

## **15E.208 Qualified corporations Iowa agricultural industry finance loans.**

1. The department may award an Iowa agricultural industry finance loan to an Iowa agricultural industry finance corporation if the department in its discretion determines that the corporation is qualified under this section.
2. The corporation must apply for an Iowa agricultural industry finance loan on forms and according to procedures required by the department.
3. The department shall loan all of the amounts available to the department pursuant to this division to a qualified corporation with provisions and restrictions as determined by the department and contained in a loan agreement executed between the department and the qualified corporation.
  - a. The department may attach conditions to the granting of the loan as it deems desirable, including any restrictions on the subordination of the moneys loaned. The attorney general shall assist the department in drafting loan agreements and in collecting on the loan agreement.
  - b. The Iowa agricultural industry finance loan shall be repayable upon terms and conditions negotiated by the parties.
    - (1) The repayment period shall begin six years following the date when the Iowa agricultural industry finance loan is awarded and end twenty-five years after the date that the repayment period begins.
    - (2) At least four percent of the amount of the Iowa agricultural industry finance loan due shall be paid each year to the department. However, the department may accept an assignment of a loan made by the corporation providing financing to an eligible person pursuant to section 15E.209. The assigned loan shall grant to the department the corporation's right to payment under the loan. Any such assignment shall be made by an agreement executed by the department and the corporation. The assignment agreement shall be subject to all of the following:
      - (a) The period of assignment may be for any number of years. The department shall apply to the amounts due under the Iowa agricultural industry finance loan the principal, interest, and fees which the eligible person is obligated to pay under the assigned loan. The total amount of the principal, interest, and fees that the eligible person is obligated to pay to the department during the period of assignment plus any other repayment of the Iowa agricultural industry finance loan made by the corporation to the department must equal the amount of the Iowa agricultural industry finance loan that the corporation would otherwise be obligated to repay the department during that same period. However, the agreement may provide that during any year of the assignment period the eligible person may pay more or less than four percent of the amount of the Iowa agricultural industry finance loan that the corporation would otherwise be obligated to repay during that year.
      - (b) The assignment agreement shall contain conditions relating to the right of payment assigned to the department which may include securing the payment obligation in any manner that allows the department to enforce a debt against the property of the eligible person. The department shall not have a right of recourse against the corporation for any amount required to be applied from the assigned loan to the Iowa agricultural industry finance loan.
      - (c) Notwithstanding any provision of this division to the contrary, payments on the principal balance of the loan granted by the corporation to an eligible person and assigned to the department pursuant to this subparagraph during calendar year 2003 shall be deferred until October 1, 2007. The eligible person shall make principal payments to the department in the amount of one million dollars for each year on October 1, 2007, October 1, 2008, and October 1, 2009. The eligible person shall pay the department four hundred eighty-two thousand seven hundred sixty-one dollars in interest, which shall be deemed to be the total amount of interest accruing on the principal amount of the loan. The eligible person shall pay the interest

amount on October 1, 2010. Upon the payment of the principal balance of the loan and the accrued interest, the debt shall be retired.

(d) Notwithstanding any provision of this division to the contrary, the corporation shall repay the department the principal balance of the Iowa agricultural industry finance loan beginning on October 1, 2007. The principal balance of the loan equals twenty-one million five hundred seventeen thousand two hundred thirty-nine dollars. The corporation shall repay the department five hundred seventeen thousand two hundred thirty-nine dollars by October 1, 2007, and for each subsequent year the corporation shall repay the department at least one million dollars by October 1 until the total principal balance of the loan is repaid. This subparagraph subdivision shall not be construed to limit the department's authority to negotiate the payment of interest accruing on the principal balance which shall be paid to the department as provided by an agreement executed by the department and the corporation.

(3) The corporation shall not be subject to a prepayment penalty.

c. The corporation shall not expend moneys originating from the state, including moneys loaned under this section, on political activity or on any attempt to influence legislation.

4. A corporation shall not provide financing to support a person who is any of the following:

a. An agricultural producer, if any of the following applies:

(1) The agricultural producer is a party to a pending action for a violation of chapter 455B or 459, subchapters II and III, concerning a confinement feeding operation in which the person has a controlling interest and the action is commenced in district court by the attorney general.

(2) The agricultural producer or a confinement feeding operation in which the agricultural producer holds a controlling interest is classified as a habitual violator under section 459.604.

b. An agricultural products processor, if the processor or a person owning a controlling interest in the processor has demonstrated, within the most recent consecutive three-year period prior to the application for financing, a continuous and flagrant disregard for the health and safety of its employees or the quality of the environment. Violations of environmental protection statutes, rules, or regulations shall be reported for the most recent five-year period prior to application. Evidence of such disregard shall include a history of serious or uncorrected violations of state or federal law protecting occupational health and safety or the environment, including but not limited to serious or uncorrected violations of occupational safety and health standards enforced by the division of labor services of the department of workforce development pursuant to chapter 84A, or rules enforced by the department of natural resources pursuant to chapter 455B or 459, subchapters II and III.

c. A member of the economic development board, an employee of the department of economic development, an elected state official, or any director or other officer or an employee of the corporation.

