# IOWA FINANCE AUTHORITY[265]

[Prior to 7/26/85, Housing Finance Authority[495]]
[Prior to 4/3/91, Iowa Finance Authority[524]]

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# CHAPTER 1
# GENERAL

**265—1.1(16) Purpose.** This chapter describes the mission, organization, programs and operations of the Iowa finance authority (authority), including the office where and the means by which interested persons may obtain information and make submissions or requests.

**265—1.2(16) Mission.** The authority was established in 1975 pursuant to Iowa Code chapter 16. The mission of the authority is to finance, administer, advance and preserve affordable housing and to promote community and economic development for Iowans.

**265—1.3(16) Organization, programs and operations.**

**1.3(1)** *Location.* The main office of the authority is located at 2015 Grand Avenue, Des Moines, Iowa 50312. Office hours for the authority are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

The title guaranty division (division) of the authority is located at 2015 Grand Avenue, Des Moines, Iowa 50312. Office hours for the division are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Additional information concerning the division can be found in Chapter 9 of the authority's administrative rules (265—Chapter 9).

The authority's Web site address is www.iowafinanceauthority.gov, and its telephone and facsimile numbers are: (515)725-4900 (general); 1-800-432-7230 (toll-free); 1-800-618-4718 (TTY); and (515)725-4901 (facsimile).

**1.3(2)** *Authority board and staff.* The powers of the authority are vested in and exercised by a board of nine members, appointed by the governor and subject to confirmation by the senate. A chairperson, vice-chairperson and treasurer are elected annually by the members, generally at the July board meeting each year. Authority staff consists of an executive director, also appointed by the governor and subject to confirmation by the senate, and additional staff as approved by the executive director.

**1.3(3)** *Meetings.* Regular meetings of the authority shall be held on the first Wednesday of each month, unless another time of meeting is designated by the authority. Meetings may also be held at the call of the chairperson or whenever two members so request. The purposes of such meetings shall be to review progress in implementation and administration of authority programs, to consider and act upon proposals for authority assistance, to establish policy as needed, and to take other actions as necessary and appropriate. The authority will give advance public notice of the specific date, time and place of each authority meeting, and will post the tentative agenda for each meeting at the main office of the authority, as well as on the authority's Web site, at least 24 hours before commencement of the meeting. Meetings may occasionally be conducted by electronic means. Any interested party may attend and observe board meetings except for any portion of a meeting that may be closed pursuant to Iowa Code section 21.5. Minutes of meetings are available for viewing at the authority's offices or via the authority's Web site. Five members of the board constitute a quorum and the affirmative vote of a majority of the appointed board members is necessary for any substantive action taken by the authority. The majority shall not include any member who has a conflict of interest, and a statement of a conflict of interest shall be conclusive for this purpose.

**1.3(4)** *Programs of the authority.* The authority's program subdivisions include: housing, economic development, state revolving fund, and title guaranty division. The authority operates the following programs, among others (this list is not exhaustive), under these subdivisions:

*a.* Housing: FirstHome, FirstHome Plus, Housing Assistance Fund, Iowa Housing Assistance Program, Low-Income Housing Tax Credits, Mortgage Credit Certificates (MCCs), Multifamily Preservation Loans, State Housing Trust Fund and Section 8 Contract Administration.

*b.* Economic development: Main Street Revitalization Loans, Economic Development Loans and Private Activity Bond Cap Allocation.

*c.* State revolving fund: Iowa Water Pollution Control and Drinking Water Facilities Financing Program.

*d.* Title guaranty division: Issuance of Title Guaranty Certificates.

**1.3(5)** *Administration of programs.* The authority may adopt manuals, instructions or other statements as necessary to assist its employees in administering its programs and to permit persons and organizations to participate in such programs. Copies of all such manuals, instructions and other statements shall be kept in the authority's offices and are available for public inspection unless excepted under applicable law.

**265—1.4(16) Location where the public may submit requests or obtain information.** Requests for assistance, information, inquiries, submissions, petitions and other requests may be directed to the authority at the address set forth in subrule 1.3(1). Requests may be made personally or by telephone, mail, E-mail or any other medium available.

**265—1.5(16) Forms.** The executive director shall prepare and, as needed, revise and amend such forms as necessary for administration of authority programs. The number and type of forms shall be sufficient to safeguard the interests of the authority. The authority shall annually assess the effectiveness of its administrative procedures, including all forms, and make any modifications which, in the judgment of the authority, are necessary or would facilitate efficient authority operations.

These rules are intended to implement Iowa Code sections 17A.3(1) and 16.5(17).

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# CHAPTER 2
# LOAN PROGRAMS

## GENERAL PROVISIONS

**265—2.1(16) Administrative agents.** The authority may contract with an administrative agent or agents to provide origination and servicing of mortgage and temporary loans on behalf of the authority, and to provide a level of services on behalf of the authority as it would customarily provide on mortgage or temporary loans made of its own account.

This rule is intended to implement Iowa Code sections 16.5(5), 16.5(14), 16.12(3).

## TERMS AND CONDITIONS

**265—2.2(16) Interest and fees.** The authority may establish fees for its services and shall establish interest on all loans. Such fees and interest shall be based on its estimate of interest cost on its bonds and notes, administrative costs, and reserve requirements.

This rule is intended to implement Iowa Code sections 16.12(4), 16.14(4), 16.5(15).

**265—2.3 Amortization.** Rescinded IAB 4/3/91, effective 5/8/91.

**265—2.4(16) Loan conditions.** The loan to value ratio, maximum loan amount, amortization period, repayment, prepayment, assumption, and assignment terms of a permanent mortgage loan shall be determined by the authority. The terms of a temporary loan, repayment thereof and of partial payment on principal thereof and partial release of security therefor upon the sale of individual housing units (when appropriate) shall also be determined by the authority. All loan conditions shall be stated in a certificate of approval issued by or on behalf of the authority.

This rule is intended to implement Iowa Code sections 16.5(9), 16.12(4), 16.18 and 16.18(2).

**265—2.5(16) Security for loans.** The authority may take security for any loan. The form of such security may include but not be limited to one or more of the following:

1. Promissory note.
2. First real estate mortgage.
3. Assignment of option.
4. Assignment of lease.
5. Lien on personal property.

This rule is intended to implement Iowa Code section 16.5(15).

**265—2.6(16) Types of loans.** The authority may make permanent mortgage loans to eligible applicants for rehabilitated, newly built or existing housing for eligible occupants. The authority may make temporary loans as follows:

1. For eligible costs associated with development activities set forth in the Iowa Code chapter 16,
2. For eligible costs associated with development of housing which, in the judgment of the authority, deals innovatively with the housing problems of eligible recipients.

This rule is intended to implement Iowa Code sections 16.12, 16.14, 16.17(3), 16.18(2), 16.20 and 16.21.

**265—2.7(16) Delinquency and foreclosure.** Before the ninetieth day following the due date of the earliest unpaid installment of an authority mortgage loan, the administrative agent shall recommend either foreclosure or other appropriate servicing action based on the particular circumstances of each mortgage. The authority, upon determination that no other course of action will cure the delinquency, may direct the administrative agent to promptly initiate foreclosure proceedings.

This rule is intended to implement Iowa Code section 16.4(1).

**265—2.8(16) Application processing.** Procedures, instructions and guidelines for receipt and processing of applications for authority mortgage loans and temporary loans, and other actions necessary or desirable for implementation and administration of the authority's programs may be established and modified from time to time by the executive director, with the approval thereof by the authority, at all times consistent with the Act and these rules.

This rule is intended to implement Iowa Code section 17A.3(1)*"b."*

**265—2.9(16) Mortgage purchase or loans to lenders for existing, newly built single-family or multifamily housing—general information.** For the purpose of providing permanent mortgage loans for purchase or refinance of existing or newly built single-family or multifamily housing, the authority may provide loan funds to a mortgage lender either by a loan to such lender, or by authority purchase, or advance commitment to purchase a mortgage from a mortgage lender.

**2.9(1)** *Eligible recipients.* Families who are of low and moderate income.

**2.9(2)** *Applicability to authority programs.* The authority may, by means of a loan to a mortgage lender, or purchase of a mortgage from a mortgage lender, provide permanent mortgage loans for special needs housing, area preservation, or refinance of Iowa homesteading loans.

**2.9(3)** *Application procedure for mortgage lenders.* Specific instructions concerning application procedures will be contained in the authority's processing procedures, instructions and guidelines promulgated pursuant to 2.8(16).

**2.9(4)** *Allocation of bond proceeds among mortgage lenders.* The authority may allocate bond proceeds in principal amounts and at rates of interest among mortgage lenders on the basis of the total amount of funds available, the amount of funds and interest specified in the individual request of each mortgage lender, and the ability in the judgment of the authority, of each mortgage lender to fully utilize the funds for the purposes intended.

**2.9(5)** *Discount of authority loans.* In order to attain consistency between interest on authority obligations and on authority loans to lenders or mortgages purchased, the authority may, by means of discount of loan principal or mortgage purchase price, adjust the effective yield of such loans or mortgages purchased.

**2.9(6)** *Procedures for commitment and disbursement by mortgage lenders with respect to new mortgage loans as a result of an authority loan or mortgage purchase.* Specific instructions concerning procedures for commitment and disbursement by mortgage lenders will be contained in the authority's processing procedures, instructions and guidelines promulgated pursuant to 2.8(16).

This rule is intended to implement Iowa Code sections 16.20 to 16.22.

**265—2.10(16) Assumption of mortgages.** Where such permission is required or contemplated by the mortgage documents, the Iowa finance authority will grant written permission for a subsequent buyer of a home financed by an IFA mortgage to assume the outstanding mortgage loan if all of the conditions established in these rules are met.

**2.10(1)** *Eligible assumptions.* The buyer or buyers meet all of the requirements of an eligible mortgagor under IFA guidelines relating to mortgages issued under a particular series of bonds except that no income restrictions shall apply.

**2.10(2)** *Rate of prepayments.* The prepayments received by the Iowa finance authority for a given series of mortgages must equal or exceed the rate of prepayments that was anticipated in structuring the principal repayment dates and amounts for that series of bonds.

This rule is intended to implement Iowa Code sections 16.22 and 16.38.

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# CHAPTER 3
# MULTIFAMILY HOUSING

## DIVISION I
## MULTIFAMILY LOAN PROGRAM

**265—3.1(16) Purpose.** Through its multifamily loan program (program), the authority seeks to preserve the existing supply of affordable rental units at risk of being lost and to foster the production of new affordable rental units in the state.

**265—3.2(16) Available funds.** The authority anticipates that it will, from time to time, publicize the approximate amount of funds available under this program on the authority's Web site at www.iowafinanceauthority.gov.

**265—3.3(16) Intent of the authority.** It is the authority's intent to allow maximum discretion and flexibility to be used by those applying for assistance under this program, and to allow discretion and flexibility to be used by the authority in its analysis and awarding of loans and grants under this program. It is the position of the authority that such discretion and flexibility are essential to structuring transactions that will work to foster affordable housing in the state in a manner that best serves the citizens of the state.

**265—3.4(16) Application procedure.** Applications for assistance under this program must be made on forms and in the manner provided by the authority. Inquiries with respect to this program should be made to those persons identified on the authority's Web site as contacts for this program. Once contacted with an inquiry, the authority will send an application package to the potential applicant. The authority will take such applications from time to time and will analyze and award loans to applicants on an ongoing basis. It is the position of the authority that such flexibility in taking and reviewing applications and making awards will best serve to foster affordable housing in the state.

**265—3.5(16) Program guidelines.** For-profit and nonprofit sponsors are eligible to apply for assistance under this program. There are three categories of loans under this program: preservation of affordable housing, low-income housing tax credits, and substantial rehabilitation of nonrestricted projects.

**3.5(1)** Projects eligible for assistance must meet the following criteria, in addition to any specific requirements applicable to a particular category of loan as set forth in rule 265—3.6(16), 265—3.7(16), 265—3.8(16), or 265—3.9(16), as applicable:

*a.* Both a demonstrated market need for the units must exist and the project must be in a good location, as determined by the authority in its sole discretion.

*b.* Assistance provided under this program must enable the project to maintain financial feasibility and affordability for at least the term of the assistance.

*c.* Maintenance and debt service reserve funds must be adequately funded, as determined by the authority in its sole discretion.

*d.* The maximum loan term is 24 months for construction financing and 40 years for permanent financing.

*e.* The required debt service is 1.25 to 1. Loan-to-value ratio will be considered. The authority may, in limited cases, change the required debt service ratio. Such decision will be made in the sole discretion of the authority.

*f.* Interest rates will be set by the authority, in its sole discretion.

*g.* Except as permitted in the case of loans made pursuant to rule 265—3.8(16), loans shall be secured by a first mortgage; provided, however, that in limited cases the authority may consider a subordinate mortgage when the first mortgage is held by another entity.

*h.* Construction financing may be awarded to projects under the program.

*i.* Borrowers must covenant to observe certain compliance measures, including a recorded agreement to ensure long-term affordability.

*j.* A title guaranty certificate from the authority's title guaranty division is required on all loans, unless specifically waived by the authority.

*k.* A local contributing effort in an amount of up to 1 percent of the proposed loan may be required by the authority, if feasible, for loans made under division I of this chapter. If a local contributing effort is required, evidence of such local contributing effort shall be presented to the authority.

*l.* The authority may require a change of management or general partner and may refer applicants to other financing options, such as tax-exempt bonds or tax credits, when appropriate.

*m.* FHA-insured loans may be available through the Multifamily Accelerated Processing (MAP) of HUD, if the authority is an approved MAP lender at the time of the loan closing. The authority may require or suggest such a MAP loan for any and all projects applying for assistance. In addition, the authority may participate in the HUD Risk-Sharing Program and may suggest or require such a loan for any and all projects applying for assistance.

*n.* Grant funds may be available, in the sole discretion of the authority, if the authority determines that such funds are necessary for the continued financial viability of the project.

*o.* Recipients must execute such documents and instruments, and must provide such information, certificates and other items as determined necessary by the authority, in its sole discretion, in connection with any assistance.

**3.5(2)** Loan fees are as follows:

*a.* Commitment fee (construction period) - 1.0 percent of total development costs.

*b.* Commitment fee (permanent loan) - 2.0 percent of loan amount.

*c.* Inspection fee - 0.5 percent of loan amount.

*d.* Application fee - 0.3 percent of proposed loan amount.

The authority may, in limited cases, reduce such fees if necessary in connection with assistance provided under this program. Such decision will be made in the sole discretion of the authority.

[**ARC 8078B**, IAB 8/26/09, effective 8/7/09; **ARC 8789B**, IAB 6/2/10, effective 5/12/10; **ARC 9028B**, IAB 8/25/10, effective 9/29/10]

**265—3.6(16) Multifamily loan program for preservation of affordable housing.** Projects eligible for loans under this category must satisfy the following conditions, in addition to (or instead of, if there is a conflict) the requirements of rule 265—3.5(16):

1. Projects must have been developed using at least one of the following: low-income housing tax credits (LIHTC); state or local HOME funding; tax-exempt bonds; a HUD or USDA Rural Development program (i.e., Section 515); authority HAF funds; or funds of the former Iowa housing corporation (IHC).

2. Units must at a minimum be affordable to tenants with incomes at or below 80 percent of area median income (AMI), and, in most cases, must be affordable to tenants with incomes at or below 50 percent AMI. Mixed income projects will be considered.

3. Projects must have at least five units.

**265—3.7(16) Multifamily loan program for low-income housing tax credits.** Projects allocated either 4 percent or 9 percent tax credits that have not yet started construction or have not obtained permanent financing are eligible for loans under this category.

**265—3.8(16) Multifamily loan program for workforce housing loan assistance.** Projects eligible for loans under this category must satisfy the following conditions, in addition to (or instead of, if there is a conflict) the requirements of rule 265—3.5(16):

**3.8(1)** A loan made under this category (the "primary loan") shall be made to an Iowa city or county for the purpose of being reloaned by the borrower in order to provide financial assistance to an identified project to rehabilitate or create new rental workforce or affordable multifamily housing within the borrower's jurisdiction (the "secondary loan"). The authority may restrict the use of funds to a designated portion of the borrower's jurisdiction.

**3.8(2)** At least 50 percent of the housing units rehabilitated or created with the proceeds of the secondary loan shall be restricted to families whose annual income at the time of leasing is at or below 120 percent of the area median income, unless the authority agrees otherwise.

**3.8(3)** The primary loan may be unsecured, but it shall constitute a general obligation of the borrower.

**3.8(4)** Preference under this category shall be given to cities and counties that can document an increased need for housing as the result of new job creation within their jurisdiction.

**3.8(5)** The borrower shall use funds received in repayment of the secondary loan first to make the scheduled principal and interest payments on the primary loan. Any secondary loan payments remaining after all then-due scheduled payments on the primary loan have been repaid may be reloaned by the borrower on the same basis as if such secondary loan payment amounts were proceeds of the primary loan.

[**ARC 8789B**, IAB 6/2/10, effective 5/12/10; **ARC 9028B**, IAB 8/25/10, effective 9/29/10]

**265—3.9(16) Multifamily loan program for substantial rehabilitation of nonrestricted projects.** Projects eligible for loans under this category must satisfy the following conditions, in addition to (or instead of, if there is a conflict) the requirements of rule 265—3.5(16):

1. Projects that currently have no affordability restrictions (e.g., Section 8 project based, USDA 515, LIHTC) are eligible for assistance.
2. Projects must need and sponsors must agree to complete rehabilitation of at least $6,000 per unit in hard construction costs.
3. Sponsors must agree that at least 40 percent of the units shall have rents at or below the applicable area FMR (fair market rents as determined by HUD).
4. Projects must have at least five units.

[**ARC 8789B**, IAB 6/2/10, effective 5/12/10; **ARC 9028B**, IAB 8/25/10, effective 9/29/10]

**265—3.10(16) Authority analysis of applications.** Authority staff will analyze and underwrite each potential project, and will make recommendations for funding assistance to the board of the authority. Authority staff will use such procedures and processes in its underwriting and analysis as it deems necessary and appropriate in connection with furthering the purposes of this program. In addition, the authority anticipates that because of the complex nature of each transaction, and the particular sets of circumstances attributable to each particular application/transaction, that the terms and conditions of loans will vary from project to project. The authority will make available its general operating procedures and guidelines for this program, as such may be revised from time to time.

