

DEPARTMENT OF ECONOMIC
DEVELOPMENT

TITLE 86, DEPARTMENT OF ECONOMIC
DEVELOPMENT

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TITLE 86 - DEPARTMENT OF ECONOMIC DEVELOPMENT

Chapter 5 - Rules and Regulations Concerning the Administration of the Nebraska Affordable Housing Act

001. Administration.

These rules and regulations relate to administration of the Nebraska Affordable Housing Act. Pursuant to provisions of Nebraska Revised Statutes, §§58-701 through 58-711, the following rules and regulations shall govern the procedures for administration of the Nebraska Affordable Housing Act (the "Act").

001.01 Definitions.

001.01A Community-Based Nonprofit - means a Nebraska based nonprofit organization that has or will be undertaking affordable housing projects, and has secured an IRS determination of 501(c)(3) or 501(c)(4) status.

001.01B Department - means the Nebraska Department of Economic Development.

001.01C Disability - means: actually having; or having a record or history of having had; or being regarded by a public entity as having-a physical or mental impairment that substantially limits one or more major life activity.

001.01D Eligible Activities - means the activities as set forth in Section 002 of these Rules.

001.01E Eligible Forms of Assistance - means loans, grants, subsidies, credit enhancements, and other financial assistance for community affordable housing projects, which are associated with projects or programs located in Nebraska.

001.01F Governmental Subdivision - means a county, city or village.

001.01G Infrastructure - means any affordable housing infrastructure which shall include streets, sewers, storm drains, water, electrical and other utilities (if commonly accepted as the developer's responsibility), sidewalks, easements and similar use rights thereof, as well as improvements necessary for the development of affordable housing units.

001.01H Low-Income Household - means income for a household which is at or below the following percentages of the area median income per the most recent United States Department of Housing and Urban Development (HUD) income limits: (a) 120% in instances of homeownership activities under the Act; and, (b) 120% in instances of rental housing activities under the Act. The HUD income limits are incorporated herein by this reference and available for access by interested parties upon request at the offices of the Nebraska

Department of Economic Development, 4th Floor of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. For the information of the reader, the HUD income limits are also available for viewing on HUD's national website. The specific webpage address (current as of the time of adoption of these Rules, but obviously subject to future change by HUD) is <http://www.huduser.org/portal/datasets/il.html>.

001.01I Program Income - means the income as set forth in Section 001.03 of these Rules.

001.01J Qualified Allocation Plan - means the plan as set forth in Section 003 of these Rules.

001.01K Qualified Recipient - means: (a) a Nebraska governmental subdivision; (b) a local housing authority, which means a 'housing agency' as that term is defined in the Nebraska Housing Agency Act, §§71-1572 to 71-15,168, Nebraska Revised Statutes; (c) a community action agency for a Nebraska community; (d) a community-based nonprofit organization for a Nebraska community; (e) a neighborhood-based nonprofit organization for a Nebraska neighborhood; or, (f) a reservation-based nonprofit organization for a reservation located in Nebraska; and, (g) Qualified Recipient also includes a for-profit entity working in conjunction with one of the organizations listed in Section 001.01K (a)-(f). Only an organization, not an individual, may be a Qualified Recipient, and no individual may receive a direct loan from the Affordable Housing Trust Fund.

001.01L Trust Fund -means the Nebraska Affordable Housing Trust Fund created pursuant to the Act, and money therein will be referred to as Trust Funds.

001.01M Very Low-Income Household - means income for a household which is at or below the following percentages of the area median income per the most recent United States Department of Housing and Urban Development (HUD) income limits: (a) 50% in instances of homeownership activities under the Act; and, (b) 50% in instances of rental housing activities under the Act. The HUD income limits are incorporated herein by this reference and available for access by interested parties upon request at the offices of the Nebraska Department of Economic Development, 4th Floor of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. For the information of the reader, the HUD income limits are also available for viewing on HUD's national website. The specific webpage address (current as of the time of adoption of these Rules, but obviously subject to future change by HUD) is <http://www.huduser.org/portal/datasets/il.html>.

001.02 Application and Award Process

Only Qualified Recipients may apply to the Department for funding of awards.

001.02A Application Form/Guidelines/Fund Availability. Such application and instructions for completing the same, together with any guidelines, shall be provided by the Department. All applications for awards shall be made on forms provided by or approved by the Department. The Department shall publish notices of fund availability.

001.02B Project Selection Criteria. The Department will establish application criteria in accordance with the Qualified Allocation Plan and review and approve applications according to said criteria and requirements contained in application guidelines.

