

## MEMORANDUM

### Nebraska Rural Projects Act Guidance

This Policy remains effective until it is amended, superseded, or rescinded.

---

#### **SUBJECT: Date of Investment**

This guidance document is advisory in nature but is binding on the Department of Economic Development (DED) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of DED and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

---

#### **ISSUE:**

- I. Will investment made after the date of application, but before a signed agreement, be treated as “matching” funds for the purposes of the Act?

---

#### **ANALYSIS:**

- I. Nebraska Revised Statute § 81-12,206 defines transformational period as “the period of time from the date of application through the end of the tenth year after the year in which the complete application was filed with the director.”
- II. Nebraska Revised Statute § 81-12,209(4) provides in part that: “[a]n agreement under the Nebraska Rural Projects Act shall have a duration of no more than ten years after the date of application, consisting of up to the ten years of the transformational period . . .”
- III. Nebraska Revised Statute § 81-12,210 delineates transactions or activities that do not create investment for purposes of triggering matching funds under the Nebraska Rural Projects Act. Section 81-12,210 uses the date of application as the benchmark in three of the four scenarios presented:

The following transactions or activities shall not create investment under the Nebraska Rural Projects Act except as specifically allowed by this section:

(1) The renegotiation of any private donor commitment in existence before the date of application, except to the extent of additional donation commitments;

(2) The purchase of any property which was previously owned by the applicant or a related entity. The first purchase by either the applicant or a related entity shall be treated as investment if the item was first placed in service in the state after the date of application;

(3) The renegotiation of any agreement in existence on the date of application which does not materially change any of the material terms of the agreement shall be presumed to be a transaction entered into for the purpose of facilitating benefits under the act and shall not be allowed in the calculation of investment under the act; and

. . .

- IV. Nebraska Revised Statute § 81-12,209(1)(d) requires a Nebraska Rural Projects Act agreement to state the date of application.
- V. Nebraska Revised Statute § 81-12,208(3) provides that “[a]n application must be complete to establish the date of application.

---

**CONCLUSION:**

- I. Qualified project investment made after the date of application may be eligible for matching funds under the Nebraska Rural Projects Act.
- II. The date of application is determined by DED’s receipt of both an applicant’s completed application and an applicant’s application fee.
- III. Otherwise qualified project investment made after the date of application, but before application approval or a fully executed agreement with DED, may be eligible for matching funds as long as the application is ultimately approved and an agreement between the applicant and DED is executed. If an application is ultimately denied, or an applicant and DED fail to enter into an agreement, otherwise qualified project investment made after the date of application will NOT be eligible for matching funds.

---

**END OF GUIDANCE MEMORANDUM**