[**ARC 8789B**, IAB 6/2/10, effective 5/12/10; **ARC 9028B**, IAB 8/25/10, effective 9/29/10]

**265—3.11(16) Discretion of authority board.** The authority board of directors has the sole and final discretion to award or not award assistance and to approve final loan terms.

[**ARC 8789B**, IAB 6/2/10, effective 5/12/10; **ARC 9028B**, IAB 8/25/10, effective 9/29/10]

**265—3.12(16) Closing/advance of funds.** If all requirements of the authority are not met in accordance with any time frames set by the authority and to the complete satisfaction of the authority, all in the sole discretion of the authority, the authority may determine to cease work on an approved project and to, accordingly, not advance any funds for such project.

[**ARC 8789B**, IAB 6/2/10, effective 5/12/10; **ARC 9028B**, IAB 8/25/10, effective 9/29/10]

**265—3.13** to **3.19** Reserved.

DIVISION II
PREDEVELOPMENT LOAN FUND

**265—3.20(16) Purpose.** Through its predevelopment loan fund (fund), the authority seeks to expand the ability of organizations to utilize the authority's multifamily loan program (program) by offering low-cost predevelopment loans for which reasonable financing through traditional lenders or other government financing is not readily available.

**265—3.21(16) Available funds.** The authority will publicize the approximate amount of funds available under this fund on the authority's Web site at www.iowafinanceauthority.gov.

**265—3.22(16) Intent of the authority.** It is the authority's intent to allow maximum discretion and flexibility to be used by those applying for assistance under this fund, and to allow discretion and flexibility to be used by the authority in its analysis and awarding of loans under this fund.

**265—3.23(16) Application procedure.** Applications for assistance under this fund must be made on forms and in the manner provided by the authority. Inquiries with respect to this fund should be made to those persons identified on the authority's Web site as contacts for the program and the fund. Once contacted with an inquiry, the authority will send an application package to the potential applicant. The authority will take such applications from time to time and will analyze and award loans to applicants on an ongoing basis. It is the position of the authority that such flexibility in taking and reviewing applications and making awards will best serve to foster affordable housing in the state.

**265—3.24(16) Fund guidelines.** Any sponsor is eligible to apply for assistance from the fund relating to a specific project provided that the sponsor applies for a multifamily loan under the program for the same project.

**3.24(1)** Loans may be made to sponsors only with respect to projects that meet the criteria detailed in subrule 3.5(1).

**3.24(2)** The following types of activities and costs, to the extent approved by the authority, are eligible for assistance: architect services, engineering services, attorney's fees, accounting fees, environmental consultants and reports, finance and development consultants, tax credit consultants, market studies, survey fees, appraisal costs, and such other similar activities as may be determined by the authority from time to time to fall within the guidelines and purposes established for loans under the fund.

**3.24(3)** Assistance will be provided upon the following terms and conditions:

*a.* Generally, the minimum loan amount is $2,500, and the maximum loan amount is $25,000.

*b.* The loan will be due on the earlier of (1) 12 months from the date it is issued or (2) the closing of the authority's first mortgage loan for the project under the program. The authority may extend the loan term as it deems necessary.

*c.* Principal and interest payments will be due at loan maturity and may be paid from the proceeds of a loan under the program.

*d.* Interest rates will be set by the authority, in its sole discretion.

*e.* Recipients must execute such documents and instruments, and must provide such information, certificates and other items, as determined necessary by the authority, in its sole discretion, in connection with any assistance.

**265—3.25(16) Authority analysis of applications.** Authority staff will analyze each potential loan and will make recommendations for funding assistance to the board of directors of the authority. Authority staff will use such procedures and processes in its underwriting and analysis as it deems necessary and appropriate in connection with furthering the purposes of this fund.

**265—3.26(16) Discretion of authority board.** The authority's board of directors has the sole and final discretion to award or not award assistance and to approve final loan terms.

**265—3.27(16) Closing/advance of funds.** If all requirements of the authority are not met in accordance with any time frames set by the authority and to the complete satisfaction of the authority, all in the sole discretion of the authority, the authority may determine to cease work on an approved project and to, accordingly, not advance any funds for such project.

**265—3.28** to **3.30** Reserved.

DIVISION III
GAP FINANCING FUND

**265—3.31(16) Purpose.** Through its gap financing fund (gap fund), the authority seeks to expand the ability of organizations to utilize the authority's multifamily loan program (program) by offering low-cost gap loans for which reasonable financing through traditional lenders or other government financing is not readily available.

**265—3.32(16) Intent of the authority.** It is the authority's intent to allow maximum discretion and flexibility to be used by those applying for assistance under this gap fund, and to allow discretion and flexibility to be used by the authority in its analysis and awarding of loans under this gap fund.

**265—3.33(16) Application procedure.** Applications for assistance under this gap fund must be made on forms and in the manner provided by the authority. The authority will take such applications from time to time and will analyze and award loans to applicants on an ongoing basis. It is the position of the authority that such flexibility in taking and reviewing applications and making awards will best serve affordable housing in the state.

**265—3.34(16) Fund guidelines.** Any sponsor is eligible to apply for assistance from the gap fund relating to a specific project provided that the sponsor applies for a multifamily loan under the program for the same project.

**3.34(1)** Loans may be made to sponsors only with respect to projects that meet the criteria detailed in subrule 3.5(1).

**3.34(2)** The following types of activities and costs, to the extent approved by the authority, are eligible for assistance: acquisition costs, operating and replacement reserves, insurance, closing costs, and such other similar activities as may be determined by the authority to fall within the guidelines and purposes established for loans under the gap fund.

**3.34(3)** Assistance will be provided upon the following terms and conditions:

*a.* The maximum loan amount cannot exceed 50 percent of the authority's first mortgage loan and second mortgage loan, if any, under the program.

*b.* The loan term shall not exceed 40 years.

*c.* Principal and interest payments shall be due monthly.

*d.* Interest rates will be set by the authority, in its sole discretion, as close to market as the financial capacity of the project will allow.

*e.* Loans shall be secured by a subordinate mortgage.

*f.* Recipients must execute such documents and instruments, and must provide such information, certificates and other items as determined necessary by the authority, in its sole discretion, in connection with any assistance.

**3.34(4)** Loan fees are as follows:

*a.* Commitment fee - 1.0 percent of loan amount.

*b.* Origination fee - 2.0 percent of loan amount.

*c.* Inspection fee - 0.5 percent of loan amount.

*d.* Application fee - 0.3 percent of proposed loan amount.

The authority may, in limited cases, reduce such fees if necessary in connection with assistance provided under this program. Such decision will be made in the sole discretion of the authority.

**265—3.35(16) Authority analysis of applications.** Authority staff will analyze each potential loan and will make recommendations for funding assistance to the board of directors of the authority. Authority staff will use such procedures and processes in its underwriting and analysis as it deems necessary and appropriate in connection with furthering the purposes of this gap fund.

**265—3.36(16) Discretion of authority board.** The authority board of directors has the sole and final discretion to award or not award assistance and to approve final loan terms.

**265—3.37(16) Closing/advance of funds.** If all requirements of the authority are not met in accordance with any time frames set by the authority and to the complete satisfaction of the authority, all in the sole discretion of the authority, the authority may determine to cease work on an approved project and accordingly, not advance any funds for such project.

**265—3.38** to **3.40** Reserved.

These rules are intended to implement Iowa Code sections 16.5(17), 16.18(1) and 16.18(2).

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# CHAPTER 4
# GENERAL REVENUE BOND PROCEDURES

**265—4.1(16) Revenue bonds authorized.** The authority may issue revenue bonds for any of the purposes for which financing is authorized under Iowa Code chapter 16. Revenue bonds are limited obligations of the authority, and principal and interest thereon shall be payable solely out of the revenues derived from the loan to the borrower financed by the bond and the underlying collateral or other security furnished by or on behalf of the borrower. The principal and interest on the bond does not constitute an indebtedness of the authority nor a charge against its general credit or general fund. The lender acquiring the bond shall have no other recourse against the authority.

**265—4.2(16) Participating lenders.** The authority will disseminate a summary of the programs for which revenue bond financing is authorized to mortgage lenders located within Iowa. Any mortgage lender as defined in Iowa Code section 16.1 may apply to become a participating lender in an authority program providing financing through revenue bonds by submitting a signed letter of interest in a form prescribed by the authority to the authority. A letter of interest may be submitted at any time and upon approval by the authority the participating lender shall be obligated to abide by applicable program guidelines. At its regular monthly meetings, the authority will review letters of interest received since the last board meeting and approve letters of interest from qualified mortgage lenders. After approval, the lenders shall be considered IFA revenue bond participating lenders.

**265—4.3(16) Procedures for project sponsors.** Applications for revenue bond financing may be made with any IFA revenue bond participating lender in the same lending area as the project to be financed. The project sponsor shall provide the lender with information books, records, etc., as the lender may consider to be reasonably necessary to evaluate or underwrite the risk.

A project sponsor must meet the eligibility requirements established for a particular type of revenue bond financing, by applicable state law and the rules of the authority. If the eligibility requirements are met, the participating lender may nonetheless deny a loan, subject to all reporting and disclosure requirements of applicable state and federal law, for any reason premised on sound lending practice, including underwriting or risk evaluation, portfolio diversification, limitations or restrictions on investments or available funds, and the lender's degree of need for tax-exempt earnings. Any loan that is approved will be assigned to the participating lender.

If the loan is approved, the terms of the loan, including interest rate, length of loan, down payment, fees, origination charge and repayment schedule, shall not be any greater than those available to similar customers after taking into account the tax-exempt nature of interest on the bonds.

**265—4.4(16) Authority review.** The completed and approved loan application shall be submitted to the authority for its review and approval. The authority's review will include, though not be limited to, consideration of whether (1) the project sponsor is qualified for the type of loan it is seeking; (2) the loan proceeds will be used for a qualified purpose under the Iowa Code and the rules of the authority, and under the U.S. Internal Revenue Code and IRS regulations relating to industrial development bonds; and (3) the terms of the loan comply with these rules.

The authority may charge reasonable and necessary fees as needed to defray its costs for processing the loan and bond.

Following such review, the authority shall either approve or deny each specific revenue bond proposal. If the proposal is approved, the authority shall issue a bond for that proposal, and shall enter into a loan agreement with the project sponsor. The authority shall then assign the loan without recourse to the participating lender.

**265—4.5(16) Public hearing and approval.** In all cases where a public hearing, and the approval of an elected state official is required under the United States Internal Revenue Code and the regulations promulgated pursuant thereto, before the issuance of a tax-exempt bond by the authority, the following procedures apply.

**4.5(1)** *Public hearing.* After January 1, 1983, the authority will not issue a bond for a specific project unless, prior to issuance, the authority has conducted a public hearing conforming to the applicable requirements of the United States Internal Revenue Code and the regulations promulgated thereunder. The hearing shall be preceded by a notice thereof published at least 14 days prior to the date of the hearing in a newspaper of general circulation in the county where the project is located. The notice shall include but not be limited to the date, time and place of the hearing, the name of the project sponsor, and a general description of the project.

The hearing shall be held at the authority's office in Des Moines, or other location stated in the notice, unless at or prior to the time scheduled for the hearing, the authority receives a written request that a local hearing be held. In the event a local hearing is requested, the previously scheduled hearing shall be canceled, and notice of a hearing in the local area shall be published in the time and manner stated above. The local hearing shall be held at the date, time and place specified in the new notice, which time and place shall be reasonably convenient to persons affected by the project.

The public hearing may be held by a staff member or board member of the authority or a hearing officer of another state agency working under an agreement with the authority.

**4.5(2)** *Approval of elected official.* After January 1, 1983, the authority will not issue a bond for a specific project unless, prior to issuance, the governor or another elected official of the state designated by the governor, shall approve the issuance of a bond. Following the public hearing opportunity referred to in subrule 4.5(1), the authority shall prepare and send to the governor's office, or the office of an elected official of the state designated by the governor, a statement describing each bond or series of bonds which it proposes to issue, along with a summary of the public comments received with respect thereto, if any.

This rule is intended to implement Iowa Code chapter 16 and Section 103(k), United States Internal Revenue Code and regulations promulgated thereunder.

**265—4.6(16) Procedures following bond issuance.** No bond proceeds may be used by a nonqualified user nor for a nonqualified purpose. Following disbursement of the bond proceeds, the participating lender and project sponsor shall certify to the authority that the proceeds were used by a qualified project sponsor for a qualified purpose.

**4.6(1)** *Assumption of loans, substitution of collateral and transfer of property.* Loans may not be assumed without the prior approval of the authority and then only if the purchaser of the property is an eligible project sponsor for IFA revenue bond financing. In any situation where collateral is substituted, or property transferred other than a sale of the entire operation financed by IFA revenue bonds, the benefits of the loan deriving from the tax-exempt rate of interest on the bonds must remain with the operation financed by the revenue bonds, and no transferee may thereby obtain the benefits of the IFA loan.

**4.6(2)** Reserved.

**265—4.7(16) Right to audit.** The authority shall have at all times the right to audit the records of the participating lender and the operation financed by IFA revenue bonds relating to the loan and bond to ensure that bond proceeds were used by a qualified user and for a qualified purpose. The authority or a designee acting under instructions of the authority may exercise this right.

These rules are intended to implement Iowa Code chapter 16.

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# CHAPTER 5
# SMALL BUSINESS LOAN PROGRAM

## PART I
## GENERAL

**265—5.1(16) Program description.** This program is intended to allow qualified small businesses to obtain loans at below market interest rates for qualified purposes through tax-exempt financing. Loans will be available from a participating lender under the IFA small business loan program. Project sponsors shall apply directly to the participating lenders, who shall make credit and risk evaluations and otherwise make the decision, based on sound lending practices, whether or not to extend credit to the project sponsor.

After the decision to extend credit has been made by the participating lender, the authority will contemporaneously enter into a loan agreement with the project sponsor and will issue a small business development revenue bond, the interest on which is exempt from federal income taxation, in the amount of the loan. The authority will assign the loan to the participating lender, and the lender will purchase that bond. The proceeds will be used to fund the loan assigned to the lender.

Under the IFA revenue bond procedures, the bond which is issued by the authority and purchased by the mortgage-lender is a nonrecourse obligation. The only security for the lender is the underlying security on the assigned loan.

**265—5.2(16) Waiver.** The authority may by resolution waive or vary particular provisions of these rules to conform to requirements of the federal government in connection with a small business loan with respect to which federal assistance, insurance or guaranty is sought, provided the waiver does not conflict with Iowa Code chapter 16.

**265—5.3(16) Urban revitalization.** To assist in improving the economy of areas which have been designated as a revitalization area under state law, applications for businesses located or to be located in such areas may be given priority by the authority. A minimum of 10 percent of the bonding authority authorized by the legislature for use on small business loans shall be reserved for use and application in those areas of the state designated as urban revitalization areas.

**265—5.4** to **5.9** Reserved.

## PART II
## DEFINITIONS

**265—5.10(16) Definitions.** As used in connection with the small business loan program, the following terms have the meanings indicated.

**5.10(1)** *"Annual gross revenues"* means total sales, before deducting returns and allowances but after deducting corrections and trade discounts, sales taxes and excise taxes based on sales, as determined in accordance with Generally Accepted Accounting Principles.

**5.10(2)** *"Application"* means those documents required by the participating lender and the authority, which shall include all of the information required by rule 5.20(16).

**5.10(3)** *"Time of application"* means the date by which a participating lender has received an application from a project sponsor.

**5.10(4)** *"Eligible project sponsor"* means a small business as defined in Iowa Code section 16.1(28).

**5.10(5)** *"Operation of a farm"* means the same as "farming" as defined in Iowa Code section 172C.1, subsection 6.

**5.10(6)** *"Profession"* means those old historically recognized vocations of law and medicine.

**5.10(7)** *"Participating lender"* means a mortgage lender as defined in Iowa Code section 16.1 that has submitted a letter of interest to the authority which has been approved by the board of the authority.

**5.10(8)** *"Full-time equivalent position"* means any of the following:

*a.* An employment position requiring an average work week of 40 or more hours;

*b.* An employment position for which compensation is paid on a salaried full-time basis without regard to the hours worked; or

*c.* An aggregation of any number of part-time positions which equal one full-time position. For purposes of this subrule each part-time position shall be categorized with regard to the average number of hours required per week as a one-quarter, half, three-quarter, or full-time position, as shown in the following table:

| Average Number of Weekly Hours | Category |
|---|---|
| More than 0 but less than 15 | 1/4 |
| 15 or more but less than 25 | 1/2 |
| 25 or more but less than 35 | 3/4 |
| 35 or more | 1 (full time) |

**265—5.11** to **5.19** Reserved.

PART III
LOAN CRITERIA AND DOCUMENTATION

**265—5.20(16) Application.** Eligible project sponsors for small business loans shall apply directly to participating lenders in the IFA small business loan program in accordance with the procedures in Chapter 4 of these rules.

**265—5.21(16) Public benefit.** Before approving a small business development revenue bond issue for any project sponsor, the authority must find that the proposed project will result in one or more of the following:

1. Creation of jobs in Iowa;
2. Increased revenues for the borrower from a more modern or expanded facility located in Iowa;
3. Providing a service facility needed in the Iowa community where the project will be located.

**265—5.22(16) Loan criteria.**

**5.22(1)** *Evaluation.* The participating lender shall evaluate each application for a small business loan to assure that the following criteria are met:

*a.* The project sponsor shall show evidence that it is able to operate the business successfully. This shall include an overall business management plan including, but not limited to, the following:

1. A generalized projection of revenues and expenditures for the three-year period beginning the month of anticipated loan closing;
2. Capital formation plans, if any, other than from the small business loan program;
3. To the extent possible, identification and analysis of risks;
4. Plans for record keeping, personnel and financial management;
5. Plans for marketing.

*b.* The project sponsor shall have enough capital in the business so that, with assistance from the small business loan program, the project sponsor will be able to operate the business on a financially sound basis. The project sponsor shall provide the participating lender access to its financial records including, but not limited to, information concerning the identity of all persons having an ownership interest in the small business, its capital structure, and its present and projected debt structure.