001.02C Notice of Approval. Qualified Recipients shall receive a written Notice of Approval. The Department and the Qualified Recipients shall execute an award agreement. A Qualified Recipient's failure to execute the award agreement will result in the Notice of Approval being withdrawn.

001.03 Program Income

Program income includes, but is not limited to: a) payments of principal and interest on loans made using Trust Funds; b) proceeds from the disposition by sale or long-term lease of real property purchased or improved with Trust Funds; c) proceeds from the disposition of equipment purchased with Trust Funds; d) interest earned on program income pending its disposition; and e) interest earned on Trust Funds held in a revolving loan fund's cash balance interest bearing account. The Department may require that program income received prior to the completion of the approved eligible activities must be applied to those activities prior to requesting additional Trust Funds from the Department.

The Department may allow Qualified Recipients to retain program income for a period of time. Qualified Recipients must reuse funds in the manner approved by the Department.

001.04 Required Match

A Qualified Recipient qualified under the criteria in Section 001.01K(g) [a for-profit entity] working in conjunction with a Qualified Recipient qualified under the criteria in Section 001.01K (a)-(f) [for the most part, local governments, non-profits and public housing authorities] shall be required to provide, or cause to be provided, matching funds for the eligible activities, which shall be at least equal to 10% of the amount of the award.

The Department may require matching funds on a project-by-project basis at a level that both ensures a financially sound project and maximizes the leveraging of the Trust Funds.

001.05 Payment of Trust Funds

Payment of Trust Funds by the Department to Qualified Recipients shall be made on a basis deemed reasonable by the Department to appropriately

provide financial support after costs or liabilities have been incurred. The Department may require adequate documentation regarding said costs or liabilities before providing payment of Trust Funds.

001.06 Performance Review

The Department shall monitor programs and projects to evaluate the Qualified Recipient's compliance with the award agreement and other requirements as promulgated in other administrative guidance. The Department or other qualified agencies or individuals may carry out monitoring duties.

001.07 Noncompliance

The Department may revoke awards, seek repayment of Trust Funds, or both, if:

001.07A the terms of the award agreement have not been, nor are anticipated to be, fulfilled;

001.07B the Department finds that the application contained inaccuracies, omissions, errors or misrepresentations;

001.07C the time schedule for program completion was misrepresented or has not been maintained;

001.07D any property, real or personal, acquired or developed with Trust Funds, passes or diverts from control of the Qualified Recipient or is used for purposes (lawful or unlawful) other than the approved program purpose, unless prior written approval from the Department has been obtained;

001.07E there exists a serious, material and uncorrected violation of any health, safety, welfare, or zoning code associated with the project funded with Trust Funds.

001.08 Ineligibility

Whenever the Department determines at any time that a Qualified Recipient is in violation of the Rules, the Qualified Recipient may be deemed ineligible for further assistance for subsequent projects until the violative matter has been resolved to the satisfaction of the Department.

001.09 Funds Required to be Returned

Any funds required to be returned by the Qualified Recipient to the Department shall be deposited in the Trust Fund and reallocated by the Department for purposes under the Act.

001.10 Other Programmatic Requirements

The Department shall determine project specific requirements including, but not limited to, income restrictions, income determination methods, rent restrictions, environmental review procedures, recapture and resale provisions, conflict of interest policies, anti-discrimination policies, and other contractual requirements.

002. Eligible Activities.

Subject to the additional provisions of these Rules, the following are eligible activities for assistance from the Trust Fund:

002.00A New construction, rehabilitation or acquisition of housing to assist low-income and very low-income families;

002.00B Matching funds for new construction, rehabilitation, or acquisition of housing units to assist low-income and very low-income families;

002.00C Technical assistance, design and finance services, and consultation for eligible nonprofit community or neighborhood-based organizations involved in the creation of affordable housing;

002.00D Matching funds for operating costs for housing assistance groups or organizations when such grant or loan will substantially increase the recipient's ability to produce affordable housing;

002.00E Mortgage insurance guarantees for eligible projects;

002.00F Acquisition of housing units for the purpose of preservation of housing to assist low-income and very low-income families;

002.00G Projects making affordable housing more accessible to families with elderly members or members who have disabilities;

002.00H Projects providing housing in areas determined by the Department of Economic Development to be of critical importance for the continued economic development and economic well-being of the community and where, as determined by the Department, a shortage of affordable housing exists;

002.00I Infrastructure projects necessary for the development of affordable housing;

002.00J Downpayment and closing cost assistance;

002.00K Housing education programs developed in conjunction with affordable housing projects. The education programs must be directed toward any or all of the following: a) preparing potential home buyers to purchase affordable housing and post purchase education; b) target audiences eligible to utilize the services of housing assistance groups or organizations; and c) developers interested in the rehabilitation, acquisition, or construction of affordable housing;

002.00L Demolition of existing vacant, condemned, or obsolete housing or industrial buildings of infrastructure;

002.00M Support for efforts to improve programs benefiting homeless youth;

002.00N Vocational training in the housing and construction trades industries by nonprofit groups.

