpose of the program is to promote the creation and retention of jobs in the state’s economy and to assist businesses to be more competitive by aiding entrepreneurs and small businesses in their efforts to upgrade or modernize equipment; realize additional efficiencies in their supply chains; improve their distribution and transportation margins; reduce facility costs through increased energy efficiency; and leverage other sources of business financing.

261—80.2(83GA,SF2389) Authority. The authority for establishing the program is provided in 2010 Iowa Acts, Senate File 2389, sections 41 through 44.

261—80.3(83GA,SF2389) Definitions.

“*Administrator*” means the organization designated by the department pursuant to rule 261—80.4(83GA,SF2389) to administer portions of the program.

“*Co-financed loan*” means a loan made under this program to a recipient who has contingent approval from another lender for leverage of other sources of business financing for the recipient’s Iowa small business at the time of origination of the loan. To be considered a co-financed loan under these rules, the other sources of business financing must meet or exceed at least one-third of the total amount borrowed. For example, a recipient that is approved for a \$10,000 loan from the program must have leveraged at least \$5,000 from other sources for the recipient’s loan to be considered a co-financed loan.

“*Conventional lender*” means a federally or state chartered bank or credit union or the United States Small Business Administration.

“*Department*” means the Iowa department of economic development.

“*Direct loan*” means a loan made under this program that is not part of a co-financing arrangement with another lender.

“*Director*” means the director of the department.

“*Iowa small business*” means a business located in Iowa that is owned, operated and actively managed by an Iowa resident and that has 35 or fewer full-time equivalent employees.

“*Program*” means the Iowa small business loan program.

“*Recipient*” means an Iowa small business that has applied for and received a loan under the program.

261—80.4(83GA,SF2389) Administrator. The department may enter into an agreement with and thereby designate a nonprofit organization to administer portions of the program provided the nonprofit organization is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and is designated by the United States Small Business Administration as a statewide microloan provider. Among other duties identified in the agreement, the administrator may manage the program application and review process to ensure consistency with these rules and may make recommendations to the department for loan approval under the program.

261—80.5(83GA,SF2389) General loan terms. In addition to terms and conditions in the loan agreement, loans made under the program shall have the following terms:

80.5(1) Amount. Loans made under the program may be for \$2,500 to \$50,000.

80.5(2) Interest rates. The interest rates for the following loans made available under the program shall be:

a. Direct loans: annual percentage rate of 3.9 percent.

b. Co-financed loans: annual percentage rate of 2 percent.

80.5(3) Security. Recipients shall provide collateral to secure the entire loan value. The department may require a first position on any collateral offered in connection with receiving a loan under the program or any equipment purchases or other uses that can be securitized. The department may, however, allow for a subordinated position on collateral on co-financed loans that involve a conventional lender.

80.5(4) Term. The term of any loan made under the program shall not exceed five years. The department may require a shorter loan term for loans at the sole discretion of the director.

80.5(5) *Unallowable uses.* Proceeds from any loans made under the program shall not be used for any of the following:

- a.* Compensation to employees, including without limitation any benefits and travel allowances.
- b.* Refinancing existing or future loans.
- c.* Working capital. Recipients shall not, without limitation, use the loan proceeds to keep cash on hand or fund inventories.
- d.* Payment of liabilities incurred prior to the origination of the loan, including unpaid taxes and money owed to creditors.
- e.* Charitable donations.
- f.* Purchase of real estate.
- g.* Purchase of a business unless the loan made under the program is leveraged with other sources of financing, including at least 10 percent equity investment by the owner.
- h.* Purchase of vehicles unless the vehicle is a special-use vehicle that shall only be used for purposes related to the Iowa small business throughout the term of the loan and personal use is not allowed.
- i.* Purchase of equipment unless the equipment is deployed and primarily used by the Iowa small business in Iowa throughout the life of the loan.

261—80.6(83GA,SF2389) Eligibility. An Iowa small business is eligible to apply for a loan under the program provided the Iowa small business meets the following requirements:

80.6(1) The Iowa small business has a business plan, has received assistance from an Iowa small business development center or qualified public or nonprofit business consultant as defined by the department, and has been declared eligible for program participation by such entity or person. For purposes of this rule, a qualified public or nonprofit business consultant may include individuals with appropriate expertise who are affiliated with department-sponsored business accelerators, John Pappajohn Centers for Entrepreneurship, or the Iowans for Social and Economic Development, otherwise known as ISED Ventures. All consultants must receive program orientation training from the administrator, agree to perform specific functions in reviewing and participating in the program, and receive approval by the department.

80.6(2) The Iowa small business is not in violation of environmental or worker safety laws or rules. This requirement shall apply only if the Iowa small business has been incorporated for at least two years.

80.6(3) The Iowa small business employs only workers legally authorized to work in the state.

80.6(4) The Iowa small business does not engage in the production, depiction or distribution of obscene material as defined in Iowa Code section 728.1.

80.6(5) The Iowa small business is not in bankruptcy or imminently contemplating filing for bankruptcy.

80.6(6) The Iowa small business has a demonstrated need for the funds and will use them for a purpose described in rule 261—80.1(83GA,SF2389).

261—80.7(83GA,SF2389) Application.