*c.* The loan shall be so secured or of sound value as to reasonably assure repayment. The participating lender may require any collateral, security or mortgage documents or other filings or protection as are reasonably necessary to assure security.

*d.* The business's past earnings record and future prospects shall indicate an ability to repay the loan out of income from the business. The project sponsor shall provide a summary of past earnings

and future earnings prospects for the business, and allow the participating lender reasonable access to its books and records.

**5.22(2)** *Small business qualifications.* For the purpose of meeting the employment position test of Iowa Code chapter 16, a project sponsor, to be an eligible project sponsor, shall not have had more than 20 full-time positions during each of the 26 consecutive weeks within the 52-week period immediately preceding the date on which the project sponsor files an application with the participating lender and shall not have more than 20 full-time equivalent positions on the date of application.

**5.22(3)** *Business dominant in its field of operation.* For the purposes of the employment position test and the gross revenue test of Iowa Code chapter 16, a business shall be considered dominant in its field of operation if:

*a.* It has had more than 20 full-time positions during each of 26 consecutive weeks within the 52-week period immediately preceding the date on which the project sponsor, which is an affiliate or is a subsidiary of the business to which the test is being applied, files an application with a participating lender, or has more than 20 full-time equivalent positions on the date of application; and

*b.* It has more than $3,000,000 in gross revenues as computed for the preceding fiscal year, or as the average of the three preceding fiscal years.

**5.22(4)** *Professions.* For the purpose of meeting the professional tests, to be an eligible project sponsor, the project sponsor shall not be a business more than 50 percent of which is owned, in the aggregate by professionals or professional entities which occupy or use, in the aggregate, more than 50 percent of the project. For purposes hereof, a professional entity shall be considered to be occupying or using a project to the extent that its partners, shareholders, officers or owners occupy or use such project.

This rule is intended to implement Iowa Code section 16.1(28).

**265—5.23(16) Good character.** A project sponsor must be of good character, to be determined in the following manner by the participating lender:

1. A project sponsor who has never been convicted of a felony is of good character.
2. A project sponsor who has been convicted of a felony but who has been restored to full rights of citizenship by the governor, pursuant to Iowa Code section 248.12, is of good character.
3. A project sponsor who has been convicted of a felony but who has not been restored to full rights of citizenship by the governor may be presumed to be of good character if no legal restrictions apply to the operation of the business for which they are seeking financing by a person so convicted.
4. The participating lender may inquire at appropriate local, county, state and federal law enforcement agencies in making the above determination.
5. If the good character of the project sponsor cannot be established as provided in paragraphs 1 to 3 herein, the lender shall notify the Iowa finance authority for further guidance.

These rules are intended to implement Iowa Code chapter 16.

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# CHAPTER 6
# GROUP HOME FACILITIES LOAN PROGRAM

## PART I
## GENERAL

**265—6.1(16) Program description.** This program is intended to permit the financing of group homes of 15 beds or less licensed as health care facilities under Iowa Code chapter 135C, or child foster care facilities under Iowa Code chapter 237, at below market interest rates through tax-exempt financing. Loans will be available from a participating lender under IFA General Revenue Bond Procedures. Project sponsors shall apply directly to the participating lenders who shall make credit and risk evaluations and otherwise make the decision, based on sound lending practices, whether or not to extend credit to the project sponsor.

After the decision to extend credit has been made by the participating lender, the authority will simultaneously enter into a loan agreement with the project sponsor and will issue a group home revenue bond, the interest on which is exempt from federal income taxation, in the amount of the loan. The authority will assign the loan to the participating lender, and the lender will purchase that bond. The proceeds will be used to fund the loan, which will be assigned to the lender.

Under the IFA general revenue bond procedures, the bond which is issued by the authority and purchased by the mortgage lender is a nonrecourse obligation. The only security for the lender is the underlying security on the assigned loan.

**265—6.2(16) Waiver.** The authority may by resolution waive or vary particular provisions of these rules to conform to requirements of the federal government in connection with a loan to a group home facility with respect to which federal assistance, insurance or guaranty is sought, provided such waiver does not conflict with Iowa Code chapter 16.

**265—6.3** to **6.9** Reserved.

## PART II
## DEFINITIONS

**265—6.10(16) Definitions.** As used in connection with the group home facilities loan program, the following terms have the meanings indicated:

**6.10(1)** *"Application"* means those documents required by the participating lender and the authority, which shall include all of the information required by rule 265—6.20(16).

**6.10(2)** *"Eligible project sponsor"* means a sponsor of group homes of 15 beds or less licensed as a health care facility under Iowa Code chapter 135C, or licensed as a child foster care facility under Iowa Code chapter 237.

**6.10(3)** *"Group home of 15 beds or less"* means a building, or a portion of a building, together with the necessary fixtures, equipment, staff and records, which provides meals, housing, appropriate care and supervision to 15 or fewer persons unrelated to the operators living together in a shared setting. A single project sponsor may obtain financing for more than one group home of 15 beds or less located on the same or adjoining tracts of land even if the group homes are physically connected or share common areas so long as each group home is separate and self-sufficient, and could be separately licensed if the other group homes or common areas were destroyed.

**6.10(4)** *"Participating lender"* means a mortgage lender as defined in Iowa Code section 16.1 that has submitted a letter of interest to the authority which has been approved by the board of the authority.

**265—6.11** to **6.19** Reserved.

PART III
LOAN CRITERIA AND DOCUMENTATION

**265—6.20(16) Application.** Eligible project sponsors for group home facilities loans shall apply directly to participating lenders in the group home facilities program in accordance with the procedures in Chapter 4 of Iowa finance authority rules.

**265—6.21(16) Public benefit.** Before approving a group home facility revenue bond issue for any project sponsor, the authority must find that the proposed project will result in one or more of the following:

1. The group home would be placed in an area of the state where a need exists for a facility of that type.
2. The tax-exempt bond financing will result in an interest rate paid by the facility that is significantly lower than the rate which they would pay without such financing.

**265—6.22(16) Eligibility.** To be eligible for a group home facility loan, a project sponsor must meet the following conditions:

1. Project sponsors may be individuals, partnerships, or profit making or nonprofit corporations licensed to do business in the state of Iowa.
2. The project to be built or acquired must be located within the state of Iowa.
3. The project to be built must be a group home of 15 beds or less as defined in these rules.
4. If an existing facility is being acquired by a new owner, the project must be already licensed either as a child foster care facility pursuant to Iowa Code chapter 237, or as a health care facility pursuant to Iowa Code chapter 135C. If the construction of a new facility is being financed, the project sponsor must obtain any preconstruction certifications that may be available to the effect that if the project is completed and operated in accordance with plans, that the project could be licensed. If any project fails to become licensed or loses its licensure, the authority may "call" the bond or bonds involved. Any risk associated with such an occurrence, which would destroy the favorable federal tax treatment given the project, shall be borne by the lender and the project sponsor.
5. The project sponsor must be capable of operating, maintaining and managing the group home facility.
6. The project must have a current Certificate of Need issued by the health facilities council pursuant to Iowa Code chapter 135, if to be licensed as a health care facility.

These rules are intended to implement Iowa Code chapter 16.

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# CHAPTER 7
# CONTESTED CASES

**265—7.1(17A) Scope and applicability.** This chapter applies to contested case proceedings conducted by the authority.

**265—7.2(17A) Definitions.** Except where otherwise specifically defined by law:

*"Authority"* means the Iowa finance authority, as designated in Iowa Code chapter 220.

*"Contested case"* means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

*"Executive director"* means the executive director of the authority or an authorized representative of the executive director.

*"Issuance"* means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

*"Party"* means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

*"Presiding officer"* means the board of the authority.

*"Proposed decision"* means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the entire board of the authority did not preside.

**265—7.3(17A) Time requirements.**

**7.3(1)** Time shall be computed as provided in Iowa Code subsection 4.1(34).

**7.3(2)** For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

**265—7.4(17A) Requests for contested case proceeding.** Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding from the authority within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the authority action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific authority action which is disputed and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

**265—7.5(17A) Notice of hearing.**

**7.5(1)** *Delivery.* Delivery of the notice of hearing to the person requesting a contested case constitutes the commencement of the contested case proceeding. Delivery may be executed by:

*a.* Personal service as provided in the Iowa Rules of Civil Procedure; or

*b.* Certified mail, return receipt requested; or

*c.* First-class mail; or

*d.* Publication, as provided in the Iowa Rules of Civil Procedure.

**7.5(2)** *Contents.* The notice of hearing shall contain the following information:

*a.* A statement of the time, place, and nature of the hearing;

*b.* A statement of the legal authority and jurisdiction under which the hearing is to be held;

*c.* A reference to the particular sections of the statutes and rules involved;

*d.* A short and plain statement of the matters asserted. If the authority or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

*e.* Identification of all parties including the name, address and telephone number of the person who will act as advocate for the authority or the state and of parties' counsel where known;

*f.* Reference to the procedural rules governing conduct of the contested case proceeding;

*g.* Reference to the procedural rules governing informal settlement;

*h.* Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., the board of the authority, members of the authority's board, administrative law judge from the department of inspections and appeals); and

*i.* Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1) and rule 7.6(17A), that the presiding officer be an administrative law judge.

**265—7.6(17A) Presiding officer.**

**7.6(1)** In each contested case in which Iowa Code chapter 17A requires an evidentiary hearing, the chairperson of the authority will determine whether the hearing shall be held before the authority, one or more members of the authority's board, or an administrative law judge. Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the authority's board or members of the authority's board.

**7.6(2)** The executive director may deny the request only upon a finding that one or more of the following apply:

*a.* Neither the authority nor any officer of the authority under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

*b.* There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

*c.* The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

*d.* The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

*e.* Funds are unavailable to pay the costs of an administrative law judge and an interauthority appeal.

*f.* The request was not timely filed.

*g.* The request is not consistent with a specified statute.

**7.6(3)** The executive director shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 7.6(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

**7.6(4)** An administrative law judge assigned to act as presiding officer in any of the authority's cases shall have the following technical expertness unless waived by the authority.

**7.6(5)** Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the board of the authority. A party must seek any available intra-authority appeal in order to exhaust adequate administrative remedies.

**7.6(6)** Unless otherwise provided by law, members of the authority's board, when reviewing a proposed decision upon intra-authority appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

**265—7.7(17A) Waiver of procedures.** Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the authority in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

**265—7.8(17A) Telephone or video proceedings.** The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings or interactive video proceedings, including the hearing for the contested

case proceeding, may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. The cost of the telephone hearing or an interactive video hearing may be assessed equally to each party.

**265—7.9(17A) Disqualification.**

**7.9(1)** A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

*a.* Has a personal bias or prejudice concerning a party or a representative of a party;

*b.* Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

*c.* Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

*d.* Has acted as counsel to any person who is a private party to that proceeding within the past two years;

*e.* Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

*f.* Has a spouse or relative within the third degree of relationship that:

(1) Is a party to the case, or an officer, director or trustee of a party;

(2) Is a lawyer in the case;

(3) Is known to have an interest that could be substantially affected by the outcome of the case; or

(4) Is likely to be a material witness in the case; or

*g.* Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

**7.9(2)** The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other authority functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 9, and subrules 7.9(3) and 7.23(9).

**7.9(3)** In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

**7.9(4)** If a party asserts disqualification on any appropriate ground, including those listed in subrule 7.9(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 7.25(17A) and seek a stay under rule 7.29(17A).

**265—7.10(17A) Consolidation—severance.**

**7.10(1)** *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

*a.* The matters at issue involve common parties or common questions of fact or law;

*b.* Consolidation would expedite and simplify consideration of the issues involved; and

*c.* Consolidation would not adversely affect the rights of any of the parties to those proceedings.

**7.10(2)** *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

**265—7.11(17A) Pleadings.**

**7.11(1)** Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

**7.11(2)** Petition.

*a.* Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

*b.* A petition shall state in separately numbered paragraphs the following:

(1) The persons or entities on whose behalf the petition is filed;

(2) The particular provisions of statutes and rules involved;

(3) The relief demanded and the facts and law relied upon for such relief; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

**7.11(3)** Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

**7.11(4)** Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

**265—7.12(17A) Service and filing of pleadings and other papers.**

**7.12(1)** *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the authority, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

**7.12(2)** *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

**7.12(3)** *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Executive Director, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the authority.

**7.12(4)** *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

**7.12(5)** *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (authority office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).
>
> (Date) (Signature)

**265—7.13(17A) Discovery.**

**7.13(1)** Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

**7.13(2)** Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 7.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

**7.13(3)** Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

**265—7.14(17A) Subpoenas.**

**7.14(1)** *Issuance.*

*a.* An authority subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

*b.* Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

**7.14(2)** *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

**265—7.15(17A) Motions.**

**7.15(1)** No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

**7.15(2)** Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the authority or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

**7.15(3)** The presiding officer may schedule oral argument on any motion.

**7.15(4)** Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the authority or an order of the presiding officer.

**7.15(5)** Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the

requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 7.28(17A) and appeal pursuant to rule 7.27(17A).

**265—7.16(17A) Prehearing conference.**

**7.16(1)** Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by or on behalf of the authority to all parties. For good cause the presiding officer may permit variances from this rule.

**7.16(2)** Each party shall bring to the prehearing conference:

*a.* A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

*b.* A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

*c.* Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

**7.16(3)** In addition to the requirements of subrule 7.16(2), the parties at a prehearing conference may:

*a.* Enter into stipulations of law or fact;

*b.* Enter into stipulations on the admissibility of exhibits;

*c.* Identify matters which the parties intend to request be officially noticed;

*d.* Enter into stipulations for waiver of any provision of law; and

*e.* Consider any additional matters which will expedite the hearing.

**7.16(4)** Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

**265—7.17(17A) Continuances.** Unless otherwise provided, applications for continuances shall be made to the presiding officer.

**7.17(1)** A written application for a continuance shall:

*a.* Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

*b.* State the specific reasons for the request; and

*c.* Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The authority may waive notice of such requests for a particular case or an entire class of cases.

**7.17(2)** In determining whether to grant a continuance, the presiding officer may consider:

*a.* Prior continuances;

*b.* The interests of all parties;

*c.* The likelihood of informal settlement;
*d.* The existence of an emergency;
*e.* Any objection;
*f.* Any applicable time requirements;
*g.* The existence of a conflict in the schedules of counsel, parties, or witnesses;
*h.* The timeliness of the request; and
*i.* Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

**265—7.18(17A) Withdrawals.** A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with authority rules. Unless otherwise provided, a withdrawal shall be with prejudice.

**265—7.19(17A) Intervention.**

**7.19(1)** *Motion.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

**7.19(2)** *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

**7.19(3)** *Grounds for intervention.* The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

**7.19(4)** *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

**265—7.20(17A) Hearing procedures.**

**7.20(1)** The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

**7.20(2)** All objections shall be timely made and stated on the record.

**7.20(3)** Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

**7.20(4)** Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

**7.20(5)** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**7.20(6)** Witnesses may be sequestered during the hearing.

**7.20(7)** The presiding officer shall conduct the hearing in the following manner:

*a.* The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

*b.* The parties shall be given an opportunity to present opening statements;

*c.* Parties shall present their cases in the sequence determined by the presiding officer;

*d.* Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

*e.* When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

**265—7.21(17A) Evidence.**

**7.21(1)** The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

**7.21(2)** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**7.21(3)** Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

**7.21(4)** The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

**7.21(5)** Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

**7.21(6)** Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

**265—7.22(17A) Default.**

**7.22(1)** If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

**7.22(2)** Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

**7.22(3)** Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final authority action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 7.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

**7.22(4)** The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

**7.22(5)** Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

**7.22(6)** "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

**7.22(7)** A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 7.25(17A).

**7.22(8)** If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

**7.22(9)** A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues; but unless the defaulting party has appeared, it cannot exceed the relief demanded.

**7.22(10)** A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 7.29(17A).

**265—7.23(17A) Ex parte communication.**

**7.23(1)** Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 7.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

**7.23(2)** Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

**7.23(3)** Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

**7.23(4)** To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 7.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

**7.23(5)** Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

**7.23(6)** The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 7.23(1).

**7.23(7)** Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 7.17(17A).

**7.23(8)** Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

**7.23(9)** Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code subsection 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

**7.23(10)** The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension, or revocation of the privilege to practice before the authority. Violation of ex parte communication prohibitions by authority personnel shall be reported to the executive director for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

**265—7.24(17A) Recording costs.** Upon request, the authority shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

**265—7.25(17A) Interlocutory appeals.** Upon written request of a party or on its own motion, the board of the authority may review an interlocutory order of the presiding officer. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

**265—7.26(17A) Posthearing procedures and orders.**

**7.26(1)** *Filing by parties of briefs and proposed findings.* The presiding officer may ask the parties to submit proposed findings and conclusions of law and a proposed order or briefs. Copies of the submission shall be served on all parties. The submission schedule, including waiver or briefs, shall be determined at the close of the hearing.

**7.26(2)** *Final decision or order.*

*a.* When a quorum of the entire board of the authority presides over the reception of evidence at the hearing, its decision is a final decision. The decision shall be in writing and shall include findings of fact and conclusions of law in conformance with Iowa Code chapter 17A.

*b.* In a contested case in which the hearing is held before an administrative law judge or a panel of the authority's board members constituting less than a quorum of the board, the presiding officer or panel

shall render a proposed decision. The proposed decision shall be in writing and shall include findings of fact and conclusions of law in conformance with Iowa Code chapter 17A. The proposed decision becomes the final decision of the authority without further proceedings unless there is an appeal to, or review on motion of, the authority within 30 days.

**7.26(3)** *Decisions and orders.*

*a.* *By whom prepared.* The presiding officer who presided at the reception of evidence shall prepare a proposed or final decision or order in each case. Findings of fact shall be prepared by the presiding officer at the reception of the evidence in a case unless the officer becomes unavailable. If the officer is unavailable, the findings of fact may be prepared by another person qualified to be a presiding officer who has read the record, unless demeanor of witnesses is a substantial factor. If demeanor is a substantial factor and the presiding officer is unavailable, the portions of the hearing involving demeanor shall be heard again or the case shall be dismissed.

*b.* *Content of decision or order.* The proposed or final decision or order shall:

(1) Be in writing or stated in the record.

