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## **Employee Ownership Loans and Interest Rate Subsidies**

### **Sec. 32-150-1.**

Repealed, April 27, 1987.

### **Sec. 32-150-1a. Definitions**

The following terms have the following meanings as used in these regulations:

“Borrower” means, with respect to a direct loan(s), the employee group or the entity formed by the employee group which is the primary obligor of the direct loan.

“Business” means any occupation, trade or profession engaged in by any individual, partnership, corporation or other entity (1) for profit, (2) for manufacturing, industrial, warehousing or distribution purposes and/or research and development activities or administrative purposes directly related to any of the forgoing purposes.

“Commissioner” means Commissioner of Economic Development or his Deputy.

“Corporate Ownership” means ownership of capital stock possessing (1) more than fifty percent (50%) of the total combined voting power of all classes of capital stock entitled to vote, provided however that in making such calculation there shall be included the voting power of shares of capital stock to be issued upon the exercise of all outstanding options to purchase said capital stock unless said options are subject to a substantial risk of forfeiture; and (2) more than fifty percent (50%) of the aggregate value of all shares of all classes of outstanding capital stock including the value of all shares of capital stock to be issued upon the exercise of all outstanding options to purchase said capital stock.

“Department” means the Connecticut Department of Economic Development.

“Direct Loan” means any Loan(s) made from the assets of the Fund pursuant to Section 32-150 of the Connecticut General Statutes.

“Eligible Loan” means a Loan(s) (1) issued by a bank, savings and loan association, insurance company, mutual fund, investment company, venture capital fund, or other similar institutional lender; (2) to an employee group purchasing a business or to a corporation partnership, ESOT or other entity established to purchase the business; (3) which in the aggregate does not exceed the purchase price as set forth in the purchase agreement for the business less any equity capital contributed by the Employee Group or others; (4) the repayment of which is not guaranteed in whole or in part, directly or indirectly, by either (a) the federal or any state government, political subdivision, agency, department, authority or other instrumentality thereof; or (b) the seller of the business being acquired with the proceeds of such Loan, provided however that Loans failing to satisfy the requirements of clause (1), (3), or (4) (a) hereof for which the Commissioner determines that Interest Rate Subsidies are necessary both to effect the acquisition of the Business and to permit the Employee Group to successfully repay the Loan(s) shall be deemed Eligible Loans.

“Employee” means any person who comes within the definition of “Employee” under Section 3121 (d) of the Internal Revenue Code of 1954, as amended.

“Employee Group” means any group consisting primarily of employees of a Business whether formed through Corporate Ownership, Partnership Ownership or through an ESOP or any entity formed by the Employee Group contemporaneously with the acquisition of the Business to own or lease all or a significant portion of the assets of the Business and/or to operate the Business being acquired.

“ESOP” means an employee stock ownership plan described in Section 4975 (e) (7) of the Internal Revenue Code of 1954, as amended.

“ESOT” means an employee stock ownership trust established under an ESOP.

“Fund” means the Employee Ownership Trust Fund established pursuant to Section 32-151 of the Connecticut General Statutes.

“Interest Rate Subsidies” means amounts paid from the Fund to reimburse an obligor for interest paid on one or more Eligible Loans incurred for the purchase of a Business.

“Loan” or “Loans” means any bona fide debt obligation issued at arms’ length for the purchase of a business.

“Partnership Ownership” means ownership of partnership interests possessing in the aggregate more than fifty percent (50%) of the right to share in (1) the capital; and (2) the earnings and profits of the partnership.

“Program of Interest Rate Subsidies” means a series of interest rate subsidies paid over a period not to exceed three (3) years to the Employee Group to whom they were granted.

(Effective April 27, 1987)

### **Sec. 32-150-2.**

Repealed, April 27, 1987.