80.7(1) *General.* Applications will be evaluated at least monthly and in the order they are received. Iowa small businesses that desire to participate in the program shall submit to the administrator a standard application, which shall be made available on the department's Web site, www.lifechanging.com. In addition to the information requested in the application, Iowa small businesses applying under this rule may also be required to submit the following documents:

- a.* Business plan and summary.
- b.* Financial statements that show total assets and total liabilities.
- c.* Such other supporting documents as may be required by the administrator to demonstrate the Iowa small business's eligibility for the loan and its ability to repay the loan.
- d.* An energy audit of the facilities for which the loan is sought, if the loan is proposed to be used to reduce facility costs.

80.7(2) Startup businesses. In addition to the requirements described in subrule 80.7(1), Iowa small businesses that have been incorporated for less than two years must submit the following additional information unless the business can document that its assets are three times greater than its liabilities, including the loan sought under this program:

- a. Contingent loan approval from a conventional loan source as an eligible co-financed loan under these rules; or
- b. Contingent loan approval from the Iowa microloan program as an eligible co-financed loan under these rules; or
- c. Contingent loan approval from the targeted small business loan program as an eligible co-financed loan under these rules.

261—80.8(83GA,SF2389) Application review.

80.8(1) Criteria. The administrator shall evaluate applications based on the following criteria:

- a. The quality of the Iowa small business's business plan and whether it projects a positive cash flow after the loan repayment.
- b. Cash flow of the Iowa small business.
- c. Credit score and credit history of the principal owner(s) of the Iowa small business and any owners of the Iowa small business with an interest of greater than 25 percent in the Iowa small business. Applicants with a credit score lower than 625 shall not be considered for a loan under this program unless the applicant is able to demonstrate extenuating circumstances that have impacted the applicant's credit score, provide adequate explanation for the low credit score and show a recent positive credit history, and either secure a suitable guarantor or have one or more co-owners with credit scores above 625.
- d. Value and quality of collateral.
- e. Education and experience of the owner of the Iowa small business related to owning and operating a business.
- f. The quality and results of a marketing plan related to the Iowa small business.
- g. The legal history, including any UCC-1 filings, of the principal owner of the Iowa small business and any owners with an interest of greater than 25 percent in the Iowa small business to the extent that history could negatively impact the business.

80.8(2) Additional information. The administrator or the department may require additional information from the Iowa small business in reviewing applications made under the program.

80.8(3) Additional expertise. The administrator and the department may use or procure the services of individuals with particular or specialized expertise in evaluating applications.

261—80.9(83GA,SF2389) Recommendation; loan agreement.

80.9(1) Recommendation. Upon final review of the application, the administrator shall prepare loan closing documents, including a loan agreement, for those businesses the administrator recommends to participate in the program and deliver them, along with the business's file, to the department for its review and approval. The administrator shall recommend and make part of the proposed loan agreements requirements in addition to standard loan provisions when the business poses a higher risk.

80.9(2) Loan agreement required. The administrator shall prepare a loan agreement which includes, but is not limited to, a description of the project to be completed by the business, the term of the loan, conditions to disbursement, a requirement for annual reporting to the department, and the repayment requirements of the business or other penalties imposed on the business in the event the business does not fulfill its obligations described in the loan agreement and other specific repayment provisions ("clawback provisions") to be established on a project-by-project basis.

80.9(3) Award. The director shall have the authority to award loans made under this program and to execute loan documents and other related documents.

80.9(4) Acceptance. A business recommended for a loan under this program shall have 20 days from receipt of the notice of intended award issued by the department to execute the necessary loan documents and return them to the department; otherwise, the department may rescind the loan award. The 20-day time limit may be extended by the director.

80.9(5) Security. The department shall take security for any loan. The form of such security may include but not be limited to one or more of the following:

- a. Real estate mortgage.
- b. Lien on personal or real property.
- c. Letter of credit.
- d. Corporate or personal guaranty.
- e. A certificate of deposit.

261—80.10(83GA,SF2389) Repayment. All loans made under the program shall be subject to repayment as described in the loan agreement. Loans made under the program shall not be forgivable.

261—80.11(83GA,SF2389) Default.

80.11(1) Events of default. The department may, for cause, determine that a recipient is in default under the terms of the loan agreement. The reasons for which the department may determine that the recipient is in default of the contract include, but are not limited to, any of the following:

- 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. A material change in the business ownership or structure occurs without prior written disclosure and the permission of the department.
- c. A relocation or abandonment of the business during the term.
- d. Expenditure of 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 perform or comply with the terms and conditions of the contract.
- g. Failure of the recipient to comply with any applicable state rules or regulations.
- h. Failure of the recipient to file the required annual report.

80.11(2) Closures. If a recipient closes any of its facilities within the state prior to receiving the incentives and assistance, the department may reduce or eliminate all or a portion of the loan assistance. If a business closes any of its facilities within the state after executing a contract to receive the loan assistance, the department may consider this an event of default and the business may be subject to repayment of all or a portion of the loan assistance that it has received.

80.11(3) Department 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.
- c. The department shall attempt to collect the amount owed. Negotiated settlements, write-offs or discontinuance of collection efforts is subject to final review and approval by the director.
- d. If the department refers defaulted contracts to outside counsel for collection, then the terms of the agreement between the department and the outside counsel regarding the scope of counsel's authorization to accept settlements shall apply.

These rules are intended to implement 2010 Iowa Acts, Senate File 2389, sections 41 through 44.

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