003. Qualified Allocation Plan

The Department shall adopt a Qualified Allocation Plan as required by the Act. The plan shall a) set forth selection criteria to be used to determine housing priorities of the housing trust fund which are appropriate to local conditions, including the community's immediate need for affordable housing, proposed increases in home ownership, private dollars leveraged, level of local government support and participation, and repayment, in part or in whole, of financial assistance awarded by the fund; and b) give first priority in allocating trust fund assistance among selected projects to those projects which meet all of the following criteria: (1) are located in whole or in part within an enterprise zone designated pursuant to the Enterprise Zone Act found in the Nebraska Revised Statutes §§13-2101 through 13-2112; (2) serve the lowest income occupant; and (3) are obligated to serve qualified occupants for the longest period of time.

003.01 Housing Assistance Policies The Department may establish policies, some of which may be more restrictive than these rules and regulations, for the use of Trust Funds for rental housing, homebuyers' assistance, and homeowners' assistance including, but not limited to, policies with respect to the terms of assistance, beneficiaries, eligible costs, property types, and affordability restrictions.

TITLE 86 - DEPARTMENT OF ECONOMIC DEVELOPMENT

Chapter 6 - Rules and Regulations Concerning the Administration of the Site and Building Development Act

001. Purpose. The purpose of these regulations is to aid the Nebraska Department of Economic Development in the administration of the Site and Building Development Act found in Sections 81-12,144 through 81-12,151 of the Nebraska Revised Statutes.

002. Administration

002.01 Definitions.

002.01A Act - means the Site and Building Development Act found in Sections 81-12,144 through 81-12,151 of the Nebraska Revised Statutes.

002.01B Allocate - means to set aside, award, or designate Site and Building Development Fund funds to an Eligible Recipient.

002.01C Department - means the Nebraska Department of Economic Development.

002.01D Director - means the Director of the Nebraska Department of Economic Development.

002.01E Eligible Applicant - means a Governmental Subdivision or Nebraska Nonprofit Organization that is eligible to submit an application for funding from the Site and Building Development Fund.

002.01F Eligible Recipient - means an Eligible Applicant that has been selected by the Department to receive funding from the Site and Building Development Fund.

002.01G Eligible Activities - means the activities that are eligible for funding from the Site and Building Development Fund as set forth in the Act and these regulations.

002.01H Eligible Project - means a project consisting of one or more Eligible Activities.

002.01I Governmental Subdivision - includes a Nebraska village, city or county, and other entities created or authorized by the Nebraska State Legislature and organized pursuant to such authorization to carry out functions for a public purpose or for the general welfare of the people, and that are exempt from property taxation under Article VIII, Section 2 of the Nebraska Constitution.

002.01J Industrial - means pertaining to any general business activity or commercial enterprise.

002.01K Nebraska Nonprofit Organization – means a Nebraska based nonprofit organization that has secured a United States Internal Revenue Service determination of 501(c)(3), or can document via legal opinion that such organization meets the requirements under Sections 501(c)(4) or 501(c)(6) of the United States Internal Revenue Code.

002.01L Nonmetropolitan Areas – means counties with fewer than one hundred thousand inhabitants according to the most recent federal decennial census.

002.01M Site and Building Development Fund – means the fund created under Section 81-12,146 of the Act, administered by the Department, and used to fund Eligible Activities.

002.01N Qualified Action Plan – means the plan required under Section 81-12,149 of the Act to be developed by the Department.

002.02 Application and Award Process.

The Department will create application forms and application instructions for use by Eligible Applicants in applying for funding from the Site and Building Development Fund. All applications for funding from the Site and Building Development Fund shall be made on forms provided by, or approved by the Department, and shall include any attachments or documentation required by the Department. In particular, the Department may require any Eligible Applicant (other than a village, city or county) to submit along with its application, a letter of support from the village, city or county, where the proposed Eligible Project will take place.