5. In order to be eligible as a qualified Iowa agricultural industry finance corporation, all of the following conditions must be satisfied:

a. The corporation must only provide financing to persons and ventures eligible under section 15E.209.

b. The corporation must demonstrate that it complies with guiding principles for the corporation as provided in section 15E.207.

c. The corporation must adopt policies and procedures which maximize public oversight into the affairs of the corporation, by providing a forum for public comment, an opportunity for public review of the corporation's

actions, and methods to ensure accountability for the expenditure of public moneys loaned to the corporation.

*d.* The corporation's articles of incorporation must comply with requirements established by the department relating to the capacity and integrity of the corporation to carry out the purposes of this division, including but not limited to all of the following:

(1) The capitalization of the corporation.

(2) The manner in which financing is provided by the corporation, including the manner in which an Iowa agricultural industry finance loan can be used by the corporation.

(3) The composition of the corporation's board of directors. The board must be composed of persons knowledgeable in Iowa agricultural industries including a representative number of individuals experienced and knowledgeable in financing new agricultural industries.

(4) The manner of oversight required by the department or the auditor of state. The articles must provide that the corporation shall submit a report to the governor, the general assembly, and the department. The report shall provide a description of the corporation's activities and a summary of its finances, including financial awards. The report shall be submitted not later than January 10 of each year. The articles shall provide that an audit of the corporation must be conducted each year for the preceding year by a certified public accountant licensed pursuant to chapter 542. The auditor of state may audit the books and accounts of the corporation at any time. The results of the annual audit and any audit for the current year conducted by the auditor of state shall be included as part of the report.

(5) The execution of an agreement between the corporation and an eligible recipient as required by the department as a condition of providing financing, in which the eligible recipient agrees to become a shareholder in the corporation. If the eligible recipient is an agricultural producer as provided in section 15E.209, the agreement shall provide that the agricultural producer becomes a shareholder of voting common stock in the corporation equal to at least five percent of the financing provided to the agricultural producer pursuant to the agreement. The agreement shall be for a period of not less than ten years. An agreement shall at least provide all of the following:

(a) The establishment of a common stock pricing system. The stock shall be frozen against price appreciation for the first five years of the life of the corporation. The articles shall contain waivers for death and disability.

(b) The maintenance of stock ownership by an eligible recipient until a financial assistance obligation due the corporation is satisfied.

(c) A requirement that the par value of participating common stock be established prior to providing financial assistance to an eligible recipient.

*e.* To the extent feasible and fiscally prudent, the corporation must maintain a portfolio which is diversified among the various types of agricultural commodities and agribusiness.

*f.* Not more than seventy-five percent of moneys originating from the state, including moneys loaned to the corporation pursuant to this section, may be used to finance any one Iowa agricultural industry venture.

*g.* The corporation may only be terminated by the following methods, unless approved by the department:

(1) Merger or share exchange under chapter 490, division XI.

(2) Dissolution as provided in chapter 490, division XIV, part A.

(3) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one or more transactions of assets of the corporation which has an aggregate market value equal to fifty percent or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis, or the aggregate market value of all the outstanding stock of the corporation.

6. The department shall provide for the default of the loan if the qualified corporation does any of the following:

*a.* Violates a provision of the articles of incorporation or an amendment to the articles of incorporation that is required by this division which violation is not approved by the department.

*b.* Violates the terms of the loan agreement executed between the department and the corporation, which violation is not approved by the department.

*c.* Fails to comply with the requirements of section 15E.205.

*d.* Completes a transaction, if all of the following apply:

(1) The transaction involves any of the following:

(a) A merger or share exchange under chapter 490, division XI.

(b) The sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one or more transactions of assets of the corporation which has an aggregate market value equal to fifty percent or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis, or the aggregate market value of all the outstanding stock of the corporation.

(2) The surviving entity of a merger or share exchange, or the entity acquiring the assets of the corporation fails to meet the requirements of section 15E.205.

7. In an action to enforce a judgment against a qualified corporation, the interest of the state shall be subrogated to the interests of holders of bonds issued by the corporation.

8. Moneys repaid or collected by the department under this section shall be deposited into the road use tax fund created pursuant to section 312.1.

98 Acts, ch 1207, §9; 99 Acts, ch 66, §2; 2000 Acts, ch 1058, §6; 2001 Acts, ch 55, §20, 38; 2002 Acts, ch 1162, §29; 2003 Acts, ch 122, §1, 2; 2004 Acts, ch 1175, §324