(2) Include findings of fact. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. If a party submitted proposed finding of fact in accordance with subrule 7.26(1), the decision or order shall include a ruling upon each proposed finding.

(3) Include conclusions of law, supported by cited authority or reasoned opinion.

*c.* *Delivery.* A copy of the proposed decision or order shall be delivered to the parties either by personal service or by certified mail, return receipt requested.

**265—7.27(17A) Appeals and review.**

**7.27(1)** *Appeal by party.* Any adversely affected party may appeal a proposed decision to the board of the authority within 30 days after issuance of the proposed decision.

**7.27(2)** *Review.* The board of the authority may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

**7.27(3)** *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the authority. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. If a member of the authority's board or the authority initiates review of a proposed decision, the executive director shall mail a notice of review to all parties. The notice of appeal or the notice of review shall specify:

*a.* The parties initiating the appeal;

*b.* The proposed decision or order appealed from;

*c.* The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

*d.* The relief sought;

*e.* The grounds for relief.

**7.27(4)** *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The board of the authority may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

**7.27(5)** *Scheduling.* The authority shall issue a schedule for consideration of the appeal.

**7.27(6)** *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The authority may resolve the appeal on the briefs or provide an opportunity for oral argument. The authority may shorten or extend the briefing period as appropriate.

**265—7.28(17A) Applications for rehearing.**

**7.28(1)** *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

**7.28(2)** *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the authority decision on the existing record and whether, on the basis of the grounds enumerated in subrule 7.27(4), the applicant requests an opportunity to submit additional evidence.

**7.28(3)** *Time of filing.* The application shall be filed with the authority within 20 days after issuance of the final decision.

**7.28(4)** *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the authority shall serve copies on all parties.

**7.28(5)** *Disposition.* Any application for a rehearing shall be deemed denied unless the authority grants the application within 20 days after its filing.

**265—7.29(17A) Stays of authority actions.**

**7.29(1)** *When available.*

*a.* Any party to a contested case proceeding may petition the authority for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the authority. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The authority may rule on the stay or authorize the presiding officer to do so.

*b.* Any party to a contested case proceeding may petition the authority for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

**7.29(2)** *When granted.* In determining whether to grant a stay, the presiding officer or authority shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

**7.29(3)** *Vacation.* A stay may be vacated by the issuing authority upon application of the authority or any other party.

**265—7.30(17A) No factual dispute contested cases.** If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

**265—7.31(17A) Emergency adjudicative proceedings.**

**7.31(1)** *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the authority may issue a written order in compliance with 1998 Iowa Acts, chapter 1202, section 21, to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the authority by emergency adjudicative order. Before issuing an emergency adjudicative order the authority shall consider factors including, but not limited to, the following:

*a.* Whether there has been a sufficient factual investigation to ensure that the authority is proceeding on the basis of reliable information;

*b.* Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

*c.* Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

*d.* Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

*e.* Whether the specific action contemplated by the authority is necessary to avoid the immediate danger.

**7.31(2)** *Issuance of order.*

*a.* An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the authority's decision to take immediate action.

*b.* The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the authority;

(3) Certified mail to the last address on file with the authority;

(4) First-class mail to the last address on file with the authority; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that authority orders be sent by fax and has provided a fax number for that purpose.

*c.* To the degree practicable, the authority shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

**7.31(3)** *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the authority shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

**7.31(4)** *Completion of proceedings.* After the issuance of an emergency adjudicative order, the authority shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which the authority's proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further authority proceedings to a later date will be granted only in compelling circumstances upon application in writing.

**265—7.32(17A,16) Informal procedure prior to hearing.** Any person who desires to pursue informal settlement of any contested case may make a request for an informal settlement to the executive director. When the authority is a party, all informal settlements shall be made by the executive director. All informal settlements are subject to ratification by the authority. A request for informal settlement should be received by the executive director not less than 15 days before the board meeting at which it is to be considered. The executive director shall schedule consideration of the request at the next regular board meeting occurring more than 15 days after the request for an informal settlement is made. Not more than 10 days after the authority meeting at which the request is scheduled for consideration, the executive director will notify the petitioner in writing of the authority's disposition of the request. If the authority determines that a conference is appropriate, the party will be notified when, where, and with whom such a conference is to be held. The terms of any settlement agreed to by the parties shall be embodied in a written stipulation. Upon receipt of the request, all formal contested case procedures are stayed, except in the case of emergency orders as provided in rule 7.31(17A). If informal settlement is unsuccessful, formal contested case proceedings may be instituted in accordance with rule 7.5(17A).

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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# CHAPTER 8
# PRIVATE ACTIVITY BOND ALLOCATION

**265—8.1(7C) General.** The governor has appointed the executive director of the Iowa finance authority as the governor's designee responsible for administration of the law which establishes procedures for allocation of private activity bonds as defined in Section 141 of the Internal Revenue Code. Procedures set out in the law and in these rules shall be followed in allocating the private activity bond state ceiling ("state ceiling") between cities, counties and the state of Iowa. For each calendar year, the state ceiling shall be allocated among bonds issued for various purposes in the percentages set forth in Iowa Code section 7C.4A. The state ceiling shall be allocated among all issuers for those various purposes annually in accordance with Iowa Code chapter 7C and these rules. All applications received in any calendar year shall expire as of December 31 of that year.

**265—8.2(7C) Forms.** Information and forms necessary for compliance with provisions of the law are available upon request from the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. The telephone number of the authority is (515)725-4900.

**265—8.3(7C) Formula for allocation.**

**8.3(1)** The state ceiling shall be allocated among all issuers on the basis of chronological order of receipt of applications. Chronological order of receipt shall be determined by the date, hour and minute indicated by the time stamp as affixed to the application at the offices of the governor's designee.

**8.3(2)** All applications that are submitted for receipt pursuant to the provisions of subrule 8.4(2) shall be considered simultaneously received at the opening of business on the first business day of the calendar year, and the same date, hour and minute shall be stamped on each application so received.

*a.* If the total amount of allocations requested in all of the applications received pursuant to subrule 8.4(2) that seek allocations of bonds for industries pursuant to Iowa Code subsection 7C.4A(5) exceed the amount of the state ceiling available for that purpose, the applications will be considered for allocation in the order determined pursuant to the procedures set forth in paragraph 8.3(3)*"a."*

*b.* If the total amount of allocations requested in all of the applications received pursuant to subrule 8.4(2) that seek allocations of private activity bonds issued by public subdivisions, the proceeds of which are used by the issuing subdivision pursuant to Iowa Code section 7C.4A(6), exceed the amount of the state ceiling available for that purpose, the applications will be considered for allocation in the order determined pursuant to the procedures set forth in paragraph 8.3(3)*"b."*

**8.3(3)** Allocation process.

*a.* In order to determine the order of allocation of the state ceiling to each of the applications for industrial purposes that are simultaneously received pursuant to subrules 8.4(2) and 8.4(4), each application shall be assigned a preference number determined by a random drawing conducted at 10 a.m. on the first day of business of the calendar year at the Iowa finance authority offices. Any person desiring to attend and witness the drawing and assigning of preference numbers may do so. Each application shall be assigned an identification code that shall be written on the outside of the sealed envelope containing the application. The identification codes shall be written on strips of paper and placed in individual envelopes and sealed. The sealed envelopes containing identification codes shall be placed in a container, mixed, and drawn from the container at random by a member of the authority's staff. The application corresponding with the identification code that is drawn first shall be placed first on the list of applicants to receive an allocation of the state ceiling. The application corresponding with the identification code that is selected second shall be placed second on the list, and so forth. Drawings shall continue until all applications are assigned a place on the list of applications received.

*b.* In order to determine the order of allocation of the state ceiling to each of the applications for state ceiling for political subdivisions that are simultaneously received pursuant to subrules 8.4(2) and 8.4(4), each application shall be assigned a preference number determined by a random drawing conducted at 10 a.m. on the first day of business of the calendar year at the Iowa finance authority offices. Any person desiring to attend and witness the drawing and assigning of preference numbers may do so.

Applications shall be assigned an identification code that shall be written on the outside of the sealed envelope containing the application. The identification codes shall be written on strips of paper and placed in individual envelopes and sealed. The sealed envelopes containing identification codes shall be placed in a container, mixed, and drawn from the container at random by a member of the authority's staff. The application corresponding with the identification code that is drawn first shall be placed first on the list of applicants to receive an allocation of the state ceiling. The application corresponding with the identification code that is selected second shall be placed second on the list, and so forth. Drawings shall continue until all applications are assigned a place on the list of applications received.

**8.3(4)** The governor's designee shall maintain one list of applications for private activity bonds for the purpose of industries and a separate list for applications for private activity bonds for the use of political subdivisions. The applications that are simultaneously received pursuant to subrules 8.4(2) and 8.4(4) shall be listed in the order of preferences established pursuant to paragraphs 8.3(3)*"a"* and 8.3(3)*"b."* Applications received after the opening of the first day of business of a calendar year shall be added to the appropriate list depending upon the subject of the application in the chronological order received.

**8.3(5)** Formula for allocations following June 30 of each year. As permitted by Iowa Code section 7C.5, following June 30 of each year issuers which initially applied for state ceiling allocated under Iowa Code section 7C.4A(6) for bonds, the proceeds of which are to be used by the issuing political subdivision, shall be given priority over any applications received for state ceiling for bonds otherwise requiring an allocation under Section 146 of the Internal Revenue Code.

This rule is intended to implement Iowa Code sections 7C.4A(7)*"a"* and 7C.5.

**265—8.4(7C) Application for allocation.**

**8.4(1)** An issuer or beneficiary, or the duly authorized agent of an issuer or beneficiary, must make an application by filing the form available from the governor's designee entitled, "Application and Response," for the allocation of a portion of the private activity bond state ceiling.

**8.4(2)** Applications for any given calendar year may be submitted to the Iowa finance authority offices during the month of December of the previous year with a request that the application be treated as received when the authority opens for business on the first business day of the calendar year for which the application is made. Applications submitted in this manner must be contained in a sealed envelope that is clearly marked with words such as: "This application for private activity bond allocation for year 2001 is to be held for constructive delivery and receipt, and stamped `received' by the Iowa Finance Authority upon the opening of business on the first business day of calendar year 2001." Applicants should also indicate on the outside of the sealed envelope the type of bond for which application is made and the amount requested. There may be only one application for each separate project. All applications so received will be deemed received simultaneously as of the date, hour and minute of the opening of business of the Iowa finance authority on the first business day of the calendar year for which application is made. Expired applications made in previous years may be resubmitted to the authority pursuant to this procedure.

**8.4(3)** Applications for any given calendar year may be submitted to the Iowa finance authority offices at any time during the calendar year. Applications must be contained in a sealed envelope that is clearly marked with the year for which the application is made, the type of bond sought, and the amount of the state ceiling requested. Applications received during the calendar year will be immediately stamped with the day, hour and minute they are received by the authority.

**8.4(4)** All applications received pursuant to the provisions of subrule 8.4(2) will be deemed to have been received simultaneously on the date, hour and minute that the authority opens for business on the first business day of the year for which the applications are made.

This rule is intended to implement Iowa Code sections 7C.4A and 7C.5.

**265—8.5(7C) Certification of allocation.** This rule implements 2000 Iowa Acts, chapter 1166, section 8, providing that "for the calendar year beginning January 1, 2001, applications for the state ceiling allocation under [Iowa Code] section 7C.4A, subsection 5, shall not be approved prior to March 1." For

the calendar year beginning January 1, 2001, unless Iowa Code chapter 7C has been otherwise amended, upon receipt of a completed application, the governor's designee shall promptly, commencing March 1, 2001, certify to the issuer the amount of the state ceiling allocated to the bonds for the purpose of the project for which the application was submitted, in the order as determined by Iowa Code chapter 7C and rules 8.3(7C) and 8.4(7C). The governor's designee shall continue to allocate the state ceiling for each purpose separately until all the available state ceiling for that purpose is fully allocated. If there is not sufficient available state ceiling to fully fund an application which is next in order for allocation, the governor's designee shall notify the applicant of the amount that is available and the applicant shall have the option to take what is available within five calendar days of receiving notice of availability. If the applicant does not notify the governor's designee of its decision to take the available allocation within five calendar days of receiving notice of that option, the available state ceiling shall be offered to the next application on the list under the same conditions, and the initial offeree will maintain its position on the list. If the partial allocation is accepted, the applicant shall submit a new application for additional state ceiling and that application will be added to the bottom of the list in the chronological order of its receipt.

If the bonds are issued and delivered prior to the expiration date of the allocation, then the issuer or the issuer's attorney shall within ten days following the issuance and delivery of the bonds notify the governor's designee by filing the form captioned "Notice of Issuance and Delivery of Bonds." Upon receipt of the form the governor's designee shall return a time-stamped copy of the form to the issuer or issuer's attorney.

**265—8.6(7C) State ceiling carryforwards.** In the event the aggregate principal amount of bonds issued by all issuers in a calendar year is less than the state ceiling for that calendar year, then an issuer may apply to the governor's designee for an allocation of a specified portion of the excess state ceiling to be applied to a specified carryforward project. The application must be in writing and shall comply with the carryforward provisions of Section 103(n) of the Internal Revenue Code and regulations promulgated under that section. All applications for carryforward of state ceiling must be filed with the governor's designee by December 31 of the calendar year for which the allocation is to be carried forward from.

**265—8.7(7C) Expiration dates.** If the expiration date of either the 90-day period or any 30-day extension period is a Saturday, Sunday or any day on which the offices of the state banking institutions or savings and loan associations in the state are authorized or required to close, the expiration date is extended to the first day thereafter which is not a Saturday, Sunday or previously described day.

**265—8.8(7C) Resubmission of expired allocations.** If an allocation expires, the issuer may resubmit its application for the same project or purpose. However, the resubmitted application shall be treated as a new application, and preference, priority or prejudice shall not be given to the application or the issuer as a result of the prior application.

**265—8.9(7C) Use by political subdivisions.** With respect to the amount of the state ceiling allocated for the purpose of private activity bonds issued by political subdivisions, the proceeds of which are used by the issuing political subdivisions, the political subdivision must use the proceeds to finance a project owned or utilized directly by the political subdivision, or finance a program of the political subdivision which the legislature by statute has authorized or directed the political subdivision to implement.

This rule is intended to implement Iowa Code section 7C.4A(6).

**265—8.10(7C) Application and allocation fees.** The Iowa finance authority may charge reasonable fees for providing administrative assistance with regard to the filing of applications and the allocation of the private activity bond state ceiling in accordance with these rules. A fee of 1 basis point (.01%) of the amount of state ceiling for which application is made shall be paid by the applicant upon filing the application with the governor's designee. An additional fee of 1 basis point shall be paid by the applicant upon receipt of the certification by the governor's designee of the state ceiling allocated.

**265—8.11(7C) Supplemental cap allocation for 2008.** The supplemental state ceiling received by the state of Iowa in calendar year 2008 for housing purposes as a result of federal legislation known as the Housing and Economic Recovery Act of 2008 shall be allocated by the governor's designee to the Iowa finance authority for such single-family and multifamily uses as the authority deems necessary and appropriate to ensure full and efficient use of the supplemental state ceiling.

This rule is intended to implement Iowa Code section 7C.12 and the Housing and Economic Recovery Act of 2008, H.R. 3221.

[**ARC 7579B**, IAB 2/25/09, effective 4/1/09]

These rules are intended to implement Iowa Code chapter 7C.

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# CHAPTER 9
# TITLE GUARANTY DIVISION

**265—9.1(16) Definitions.** The following words and phrases, when used in this chapter, shall have the meanings set forth below unless a meaning is inconsistent with the manifest intent or the context of a particular rule:

*"Abstract of title"* or *"abstract,"* for the purposes of the title guaranty program, means a written or electronic summary of all matters of record including, but not limited to, grants, conveyances, easements, encumbrances, wills, and judicial proceedings affecting title to a specific parcel of real estate, together with a statement including, but not limited to, all liens, judgments, taxes and special assessments affecting the property and a certification by a participating abstractor that the summary is complete and accurate; provided, however, that for purposes of issuance of a title guaranty certificate covering nonpurchase financing, and for only such purposes, the "abstract of title" or "abstract" may also mean a title guaranty report of title.

*"Authority"* means the Iowa finance authority described in Iowa Code chapter 16.

*"Certificate"* means the division certificate to guarantee title, including any part or schedule thereof and any endorsements thereto.

*"Closing protection letter"* means an agreement by the division to indemnify a lender or owner or both for loss caused by a division closer's theft of settlement funds or failure to comply with written closing instructions relating to title certificate coverage when agreed to by the division closer.

*"Commitment"* means the division commitment to guarantee title, including any part or schedule thereof and any endorsements thereto.

*"Division"* means the title guaranty division of the Iowa finance authority.

*"Division board"* means the board of the title guaranty division created pursuant to Iowa Code section 16.2A(1).

*"Division closer"* means a participating attorney, a participating abstractor, or an independent closer who is authorized by the division to conduct a division closing under the protection of a closing protection letter.

*"Division closing"* means a settlement in which a division closer is appointed to finalize a real estate transaction in accordance with general and specific instructions prior to disbursement of the proceeds and for which a closing protection letter is issued.

*"Division escrow account"* means, in conjunction with division closings, escrows, settlements, and title indemnities, any checking account utilized for the purpose of:

1. Deposits, including, but not limited to, the acceptance of incoming funds from the lender or borrower or both; and
2. Disbursements, including, but not limited to, sellers' proceeds, mortgage payoffs, expenses of sale, and professional fees.

However, "division escrow account" shall not include client trust accounts subject to the requirements of chapter 45 of the Iowa Court Rules.

*"Electronic record,"* for the purposes of the title guaranty program, means a record created, generated, sent, communicated, received, or stored by electronic means that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

*"Field issuer"* means a participating attorney, a participating abstractor, or an independent closer authorized by the division to issue commitments and certificates.

*"Form"* or *"forms"* means printed instruments used in guaranteeing title to Iowa real estate that, when completed and executed, create contractual obligations or rights affecting the division.

*"Grandfathered attorney"* means a participating attorney who has been providing abstract services continuously from November 12, 1986, to the date of application to be a participating abstractor, either personally or through persons under the participating attorney's supervision and control, who is exempt from the requirement to own or lease a title plant.

