

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed Emergency

Rule making related to disaster recovery housing program

The Economic Development Authority hereby amends Chapter 48, “Workforce Housing Tax Incentives Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 15.106A and 2019 Iowa Acts, House File 772, section 30.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 15.119 and 15.352 to 15.355.

Purpose and Summary

2019 Iowa Acts, House File 772, amends the Workforce Housing Tax Incentive Program and creates additional incentives for a new category of projects referred to as the Disaster Recovery Housing Program. This rule making is intended to implement the Disaster Recovery Housing Program. This rule making amends the definition of a “small city,” defines “disaster recovery housing project,” establishes the eligibility requirements for tax incentives under the Disaster Recovery Housing Program, and describes the application process, the award process, and the administration of the disaster recovery housing tax incentives.

*Reason for Adoption of Rule Making Without
Prior Notice and Opportunity for Public Participation*

Pursuant to Iowa Code section 17A.4(3), the Authority finds that notice and public participation are unnecessary or impractical because statute so provides.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)“b”(1)(a), the Authority also finds that the normal effective date of this rule making, 35 days after publication, should be waived and the rule making made effective on October 3, 2019, because 2019 Iowa Acts, House File 772, section 30, allows the Authority to adopt emergency rules to implement House File 772 and states that the rules shall be effective immediately upon filing unless a later date is specified in the rules. This rule making will confer a benefit, and the Authority has determined that an immediate effective date is useful to further the purposes of House File 772 and this rule making.

Adoption of Rule Making

This rule making was adopted by the Authority on August 16, 2019.

Concurrent Publication of Notice of Intended Action

In addition to its adoption on an emergency basis, this rule making has been initiated through the normal rule-making process and is published herein under Notice of Intended Action as **ARC 4723C** to allow for public comment.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making became effective on October 3, 2019.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definition of “Disaster recovery housing project” in rule **48.3(15)**:

“*Disaster recovery housing project*” means a qualified housing project located in a county that has been declared a major disaster by the President of the United States on or after March 12, 2019, and that is also a county in which individuals are eligible for federal individual assistance.

ITEM 2. Amend rule **261—48.3(15)**, definition of “Small city,” as follows:

“*Small city*” means any city or township located in this state, except those located wholly within one or more of the 11 most populous counties in the state, as determined by the most recent federal decennial census population estimates issued by the United States bureau of census. ~~For the purposes of this definition, a small city that is located in more than one county shall be considered to be located in the county having the greatest taxable base within the small city.~~

ITEM 3. Adopt the following **new** 261—Chapter 48, subheading, to precede rule 216—48.9(15):

DISASTER RECOVERY HOUSING PROGRAM

ITEM 4. Adopt the following **new** rules 261—48.9 to 261—48.13:

261—48.9(15) Housing project minimum requirements. To receive disaster recovery housing tax incentives pursuant to the program, a proposed disaster recovery housing project shall meet all of the following requirements:

48.9(1) The project includes at least one of the following:

- a. Four or more single-family dwelling units, except for a project located in a small city, then two or more single-family dwelling units.
- b. One or more multiple dwelling unit buildings each containing three or more individual dwelling units.
- c. Two or more dwelling units located in the upper story of an existing multi-use building.

48.9(2) The project consists of any of the following:

- a. Rehabilitation, repair, or redevelopment at a brownfield site or grayfield site that results in new dwelling units.
- b. The rehabilitation, repair, or redevelopment of dilapidated dwelling units.

c. The rehabilitation, repair, or redevelopment of dwelling units located in the upper story of an existing multi-use building.

d. The new construction, rehabilitation, repair, or redevelopment of dwelling units in a distressed workforce housing community. The authority will determine whether a community is considered a distressed workforce housing community pursuant to subrule 48.4(2).

e. For a project located in a small city that meets the minimum housing project requirements under this subrule, development at a greenfield site. A project located in a small city is not required to complete the distressed workforce housing community application pursuant to subrule 48.4(2).

f. For a disaster recovery housing project, development at a greenfield site.

48.9(3) Except as provided in subrules 48.9(4) and 48.9(5) below, the average dwelling unit cost does not exceed \$200,000 per dwelling unit. For purposes of this rule, the average dwelling unit cost equals the costs directly related to the housing project divided by the total number of dwelling units in the housing project.

48.9(4) The average dwelling unit cost does not exceed \$250,000 per dwelling unit if the project involves the rehabilitation, repair, redevelopment, or preservation of eligible property, as that term is defined in Iowa Code section 404A.1(8) “a.”

48.9(5) The average dwelling unit cost does not exceed \$215,000 per dwelling unit if the project is located in a small city.

48.9(6) The dwelling units, when completed and made available for occupancy, meet the U.S. Department of Housing and Urban Development’s housing quality standards and all applicable local safety standards.

