

261—68.6(15) Agreements and compliance.

68.6(1) Execution. Successful applicants will be required to execute an agreement with the authority within 180 days of the award date. The time limit for execution may be extended by the authority director for an additional 180 days for good cause shown. Upon expiration of the time limit, including any extensions approved pursuant to this subrule, the board may approve additional extensions or rescind the award.

68.6(2) Requirements. An agreement shall meet all requirements of and be administered pursuant to Iowa Code sections 15.330 and 15.330A.

68.6(3) Jobs. An agreement will specify the number of jobs the business has pledged to create in addition to the base employment level and the number of retained jobs, if applicable. If the project is a modernization project or retention-only project, the business shall maintain the base employment level. Job obligations will be established and monitored pursuant to rule 261—68.7(15).

68.6(4) Investment. An agreement will describe the project and specify the investment the business proposes to make.

68.6(5) Project completion date. An agreement will specify the project completion date. The project completion date will be the date on which a program recipient has agreed to meet all the terms and obligations contained in an agreement with the authority, including but not limited to completing the project and creating or retaining jobs. The project completion period will be at least three years. The project completion date is calculated by the authority from the end of the month during which an award is made. For example, if an award is made on June 13, 2023, the three-year project completion date will be calculated from June 30, 2023. The project completion date for this award would be June 30, 2026.

68.6(6) Maintenance period completion date. An agreement will specify the maintenance period completion date. The maintenance period completion date will be used to establish the period during which the project, the created jobs, if any, and the retained jobs must be maintained. A modernization project shall maintain the base employment level through the maintenance period completion date. The total contract length, including the maintenance period, will be at least five years.

68.6(7) Conditions to disbursement. An agreement will specify the conditions to disbursement of project completion assistance funds or issuance of a tax credit certificate, including but not limited to compliance with the requirements of Iowa Code section 15A.1(3) “b” regarding solid and hazardous waste.

68.6(8) Monitoring and reports. The authority shall ensure that program recipients comply with contracts entered into pursuant to this rule. An agreement will specify the reports a program recipient must submit to the authority and due dates for such reports. Reports shall be provided in form and content acceptable to the authority.

a. Recipients shall report annually to the authority about the status of the funded project, including but not limited to employment, wages, benefits, project costs, capital investment, and compliance with the contract. The authority will use the data it collects in the authority’s annual report to the general assembly.

b. Recipients shall submit a report to the authority following the project completion date and the maintenance period completion date to verify compliance with the agreement. On-site or remote monitoring may be conducted following the project completion date as deemed appropriate by the authority. On-site or remote monitoring may be conducted following the maintenance period completion date as deemed appropriate by the authority.

68.6(9) Default. An agreement will specify events of default and the remedies available to the authority.

a. **Project completion assistance.** If the authority determines that a recipient is in default, the authority may seek recovery of all project completion assistance funds plus interest; assess penalties; negotiate alternative repayment schedules; initiate, suspend or discontinue collection efforts; and take other appropriate action as the board deems necessary. Negotiated settlements, write-offs or discontinuance of collection efforts are subject to approval by the board. If the authority or board refers defaulted contracts to outside counsel for collection, then the terms of the agreement between the authority and the outside counsel regarding scope of counsel’s authorization to accept settlements shall apply.

b. **Tax incentives.** If the authority determines that a recipient is in default, the authority may seek recovery of all state tax incentives by notifying the department of revenue of the event of default and the

required repayment amount. The repayment amount is subject to applicable interest and penalties as determined by the department of revenue. The department of revenue will undertake collection efforts. If the business is an entity that has elected pass-through taxation status for income tax purposes, the department of revenue may undertake collection efforts against members, individuals, or shareholders to whom the tax incentives were passed through. If the agreement provided for local tax incentives, the authority will notify the community that provided incentives.

c. Calculation of repayment due or reduction of incentives.

(1) Job shortfall. If a business does not meet its job requirements, the repayment amount or reduction of incentives shall be the same proportion as the amount of the job shortfall. For example, if the business creates 50 percent of the jobs required, the business shall repay 50 percent of the incentives received or incentives will be reduced by 50 percent.

(2) Capital investment shortfall. If a business does not meet the capital investment requirement, the repayment amount or reduction of incentives shall be the same proportion as the amount of the shortfall in required capital investment. For example, if the business meets 75 percent of the amount of required capital investment, the business shall repay 25 percent of the amount of the incentives received or incentives will be reduced by 25 percent.

(3) Job and capital investment shortfalls. If a business has a shortfall in both capital investment and job requirements, the repayment amount or reduction of incentives shall be the same proportion as the greater of the two shortfalls. For example, if a business creates 50 percent of the required jobs and meets 75 percent of the required capital investment, the business shall be required to repay 50 percent of the amount of the incentives received or incentives will be reduced by 50 percent.

(4) Benefits. Notwithstanding any other provision in this subrule, if a business fails to comply with the benefit requirements of the agreement, the business shall be required to repay all of the incentives received or incentives will be fully revoked.

(5) Minimum eligibility. Notwithstanding any other provision in this subrule, if a business fails to maintain eligibility for the program, the business shall repay all of the incentives received or incentives will be fully revoked.

d. Notice of default. The authority will notify a business and, if applicable, the community of an event of default as described in the agreement.

68.6(10) Amendments. Agreement amendments must comply with Iowa Code chapter 15, subchapter II, part 13, and this chapter. Participating businesses may submit requests for amendments to authority staff.

a. Except as provided in paragraph 68.6(10)“*b*,” no request to amend an agreement may be approved unless it has been reviewed by the due diligence committee established pursuant to 261—subrule 1.3(7), the due diligence committee has recommended approving the request to amend the agreement, and the board approves the request to amend the agreement.

b. Authority staff may approve nonsubstantive changes, including but not limited to the following:

- (1) Recipient name, address and similar changes.
- (2) Collateral changes that do not materially and substantially impact the authority’s security.
- (3) Line item budget changes that do not reduce overall total project costs.
- (4) Loan repayment amounts or due dates that do not extend the final due date of a loan.
- (5) Changes to tax credit amortization schedules.

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