*"Independent closer"* means a person or entity, other than a participating attorney or a participating abstractor, conducting a division closing and authorized to close a transaction under protection of a closing protection letter.

*"Manual"* means a title guaranty reference book approved by the division board containing division certificate forms and certain Iowa statutory requirements.

*"Nonpurchase financing,"* for the purposes of the title guaranty program, means a refinanced or junior mortgage securing an amount fixed by the division board and included in the manual.

*"Participant"* means a participating attorney or a participating abstractor.

*"Participating abstractor"* means an abstractor who is authorized to participate in the title guaranty program and who is in full compliance with the abstractor's participation agreement, the Code of Iowa, these rules, the manual, staff supplements, and any other written or oral instructions or requirements given by the division.

*"Participating attorney"* means an attorney who is authorized to participate in the title guaranty program, who is in full compliance with the attorney's participation agreement, the Code of Iowa, these rules, the manual, staff supplements, and any other written or oral instructions or requirements given by the division, and who is not subject to current disciplinary proceedings by the Iowa supreme court that preclude the attorney from practicing law in this state.

*"Person"* shall have the same meaning as in Iowa Code section 4.1(20).

*"Residential property,"* for the purposes of the title guaranty program, means residential real estate consisting of single-family housing or multifamily housing of no more than four units.

*"Supervision and control,"* for the purposes of the title guaranty program, means that a participant's or independent closer's shareholders, partners, associates, secretaries, paralegals, and other persons under the participant's or independent closer's supervision or control who transact the business of abstracting, which includes but is not limited to any manner of title search or review, opining on titles to real estate, or issuing commitments or certificates at the direction of or in the name of the participant or independent closer, shall comply with the requirements of the contracts, forms, the manual, staff supplements, and any other written or oral instructions or requirements given by the division. A participant or independent closer shall be liable to the division for loss or damage suffered by the division resulting from acts or omissions of the participant's or independent closer's shareholders, partners, associates, secretaries, paralegals, and other persons under the participant's or independent closer's supervision or control who transact the business of abstracting, which includes but is not limited to any manner of title search or review, opining on titles to real estate, or issuing commitments or certificates at the direction of or in the name of the participant or independent closer as an agent of the division as though the act or omission were that of the participant or independent closer.

*"Title guaranty report of title,"* for the purpose of nonpurchase financing, means a written or electronic short form of the abstract of title covering the borrower's title, liens, and encumbrances. The division board shall approve requirements and procedures for the title guaranty report of title in the manual.

*"Title search(es)"* or *"search(es),"* for the purposes of the title guaranty program, means the abstract of title.

[**ARC 8458B**, IAB 1/13/10, effective 2/17/10]

**265—9.2(16) Purpose.** This chapter describes the mission, organization, programs and operations of the division, including the office where and the means by which interested persons may obtain information and make submissions or requests.

[**ARC 8458B**, IAB 1/13/10, effective 2/17/10]

**265—9.3(16) Mission.** The mission of the division is to operate a program that offers guaranties of real property titles in order to provide, as an adjunct to the abstract-attorney's title opinion system, a low-cost mechanism to facilitate mortgage lenders' participation in the secondary market and add to the integrity of the land-title transfer system in the state. Surplus funds in the title guaranty fund shall be transferred to

the authority's housing program fund after providing for adequate reserves and for the operating expenses of the division.
[**ARC 8458B**, IAB 1/13/10, effective 2/17/10]

**265—9.4(16) Organization.**

**9.4(1)** *Location.* The office of the division is located at 2015 Grand Avenue, Des Moines, Iowa 50312. Office hours are 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The division's Web site address is www.iowafinanceauthority.gov, and the division's telephone and facsimile numbers are as follows: (515)725-4900 (general telephone number); 1-800-432-7230 (toll-free telephone number); 1-800-618-4718 (TTY); and (515)725-4901 (facsimile).

**9.4(2)** *Division board.* A chair and vice-chair shall be elected annually by the members of the division board, generally at the first meeting following July 1 of each year, which is the beginning of the fiscal year.

**9.4(3)** *Meetings.* Meetings of the division board shall be held quarterly on the date and time determined by the board. Meetings of the division board may also be held at the call of the chair or on written request of two members. The division will give advance public notice of the specific date, time and place of each division board meeting, and will post the tentative agenda for each meeting at least 24 hours before commencement of the meeting at the main office of the authority, as well as on the authority's Web site. Meetings may occasionally be conducted by electronic means. Any interested person may attend and observe division board meetings except for any portion of a meeting that may be closed pursuant to Iowa Code section 21.5. The minutes of the division board meetings are available for viewing at the main office of the authority or via the authority's Web site. Three members of the division board constitute a quorum. An affirmative vote of a majority of the appointed board members is necessary for any substantive action taken by the division board. The majority shall not include any board member who has a conflict of interest, and a statement of a conflict of interest shall be conclusive for this purpose.
[**ARC 8458B**, IAB 1/13/10, effective 2/17/10]

**265—9.5(16) Location where public may obtain information.** Requests for information, inquiries, submissions, petitions and other requests may be directed to the division at the address set forth in subrule 9.4(1). Requests may be made personally, by telephone, mail, E-mail or any other medium available.

**265—9.6(16) Title guaranty program.**

**9.6(1)** *Operation.* The division operates a program to offer guaranties of real property titles in the state through the issuance of title guaranty commitments and certificates by the division, by participating abstractors for the division pursuant to subrule 9.6(4), paragraph *"c,"* herein, or by participating attorneys pursuant to Iowa Code section 16.91(7).

**9.6(2)** *Application for title guaranty commitments or certificates.* The division may authorize entities engaged in the real estate industry to apply directly to the division staff, an independent closer, a participating attorney, or a participating abstractor for a title guaranty commitment or certificate. The applicant shall complete and submit such forms and other information as the division may require and pay the appropriate fee. Entities engaged in the real estate industry that the division may authorize to apply include, but are not limited to, mortgage lenders as defined in Iowa Code section 16.1(1)*"y,"* and closing and escrow companies.

**9.6(3)** *Participating attorneys.* An attorney licensed to practice law in the state of Iowa may participate in the title guaranty program upon approval by the division director of an application submitted by the licensed attorney to the division and upon execution and acceptance by the division director of the attorney's participation agreement.

*a. License.* A participating attorney shall be licensed to practice law in the state of Iowa and shall be in good standing with the Iowa supreme court at all times while acting as an agent of the division.

*b. Underwriting determinations.* A participating attorney shall make all underwriting determinations prior to or at the time of closing. If the participating attorney does not attend the closing and is not available by telephone during the closing, all underwriting determinations must

have been made by the participating attorney issuing the opinion, commitment or certificate prior to closing. For purposes of this rule, the term "underwriting determinations" includes, but is not limited to, guaranteeing access, reviewing gap searches, possible judgments, survey matters (including encroachments), unreleased mortgages or other liens, and any other matters disclosed by the opinion, commitment or other sources of title information. A participating attorney who causes or allows an erroneous underwriting determination to be made by someone other than a member of the division's legal staff or the participating attorney who issued the opinion, commitment or certificate shall be strictly liable to the division for loss or damage the division may suffer as a result of the erroneous underwriting determination.

(1) A participating attorney shall make all underwriting determinations arising out of the issuance of an attorney title opinion or a title commitment or certificate using both:

1. Generally accepted and prudent title examining methods; and

2. Procedures implemented by the division and outlined in these rules, the manual, staff supplements, and any other written or oral instructions or requirements given by the division.

(2) Any underwriting determination about which there may be a bona fide difference of opinion among local lawyers and that is not specifically covered by materials provided by the division shall be approved by division legal staff.

*c. Authority of participating attorney.* A participating attorney is authorized to act as an agent of the division but only for the purposes and in the manner set forth in the attorney's participation agreement, the Code of Iowa, these rules, the manual, staff supplements, and any other written or oral instructions given by the division and in no other manner whatsoever. The authority of the participating attorney under the preceding sentence is not exclusive and is subject to the rights of the authority, the division, and other participants, independent closers, agents, or representatives of the division to transact the business of opining on titles to real estate and issuing commitments and certificates and is further subject to the right of the division to appoint other participants and independent closers.

**9.6(4)** *Participating abstractors.* An abstractor or abstracting concern may participate in the title guaranty program upon approval by the division director of an application to the division and upon execution and acceptance by the division director of an abstractor's participation agreement.

*a. Title plant.* Participating abstractors shall own or lease, and maintain and use in the preparation of abstracts, an up-to-date abstract title plant including tract indices for real estate for each county in which abstracts are prepared for titles to real property guaranteed by the division. Each of the tract indices shall be designated to encompass a geographical area of not more than one block in the case of platted real estate, nor more than one section in the case of unplatted real estate. The tract indices shall include a reference to all of the instruments affecting real estate recorded in the office of the county recorder, and the tract indices shall commence not less than 40 years prior to the effective date of the abstractor's participation in the title guaranty program.

*b. Title plant exemption.* Grandfathered attorneys and attorneys and abstractors who have received a waiver of the use of an up-to-date plant described in Iowa Code section 16.91(5)*"a"*(2), either personally or through persons under their supervision and control, shall be exempt from the requirement to own or lease a title plant. This exemption is a personal exemption of the individual participant, is not transferable, and terminates at such time as the participant ceases providing abstracting services or upon the death or incapacity of the participant.

*c. Issuing title guaranty.* Pursuant to a written contract with the division director, a participating abstractor may be authorized to issue a title guaranty commitment or certificate for the division when the participating attorney who prepares the opinion allows issuance by the participating abstractor. Written contractual approval by the division director for division issuance will be based upon the completion of a division request form by a participating abstractor and the attachment of all disclosures required by the division. A participating abstractor authorized to issue a title guaranty commitment or certificate must comply with the Code of Iowa, these rules, the manual, staff supplements, and any other written or oral instructions or requirements given by the division and in no other manner whatsoever. The rights of the participating abstractor under the preceding sentence are not exclusive and are subject to the rights of the authority, the division, and other field issuers of the division to issue commitments or certificates and

are further subject to the right of the division to appoint other field issuers. A participating abstractor's right to issue commitments and certificates is a privilege for the convenience of the division and may be terminated pursuant to the written contract with the division.

*d. Authority of participating abstractor.* A participating abstractor is authorized to act as an agent of the division but only for the purposes and in the manner set forth in the abstractor's participation agreement, the Code of Iowa, these rules, the manual, staff supplements, and any other written or oral instructions or requirements given by the division and in no other manner whatsoever. The authority of the participating abstractor under the preceding sentence is not exclusive and is subject to the rights of the authority, the division, and other participating abstractors, agents, or representatives of the division to transact the business of abstracting, which includes but is not limited to any manner of title search or review of titles to real estate, and is further subject to the right of the division to appoint other participating abstractors.

**9.6(5)** *Participation requirements.*

*a. Errors and omissions insurance.* A participant shall maintain errors and omissions insurance at all times while acting as an agent of the division, with such coverage and in such amounts as the division board may direct from time to time by resolution.

(1) The division will inform the Iowa State Bar Association, the Iowa Land Title Association, and any person requesting such information of any proposed change in the amount of required errors and omissions insurance at least 30 days prior to the date of the meeting at which the matter will be considered.

(2) Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.

*b. Participation fees.* A participant shall pay a participation fee set by resolution of the division board subject to the approval of the authority board.

(1) The division will inform the Iowa State Bar Association, the Iowa Land Title Association, and any person requesting such information of any proposed change in the amount of participation fees at least 30 days prior to the date of the meeting at which the matter will be considered.

(2) Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.

**9.6(6)** *Abstract of title.* All abstracts of title shall be prepared and conducted in compliance with division procedures as specified in the manual, staff supplements, and any other written or oral instructions or requirements given by the division that are in effect at the time of abstracting. A participating abstractor shall retain a written or electronic copy of each abstract of title prepared for a title guaranty certificate and shall provide such copy to the division upon request.

**9.6(7)** *Attorney title opinion.* All attorney title opinions shall be prepared and issued in compliance with division procedures as specified in the manual, staff supplements, and any other written or oral instructions or requirements given by the division that are in effect at the time of issuance. A participating attorney who is a field issuer may issue a commitment as the preliminary attorney title opinion and the certificate as the final attorney title opinion in compliance with division procedures. A written or electronic copy of each attorney title opinion shall be retained by a field issuer, and a copy thereof shall be provided to the division upon request.

**9.6(8)** *Closing protection letters.*

*a. Issuance of closing protection letters.* Division closers may be authorized to receive a closing protection letter approved by the division board when:

(1) A division closer has completed division forms and procedures training,

(2) The division director has approved the application, and

(3) A division commitment is issued.

*b. Application.* Application for designation of division closer status shall be on forms provided by the division, and all requested information shall be provided with the application form. The division may consider an application withdrawn if it does not contain all of the information required and the information is not submitted to the division within 30 days after the division requests the information. The application shall be accompanied by a fee to be set by the division board. The division director shall

approve or deny the application within 90 days after the application has been accepted for processing and send written notice thereof to the applicant.

*c. Guidelines.* In determining whether to approve or deny an application for designation of division closer status, the division director may consider the following factors, including but not limited to:

(1) The needs of the public and the needs of existing or potential customers of the applicant that are served by a designation of division closer status.

(2) A history of operation and management of the applicant's business.

(3) Character, fitness, financial responsibility and experience of the applicant and the applicant's employees.

(4) Criminal background checks for felony or misdemeanor convictions of the applicant or the applicant's employees involving moral turpitude.

(5) A record of defaulting by the applicant or the applicant's employees in the payment of moneys collected for others in this state or other states.

(6) A history of discharge of debts by the applicant or the applicant's employees through bankruptcy proceedings.

(7) The applicant's credit report, which is to be submitted directly to the division director at the expense of the applicant.

(8) Other factors as determined by the division director to be relevant.

*d. Investigation.* The division director may conduct an investigation as deemed necessary. The division director may solicit, by whatever manner deemed appropriate, comments from other persons conducting closings, or from any other person or entity which may be affected by or have an interest in the pending application.

*e. Revocation.* The division director has discretion to revoke a division closer's status for reasons including but not limited to the following:

(1) When the financial condition of the division closer deteriorates.

(2) When the division director determines that the division closer's activities are being conducted unlawfully or in an unsafe or unsound manner.

*f. Authority of division closer.* A division closer is authorized to conduct division closings only for the purposes and in the manner set forth in the division closer's agreement, the Code of Iowa, these rules, the manual, staff supplements, and any other instructions or requirements given by the division and in no other manner whatsoever. The authority of the division closer under the preceding sentence is not exclusive and is subject to the rights of the authority, the division, and other division closers to transact the business of guaranteeing titles to real estate in Iowa and is further subject to the right of the division to appoint other division closers.

A division closer shall obtain the written authorization of a member of the division's legal staff prior to issuing a commitment or certificate which exceeds such amounts as the division board may set from time to time by resolution. If any authorization required under 9.6(8)*"f"* is not obtained through the act or omission of the division closer, the division closer shall be strictly liable to the division for any resulting loss or damage.

*g. Division escrow accounts.* The division board shall approve procedures and requirements for the maintenance of division escrow accounts. Division closers shall comply with the rules and requirements set by the division board with respect to the procedures, format, and style for maintaining the division escrow accounts. The division board may require the division closer to provide an irrevocable letter of direction to the institution at which each division escrow account is established, authorizing the division to review and audit the institution's records of such account at any time that the division, in its discretion, deems necessary.

**9.6(9)** *General provisions.*

*a. Commitment and certificate amount limitations.* A field issuer shall obtain the written authorization of a member of the division's legal staff prior to issuing a commitment or certificate which exceeds such amounts as the division board may set from time to time by resolution. If any authorization required under this paragraph is not obtained through the act or omission of the field

issuer, the field issuer shall be strictly liable to the division for any loss or damage resulting from issuance of the commitment or certificate.

*b. Title/closing files and forms.* A participant or independent closer shall maintain separate title, client and closing files or maintain client files in such a manner that information pertaining to activities of the participant or the independent closer is readily available to the division. A participant or independent closer shall maintain files for a period of ten years after the effective date of the commitment and certificate or certificates.

(1) The division will provide forms to a participant or independent closer for use in acting for the division. A participant or independent closer may not alter any form supplied by the division, or use a form supplied by another person or entity to bind the division, or otherwise bind the division to liability with a form, other writing or representation not supplied or authorized by the division. In addition, the participant or independent closer shall:

1. Return the original of any canceled certificate to the division, and

2. Not transfer or attempt to transfer unissued commitments or certificates to another participant, independent closer, or other person or entity unless authorized in writing by the division.

(2) If a participant or independent closer fails to comply with the requirements of 9.6(9)*"b,"* in addition to the division's other rights and remedies, the division may refuse to supply any forms to the participant or independent closer until the participant or independent closer complies with the requirements of 9.6(9)*"b"* to the satisfaction of the division.

(3) The participant or independent closer shall be liable to the division for loss or damage sustained by the division by reason of the loss of, misuse of, or inability of the participant or independent closer to account for any form supplied by the division, or the failure of the participant or independent closer to comply with the requirements of 9.6(9)*"b."*

*c. Training.* The division director may require a participant, an independent closer, and the participant's and independent closer's staff to attend training sessions or continuing education seminars as deemed necessary by the division director in order to ensure compliance with division requirements and procedures.

*d. Office audits.* The division may, with or without notice to a participant or an independent closer, audit the participant or independent closer at the participant's or independent closer's office. This audit may include, but need not be limited to, a review of the participant's or independent closer's commitment and certificate issuance procedures, an audit of serialized forms, an audit and test of title plants and tract indices, an audit of closing operation and closing procedures, an audit of the division escrow account(s), and verification of the participant's or independent closer's compliance with division rules, participation agreements, the Code of Iowa, these rules, the manual, staff supplements, and any other written or oral instructions or requirements given by the division.

*e. Interest in property.* No participant or independent closer shall prepare an abstract of title, issue attorney title opinions, commitments, or certificates, or conduct a closing upon property in which the participant or independent closer has an interest without prior authorization of the division.

[**ARC 8458B**, IAB 1/13/10, effective 2/17/10]

**265—9.7(16) Waiver of up-to-date title plant requirement.** The division board shall consider an application by an attorney or abstractor for waiver of the use of an up-to-date title plant requirement described in Iowa Code Supplement section 16.91(5)*"a"*(2).