48.9(7) The project is not located in a 100-year floodplain.

261—48.10(15) Housing project application and agreement.

48.10(1) Application.

a. A housing business seeking disaster recovery housing tax incentives pursuant to rule 261—48.11(15) shall make application to the authority in the manner prescribed in this rule. The authority may accept applications on a continuous basis and will review applications in the order received. The authority will acknowledge receipt of the application and notify the applicant within 30 days as to whether the disaster recovery housing project will be awarded tax incentives pursuant to this rule.

b. The application for disaster recovery housing tax incentives described in paragraph 48.10(1) “a” shall include all of the following:

(1) The following information establishing local participation for the housing project:

1. A resolution in support of the housing project by the community where the housing project will be located.

2. Documentation of local matching funds pledged for the housing project in an amount equal to at least \$1,000 per dwelling unit, including but not limited to a funding agreement between the housing business and the community where the housing project will be located. For purposes of this paragraph, local matching funds shall be in the form of cash or cash equivalents or in the form of a local property tax exemption, rebate, refund, or reimbursement.

(2) A report that meets the requirements and conditions of Iowa Code section 15.330(9).

(3) Information showing the total costs and funding sources of the housing project sufficient to allow the authority to adequately determine the financing that will be utilized for the housing project, the actual cost of the dwelling units, and the amount of qualifying new investment.

(4) A certification that the applicant’s housing project is located in a county that has been declared a major disaster by the President of the United States on or after March 12, 2019, and is also located in a county in which individuals are eligible for federal individual assistance.

(5) Documentation that provides evidence that the housing project is needed due to impact of the disaster that is the subject of the presidential major disaster declaration.

(6) Information showing that the housing project is located outside of a 100-year floodplain.

(7) Any other information deemed necessary by the authority to evaluate the eligibility and financial need of the housing project under the disaster recovery housing program.

48.10(2) Application review—tax incentive award.

a. Upon review of the application, the authority may make a tax incentive award to a disaster recovery housing project under the disaster recovery housing program. The tax incentive award shall represent the maximum amount of tax incentives that the disaster recovery housing project may qualify for under the program. In determining a tax incentive award, the authority shall not use an amount of project costs that exceeds the amount included in the application of the housing business. Tax incentive awards shall be approved by the director of the authority.

b. After making a tax incentive award, the authority shall notify the housing business of its tax incentive award under the program. The notification shall include the amount of tax incentives under rule 261—48.11(15) for which the housing business has received an award and a statement that a housing business has no right to receive a tax incentive certificate or claim a tax incentive until all requirements of the program, including all requirements imposed by the agreement entered into pursuant to subrule 48.10(3), are satisfied. The amount of tax credits included on a tax credit certificate issued pursuant to this chapter, or a claim for refund of sales and use taxes, shall be contingent upon completion of all requirements in subrule 48.10(3).

48.10(3) Agreement and fees.

a. Upon receipt of a tax incentive award to the disaster recovery housing project, the housing business shall enter into an agreement with the authority for the successful completion of all requirements of the disaster recovery housing program. The agreement shall identify the tax incentive award amount, the tax incentive award date, the project completion deadline, and the total costs of the disaster recovery housing project.

b. The compliance cost fees imposed in Iowa Code section 15.330(12) shall apply to all agreements entered into under the program and shall be collected by the authority in the same manner and to the same extent as described in Iowa Code section 15.330(12).

c. A housing business shall complete its disaster recovery housing project within three years from the date incentives are awarded by the authority to the disaster recovery housing project.

d. Upon completion of a disaster recovery housing project, an examination of the project in accordance with the American Institute of Certified Public Accountants' statements on standards for attestation engagements, completed by a certified public accountant authorized to practice in this state, shall be submitted to the authority.

e. Upon review of the examination as described in paragraph 48.10(3)“d” and verification of the amount of the qualifying new investment, the authority may notify the housing business of the amount that the housing business may claim as a refund of the sales and use tax under Iowa Code section 15.355(2), and may issue a tax credit certificate to the housing business stating the amount of disaster recovery housing investment tax credits under rule 261—48.11(15) that the eligible housing business may claim. The sum of the amount that the housing business may claim as a refund of the sales and use tax and the amount of the tax credit certificate shall not exceed the amount of the tax incentive award.

48.10(4) Maximum tax incentives amount.

a. The maximum amount of tax incentives that may be awarded under rule 261—48.11(15) to a housing business for a disaster recovery housing project shall not exceed \$1 million.

b. If a housing business qualifies for a higher amount of tax incentives under rule 261—48.11(15) than is allowed by the limitation imposed in paragraph 48.10(4)“a,” the authority and the housing business may negotiate an apportionment of the reduction in tax incentives between the sales and use tax refund provided in subrule 48.11(2) and the disaster recovery housing investment income tax credits provided in subrule 48.11(3) provided the total aggregate amount of tax incentives after the apportioned reduction does not exceed the amount in paragraph 48.10(4)“a.”

