

Purpose and Summary

Pursuant to Executive Order 10, the Authority proposes to rescind Chapter 56 and adopt a new chapter in lieu thereof. The chapter describes the policies and procedures applicable to the ESOP Formation Assistance program established pursuant to 2013 Iowa Acts, House File 648, section 9. The updated chapter is clearer and more concise throughout.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- **Classes of persons that will bear the costs of the proposed rulemaking:**

Businesses interested in applying for or receiving assistance through the program will bear the costs of the rulemaking.

- **Classes of persons that will benefit from the proposed rulemaking:**

Businesses interested in applying for or receiving assistance through the program will benefit from the rulemaking.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- **Quantitative description of impact:**

Businesses interested in applying for financial assistance may require staff time to complete an application for financial assistance. Businesses that receive funds may similarly incur costs to administer an award, including requests for disbursement. Some applicants may choose to rely on an external service provider to complete these tasks. The amount of the costs will vary depending on the compensation of staff or service providers.

- **Qualitative description of impact:**

The program supports businesses interested in establishing an ESOP. An ESOP allows owners to share equity with employees and provides a retirement plan for those employees.

3. Costs to the State:

- **Implementation and enforcement costs borne by the agency or any other agency:**

Authority staff time is required to review and approve applications, draft and execute program contracts, disburse funds, and communicate with program applicants and recipients.

- **Anticipated effect on State revenues:**

The rules have no anticipated impact on State revenues. The Authority was directed to establish the program by 2013 Iowa Acts, House File 648, section 9, and provides financial assistance from funds lawfully available to the Authority.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Only the entities that will potentially benefit from financial assistance bear the costs of the rulemaking. The costs to the State to administer the program are proportional to the activities supported by financial assistance.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Authority has not identified any less costly methods or less intrusive methods for administering the program.

6. Alternative methods considered by the agency:

- **Description of any alternative methods that were seriously considered by the agency:**

The Authority did not consider any other methods.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

The Authority did not consider any other methods.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking impacts only small businesses seeking financial assistance. The rules regarding compliance and reporting requirements are no more stringent than necessary to implement the purposes of the program. The rules do not establish schedules or deadlines. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 261—Chapter 56 and adopt the following **new** chapter in lieu thereof:

CHAPTER 56

EMPLOYEE STOCK OWNERSHIP PLAN (ESOP) FORMATION ASSISTANCE

261—56.1(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 an employee stock ownership plan, as defined in Section 4975(e)(7) of the Internal Revenue Code as in effect on [effective date of this rulemaking], and trust that are established by an Iowa corporation for the benefit of the employees of the corporation.

261—56.2(85GA, HF648) Program eligibility, application, and funding decisions.

56.2(1) *Program eligibility.* To be eligible under the program, an applicant shall meet all of the following requirements:

- a. The business is interested in establishing an ESOP.
- b. The business is, or documents intent to become, an Internal Revenue Service (IRS) subchapter C or subchapter S corporation.
- c. The business has a valuation that is sufficient to make an ESOP feasible. A business with valuation less than \$5 million is generally not considered a feasible candidate for an ESOP.
- d. The business has a number of employees, eligible employee types, and a total payroll that are sufficient to make an ESOP feasible. A business with fewer than 25 full-time, permanent employees is generally not considered a feasible candidate for an ESOP.
- e. The applicant shall have a cash flow level sufficient to make an ESOP feasible. A business with cash flow less than \$500,000 is generally not considered a feasible candidate for an ESOP.
- f. The business is not a business engaged in the business of sale at retail of tangible personal property or taxable services in this state or online. “Sale at retail” means the same as defined in Iowa Code section 423.1(46). Any business obligated to collect sales or use tax under Iowa Code chapter 423 may be ineligible pursuant to this paragraph.

g. The business is not a publicly traded company.

h. The business has not completed a feasibility study for purposes of exploring formation of a qualified Iowa ESOP in the three years prior to application for the program.

56.2(2) *Application.* The authority will accept applications for the program on a rolling basis. Information on submitting an application is available on the authority's website.

56.2(3) *Application scoring.* The authority may engage outside experts for assistance in evaluating the applications as needed. An applicant may be required to interview with authority staff or outside experts engaged by the authority. Authority staff will score applications based on the extent to which an applicant is a feasible candidate to form a qualified Iowa ESOP. The authority will keep records of the scoring process and make those records available to applicants.

56.2(4) *Funding decisions.* 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 will not approve funding for an application that receives an average score of less than 50 points.

56.2(5) *Amount of assistance.* 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.

261—56.3(85GA, HF648) Contract and disbursement.

56.3(1) Each applicant that is approved for financial assistance under the program shall enter into an agreement with the authority to establish the terms on which the financial assistance is to be provided.

56.3(2) The authority may reimburse a business for up to 25 percent of the cost of a feasibility study upon completion of the feasibility study. The authority may reimburse a

business for up to 25 percent of the cost of a feasibility study upon formation of a qualified Iowa ESOP. The business must document the costs incurred and completion of all necessary transactions to the satisfaction of the authority prior to disbursement. Costs incurred prior to approval of financial assistance will not be eligible for reimbursement.

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