**9.7(1)** *Mission.* The division is authorized under Iowa Code chapter 16 to issue title guaranties throughout the state. The division's public purpose is to facilitate lenders' participation in the secondary market and to promote land title stability through use of the abstract-attorney opinion system. The division recognizes the 40-year title plant as the preferred method of providing title evidence for the purpose of issuing title guaranties. The division must weigh the benefits of the traditional title plant with other alternatives to ensure buyers and lenders high quality of title guaranties throughout the state, rapid service, and a competitive price. To assist the division in this mission, Iowa Code Supplement section 16.91(5)*"b"* expressly allows the division to waive the up-to-date title plant requirement.

**9.7(2)** *Definitions.* The following words and phrases, when used in this rule, shall have the meanings set forth below unless a meaning is inconsistent with the manifest intent or the context of a particular rule:

*"Availability of title guaranties"* means that title guaranties are uniformly accessible throughout the state to buyers and lenders with competitive pricing, service, and quality and that there are two or more abstractors physically located in all 99 counties.

*"Exempt attorney-abstractor,"* as it relates to the title plant requirement, means a grandfathered attorney or a waived attorney.

*"Grandfathered attorney"* means a participating attorney who has been providing abstract services continuously from November 12, 1986, to the date of application to be a participating abstractor, either personally or through persons under the participating attorney's supervision and control, who is exempt from the requirement to own or lease a title plant. This exemption is a personal exemption of the individual participating attorney, is not transferable, and terminates at such time as the participating attorney ceases providing abstracting services or upon the death or incapacity of the participating attorney.

*"Hardship"* means deprivation, suffering, adversity, or long-term adverse financial impact in complying with the title plant requirement that is more than minimal when considering all the circumstances. Financial hardship alone may constitute a hardship.

*"Interested person"* means a person requesting a plant waiver, all division board members, all participating abstractors in the county for which the waiver is requested, the Iowa State Bar Association, the Iowa Land Title Association, and any person requesting such information that an application for waiver has been made to the division.

*"Person"* means an individual, including a corporation, limited liability company, government or governmental subdivision or agency, business trust, trust, partnership or association, or any other legal entity.

*"Public interest"* means that which is beneficial to the public as a whole, including but not limited to increasing competition among abstractors, encouraging the use of title guaranties throughout the state, making title guaranties more competitive than out-of-state title insurance, increasing the division's market share, improving the quality of land titles, protecting consumers, and encouraging maximum participation by participating abstractors and participating attorneys physically located in all 99 counties.

*"Waiver"* or *"variance"* means an action by the division which suspends in whole or in part the requirement of the use of a current tract index described in Iowa Code Supplement section 16.91(5) as applied to an abstractor.

**9.7(3)** *Filing of application.* An applicant must submit a plant waiver application in writing to the attention of the director of the Title Guaranty Division of the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312.

**9.7(4)** *Content of application.* The title guaranty division may provide an application form on the division's Web site. A plant waiver application shall include, at a minimum, the following information where applicable and known to the applicant:

*a.* The name, business address, E-mail address, and telephone number of the abstractor for whom a waiver is being requested;

*b.* The type of waiver being requested, as described in subrule 9.7(8);

*c.* A general description of the applicant's business;

*d.* A description of intention to develop a 40-year tract index;

*e.* The relevant facts that the applicant believes would justify a waiver under subrules 9.7(7) and 9.7(8); and

*f.* A signed statement from the applicant attesting to the accuracy of the facts provided in the application.

**9.7(5)** *Notification and response.*

*a.* The division director shall acknowledge an application upon receipt. All interested persons shall be contacted by E-mail and Web-site posting, and notice shall be given by United States first-class mail to any party requesting the same in writing. Notice shall be given within 14 days of the receipt of

the application by the division director. Notification to an interested person is not a requirement for the division board to consider the waiver, and failure to inform an interested person of an application for waiver shall not void or otherwise nullify any action or decision of the division board.

*b.* Any person may submit a written statement in support of or in opposition to the application.

*c.* The application shall be placed on the agenda for the next scheduled division board meeting which is at least 30 days after the application is filed unless a special meeting is requested by the chairperson of the board or by written request of two board members.

**9.7(6)** *Board meeting action.*

*a.* The informal review of the waiver is not a contested case proceeding but other agency action wherein the rules of evidence are not applicable.

*b.* To preserve order, the chairperson of the board may set reasonable limitations upon the number of persons who may appear before the division board and the time allotted for presentations in favor of and against the requested waiver.

*c.* Title guaranty director review. The title guaranty director shall investigate and review the petition and its supporting documentation and, at the waiver meeting before the board, shall give the board a recommendation to grant or deny the waiver.

*d.* The board shall consider the application, the criteria and type of waiver set forth in subrules 9.7(7) and 9.7(8), and then vote on the application.

**9.7(7)** *Criteria for waiver or variance.* In response to an application completed pursuant to subrule 9.7(4), the division board may issue a ruling permanently or provisionally waiving the requirement set forth in Iowa Code Supplement section 16.91(5)*"a"*(2) of an up-to-date title plant requirement, if the board finds both of the following:

*a.* The title plant requirement described in Iowa Code Supplement section 16.91(5)*"a"*(2) imposes a hardship to the abstractor or attorney; and

*b.* The waiver is:

(1) Clearly in the public interest; or

(2) Absolutely necessary to ensure availability of title guaranties throughout the state.

**9.7(8)** *Type of waiver or variance granted.* Provisional and permanent waivers described in this subsection may be granted by the division board. Guidelines for provisional and permanent waivers are as follows:

*a. Provisional waivers.* The division board may grant a provisional waiver of one year or less to an applicant intending to build a title plant. If such time period is not sufficient, the applicant may reapply to the division board for an extension of the waiver up to one additional year at the discretion of the division board. The division board may grant a provisional waiver when the applicant provides the following:

(1) Evidence that a title plant will be built for a specified county;

(2) Evidence of significant financial loss due to the inability to provide abstracts for the division;

(3) Evidence that the provisional waiver is necessary in order to produce a revenue stream to justify the expense associated with building a title plant; and

(4) Professional references from two licensed Iowa attorneys or one participating plant-abstractor attesting to the applicant's ability to abstract.

*b. Permanent waivers for attorneys.* The division board may grant a permanent waiver to an Iowa-licensed attorney.

(1) Attorneys granted a permanent waiver hold the same status as grandfathered attorneys and, absent express legislative authority to the contrary, the board will not limit geographically an attorney's ability to abstract for the division. However, the applicant may by contract with the division board agree voluntarily to limit the applicant's abstracting for the division to one or more specified counties.

(2) A permanent waiver is personal in nature and nontransferable. An attorney granted a permanent waiver shall be personally liable for abstracting conducted on behalf of the division. Although an attorney may abstract through a separate entity, such liability cannot be transferred to a corporate entity nor may an attorney utilize a corporate structure which would shield the attorney from personal liability.

(3) Permanent waivers are predicated upon the attorney's retaining an Iowa license to practice law. An attorney whose license is suspended shall reapply to the division director upon reinstatement by the Iowa supreme court. The division director has the discretion to refer the matter to the division board.

(4) There are two circumstances when an attorney may be granted a permanent waiver:

1. For attorney applicants with experience abstracting under the supervision and control of an exempt attorney-abstractor, the board shall consider, at a minimum, the following:

- The applicant's abstract experience. The board shall give considerable weight to an applicant's experience abstracting under the personal supervision and control of an exempt attorney-abstractor with whom the applicant has had a close working relationship or with whom the applicant is a legal partner or associate.
- Professional references. The board shall give considerable weight to a recommendation from the exempt attorney-abstractor or grandfathered attorney who personally supervised the applicant's abstracting for a period of two years or more and who attests in writing or in person before the division board regarding the applicant's ability to abstract.
- Samples of abstracts prepared by the applicant.
- The division board shall give consideration to the number of participating abstractors physically located in the county or counties where the applicant seeks to abstract in determining whether a waiver should be granted.

2. For attorney applicants without experience working under the supervision and control of an exempt attorney-abstractor, the board shall consider, at a minimum, the following:

- The applicant's abstract experience;
- Professional references;
- Samples of abstracts prepared by the applicant;
- The applicant's business plan;
- Evidence of clients and volume of additional transactions that will be brought into the title guaranty abstract/attorney system as a result of the waiver;
- The number, availability, service and quality of other abstractors available to perform abstracting and whether the grant of a permanent waiver will adversely impact the business of other participating abstractors;
- Whether the applicant demonstrates the inability to abstract under the supervision and control of an exempt attorney.

*c. Permanent waivers for non-attorneys.*

(1) The board may grant a permanent waiver with limitations as to county, or transaction type, or both.

(2) In determining whether to grant a waiver, the board shall consider, at a minimum, the following:

1. The applicant's abstract experience, maintenance of a title plant by the applicant in any other county, and degree of participation by the applicant in the title guaranty division standards in excellence program;
2. Professional references;
3. Samples of abstracts prepared by the applicant;
4. The applicant's business plan;
5. Evidence of clients and volume of additional transactions that will be brought into the title guaranty abstract/attorney system as a result of the waiver;
6. The number, availability, service and quality of other abstractors available to perform abstracting and whether the grant of a permanent waiver will adversely impact the business of other participating abstractors.

**9.7(9)** *Ruling.* The division board shall direct the division director to prepare, or cause to be prepared, a proposed written ruling setting forth the board's rationale for granting or denying the waiver. Action to adopt or direct changes to the proposed ruling will be taken by the division board at a subsequent meeting. However, if the board directs the division director to prepare a proposed ruling granting the waiver, the applicant may start abstracting while the ruling is being prepared, and staff shall issue a new participating abstractor number to the applicant immediately.

*a.* The ruling granting or denying a waiver shall contain a reference to the particular applicant, discuss the application of subrules 9.7(7) and 9.7(8), and describe how granting the waiver would or would not advance the division's statutory mission described in subrule 9.7(1). The ruling will summarize the relevant facts and reasons upon which the action is based and include a description of the precise scope and duration of the waiver if the waiver contains limitations, restrictions or requirements.

*b.* The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the division board upon consideration of all relevant factors. Relevant factors to be considered are the unique circumstances set out in the application, presentations given before the board, the professional knowledge and expertise of the board members and division staff, and any other resources available to the entire division board. Consideration should be afforded to rulings on prior plant waiver requests, but the division board shall not be bound by such rulings.

*c.* Within seven days of its issuance, any ruling issued under subrule 9.7(9) shall be transmitted to the applicant, the Iowa State Bar Association and the Iowa Land Title Association.

*d.* The decision of the division board shall be final agency action and all appeals shall be filed with the Iowa District Court for Polk County.

**9.7(10)** *Title plant certification.* For applicants granted a provisional waiver, division staff shall inspect the title plant and certify to the division board that the title plant is complete before the board may grant up-to-date title plant status to the applicant. Upon certification of up-to-date title plant status, the applicant must obtain approval from the division to conduct business under a name other than the entity to which the provisional waiver was granted. Any transfer of a title plant must be approved by division staff in order for the title plant to be a title guaranty abstractor.

**9.7(11)** *Public availability.* Applications for waivers and rulings on waiver applications are public records under Iowa Code chapter 22. Some applications or rulings may contain information the division is authorized or required to keep confidential. Division staff may accordingly redact confidential information from applications or rulings prior to public inspection or dissemination.

**9.7(12)** *Voiding or cancellation.* A waiver or variance is voidable if material facts upon which the petition is based are not true or if material facts have been withheld. A waiver or variance issued by the division board may be withdrawn, canceled, or modified if, after appropriate notice and meeting, the division board issues a ruling finding any of the following:

*a.* That the petitioner or the applicant who was the subject of the waiver ruling withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

*b.* That the alternative search method assuring that the public interest will be adequately protected after issuance of the ruling has been demonstrated to be insufficient; or

*c.* That the subject of the waiver ruling has failed to comply with all conditions contained in the ruling.

[**ARC 7892B**, IAB 7/1/09, effective 8/5/09]

**265—9.8(16) Title guaranty contracts, forms, manual, and staff supplements.** The division shall adopt and issue such contracts, forms, and the manual as the division deems necessary to set out standards and requirements, and such other matters that the division deems necessary for implementation and effective administration of the title guaranty program. The contents of the contracts, forms, and the manual shall be applicable to participants and independent closers in the title guaranty program.

**9.8(1)** *Division board adoption.* The form of title guaranty commitments and certificates will be adopted, revised, or amended by resolution of the division board, and the form of such commitments and certificates is subject to the approval of the authority board. The manual will be adopted, revised, or amended on approval of a majority vote of the division board.

*a.* The division will inform the Iowa State Bar Association, the Iowa Land Title Association, and any person requesting such information of any proposed adoption of or change to the form of title guaranty commitments and certificates at least 30 days prior to the date of the division board meeting at which the matter will be considered.

*b.* Interested parties may submit evidence or statements in support of or in opposition to the proposal in writing or by personal appearance before the division board.

**9.8(2)** *Division staff adoption.* Under the direction of the division director, the division staff shall adopt and issue staff supplements as the division deems necessary to set out standards and requirements of these rules, applicable statutes, and the manual; to address nonresidential, extraordinary and unusual risk situations; and to address such other matters that the division deems necessary for implementation and effective administration of the title guaranty program.
[**ARC 8458B**, IAB 1/13/10, effective 2/17/10]

**265—9.9(16) Mortgage release certificate.** Pursuant to Iowa Code section 16.92, the division is charged with the administration of a system, after notification to lenders, to clear paid-off mortgages from real estate titles in Iowa by executing and filing with county recorders release certificates for mortgages that have been paid in full.

**9.9(1)** *Definitions.* As used in this rule, unless the context otherwise requires:

*"Certificate"* means the certificate of release or partial release of mortgage issued by the division.

*"Claim for damages"* means a claim for actual money damages against the division caused by the division's wrongfully or erroneously, through an act of negligence, filing a certificate while division staff are acting within the scope of their office or employment.

*"Effective release"* or *"satisfaction"* means a release or satisfaction of mortgage pursuant to Iowa Code chapter 655.

*"Mortgage"* means a mortgage or mortgage lien on an interest in real property in this state given to secure a loan in an original principal amount, including any future advances, equal to or less than:

1. $20 million for mortgages paid off by the division staff or a division closer within a division closing, unless prior written approval is obtained from the division director.
2. $1 million for all other mortgages.

*"Real estate lender or closer"* means a person licensed to regularly lend moneys to be secured by a mortgage on real property in this state, a licensed real estate broker, a licensed attorney, or a participating abstractor.

**9.9(2)** *Request for certificate.* Applications, forms, procedures and practices for the implementation of an effective mortgage release certificate by the division pursuant to Iowa Code section 16.92 shall be provided in the staff supplements. Further, any fee to be charged for the mortgage release application shall be set by the division board upon the recommendation of the division director.

**9.9(3)** *Authority to sign certificate.* The division director or designee of the division director may execute and record the certificates pursuant to Iowa Code section 16.92 and this rule.

**9.9(4)** *Additional remedies.* In addition to any other remedy provided by law, the division may recover from the real estate lender or closer who requested the certificate all expenses incurred, and all damages including punitive or exemplary damages paid to the mortgagee or mortgage service provider, in satisfaction or resolution of a claim for damages.
[**ARC 8458B**, IAB 1/13/10, effective 2/17/10]

**265—9.10(16) Rates.** The rate or fee, if any, for the owner's guaranty, the lender's guaranty, the various endorsements, and the closing protection letter will be fixed by the division board by resolution. In situations involving extraordinary risk, unusual transactions, or unique or multiple endorsements, the division, under the direction of the division director, may make additional charges that are added to and become part of the rate or fee. The rates or fees of any other products or services that will be offered by the division shall be set by the division board upon the recommendation of the division director.

A participant or independent closer shall calculate the title guaranty fees and premiums according to the applicable rate schedule in effect on the effective date of the commitment or the certificate, whichever is earlier. A participant or independent closer shall collect the fee in effect for any other product or service offered by the division at the time the product or service is sold. Additional participant or independent closer responsibilities with regard to the collection and use of fees and premiums shall be set forth in the manual and staff supplements.
[**ARC 8458B**, IAB 1/13/10, effective 2/17/10]

**265—9.11(16) Claims.**

**9.11(1)** *Definitions.* The following words and phrases, when used in this rule, shall have the meanings set forth below unless a meaning is inconsistent with the manifest intent or the context of a particular rule:

*"Claim"* means loss or damage or potential loss or damage arising by reason of a matter actually, possibly, or allegedly within the coverage of a commitment, certificate, closing protection letter, mortgage release certificate, or by reason of any other matter for which the division is actually, possibly, or allegedly liable.

*"Claim loss"* means amounts paid by the division in the investigation and resolution of a claim including, but not limited to, payments to the guaranteed, payments to adverse claimants, attorneys' fees, and all other expenses and costs related to or arising from the claim in accordance with the provisions of this rule.

*"Party"* means a participant, independent closer, or any other person or entity that has a contractual relationship with the division to provide coverage or services for which a claim may be brought against the division.

**9.11(2)** *Claim procedures.* In the event of a claim, the rights of the division and a party are as follows:

*a.* Upon receipt of notice by a party of a claim, the party must notify the division in writing within three business days of receipt of information about a claim by the party and shall mail notification to the division by first-class mail at the division's address in subrule 9.4(1). In addition, if the nature of the claim is such that the guaranteed claimant or the division, or both, may suffer loss or damage that might be reduced or avoided by notice given more promptly than required by the preceding sentence, the party shall notify the division by telephone, facsimile transmission, overnight mail or other overnight delivery service, or any combination of these methods.

*b.* When a party receives a request from the division for information with respect to a claim, the party shall supply to the division any documents, correspondence, surveys, abstracts of title, title searches, other writings, or other information known by or available to the party and relevant to the claim, even if not specifically requested by the division.

*c.* A party shall cooperate fully in the investigation and resolution of a claim and shall supply any additional, new information that may come to the party's attention with such promptness as the circumstances permit.

*d.* The division may, with or without prior notice to the party or parties involved, investigate and resolve any claim in any manner that, in the division's sole discretion, the division may deem advisable.