48.10(5) Termination and repayment. The failure by a housing business in completing a disaster recovery housing project to comply with any requirement of the disaster recovery housing program or any of the terms and obligations of an agreement entered into pursuant to this rule may result in the revocation, reduction, termination, or rescission of the tax incentive award or the approved tax incentives

and may subject the housing business to the repayment or recapture of tax incentives claimed under rule 261—48.11(15). The repayment or recapture of tax incentives pursuant to this rule shall be accomplished in the same manner as provided in Iowa Code section 15.330(2).

261—48.11(15) Disaster recovery housing tax incentives.

48.11(1) Eligibility. A housing business that has entered into an agreement with the authority for the successful completion of program requirements pursuant to rule 261—48.10(15) is eligible to receive the tax incentives described in subrules 48.11(2) and 48.11(3).

48.11(2) Sales tax refunds. A housing business may claim a refund of the sales and use taxes paid under Iowa Code chapter 423 that are directly related to a disaster recovery housing project. The refund available pursuant to this subrule shall be as provided in Iowa Code section 15.331A to the extent applicable for purposes of the disaster recovery housing program.

48.11(3) Income tax credits.

a. For a disaster recovery housing project, a housing business may claim a tax credit in an amount not to exceed 20 percent of the qualifying new investment of a disaster recovery housing project.

b. The tax credit shall be allowed against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329.

c. An individual may claim a tax credit under this subrule of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.

d. Any tax credit in excess of the taxpayer's liability for the tax year is not refundable but may be credited to the tax liability for the following five years or until depleted, whichever is earlier.

e. (1) To claim a tax credit under this subrule, a taxpayer shall include one or more tax credit certificates with the taxpayer's tax return.

(2) The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of the credit, the name of the eligible housing business, any other information required by the department of revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred.

(3) The tax credit certificate, unless rescinded by the authority, shall be accepted by the department of revenue as payment for taxes imposed pursuant to Iowa Code chapter 422, divisions II, III, and V, and to Iowa Code chapter 432, and against the moneys and credits tax imposed pursuant to Iowa Code section 533.329, subject to any conditions or restrictions placed by the authority upon the face of the tax credit certificate and subject to the limitations of this program.

(4) A tax credit certificate issued under an agreement entered into pursuant to subrule 48.10(3) may be transferred to any person. Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number, and address; the denomination that each replacement tax credit certificate is to carry; and any other information required by the department of revenue. Tax credit certificate amounts of less than \$1,000 shall not be transferable.

(5) Within 30 days of receiving the transferred tax credit certificate and the transferee's statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared on the transferred tax credit certificate.

(6) A tax credit shall not be claimed by a transferee under this rule until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred against the taxes imposed pursuant to Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329, for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under Iowa

Code chapter 422, divisions II, III, and V. Any consideration paid for the transfer of the tax credit shall not be deducted from income under Iowa Code chapter 422, divisions II, III, and V.

f. For purposes of individual and corporate income taxes and the franchise tax, the increase in the basis of the property that would otherwise result from the qualifying new investment shall be reduced by the amount of the tax credit described under this subrule.

261—48.12(15) Program funding allocation and management of excess demand.

48.12(1) The authority shall allocate \$10 million to disaster recovery housing tax incentives pursuant to rules 261—48.9(15) to 261—48.13(15). In allocating tax credits pursuant to Iowa Code section 15.119(5), as enacted by 2019 Iowa Acts, House File 772, for the period beginning July 1, 2019, and ending June 30, 2024, the authority shall not allocate more than \$10 million for purposes of Iowa Code section 15.119(5).

48.12(2) The authority shall issue tax incentives under the program for disaster recovery housing projects on a first-come, first-served basis until the maximum amount of tax incentives allocated under Iowa Code section 15.119(5) is reached.

48.12(3) The authority will administer a wait list for disaster recovery housing projects in accordance with Iowa Code section 15.354(6) “*d.*”

261—48.13(15) Application submittal and review process.

48.13(1) The authority will develop a standardized application and make the application available to eligible housing businesses and to communities. To apply for assistance under the disaster recovery housing program, an interested person shall submit an application to the authority. Applications must be submitted online at www.iowagrants.gov. Instructions for application submission may be obtained at www.iowagrants.gov or by contacting the Community Development Division, Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309.

48.13(2) The authority has final decision-making authority on requests for financial assistance for the disaster recovery housing program. Applications will be reviewed and scored by the staff of the authority. The director or the director’s designee will make final funding decisions after considering the recommendations of staff. The director may approve, defer or deny an application.

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