

CHAPTER 56
EMPLOYEE STOCK OWNERSHIP PLAN (ESOP) FORMATION ASSISTANCE

261—56.1(85GA, HF648) Purpose. The authority is authorized to provide financial and technical assistance to businesses interested in establishing an employee stock ownership plan (ESOP). The purpose of this chapter is to create a program that will assist a business by (1) helping to determine whether an ESOP is a feasible form of ownership and (2) providing assistance to reduce the cost of forming an ESOP when it is feasible.

[ARC 1249C, IAB 12/25/13, effective 1/29/14]

261—56.2(85GA, HF648) Definitions. For purposes of this chapter, unless the context otherwise requires:

“*Agreement*” means a contract for financial assistance under the program describing the terms on which the financial assistance is to be provided.

“*Applicant*” means a business applying for assistance under the program.

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

“*Business*” means a corporation eligible to become a qualified Iowa ESOP.

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

“*Financial assistance*” means a payment made by the authority to an applicant approved for funding under the program.

“*Program*” means the ESOP formation assistance program established pursuant to this chapter.

“*Qualified Iowa ESOP*” means the same as defined in the department of revenue’s rules for the determination of net income at 701—subrule 40.38(10).

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261—56.3(85GA, HF648) Program description.

56.3(1) Amount, form, and timing of assistance. The program provides financial assistance to businesses interested in establishing an ESOP. An applicant to the program may be approved for financial assistance in an amount equal to 50 percent of the cost incurred for obtaining a feasibility study conducted by an independent financial professional. The total amount of financial assistance provided to an applicant will not exceed \$25,000. The financial assistance may be provided in two tranches. The first tranche will be provided as a reimbursement of 25 percent of the cost of a feasibility study and will be remitted upon completion of the feasibility study. The second tranche will be provided as a reimbursement of 25 percent of the cost of the feasibility study and will be remitted only upon completion of an ESOP formation. A business that does not successfully complete the formation of an ESOP will not receive the second tranche. A business will be required to provide to the authority documentation establishing the costs incurred and the successful completion of all necessary transactions.

56.3(2) Application.

a. Each fiscal year in which funding is available, the authority will accept applications for assistance under the program and make funding decisions on a rolling basis.

b. Information on submitting an application under the program may be obtained by contacting the authority.

56.3(3) Approval of assistance. Authority staff will consider, evaluate, and recommend applications for financial assistance under the program. The authority may consult with an ESOP advisory panel consisting of individuals selected by the director who have demonstrated expertise in the formation and operation of ESOPs as needed. Authority staff will review applications for financial assistance and score the applications according to the criteria described in rule 261—56.4(85GA, HF648). Applications deemed to meet the minimum scoring criteria will be submitted to the director for a final funding decision.

56.3(4) Contract required. If the director approves an applicant for financial assistance under the program, the authority will prepare an agreement stating the terms on which the financial assistance is to be provided, and the applicant shall execute the agreement before funds are disbursed under the program.

56.3(5) Use of funds. An applicant shall use funds provided only for the purpose of reducing the cost of services of an independent financial professional for evaluating the feasibility of an ESOP and forming an ESOP. The authority may require documentation or other information establishing the actual costs incurred. The financial assistance shall be provided to the applicant after the costs are incurred and on a reimbursement basis. Costs incurred prior to approval of financial assistance will not be eligible for reimbursement.

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261—56.4(85GA, HF648) Program eligibility, application scoring, and funding decisions.

56.4(1) Program eligibility. To be eligible under the program, an applicant shall meet all of the following requirements:

a. The applicant shall be a business interested in establishing an ESOP. To establish that this criterion is met, the applicant shall state the reasons for its interest in establishing an ESOP.

b. The applicant shall be, or be willing to become, an IRS subchapter C or subchapter S corporation. To establish that this criterion is met, the applicant shall include a copy of its articles and documentation establishing the applicable IRS election. An applicant not yet a corporation may be required to execute a letter of intent.

c. The applicant shall have a valuation that is sufficient to make an ESOP feasible. To establish that this criterion is met, the applicant shall provide information estimating the value of the business and information about the source of that estimate. This information may be a good-faith estimate. The authority will not set a specific minimum valuation; however, applicants are advised that a business with valuation less than \$5 million may not be considered a feasible candidate for an ESOP.

d. The applicant shall have a number of employees, eligible employee types, and a total payroll that are sufficient to make an ESOP feasible. To establish that this criterion is met, the applicant shall provide relevant payroll information. The authority will not set a specific minimum number of employees; however, applicants are advised that a business with fewer than 25 employees may not be a feasible candidate for an ESOP.

e. The applicant shall have a cash flow level sufficient to make an ESOP feasible. To establish that this criterion is met, the applicant shall provide relevant financial statements. The authority will not set a minimum cash flow level; however, applicants are advised that a business with cash flow less than \$500,000 may not be a feasible candidate for an ESOP.

f. The applicant is not a retail business.

g. The applicant is not a publicly traded company.

h. The applicant has not completed a feasibility study for purposes of exploring an ESOP formation in the three years prior to application for the program. An applicant who has engaged a service provider as of the time of application shall provide a copy of the engagement letter to the authority.

56.4(2) Application scoring. A business meeting the requirements of subrule 56.4(1) may apply to the authority for financial assistance under the program. The authority will review applications for completeness. The authority may engage an ESOP advisory panel for assistance in evaluating the applications as needed. As part of the evaluation process, an applicant may be required to interview with authority staff and with members of the ESOP advisory panel about the applicant's business, future plans, and interest in forming an ESOP. Authority staff will evaluate the applications and give them an average numerical score between 0 and 100. The numerical score will reflect the extent to which an applicant is a feasible candidate for an ESOP. In determining the numerical score, the authority will take into account the extent to which each applicant meets the requirements of subrule 56.4(1). The authority will keep records of the scoring process and make those records available to applicants.

56.4(3) Funding decisions. Each application, including its numerical score, will be referred to the director with a recommended funding decision. The director will make the final funding decision on each application, taking into consideration the score and the funding recommendation of authority staff.

The director may not approve funding for an application that receives an average score of less than 50 points.

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261—56.5(85GA, HF648) Contract required. Each applicant that is approved for financial assistance under the program shall enter into an agreement with the authority. The agreement shall establish the terms on which the financial assistance is to be provided.

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These rules are intended to implement 2013 Iowa Acts, House File 648, section 9.

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