If the Department awards funds from the Site and Building Development Fund to an Eligible Recipient, such Eligible Recipient will receive notice of approval from the Department. The Department and the Eligible Recipient will then execute an award agreement. An Eligible Recipient's failure to execute the award agreement may result in the award of funds being withdrawn.

002.03 Administrative Costs and Expenses.

Funds from the Site and Building Development Fund may be used for administrative costs and expenses of the Department in carrying out the Act. Funds from the Site and Building Development Fund may be used for administrative costs and expenses of Eligible Recipients in carrying out Eligible Activities and complying with the terms of the award agreement, subject to any amount limitations as may be established by the Department.

002.04 Required Match; Failure to Provide Required Match.

An Eligible Recipient shall provide, or cause to be provided, matching funds for an Eligible Project in a minimum amount equal to 100% of the amount of the award from the Site and Building Development Fund.

The Department may reduce an Eligible Recipient's award of funds from the Site and Building Development Fund, or require Eligible Recipients to repay funds received from the Site and Building Development Fund, if required matching funds are not provided, or are not caused to be provided by the Eligible Recipient.

002.05 Allocation of Funds to Nonmetropolitan Areas.

During each calendar year in which funds are available from the Site and Building Development Fund, the Department shall allocate a specific amount of funds to Nonmetropolitan Areas, as provided in Section 81-12,149 of the Act. Funds allocated directly to counties with fewer than one hundred thousand inhabitants according to the most recent federal decennial census, and to Eligible Recipients within Nonmetropolitan Areas will count toward the Department's required allocation amount.

002.06 Payment of Funds.

Payment of funds from the Site and Building Development Fund shall be made to Eligible Recipients on a basis deemed reasonable by the Department, provided that matching funds requirements are enforced by the Department.

The Department may require documentation from Eligible Recipients to support any requests for funds from the Site and Building Development Fund.

002.07 Effect of Other Incomplete Projects.

The Director may, in the Director's sole discretion, declare Governmental Subdivisions and Nebraska Nonprofit Organizations with incomplete speculative site and/or building projects funded through the Site and Building Development Fund, or any other funding source administered by the Department, to be ineligible for funding from the Site and Building Development Fund until such incomplete project is completed.

002.08 Marketing Plan.

The Department may require Eligible Recipients to develop a marketing plan for sites and/or buildings funded with funds from the Site and Building Development Fund. The Department may require Eligible Recipients to undertake marketing activities identified in such marketing plan. The Department may consider any expenses incurred by Eligible Recipients in developing a marketing plan and undertaking marketing activities to be eligible Site and Building Development Fund expenses, or eligible matching expenses.

002.09 Performance Review and Monitoring.

The Department may conduct performance reviews, monitoring, and/or required audits to evaluate each Eligible Recipient's compliance with the

award of Site and Building Development Funds and any other related requirements.

002.10 Noncompliance.

The Department may terminate disbursement of funds and/or seek repayment of any funds disbursed from the Site and Building Development Fund if:

002.10A the terms of the award agreement have not been, and are not anticipated to be, fulfilled;

002.10B the Department finds that the application for funding from the Site and Building Development Fund contained inaccuracies, omissions, errors or misrepresentations;

002.10C the time schedule for completion was misrepresented or has not been maintained;

002.10D any property, real or personal, acquired or developed with funds from the Site and Building Development Fund is used for purposes inconsistent with the Act;

002.10E any violation of any health, safety, welfare, or zoning code associated with the Eligible Project; or

002.10F any violation of the Act or these regulations, or any breach of the award agreement the part of the Eligible Recipient.

002.11 Ineligibility.

Should the Department determine that an Eligible Recipient is in violation of the Act, these regulations, or the award agreement, the Department may deem such Eligible Recipient ineligible for further assistance from the Site and Building Development Fund for a period of up to two years.

002.12 Returned Funds.

Any funds provided from the Site and Building Development Fund that are returned or repaid to the Department by an Eligible Recipient shall be deposited into the Site and Building Development Fund and reallocated by the Department for further usage consistent with the Act.

002.13 Program Guidelines; Other Programmatic Requirements.

The Department may develop Site and Building Development Act program guidelines to aid the Department in administering the Site and Building Development Act.

The Department may establish additional requirements in the Qualified Action Plan, in program guidelines, or in award agreements, some of which may be more restrictive than these regulations, for the use of funds from

the Site and Building Development Fund. These requirements may include, but are not limited to, requirements regarding ownership or control of sites and/or buildings improved or to be improved with funds from the Site and Building Development Fund; restrictions on the sale, lease, or transfer of sites and/or buildings improved or to be improved with funds from the Site and Building Development Fund; limitations on the type of businesses or industries that an Eligible Recipient may allow to locate a site and/or building funded with Site and Building Development Funds.

