TITLE 86, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 5

NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT

Rules and Regulations Concerning the
Administration of the Nebraska Affordable Housing Act

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TITLE 86 NAC 5

ALPHABETICAL TABLE OF CONTENTS

Subject or Title	Statutory Authority	Code Section
Administration	Neb. Rev. Stat. § 58-703; § 58-704; § 58-705	Section 001
Eligible Activities	Neb. Rev. Stat. § 58-706; § 58-707; § 58-708	Section 002
Qualified Allocation Plan	Neb. Rev. Stat. § 58-706; § 58-707; § 58-708	Section 003

OCT - 1 2015

NEBRASKA ADMINISTRATIVE CODE

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PETE RICKETTS
GOVERNOR

FILED
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APPROVED
DOUGLAS J. PETERSON
ATTORNEY GENERAL

MAY 12 2015

ASSISTANT ATTORNEY GENERAL

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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.

OCT - 1 2015

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.

OCT - 1 2015

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.

OCT - 1 2015

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;

OCT - 1 2015

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.

APPROVED
DOUGLAS J. PETERSON
ATTORNEY GENERAL

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BY
ASSISTANT ATTORNEY GENERAL

FILED
OCT - 1 2015
BY SECRETARY OF STATE

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PETE RICKETTS
GOVERNOR