

261—175.4 (15) Procedures for waiver of wage and other program requirements.

175.4(1) General information. Within the parameters described in this rule, the board may, for good cause shown, waive qualifying wage requirements and some nonstatutory CEBA program requirements. Iowa Code section 15G.112 permits applicants to apply to the board for a waiver of the IVF (2005) qualifying wage requirement (130 percent of the average county wage). Iowa Code section 15.335A(3) allows a community to apply to the board for a project-specific waiver from the average county wage calculations provided in the HQJC program in order for an eligible business to receive tax incentives. This rule also establishes a process for applicants to apply for a waiver of certain nonstatutory program requirements that the department has established by rule for the CEBA program. The waiver of CEBA nonstatutory program requirements is available only if the funding for the CEBA project is from program funds (“old money”). The meaning of “program funds (‘old money’)” is as described in subrule 175.2(3).

175.4(2) Definition of “good cause.” For purposes of this rule, “good cause” can include, but is not limited to, documentation of any of the following:

a. Economic distress. An applicant can establish good cause by demonstrating that the proposed project is located or plans to locate in an area that has experienced economic distress. Data that can be used to establish economic distress may be based on a combination of factors including, but not limited to:

- (1) A county family poverty rate significantly higher than the state average.
- (2) A county unemployment rate significantly higher than the state average.
- (3) A unique opportunity to use existing unutilized facilities in the community.
- (4) A significant downsizing or closure by one of the community’s major employers.
- (5) An immediate threat posed to the community’s workforce due to the downsizing or closure of a business.

b. Targeted industry project. An applicant can establish good cause by demonstrating that the proposed project meets all of the following criteria:

- (1) The business is in one of the state’s targeted industry clusters: life sciences, information solutions, and advanced manufacturing.
- (2) All jobs created as a result of the project have a qualifying wage, not including benefits, equal to or greater than 100 percent of the average county wage.
- (3) The business is headquartered in Iowa or, as a result of the proposed project, will be headquartered in Iowa. In lieu of the business’s being headquartered in Iowa, the proposed project has unique aspects which will assist the department in meeting one or more of its strategic objectives.

c. Natural disaster—limited to presidentially declared disaster areas. An applicant can establish good cause by demonstrating that the proposed project is located or plans to locate in a presidentially declared disaster area. To qualify for a waiver on the basis of a natural disaster in a presidentially declared disaster area, an applicant shall meet all of the following criteria:

- (1) The business must be located in a presidentially declared disaster area.
- (2) The business must apply for a waiver within 12 months of the date of the presidential disaster declaration.
- (3) The business must document that it has sustained substantial physical damage related to the natural disaster. For purposes of this criterion, “substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
- (4) The business must commit to bringing its employment level up, within six months of the award date, to at least 90 percent of its base employment prior to the closure of the business due to the natural disaster in a presidentially declared disaster area. The business shall submit payroll records to establish the business’s employment base prior to the date of the presidential disaster declaration.
- (5) The business must commit to paying wages, within six months of the award date, that are no less than the wages paid prior to the closure of the business due to the natural disaster in a presidentially

declared disaster area. The business shall submit payroll records to establish the wages that were paid prior to the date of the presidential disaster declaration.

175.4(3) Request to waive HQJC average county wage calculation.

a. Iowa Code section 15.335A(3) authorizes a community to request a project-specific waiver from the average county wage calculations in order for an eligible business to receive tax incentives.

b. Upon a showing of good cause as defined in subrule 175.4(2), the board may grant a project-specific waiver from the average county wage calculations for the remainder of the calendar year based on average county or regional wage calculations brought forth by the applicant county including, but not limited to, any of the following:

(1) The average county wage calculated without wage data from the business in the county employing the greatest number of full-time employees.

(2) The average regional wage calculated without wage data from up to two adjacent counties.

(3) The average county wage calculated without wage data from the largest city in the county.

(4) A qualifying wage guideline for a specific project based upon unusual economic circumstances present in the city or county.

(5) The annualized, average hourly wage paid by all businesses in the county located outside the largest city of the county.

(6) The annualized, average hourly wage paid by all businesses other than the largest employer in the entire county.

175.4(4) Request to waive IVF (2005) qualifying wage requirement.

a. Iowa Code section 15G.112 allows applicants to apply to the board for a waiver of the IVF (2005) qualifying wage requirement.

b. Upon a showing of good cause as defined in subrule 175.4(2), the board may grant a project-specific waiver of the IVF (2005) qualifying wage requirement. The board may grant a waiver from the average county wage calculations based on average county or regional wage calculations brought forth by the applicant including, but not limited to, any of the following:

(1) The average county wage calculated without wage data from the business in the county employing the greatest number of full-time employees.

(2) The average regional wage calculated without wage data from up to two adjacent counties.

(3) The average county wage calculated without wage data from the largest city in the county.

(4) A qualifying wage guideline for a specific project based upon unusual economic circumstances present in the city or county.

(5) The annualized, average hourly wage paid by all businesses in the county located outside the largest city of the county.

(6) The annualized, average hourly wage paid by all businesses other than the largest employer in the entire county.

c. The board will give extra consideration to wage waiver requests when the request is for a VAAPFAP project or for a project located in an economic enterprise area. "Economic enterprise area" means an area that shall consist of at least one county containing no city with a population of more than 23,500 and that shall meet at least three of the following criteria:

(1) A per-capita income of 80 percent or less than the national average.

(2) A household median income of 80 percent or less than the national average.

(3) Twenty-five percent or more of the population of the economic enterprise area with an income level of 150 percent or less of the United States poverty level as defined by the most recently revised poverty income guidelines published by the U.S. Department of Health and Human Services.

(4) A population density in the economic enterprise area of less than ten people per square mile.

(5) A loss of population as shown by the 2000 certified federal census when compared with the 1990 certified federal census.

(6) An unemployment rate greater than the national rate of unemployment.

(7) More than 20 percent of the population of the economic enterprise area consists of people over the age of 65.

175.4(5) *Request to waive CEBA requirements for CEBA projects funded with program funds (“old money”).*

a. CEBA projects may be funded by program funds (“old money”), IVF(FES) or IVF (2005). The definitions of IVF(FES) and IVF (2005) are located in 261—Chapter 173, “Standard Definitions.” The meaning of “program funds (“old money”)” is found in subrule 175.2(3).

b. The waiver provisions described in this rule are available only to CEBA projects funded with program funds (“old money”).

c. An applicant may apply to the board to waive the CEBA qualifying wage requirement or any other nonstatutory program requirement that the department has established by rule for the CEBA program.

d. Upon a showing of good cause as defined in subrule 175.4(2), the board may grant a project-specific waiver of the CEBA qualifying wage requirement or any other nonstatutory program requirement established by IDEED by rule. Examples of nonstatutory CEBA program requirements include requirements governing local match, the limitation on funding projects that have started (project initiation), and the \$500,000 limitation for forgivable loan awards.

175.4(6) *Waiver procedures and board action.*

a. Waiver requests shall be submitted in writing to the department when the business’s application is submitted. The request shall include documentation of good cause as defined in subrule 175.4(2).

b. Waiver requests shall include all necessary documentation, including documentation from other sources confirming any statistical data cited in the request.

c. Waiver requests will be reviewed as part of the application review process and acted upon by the board. If a request for a waiver is approved, the board will proceed with a final decision on the application.

d. The board may approve, deny, or defer action on waiver requests. The board reserves the right to condition its approval upon terms and conditions the board deems appropriate for the specific project.