

**261—55.5(15) Loan guarantee program.**

**55.5(1) *Loan guarantee program description.*** This program is intended to allow a targeted small business to obtain a loan guarantee from a local lender for eligible uses in an amount not to exceed \$50,000. Following the department's approval of the application, the targeted small business loan guarantee program will guarantee the financial institution up to 80 percent of the loan amount.

Applicants must meet the credit evaluation of the lending institution. The lending institution shall make credit risk evaluations and otherwise make the decision, based on sound lending practices, of whether or not to extend credit to the business.

After the decision to extend credit has been made by the participating lender, the lender shall forward the application to IDED. The department will review and rank the loan applications and, for approved applications, enter into a loan guarantee agreement with the participating lender guaranteeing payment to the lender in the event the project goes into default.

**55.5(2) *Application procedure.*** Eligible applicants for targeted small business loan guarantees must apply directly to participating lenders using the application form available from IDED.

Each application shall include, at a minimum, the following: name(s) and address(es) of the applicant and participating lender, amount of loan, amount of loan guarantee requested, and certification of compliance with state law and lending practices.

**55.5(3) *Loan criteria.***

*a. Evaluation.* It is the lender's responsibility to make a sound and fair evaluation of a project and creditworthiness. The participating lender shall evaluate each application for a targeted small business loan guarantee to ensure that the following criteria are met:

(1) The applicant shall show evidence that it is able to operate the business successfully. This shall include an overall business management plan including, but not limited to, the following:

- New business.

1. A generalized projection of revenues and expenses for the three-year period beginning the month of anticipated loan closing;

2. Capital formation plans, if any, other than from the targeted small business loan guarantee program;

3. To the extent possible, identification and analysis of risks;

4. Plans for record keeping, personnel and financial management;

5. Plans for marketing; and

6. Personal financial information/history.

- Existing business.

1. Record-keeping process in place at time of application;

2. Tax returns for three prior years (personal and business);

3. Quarterly financial statements (balance sheet and income); and

4. Annual personal financial statements.

(2) IDED shall have the authority to obtain access to the financial records, ownership identity, and other information it may deem necessary regarding the business.

(3) The applicant shall have enough capital in the business so that, with assistance from the targeted small business loan guarantee program, the applicant will be able to operate the business on a financially sound basis. The applicant shall provide the participating lender, and IDED, access to its financial records including, but not limited to, information concerning the identity of all persons having an ownership interest in the small business, its capital structure, and its present and projected debt structure.

(4) The loan shall be so secured or of sound value as to reasonably ensure repayment. The participating lender may require any collateral, security or mortgage documents or other filings or protection as are reasonably necessary to insure security subject to the limitations of 55.5(3) "b."

(5) The business's past earnings record and future prospects shall indicate an ability to repay the loan out of income from the business. The applicant shall provide a summary of past earnings and future earnings prospects for the business and allow the participating lender reasonable access to its books and records.

*b. Guarantee amount and term.* No guarantee shall exceed the lesser of 80 percent or \$50,000 of the principal of a loan made to a targeted small business. The term of the guarantee is the lesser of the length of the loan or seven years. The term may be extended for an additional year upon a showing of good cause. The lender shall not acquire any preferential security, surety, or insurance to protect the unguaranteed interest in a loan.

**55.5(4) *Minority and women contractors.*** Businesses awarded funds under this program shall, to the fullest extent possible, attempt to utilize minority and women contractors, suppliers, and professionals in performance of any project funded by a loan guaranteed under the targeted small business finance program.

**55.5(5) *Loan eligibility and purposes.*** A targeted small business loan guarantee shall be used for legitimate business expenses, including, but not limited to, purchase of and improvement to land and buildings, equipment and furnishings, working capital, inventory, supplies, or operating expenses.

**55.5(6) *Ineligible uses.*** The department shall not issue a loan guarantee to facilitate refinancing of existing debt. Existing debt in the context of this rule does not include interim financing obtained after the date of a targeted small business loan guarantee award. The department shall not issue a loan guarantee to facilitate financing of a project which would consist of relocation of an existing business within Iowa.

**55.5(7) *Lender responsibilities.*** Participating lenders shall take affirmative action to encourage certified targeted small businesses to apply for loans which would be guaranteed under the targeted small business finance program. Lenders shall assist applicants in preparation of loan applications and supporting documentation and in determination of financial feasibility of proposed targeted small business ventures. Lenders shall prepare the targeted small business loan guarantee applications and shall submit them for consideration and action to the department. Lenders shall perform all necessary and standard loan servicing activities for each loan secured by a targeted small business loan guarantee.

**55.5(8) *Administration of loans.*** Participating lenders shall hold the loan instrument and shall receive all payments of principal and interest. The participating lender (noteholder) shall not, without prior consent of the department:

- a.* Make or consent to any substantial changes in the terms of any loan instrument;
- b.* Make or consent to releases of security or collateral on the loan;
- c.* Accelerate the maturity of the note;
- d.* Sue upon any loan instrument;
- e.* Waive any claim against any borrower, cosigner, guarantor, obligor, or standby creditor arising from any of the loan documents. All loan servicing actions shall be the responsibility of the participating lender, who shall follow accepted standards of loan servicing employed by prudent lenders.

**55.5(9) *Events of default.*** After a loan is in default for a period of 60 days, the lender shall within 10 days notify IDED of the default and recommend a course of action.

**55.5(10) *Default and eligibility for payment.*** A default is not eligible for payment until the lender has satisfied all administrative and legal remedies for settlement of the loan and the loan has been reduced to judgment by the lender. After the default has been reduced to judgment and the guarantee paid from the loan reserve account, the department is entitled to an assignment of the judgment. The attorney general may take all appropriate action to enforce the judgment or may enter into an agreement with the lender or the department to provide for enforcement. Upon collection of the amount guaranteed, any excess collected shall be applied first to principal and then to interest and be paid to the lender or to the department as their respective interests may appear.

**55.5(11) *Costs of collection.*** The participating lender is responsible for all costs and fees, including, but not limited to, attorney's fees associated with the collection of loans and reducing any default to judgment.

**55.5(12) *Sharing of repayment proceeds and collateral.*** All repayments, security or guarantee of any nature, including without limitation, rights of setoff and counterclaim, which the lender or the department jointly or severally may at any time recover from any course whatsoever or have the right to recover on any guaranteed loan, shall repay and secure the interest of the lender and the department in the same proportion as such interest bears respectively to the guaranteed loan.

**55.5(13) Reserve account.** The department shall establish a loan reserve account from funds provided for this program, from which any default on a guaranteed loan shall be paid. In administering the program, the department shall not guarantee loan values in excess of the amount credited to the reserve account and only money set aside in the loan reserve account may be used for the payment of a default. Each time a loan guarantee is approved by the department, the amount of value of the loan guarantee will be transferred into the loan reserve account set up for that purpose. As funds in the reserve account become unencumbered due to the repayment of loans, the department may transfer money between the reserve and the TSBFAP account. The reserve account shall at all times be actuarially sound.

**55.5(14) Waiver.** The department may waive or vary particular provisions of these rules to conform to requirements of the federal government in connection with a small business loan with respect to which federal assistance, insurance, or guaranty is sought, provided the waiver does not conflict with applicable state laws.