**9.11(3)** *Claim loss recovery.*

*a.* Any claim losses paid are recoverable from a party by the division.

*b.* In the absence of knowledge by the party about the title defect or other matter causing the claim loss, the division shall not seek recovery from the party when a claim loss arises from one or more of the following:

(1) Hidden defects, including, but not limited to, forged deeds and mortgages, false affidavits, and false statements of marital status;

(2) Errors by public officials in maintaining and indexing the public records, including, but not limited to, errors by county assessors, recorders, clerks, and treasurers;

(3) Errors in these rules, the manual, staff supplements, and any other written or oral instructions or requirements given by the division that the party relies upon in issuing an abstract of title, opinion, commitment, certificate, or endorsement;

(4) Errors in surveys provided by registered Iowa land surveyors that the party relies upon in giving survey coverage or issuing an endorsement or endorsements; or

(5) Underwriting determinations or title risks approved by the division prior to issuance of the abstract of title, opinion, commitment, certificate, or endorsement.

*c.* The party shall reimburse the division for a claim loss when the division determines, in accordance with 9.11(3)*"d,"* that the party is liable and when the claim loss arises from one or more of the following:

(1) Errors by the party in the title search and report of information in the public record;

(2) Reliance by the party upon sources of title searches and other title information that had not been approved by the division at the time of the reliance;

(3) Errors made by the party in examining the title information provided in an abstract of title, survey, affidavit, or other source of title information;

(4) Errors made by the party in the preparation or review of an abstract of title, opinion, commitment or certificate;

(5) Knowing issuance of an abstract of title, opinion, commitment or certificate by the party upon a defective title; or

(6) Failure of the party to follow these rules, the manual, staff supplements, or any other written or oral instructions or requirements given by the division with respect to any other matters not included within 9.11(3)*"c."*

*d.* Unless another rule, the Code of Iowa, the manual, a procedure, or a guideline provides for a different standard of liability or other rule for determining whether the party shall be liable for a claim loss, the division shall apply the following standards:

(1) In the event that a claim loss occurs for which the division may seek recovery from the party under 9.11(3)*"c"*(1), the division may demand reimbursement from the party if the party was grossly negligent in conducting the title search. Gross negligence includes the failure to make a search or the use of inadequate search procedures. Gross negligence under the preceding sentence includes but is not limited to failure to search certain indices, failure to search all names of parties with an interest in the real estate, or failure to search in all public offices required by the division search procedures or procedures used by prudent title searchers if the division has not established specific search procedures. In making its determination whether to seek recovery, the division may consider the complexity of the public record, the reliance of the party upon division-approved search procedures, the training and experience of the person who made the error, and the existence or nonexistence of previous search errors by the party.

(2) In the event that a claim loss occurs for which the division may seek recovery from a party under 9.11(3)*"c"*(2), the division may demand reimbursement from that party if the party relied upon sources of title searches or other title information that had not been approved by the division at the time of the reliance.

(3) In the event that a claim loss occurs for which the division may seek recovery from the party under 9.11(3)*"c"*(3), the division may demand reimbursement from the party if the party negligently examined the title information used in making a title determination, failed to raise an appropriate exception, waived an exception, or endorsed a title commitment or certificate.

1. The division may make full review of local county abstracting standards and bar title rules as a guide to determine whether the party has failed to meet the standard of skill and competence of an abstractor who prepares an abstract of title or an attorney who examines titles in the community where the claim arose.

2. The division may also consider whether the party followed these rules, the manual, staff supplements, or any other written or oral instructions or requirements given by the division in examining the title.

3. In addition, the division may seek input from other parties in the community in which the claim arose as to the standard of care of an abstractor who prepares an abstract of title or of an attorney who examines titles in that community.

(4) In the event that a claim loss occurs for which the division may seek recovery from the party under 9.11(3)*"c"*(4), the division may demand reimbursement from the party if the party negligently prepared and reviewed an abstract of title, opinion, commitment or certificate.

(5) In the event that a claim loss occurs for which the division may seek recovery from the party under 9.11(3)*"c"*(5), the division may demand reimbursement from the party if the issuance of the abstract of title, opinion, commitment or certificate constituted fraud, concealment or dishonesty, or if the issuance of the abstract of title, opinion, commitment or certificate was based upon an underwriting decision on an unusual risk that was made without contacting the division for approval.

(6) In the event that a claim loss occurs for which the division may seek recovery from the party under 9.11(3)*"c"*(6), the division may demand reimbursement from the party if the party failed to follow

these rules, the manual, staff supplements, or any other written or oral instructions or requirements given by the division with respect to the matter causing the claim loss.

(7) In the event the division seeks reimbursement from a party, the division shall state the basis of the reimbursement.

*e.* The division board may, from time to time by resolution, establish levels of authority, including dollar amounts, for the division board, the division director and the division staff for the settlement of claims made against the division.

[**ARC 8458B**, IAB 1/13/10, effective 2/17/10]

**265—9.12(16) Rules of construction.** In the construction of this chapter, the following rules of construction shall be observed, unless either the rules of Iowa Code chapter 4, Construction of Statutes, or the following rules of construction are inconsistent with the manifest intent or the context of a rule:

1. The word "shall" means mandatory and not permissive and the word "may" means permissive and not mandatory.

2. The word "closing" includes, but is not limited to, the recording of a deed executed and delivered in lieu of a mortgage foreclosure or pursuant to a mortgage foreclosure proceeding and also includes the entry into a binding agreement and transfer of possession by a seller to a buyer on a contract sale of land.

3. Nothing contained in this chapter shall be construed to require a participating attorney to disclose privileged information of a client to the division or to any other person.

4. Any rule that provides a specific remedy or sanction for violation of the rule shall not be construed as limiting the ability of the division to pursue and enforce other penalties or sanctions under this chapter, or otherwise, against the participating abstractor, participating attorney, independent closer or other person responsible or liable, either separately, concurrently, cumulatively, or in any combination, at the sole discretion of the division.

5. The failure of the division to enforce a right or remedy under this chapter, a statute, or common law shall not be construed as a waiver of such right or remedy either in the specific instance or in any other instance.

[**ARC 8458B**, IAB 1/13/10, effective 2/17/10]

**265—9.13(16) Seal.** The division shall have a corporate seal that may be altered from time to time. The seal shall impress the words "Title Guaranty Division Iowa Finance Authority" and may be used to authenticate acts and legal instruments of the division.

[**ARC 8458B**, IAB 1/13/10, effective 2/17/10]

**265—9.14(16) Rules of construction.** Rescinded IAB 1/13/10, effective 2/17/10.

**265—9.15(16) Implementation.** Rescinded IAB 1/13/10, effective 2/17/10.

**265—9.16(16) Forms, endorsements, and manuals.** Rescinded IAB 8/4/04, effective 9/8/04.

**265—9.17(16) Application for waiver of participation requirements.** Rescinded IAB 8/4/04, effective 9/8/04.

**265—9.18(16) Rates.** Rescinded IAB 8/4/04, effective 9/8/04.

**265—9.19(16) Charges.** Rescinded IAB 8/4/04, effective 9/8/04.

**265—9.20(16) Mortgage release certificate.** Rescinded IAB 1/13/10, effective 2/17/10.

**265—9.21(16) Seal.** Rescinded IAB 1/13/10, effective 2/17/10.

**265—9.22(16) Closing protection letters.** Rescinded IAB 1/13/10, effective 2/17/10.

These rules are intended to implement Iowa Code sections 17A.3, 17A.9, 17A.10, and 535.8(10), 2007 Iowa Code Supplement sections 16.1, 16.2, 16.3, 16.5, 16.40, and 16.91, and Iowa Code section 16.93 as amended by 2008 Iowa Acts, Senate File 2117.

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◊ Two or more ARCs

1 Effective date of 9.7(2), definition of "Title plant" delayed 70 days by the Administrative Rules Review Committee at its meeting held December 9, 2008.

# CHAPTER 10
# MORTGAGE CREDIT CERTIFICATES

**265—10.1(16) General.** Mortgage credit certificates (MCCs) were authorized by Congress in the 1984 Tax Reform Act as a new concept for providing housing assistance. The Iowa finance authority may elect to allocate a portion of its mortgage revenue bonding authority for single-family housing toward an MCC program. The program will be made available to home buyers through participating Iowa lenders on a first-come, first-served basis.

The MCC operates as a federal income tax credit. The MCC tax credit will reduce the federal income taxes of qualified home buyers purchasing qualified residences, in effect assisting buyers with their house payments.

A purchaser of a new or existing single-family residence may apply for an MCC through a participating lender at the time of purchasing a home and obtaining financing through the lender. An MCC cannot be issued to a home buyer who is refinancing an existing mortgage or land contract, nor can it be used in conjunction with a mortgage financed through a mortgage subsidy bond.

MCCs will be made available to home buyers with generally the same noncredit eligibility requirements as are in effect for the authority's single-family mortgage program. However, mobile and manufactured housing are eligible under the MCC program.

**265—10.2(16) Participating lenders.** The authority will disseminate a summary of the MCC program to mortgage lenders operating within Iowa. Each branch office of a mortgage lender is deemed to be a separate mortgage lender. Any mortgage lender as defined in Iowa Code section 16.1 may become a participating lender by entering into an MCC lender participation agreement with the authority. All other participating lenders may take applications for MCCs on loans closed after the effective date of the participation agreement. Each participating lender shall pay a $100 annual participation fee.

**265—10.3(16) Eligible borrowers.** To be eligible to receive a mortgage credit certificate, an eligible borrower must, on the date the loan is closed:

1. Be a resident of Iowa.
2. Be a purchaser of a single-family residence who will occupy the single-family residence as a permanent, primary, principal residence located within the state.
3. Have the legal capacity to incur the obligations of the loan.
4. Agree not to rent the single-family residence any time during the term of the loan except under special circumstances and with a lease arrangement, the terms and conditions of which are acceptable to the authority.
5. To the extent determined by the authority to assure its MCCs will be qualified mortgage credit certificates pursuant to a qualified mortgage credit certificate program, the authority shall require that the eligible borrower meet the requirements of Section 25 of the Internal Revenue Code and the rules and regulations promulgated thereunder, as well as the requirements set forth in the MCC program guide. Copies of the program guide are available from the authority.

**265—10.4(16) MCC procedures.** Applications for MCCs may be made with any participating lender. The applicant shall provide the lender with all information that is necessary to secure a mortgage loan and an MCC. An applicant must meet the eligibility requirements set out in rule 10.3(16). If the eligibility requirements are met, the participating lenders may nonetheless deny a loan, subject to all reporting and disclosure requirements of applicable state and federal law, for any reason premised on sound lending practices, including underwriting risk evaluation, portfolio diversification, and limitations on restrictions on investments or available funds. If the loan is approved, the terms of the loan, including interest rate, length of loan, down payment, fees, origination charge and repayment schedule, shall not be greater than those available to similar customers that do not make application for an MCC. However, the lender may collect a one-time MCC commitment fee of up to $200, which may be paid by the borrower, lender, or any other party. Of this fee, $100 must accompany the MCC application and be submitted to the

authority by the lender. The balance of the fee may be kept by the lender as compensation for processing the MCC.

No MCC will be issued unless the requirements and procedures set out in the MCC program guide are complied with by all parties to the home sale and financing.

These rules are intended to implement Iowa Code section 16.15, subsection 7.

[Filed 9/10/86, Notice 6/18/86—published 10/8/86, effective 11/12/86]
[Filed 3/19/91, Notice 10/17/90—published 4/3/91, effective 5/8/91]

# CHAPTER 11
# IOWA MAIN STREET LOAN PROGRAM

**265—11.1(16) Program description.** This program is intended to provide financing to facilitate upper floor housing, infill development projects and commercial properties situated in the downtown area of communities participating in the Iowa main street program administered by the Iowa department of economic development pursuant to 261—Chapter 39. Loans will be made from a pool of funds legally available to the authority. Community development corporations, community-initiated development groups and owners or others having an interest in property in selected Iowa main street program communities may apply for such loans. Applications first reviewed and approved by the Iowa department of economic development main street program for project appropriateness shall be reviewed by the authority for underwriting purposes.

**265—11.2(16) Waiver.** The authority may by resolution waive or vary particular provisions of these rules in accordance with rule 265—1.11(16) or, after August 1, 2001, 265—Chapter 18.

**265—11.3(16) Main street loan program.** The purpose of the program is to assist in stimulating downtown economic development within the context of historic preservation and to establish a strong public/private partnership to revitalize downtowns and their communities by providing financing to facilitate upper floor housing, infill development projects and commercial properties situated in the downtown area of communities participating in the Iowa main street program.

**265—11.4(16) Definitions.** As used in connection with the Iowa main street loan program, the following terms have the meanings indicated.

*"Applicant"* means an eligible borrower that applies for an Iowa main street loan.

*"Application"* means those documents required by the participating lender and the authority, which shall include all of the information required by rule 265—2.8(16).

*"Commercial property"* means property formerly or currently used primarily for business, retail, governmental or professional purposes.

*"Department"* means the Iowa department of economic development.

*"Downtown area"* means the business area of a community that is centrally located within the community within the context of the Iowa main street program.

*"Eligible borrower"* means owners or others having an interest in property situated within the downtown area of a participating city, community development corporations associated with a participating city, Iowa main street program organizations associated with a participating city, community-initiated development groups associated with a participating city, or other organization associated with a participating city for purposes of implementing the Iowa main street program.

*"Financing"* includes loans, mortgages, and other financing arrangements to participants in the Iowa main street loan program to finance projects approved pursuant to rule 11.7(16).

*"Housing"* means housing as defined in Iowa Code section 16.1(16)*"a."*

*"Infill development"* means new construction on a vacant commercial lot currently held as open space.

*"Participating city"* means a city participating in the Iowa main street program.

*"Property"* means property owned by the applicant or in which the applicant has an interest and for which the applicant proposes to expend the funds to be borrowed from the Iowa main street loan program.

*"Time of application"* means the date a participating lender receives an application from a participating community.

*"Upper floor housing"* means any housing that is attached to or contained in the same building as commercial property, whether located on the ground floor behind the traditional storefront or on other floors of the property.

**265—11.5(16) Application.** Eligible borrowers for Iowa main street loans shall apply to the department in accordance with the procedures outlined in 265—Chapter 2.

**265—11.6(16) Public benefit.** Before approving an Iowa main street loan, the department and the authority must find that the proposed project will result in one or more of the following:

1. Rehabilitation of upper floor housing or commercial properties or new construction development on infill vacant lots located in the downtown area of a participating city;
2. Housing in downtown areas located in a participating city; or
3. Stimulation of downtown area economic development within the context of historic preservation of the downtown area in a participating city.

**265—11.7(16) Loan criteria.**

**11.7(1)** *Evaluation by the department.* The department shall evaluate each application for an Iowa main street loan to ensure that the following criteria are met:

*a.* The property for which the applicant is applying for an Iowa main street loan is situated in the downtown area of a city participating in the Iowa main street program.

*b.* Strong local community support is evidenced by local contributing effort including, but not limited to, contributions by the city or county, grants, tax abatement, local private contributions and investments, and establishment of community development corporations or community-initiated development groups.

*c.* The loan proceeds will be used in a manner that will enhance the property in a manner that will stimulate downtown economic development within the context of historic preservation.

*d.* The loan proceeds will be used in a manner that will enhance the property in a manner that will assist in establishing a strong public/private partnership to revitalize the downtown area of the community in which the property is situated.

**11.7(2)** *Evaluation by the authority.* Once approval for the loan is given by the department, the authority shall evaluate each application for an Iowa main street loan to ensure that the following criteria are met:

*a.* The applicant shall show evidence that it is able to manage the property in a manner to show economic feasibility. This shall include an overall business management plan including, but not limited to, the following:

(1) A generalized projection of revenues and expenditures for the three-year period beginning the month of anticipated loan closing;

(2) Capital formation plans, if any;

(3) To the extent possible, identification and analysis of risk;

(4) Plans for record keeping, personnel and financial management;

(5) Plans for marketing the rental of the property;

(6) Appraisal of the property provided by the applicant.

*b.* The applicant shall contribute a minimum of 10 percent of the overall project cost.

*c.* There is reasonable assurance that the loan will be repaid. The authority may require any collateral, security or mortgage documents or other filings or protection, including without limitation personal or corporate guarantees, or both, as are reasonably necessary to insure security.

*d.* The business's past earnings record and future prospects shall indicate an ability to repay the loan out of income from the property. The applicant shall provide financial statements and projections of future earnings prospects for the business as required by the authority and shall allow the authority reasonable access to its books and records.

**11.7(3)** *Amount of loans.* The principal amount of each loan shall not be less than $50,000 and shall not exceed $250,000.

**11.7(4)** *Term of loan.* Loans shall be amortized over not more than 30 years; the actual term of the loan shall be determined by the authority depending on the economic feasibility of the project.

**11.7(5)** *Interest rate.* Interest shall be charged on the loan at a rate related to the community investment program as determined and announced by the authority from time to time.

**11.7(6)** *Loan fee.* The applicant shall pay a fee in the amount of 1 percent of the initial loan amount. The loan fee shall be payable at closing.

These rules are intended to implement Iowa Code sections 16.12, 16.18, 16.19, 16.51, 16.100 and 16.101.