### **Sec. 32-150-2a. Eligibility**

To be eligible for an Interest Rate Subsidy, a Program of Interest Rate Subsidies or a Direct Loan:

(a) **The Employee Group:**

(1) must include fifty percent (50%) or more of all employees of the Business being acquired by the Employee Group immediately following the purchase; and

(2) must own more than fifty (50%) of the outstanding equity interest in the Business being acquired by the Employee Group immediately following the purchase; and

(3) must demonstrate to the satisfaction of the Commissioner:

(A) the financial viability of the Business;

(B) that the acquisition of the Business will tend to maintain or provide gainful employment, maintain or increase the tax base of the economy or maintain or diversify industry in the State of Connecticut; and

(C) that the proceeds of any Direct Loan or Loan for which an Interest Subsidy is sought will not essentially be used to refinance interests held in the Business prior to the acquisition by the Employee Group, its members or related parties thereto.

(b) The Loan or Loans for which an Interest Rate Subsidy is sought must be Eligible Loan(s), provided however that the proceeds of the Eligible Loans are used for acquisition costs or expenses related to the proposed purchase of such Business.

(c) The proceeds of any Direct Loan must be used for the purpose of the initial purchase of the Business, including without limitation, initial working capital requirements of the Employee Group.

(Effective April 27, 1987)

### **Sec. 32-150-3. Application and agreement**

(a) Application for an interest rate subsidy and/or a direct loan shall be submitted on forms prescribed by the Commissioner. No application shall be considered unless the information required by such forms is furnished and, in the case of an application for a direct loan, an application fee is paid in such amount as the Commissioner may from time to time determine to be reasonable and necessary.

(b) Upon approval of an application by the Commissioner, the Department and the Employee Group shall enter into an agreement which shall set forth the terms and

conditions set forth by these regulations and other terms and conditions considered by the Commissioner to be necessary.

(c) The agreement shall be executed on forms provided by the Commissioner and shall be effective only upon approval by the Commissioner and the Employee Group and, in the case of a direct loan(s), payment by the Employee Group of a commitment fee considered by the Commissioner to be reasonable and necessary.

(d) The agreement with respect to interest subsidies shall provide, without limitation:

- (1) the percentage of the interest rate subsidy,
- (2) the number of years for which the subsidy is committed,
- (3) the maximum amount of the interest rate subsidy,
- (4) the condition(s) for termination of the Interest Rate Subsidy.

(e) The agreement with respect to a Direct Loan(s) shall provide, without limitation:

(1) that the proceeds will be used solely for purposes related to the initial purchase of the business;

(2) that the Borrower shall provide the Department with such financial and other reports as the Commissioner, in his discretion, may require from time to time;

(3) that the Borrower shall notify the Department promptly of any material adverse change in the financial condition or business prospects of the Borrower or its business;

(4) that the Borrower shall represent and warrant that it has the power and authority to enter into the direct loan agreement and to incur the obligations therein provided for, and that all documents and agreements executed and delivered in connection with the direct loan will be valid and binding upon the Borrower in accordance with their respective terms;

(5) for such collateral security for the direct loan(s) as the Commissioner may require pursuant to Section 32-150-4 (b) (1) of these regulations and to execute and deliver all documents in connection therewith;

(6) the conditions for termination of, and default under, the direct loan;

(7) that all costs of closing will be paid by the borrower; and

(8) for such other representations and warranties as may be determined by the Commissioner to be necessary.

(f) If, upon examination of the application, supporting information and results of any investigation, the Commissioner rejects such application, then the request may not be granted and the Department shall cause the applicant to be notified that the application has been denied.

(Effective April 27, 1987)

#### **Sec. 32-150-4. Interest rate subsidy and direct loans**

(a) **An interest rate subsidy:**

(1) may be granted on all or a portion of any Eligible Loan(s).

(2) shall not reduce the interest rate on any Eligible Loan by more than five percent (5%).

(3) shall not exceed in total the lesser of fifteen percent (15%) of the total principal amount of any Eligible Loan(s) or \$1,000,000.

(4) shall not exceed three (3) years in term.

(5) shall be solely for the benefit of the Employee Group to whom they are granted and shall not be assignable.

(6) shall be payable annually, upon certification in form and substance acceptable to the Commissioner.