003 Eligible Activities.

Subject to the additional provisions of these regulations, the following activities are eligible for assistance from the Site and Building Development Fund:

003.01 Grants or zero-interest loans to villages, cities or counties to acquire land, infuse infrastructure, or otherwise make large sites and buildings ready for industrial development;

003.02 Grants, loans, or other financial assistance to Eligible Recipients for new construction, rehabilitation, or acquisition of land and buildings when villages, cities or counties will benefit from the improvements resulting from such assistance;

003.03 Grants, loans, or other financial assistance to Eligible Recipients to obtain technical assistance, design and finance services, and consultation for the preparation and creation of industrial ready sites and buildings when villages, cities or counties will benefit from the technical assistance, design and finance services or consultation services provided as a result of such assistance;

003.04 Loan guarantees for Eligible Projects;

003.05 Grants, loans, or other financial assistance to Eligible Recipients for projects making industrial-ready sites and buildings more accessible to business and industry;

003.06 Grants, loans, or other financial assistance to Eligible Recipients for infrastructure projects necessary for the development of industrial ready sites and buildings; and

003.07 Grants, loans, or other financial assistance to Eligible Recipients for projects that mitigate the economic impact of a closure or downsizing of a private-sector entity by making necessary improvements to buildings and infrastructure.

004 First Priority Projects - Business to Locate Within Ninety Days.

The Department will give first priority to funding financially viable Eligible Projects in which a business has agreed to locate the site and/or building for which the Eligible Activities will occur; provided the business agrees to locate such site and/or building no later than the later of ninety (90) days after the business executes a written commitment to locate the site, or ninety (90) days

after the Department has executed a written agreement with an Eligible Recipient.

The Department may require the business agreeing to locate a site and/or building to provide a written commitment to the Department or to an Eligible Recipient certifying the business will locate the site within the later of the 90 day time periods described above.

As used in these regulations and in the Act, locate shall mean any of the following:

004.01 Purchase of the site and/or building for which the Eligible Activities are proposed to occur;

004.02 Execution of a lease for the site and/or building for which the Eligible Activities are proposed to occur;

004.03 Execution of a lease with an option to purchase the site and/or building for which the Eligible Activities are proposed to occur; or

004.04 Other arrangements, acceptable to the Department, involving the business entering to a contractual arrangement regarding the site and/or building for which the Eligible Activities are proposed to occur.

The Department may establish a separate application process, separate award process, and separate award agreement for the funding of first priority projects under this section 004. The funding of first priority projects shall not take precedence over the requirement that the Department allocate a specific amount of funds to Nonmetropolitan Areas, as provided in Section 81-12,149 of the Act. An order of precedence for priorities identified in the Act may be established by the Department in the Qualified Action Plan.

Should a business fail to locate a site as certified, or as otherwise agreed by such business, the Department may either withdraw Site and Building Development Fund funds from the Eligible Project and terminate any award agreement with the Eligible Recipient, or may proceed with funding the Eligible Project; provided the Eligible Recipient agrees to develop a marketing plan for the site and/or building and undertake activities to implement such marketing plan within a reasonable amount of time. In making a determination as to how to proceed, the Department will consider the impact of the Department's decision on the Eligible Recipient.

005 First Priority Projects - Projects in Enterprise Zones.

The Department will give first priority to funding financially viable Eligible Projects located in whole or in part within an enterprise zone designated pursuant to the Enterprise Zone Act, found in Sections 13-2101 to 13-2112 of the Nebraska Revised Statutes.

The Department may establish a separate application process, separate award process, and separate award agreement for the funding of first priority projects under this section 005. The funding of first priority projects shall not take

precedence over the requirement that the Department allocate a specific amount of funds to Nonmetropolitan Areas, as provided in Section 81-12,149 of the Act. An order of precedence for priorities identified in the Act may be established by the Department in the Qualified Action Plan.

006 Annual Report.

The Department will submit an annual report regarding the Act to the Legislature no later than the date specified in the Act. Such annual report may be submitted to the Legislature independently or may be combined into one document with other annual reports that the Department is required to submit to the Legislature.

The Department may require Eligible Recipients to collect information on Eligible Projects, including information from businesses that locate on sites and/or in buildings, and to submit reports to the Department in order to assist the Department in fulfilling the Department's annual reporting obligation.

