

261—187.5(15) Default.

187.5(1) *Events of default.* The authority may, for cause, determine that a recipient is in default under the terms of the contract. The reasons for which the authority may determine that the recipient is in default of the contract include, but are not limited to, any of the following:

- a.* Any material representation or warranty made by the recipient in connection with the application that was incorrect in any material respect when made.
- b.* A material change in the business ownership or structure that occurs without prior written disclosure and the permission of the authority.
- c.* A relocation or abandonment of the business or jobs created or retained through the project.
- d.* Expenditure of funds for purposes not described in the application or authorized in the agreement.
- e.* Failure of the recipient to make timely payments under the terms of the agreement, note or other obligation.
- f.* Failure of the recipient to fulfill its job obligations.
- g.* Failure of the recipient to comply with wage or benefit packages.
- h.* Failure of the recipient to perform or comply with the terms and conditions of the contract.
- i.* Failure of the recipient to comply with any applicable state rules or regulations.
- j.* Failure of the recipient to file the required annual report.
- k.* Failure of the recipient to comply with any other provision of the agreement required pursuant to Iowa Code section 15.330 or 15.330A.

187.5(2) *Layoffs or closures.* If a recipient experiences a layoff within the state or closes any of its facilities within the state prior to receiving the incentives and assistance, the authority may reduce or eliminate all or a portion of the incentives and assistance. If a business experiences a layoff within the state or closes any of its facilities within the state after executing a contract to receive the incentives and assistance, the authority may consider this an event of default and the business may be subject to repayment of all or a portion of the incentives and assistance that it has received.

187.5(3) *Authority actions upon default—direct financial assistance programs.*

- a.* The authority will take prompt, appropriate, and aggressive debt collection action to recover any funds misspent by recipients.
- b.* If the authority determines that the recipient is in default, the authority may seek recovery of all program funds plus interest, assess penalties, negotiate alternative repayment schedules, suspend or discontinue collection efforts, and take other appropriate action as the board deems necessary.
- c.* Determination of appropriate repayment plan. Upon determination that the recipient has not met the contract obligations, the authority will notify the recipient of the amount to be repaid to the authority. If the enforcement of such penalties would endanger the viability of the recipient, the board may extend the term of the loan to ensure payback, stability, and survival of the recipient. In certain instances, additional flexibility in a repayment plan may be necessary to ensure payback, stability, and survival of the recipient. Flexibility in a repayment plan may include, but is not limited to, deferring principal payments or collecting monthly payments below the amortized amount. In these cases, review and approval by the board, committee or director, as applicable, are necessary before the authority may finalize the repayment plan with the recipient.
- d.* The authority shall attempt to collect the amount owed. Negotiated settlements, write-offs or discontinuance of collection efforts is subject to final review and approval by the board, committee or director, as applicable, and described in paragraph 187.5(3) “*f.*”
- e.* 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. No additional approvals by the board, committee or director shall be required.
- f.* The table below describes the approval procedures that shall be followed for all negotiated settlements, write-offs or discontinuance of collection efforts for state direct financial assistance programs, federal programs, and other programs administered by the authority.

PROGRAM	STATE/FEDERAL	RECOMMENDATION BY	FINAL DECISION BY
HQJP	State	DDC	Board
GIVF	State	DDC	Board
EZ (Business)	State	DDC	Board
EZ (Housing)	State		Director
INNOVATION	State	TCC	Board
LCG	State	DDC	Board
FILM	State		Director
ASSISTIVE	State		Director
EDSA	Federal	DDC	Board
CDBG	Federal		Director
NSP	Federal		Director
HOME	Federal		Director
BROWN	State	BRN	Director
TSB LOAN	State	TSB	Director
ETAP	State		Director
ACE	State		Director
TJWTC	State	DDC	Board

187.5(4) Authority actions upon default—tax credit programs. If the authority determines that an event of default has occurred under the contract and that state tax incentives are required to be repaid, the eligible business and the department of revenue will both be notified of the event of default and of the required repayment amount. If the contract provided for local tax incentives, the community where the project is located will also be notified of the default. In the case of state tax incentives, the department of revenue will undertake collection efforts. In the case of local tax incentives, the local community will undertake collection efforts.

a. Repayment. If an eligible business or eligible housing business has received incentives or assistance under the EZ program or the HQJP and fails to meet and maintain any one of the requirements of the program or applicable rules, the business is subject to repayment of all or a portion of the incentives and assistance that it has received. 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.

b. Calculation of repayment due for a business. If the authority, in consultation with the city or county, determines that a business has failed in any year to meet any one of the requirements of the tax credit program, the business is subject to repayment of all or a portion of the amount of the incentives received.

(1) Job creation shortfall. If a business does not meet its job creation requirement or fails to maintain the required number of jobs, the repayment amount shall be the same proportion as the amount of the shortfall in created jobs. For example, if the business creates 50 percent of the jobs required, the business shall repay 50 percent of the incentives received.

(2) Capital investment shortfall. If a business does not meet the capital investment requirement, the repayment amount 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.

(3) Job creation and capital investment shortfalls. If a business has a shortfall in both capital investment and job creation requirements, the repayment amount 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.

(4) Wages and benefits. Notwithstanding any other provision in this subrule, if a business fails to comply with the wage and benefit requirements of the contract, the business shall be required to repay all of the incentives received during the year in which the business was not in compliance with the wage and benefit requirements of the contract.

(5) Minimum eligibility. Notwithstanding any other provision in this subrule, if a program requires a minimum amount of job creation or capital investment in order to qualify for the program and a business fails to meet such minimum eligibility, the business shall repay all of the incentives received.

(6) Definitions. For purposes of this subrule, “incentives received” includes both amounts claimed from the department of revenue or the local community and any future incentives that remain unclaimed as of the date of default. “Capital investment” means the qualifying investment or investment qualifying for tax credits, as specified in the required contract.

c. Department of revenue; county/city recovery. Once it has been established, through the business’s annual certification, monitoring, audit or otherwise, that the business is required to repay all or a portion of the incentives received, the department of revenue and the city or county, as appropriate, shall collect the amount owed. The city or county, as applicable, shall have the authority to take action to recover the value of taxes not collected as a result of the exemption provided by the community to the business. The department of revenue shall have the authority to recover the value of state taxes or incentives provided under the program pursuant to Iowa Code section 15.330 or 15E.196. The value of state incentives provided under the program shall include all applicable interest and penalties.

d. Layoffs or closures. If an eligible business experiences a layoff within the state or closes any of its facilities within the state prior to receiving the incentives and assistance, the authority may reduce or eliminate all or a portion of the incentives and assistance. If a business experiences a layoff within the state or closes any of its facilities within the state after receiving the incentives and assistance, the business shall be subject to repayment of all or a portion of the incentives and assistance that it has received.

e. Extensions. If an eligible business or eligible housing business fails to meet its requirements under the Act, these rules, or the agreement described in rule 261—187.2(15), the authority, in consultation with the city or county, may elect to grant the business a one-year extension period to meet the requirements. Additional extensions may be granted at the board’s discretion.

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