**(b) Direct loan(s):**

(1) The Direct Loans(s) may be secured or unsecured as the Commissioner determines to be appropriate in the particular circumstances. If a Direct Loan(s) is to be secured, the Commissioner may require the borrower to provide as security any or all of the following: real property, accounts, chattel paper, documents, instruments, general intangibles, goods, equipment, inventory or other personal property, and may further require the borrower to have executed and delivered such security agreements, financing statements, mortgages, pledges, assignments, subordinations, guarantees or other documents or evidences of security as and in the form required by the Commissioner.

(2) Direct Loan(s) shall not exceed in amount the lesser of:

(A) \$500,000, or

(B) 10% of the purchase price as set forth in the purchase agreement for the business being acquired.

(3) The term of a direct loan shall not exceed twenty five years from the date of the first disbursement and shall be repaid on an amortized schedule of payments or upon such other method of payment of principal and interest as the Commissioner considers necessary and appropriate in the particular circumstances.

(4) At no time shall the aggregate principal balance of all outstanding direct loans issued under this Section 32-150-4 (b) exceed \$4,000,000.

**(c) Direct loan note:**

(1) Each Direct Loan shall be evidenced by a promissory note which shall contain a provision permitting the borrower to prepay the loan in whole or in part upon any interest payment date.

(2) The promissory note shall provide for the payment of interest at a rate not to exceed 1% above the interest paid by the State of Connecticut on the latest general obligation bonds issued prior to the date of approval of the Direct Loan.

(3) The promissory note may provide for the collection of a late charge, not to exceed two percent of any installment more than fifteen days in arrears. Late charges shall be separately charged to and collected from the borrower.

(4) Any misrepresentation, breach of warranty or other breach of any agreement or covenant contained in the agreement, the promissory note, or other documents signed by the borrower in connection with such loan shall be considered a default under such promissory note.

(5) The promissory note shall contain a provision that the failure of the borrower to make a payment of any installment of principal or interest due under the promissory note within thirty days from the due date shall constitute a default.

(6) The promissory note shall provide that upon default, any and all sums owing by the borrower under the promissory note shall, at the sole discretion of the Commissioner, become immediately due and payable.

(7) The promissory note shall provide that upon default interest on the promissory note shall automatically increase two percent per annum above the rate of the said note and shall apply not only after default, but after any judgment rendered upon said promissory note.

(8) The promissory note shall provide for payment of reasonable attorneys' fees and legal costs in the event the borrower shall default in the payment of the note.

(9) The promissory note shall contain such other clauses and covenants as the Commissioner in his discretion, may require.

**(d) Disbursement and use of proceeds:**

Disbursement of direct loan proceeds and interest rate subsidies shall be made at the discretion of the Commissioner in accordance with the agreement(s).

(Effective April 27, 1987)

**Sec. 32-150-5. Termination**

The Commissioner may terminate the Interest Rate Subsidy and/or accelerate the direct loan under any of the following:

(a) if he determines that all or part of the Business has been removed from the State or that there are pending plans to remove all or part of said Business from the State, or

(b) if he determines at any time that the Employee Group no longer meets the eligibility criteria set forth in Section 32-150-2a of these regulations, or

(c) if he determines the Employee Group is in default of its obligation to make any payment of principle or interest due under an Eligible Loan or Direct Loan and said default has not been cured under any applicable cure provision of such Eligible Loan, Direct Loan or the agreement of the Interest Rate Subsidy.

(d) if he determines that the Business has acted or failed to act in a manner that results in a significant violation of federal, state, or local laws or ordinances, creates or causes the facilities to become a public nuisance, fails to maintain and insure the business facilities and equipment, or fails to pay all taxes, assessments and other charges, allows any change in the nature of the occupancy, use or operation of the Business which is inconsistent with the application for subsidy, or sells, assigns, conveys, leases or otherwise disposes of any real estate, equipment or capital stock acquired with a subsidized loan or Direct Loan.

(Effective April 27, 1987)

**Sec. 32-150-6. Reservation of funds**

The Commissioner shall reserve from the Fund the total amount of the Rate Subsidy for the term committed.

(Effective April 4, 1986)