[Filed Emergency 6/8/01 after Notice 5/2/01—published 6/27/01, effective 6/8/01]

# CHAPTER 12
# LOW-INCOME HOUSING TAX CREDITS

**265—12.1(16) Qualified allocation plan.** The qualified allocation plan entitled Iowa Finance Authority Low-Income Housing Tax Credit Program 2010 First Amended Qualified Allocation Plan shall be the qualified allocation plan for the allocation of 2010 low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.52. The qualified allocation plan includes the plan, application, and the application instructions. The qualified allocation plan is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2). The qualified allocation plan does not include any amendments or editions created subsequent to June 23, 2010.
[**ARC 8266B**, IAB 11/4/09, effective 12/9/09; **ARC 8947B**, IAB 7/28/10, effective 7/6/10]

**265—12.2(16) Location of copies of the plan.** The qualified allocation plan can be reviewed and copied in its entirety on the authority's Web site at http://www.iowafinanceauthority.gov. Copies of the qualified allocation plan, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library and shall be available on the authority's Web site. The plan incorporates by reference IRC Section 42 and the regulations in effect as of June 23, 2010. Additionally, the plan incorporates by reference Iowa Code section 16.52. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority's Web site.
[**ARC 8266B**, IAB 11/4/09, effective 12/9/09; **ARC 8947B**, IAB 7/28/10, effective 7/6/10]

**265—12.3(16) Compliance manual.** The Low Income Housing Tax Credit Program Compliance Monitoring Manual, dated January 1, 2010, is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).
[**ARC 7700B**, IAB 4/8/09, effective 3/19/09; **ARC 7891B**, IAB 7/1/09, effective 8/5/09; **ARC 8723B**, IAB 5/5/10, effective 6/9/10]

**265—12.4(16) Location of copies of the manual.** The compliance manual can be reviewed and copied in its entirety on the authority's Web site at www.iowafinanceauthority.gov. Copies of the compliance manual shall be deposited with the administrative rules coordinator and at the state law library. The compliance manual incorporates by reference IRC Section 42 and the regulations in effect as of October 31, 2009. Additionally, the compliance manual incorporates by reference Iowa Code section 16.52. These documents are available from the state law library, and links to these statutes, regulations and rules are on the authority's Web site. Copies are available from the authority upon request at no charge.
[**ARC 7700B**, IAB 4/8/09, effective 3/19/09; **ARC 7891B**, IAB 7/1/09, effective 8/5/09; **ARC 8723B**, IAB 5/5/10, effective 6/9/10]

These rules are intended to implement Iowa Code section 16.52.

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[Filed Emergency ARC 8947B, IAB 7/28/10, effective 7/6/10]

# CHAPTER 13
# PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The Iowa finance authority hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

**265—13.1(17A,22) Definitions.**
*"Agency"* means the Iowa finance authority.

**265—13.3(17A,22) Requests for access to records.** As used in this chapter:

**13.3(1)** *Location of record.* A request for access to a record should be directed to the office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. The Iowa finance authority will forward the request to the appropriate person.

**13.3(2)** *Office hours.* Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays.

**265—13.4(17A,22) Access to confidential records.** The following procedures for access to confidential records are in addition to those specified for all records in rule 13.3(17A,22).

**265—13.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.** Except as otherwise provided by law, the subject of a record shall have the right to have a written statement of additions, dissents, or objections entered into the record. The subject shall send the statement to the custodian of the record or to the Iowa finance authority. The statement must be dated and signed by the subject, and shall include the current address and telephone number of the subject or the subject's representative.

**265—13.9(17A,22) Availability of records.** Authority records not routinely available for public inspection. The following records are confidential and not routinely available for public inspection.

**13.9(1)** Materials that are specifically exempted from disclosure by statute and which the authority may in its discretion withhold from public inspection. Records the authority is authorized to withhold from public inspection under Iowa law in its discretion include, but are not limited to, the following:

*a.* Records that represent the work product of an attorney, which are related to litigation or claim made by or against a public body.

*b.* Reports made to the authority which, if released, would give advantage to competitors and serve no public purpose.

*c.* Personal information in confidential personnel records.

*d.* Records of identity of owners of public bonds or obligations maintained as provided in Iowa Code section 76.10 or by the issuer of the public bonds or obligations. However, the issuer of the public bonds or obligations and a state or federal agency shall have the right of access to the records.

*e.* Communications that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination, included but not limited to, financial statements, security agreements, notes, mortgages, partnership agreements, articles of incorporation, tax returns, credit reports and underwriting decisions to the extent they contain personally identifiable information.

*f.* Materials that are specifically exempted from disclosure by statute and which the authority is prohibited from making available for public inspection.

**13.9(2)** The authority, in the implementation of this program, must collect personally identifiable information under Iowa Code chapter 16 and federal statutes and regulations governing the issuance

of debt instruments by the authority. Such personally identifiable information is confidential and includes, but is not limited to, financial statements, security agreements, notes, mortgages, partnership agreements, articles of incorporation, tax returns, credit reports, underwriting decisions as they relate to bond financings, tax credit programs, loans administered by the authority and other authority programs as authorized by law.

These rules are intended to implement Iowa Code section 22.11.

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[Filed 3/19/91, Notice 10/17/90—published 4/3/91, effective 5/8/91]

# CHAPTER 14
# HOMELESS SHELTER ASSISTANCE PROGRAM

**265—14.1(16) General.** The homeless shelter assistance program provides grants for the construction, rehabilitation or expansion of group shelter facilities serving the homeless. Grant requests will be submitted by eligible applicants, and funding decisions will be made by the authority board of directors after application review and recommendations by authority staff. Upon board approval of a grant request, the authority and the applicant will enter into a contract for the grant to ensure program compliance. The authority shall coordinate funding under the program with related funding programs administered by the department of economic development.

**265—14.2(16) Eligible applicants.** Cities, counties, nonprofit organizations, and joint ventures of the same are eligible for funds under the homeless shelter assistance program. Ineligible applicants include for-profit organizations and facilities operating in violation of law.

**265—14.3(16) Eligible activities.** Rehabilitation (including repairs and remodeling) of existing facilities, expansion of existing facilities, and construction of new facilities (including the acquisition of existing structures and the conversion to group shelters), services for the homeless, and operations of homeless assistance shelters are eligible activities for funding under the homeless shelter assistance program. Ineligible activities for funding include, but are not limited to, religious instruction and refinancing.

**265—14.4(16) Application procedure.** The authority will solicit requests for written proposals (RFPs) from eligible applicants. Applicants will be given 45 days in which to respond to the RFP. Applications will be reviewed by the authority staff and recommendations for approval or denial will be made to the authority's board of directors. The authority staff may consult with local or state agencies or groups with an expertise in the area of homeless shelters before making final funding recommendations.

**265—14.5(16) Application review criteria.** The application must be in the form prescribed by the authority and shall include, but not be limited to, the amount of funds requested, the need for the funds, the amount and source of the local match, and estimated number of persons to be served by the shelter. Application review criteria include local match, experience of the applicant, needs assessment, availability of support systems, financial viability of the shelter, coordination and integration with other programs, and comprehensiveness of local housing programs. Priorities for program funding include rehabilitation and expansion of existing facilities; serving geographic areas demonstrating the greatest need; coordination with other programs and agencies, and integration of homeless shelters into a comprehensive program of housing assistance at the community level.

**265—14.6(16) Maximum grant award.** The form of assistance will be a grant limited to a maximum of $50,000 unless there are not adequate applications to utilize available funds.

**265—14.7(16) Contracts.** Upon selection of a project(s) for funding, the authority will issue a contract. In the absence of special circumstances in which there is a legal incapacity on the part of the applicant to accept funds for eligible activities, the contract shall be between the authority and the applicant.

The contract will include, but not be limited to, all terms and conditions necessary for the authority to ensure that funds are properly received, accounted for and audited, that project activities are completed, and that the grantee is in compliance with applicable law.

These rules are intended to implement Iowa Code section 16.100(2)*"a."*

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[Filed 3/19/91, Notice 10/17/90—published 4/3/91, effective 5/8/91]

# CHAPTER 15
# PURCHASING

**265—15.1(16) Applicability of competitive bidding.** Items, including goods or services, that are expected to cost in the aggregate in excess of $50,000 will be obtained as a result of a formal or informal competitive bidding process conducted by the authority, or through the department of administrative services whenever such procurement is in the best interests of the authority, as determined by the authority. Items, including goods or services, expected to cost $50,000 or less in the aggregate may be obtained in any manner deemed appropriate by the authority.

Notwithstanding the foregoing, the authority may exempt any item from competitive bidding if the item is noncompetitive or is purchased in quantities too small to be effectively purchased through competitive bidding; if there is an immediate or emergency need for the item; if the purchase of the item facilitates compliance with set-aside procurement provisions; or if the executive director of the authority determines, in the executive director's sole discretion, that the authority's best interests will be served by exemption from the bidding process.

**265—15.2(16) Methods of obtaining bids or proposals used by the authority.** Formal or informal bids or proposals are to be obtained by one of the following methods. If more than one method is applicable to the purchase of a particular item, the authority shall choose the method of bidding to be utilized.

**15.2(1)** *Formal bids.*

*a.* To solicit formal bids, the authority shall prepare a written invitation-to-bid document and shall send it via the United States Postal Service or electronic mail to selected vendors in the business of providing the goods or services sought by the authority. Goods or services may also be obtained by the authority using reverse auction methods via the authority's Internet Web site.

*b.* The invitation to bid shall contain the due date and time of the bid opening, a complete description of the item needed, and any other necessary or proper items.

*c.* Formal bids received prior to the submission deadline set in the bidding document shall be made available to any interested party on the date and hour designated on the bid form. As the bids are opened, they shall be tabulated, and the results of the tabulation shall be made available to any interested party. The original bids and the tabulations shall be maintained at the authority for one year following the date on which the bids were opened.

*d.* An award shall be made within 60 calendar days from the date of the bid opening, unless a different time frame is stated by the authority in the invitation to bid or subsequently agreed to by the vendors. The price quoted by the vendors shall remain binding throughout the applicable time period. If an award is not made within the applicable time frame, all bids shall be deemed rejected.

**15.2(2)** *Informal bids.*

*a.* Informal bids may be obtained by the authority through use of a written bid form, over the telephone, via facsimile transmission, or in electronic format, including over the Internet or through electronic mail. When requesting informal bids, the authority shall contact selected vendors supplying the goods or services sought by the authority and shall communicate to each vendor the date on which bids must be received, a complete description of the item to be purchased, and the time period during which the bid must remain valid. Goods or services may also be obtained by the authority using reverse auction methods via the authority's Internet Web site.

*b.* Written informal bids shall be opened as received, and informal telephone, facsimile, or electronic bids shall be recorded as received. If a bid is received over the telephone, a telephone bid form shall be used to record the bid received. If an electronic bid is received, a printout shall be used to record the bid received. Following the submission deadline, the authority shall tabulate the bids received and make the award. The bids and the tabulations shall be available to interested parties after the submission deadline and shall be maintained by the authority for one year following the submission deadline.

*c.* If an award is not made within the time frame indicated by the authority when requesting bids, all bids shall be deemed rejected.

**15.2(3)** *Request for proposals.* Whenever a requirement exists for an item and cost may not be the sole criterion for selection, the authority may issue a request for proposals. The purpose of a request for proposals is to provide the vendor with sufficient information about the authority's requirements and goals to allow the vendor to propose a solution to the authority's requirements.

*a.* The authority shall prepare a written request for proposals and shall send it via the United States Postal Service or electronic mail to selected vendors in the business of supplying the goods or services sought by the authority.

*b.* An award shall be made within 60 calendar days from the date of the proposal opening unless a different time frame is stated by the authority in the request for proposals or subsequently agreed to by the vendors. The terms quoted by the vendor shall remain binding throughout the applicable time frame. If an award is not made within the applicable time frame, all proposals shall be deemed rejected and not binding.

*c.* At a minimum, a request for proposals shall address the following criteria: the need for a proposal conference; the purpose and background of the request; important dates in the proposal and the award process, including the submission deadline; administrative requirements for submitting the proposal and the format required by the authority; the scope of the work to be performed and any specific requirements which the vendor must meet; and any contractual terms and conditions which the authority anticipates may affect the terms of the vendor's proposal.

**265—15.3(16) Items purchased through the department of administrative services.** Goods and services may be obtained by the authority through the department of administrative services (DAS) whenever procurement through DAS is in the best interests of the authority. Items procured through DAS may be obtained by DAS in any manner it deems appropriate.

**265—15.4(16) Advertising solicitations.** Formal bids and requests for proposals issued by the authority shall be advertised in a daily paper in Iowa. The advertisement shall indicate that it is a notice to prospective bidders, contain the due date and time of opening of the bid or proposal, describe the items to be purchased, and provide the name, address and telephone number of the person to be contacted to obtain official bidding documents.

**265—15.5(16) Contract purchases.** The authority may enter into contract purchase agreements for items, groups of items, or services. Contract purchase agreements are subject to the competitive bidding requirements previously outlined, where applicable.

**265—15.6(16) Blanket purchase agreements.** If the authority foresees a requirement for frequent purchases of off-the-shelf items, the authority may establish blanket purchase agreements. A blanket purchase agreement is a formally approved charge account that is designed to reduce paperwork and the number of checks issued. Blanket purchase agreements are subject to the competitive bidding requirements previously outlined, where applicable.

**265—15.7(16) Bids and proposals to conform to specifications.** All bids and proposals must conform to the specifications indicated by the authority. Bids and proposals that do not conform to the specifications stated may be rejected. The authority reserves the right to waive deficiencies in the bids or proposals if in the judgment of the authority its best interests would be served by the waiver.

**265—15.8(16) Time of delivery.** When evaluating bids or proposals, the authority may consider the time of delivery when determining the successful vendor.

**265—15.9(16) Cash discounts.** When evaluating bids or proposals, the authority may consider cash discounts.

**265—15.10(16) Ties.** The authority shall resolve ties among bids or proposals which are equal in all respects by drawing lots unless only one of the tied bidders is an Iowa business. If only one of the

bidders tied for an award is an Iowa business, the Iowa business shall be given preference over all tied out-of-state businesses. If it is necessary to draw lots, the drawing shall be held in the presence of the vendors who submitted the tied bids or proposals whenever practical. If the tied vendors are not present, the drawing shall be held in front of at least two persons, and the authority shall document the drawing.

**265—15.11(16) Time of submission.** All formal bids and proposals shall be submitted by the vendor in sufficient time to actually reach the authority prior to the submission deadline specified in the bid document. All informal bids shall be submitted by the vendor in time to reach the authority prior to the submission deadline indicated by the authority. Formal bids and proposals shall be marked by the authority with the date and time received by the authority. Formal bids and proposals received after the submission deadline shall be returned to the vendor unopened. All vendors to whom invitations to bid or requests for proposals are sent shall be notified of any changes in submission deadline.

If a formal bid or request for proposals is canceled prior to the submission deadline, any responses already received shall be returned unopened. If an informal bid is canceled prior to the submission deadline, any bids already received shall be destroyed.

**265—15.12(16) Modification or withdrawal of bids.** Bids or proposals may be modified or withdrawn prior to the time and date set for the bid or proposal opening. Modifications or withdrawals shall be in writing and delivered in a sealed envelope that properly identifies the correct bid or proposal to be modified or withdrawn. A bid or proposal may be withdrawn after opening only with the approval of the authority if the authority finds that an honest error was made by the vendor that will cause undue financial hardship to the vendor and that will not cause undue financial hardship or inconvenience to the authority.

**265—15.13(16) Financial security.** The authority may require bid security, litigation security, and performance security on formal bids or proposals. When required, security may be by certified check, certificate of deposit, letter of credit made payable to the authority, or any other form specified by the authority.

**265—15.14(16) Rejection of bids and proposals.** The authority reserves the right to reject any or all bids or proposals. Bids and proposals may be rejected because of faulty specifications, abandonment of the project, insufficient funds, evidence of unfair or flawed bidding procedures, failure of a vendor to meet the authority's requirements, or for any other reason if the authority determines that its best interests will be served by rejecting any or all bids. Following the rejection of bids, new bids may be requested by the authority at any time deemed convenient by the authority.

**265—15.15(16) Vendor appeals.** Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the authority may appeal the decision by filing a written notice of appeal before the Iowa Finance Authority Board, 2015 Grand Avenue, Des Moines, Iowa 50312, within three days of the date of the award, exclusive of Saturdays, Sundays, and state legal holidays. The notice of appeal must actually be received at this address within the time frame specified to be considered timely. The notice of appeal shall state the grounds upon which the vendor challenges the authority's award. Following receipt of a notice of appeal which has been timely filed, the board shall notify the aggrieved vendor and the vendor who received the contract award of the procedures to be followed in the appeal. The board may appoint a designee to proceed with the appeal on its behalf.

These rules are intended to implement Iowa Code section 16.5 as amended by 2007 Iowa Acts, Senate File 431, section 19.

[Filed 10/4/07, Notice 8/29/07—published 10/24/07, effective 11/28/07]

# CHAPTER 16
# DECLARATORY ORDERS

**265—16.1(17A) Petition for declaratory order.** Any person may file a petition with the authority for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the authority, at Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. A petition is deemed filed when it is received by that office. The authority shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the authority an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE
IOWA FINANCE AUTHORITY

| | | |
|---|---|---|
| Petition by (Name of Petitioner)<br>for a Declaratory Order on<br>(Cite provisions of law involved). | } | PETITION FOR<br>DECLARATORY ORDER |

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 16.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

**265—16.2(17A) Notice of petition.** Within 15 days after receipt of a petition for a declaratory order, the authority shall give notice of the petition to all persons not served by the petitioner pursuant to rule 16.6(17A) to whom notice is required by any provision of law. The authority may also give notice to any other persons.

**265—16.3(17A) Intervention.**

**16.3(1)** Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

**16.3(2)** Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the authority.

**16.3(3)** A petition for intervention shall be filed at Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Such a petition is deemed filed when it is received by that office. The authority will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides

an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE
IOWA FINANCE AUTHORITY

| | |
|---|---|
| Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition). } | PETITION FOR INTERVENTION |

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

**265—16.4(17A) Briefs.** The petitioner or any intervenor may file a brief in support of the position urged. The authority may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

**265—16.5(17A) Inquiries.** Inquiries concerning the status of a declaratory order proceeding may be made to the Executive Director, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312.

**265—16.6(17A) Service and filing of petitions and other papers.**

**16.6(1)** *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

**16.6(2)** *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the authority.

**16.6(3)** *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 265—7.12(17A).

**265—16.7(17A) Consideration.** Upon request by petitioner, the authority must schedule a brief and informal meeting between the original petitioner, all intervenors, and the authority, a member of the authority's board, or a member of the staff of the authority, to discuss the questions raised. The authority may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the authority by any person.

**265—16.8(17A) Action on petition.**

**16.8(1)** Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the executive director or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

**16.8(2)** The date of issuance of an order or of a refusal to issue an order is as defined in rule 265—7.2(17A).

**265—16.9(17A) Refusal to issue order.**

**16.9(1)** The authority shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the authority to issue an order.
3. The authority does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other authority or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an authority decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the authority to determine whether a statute is unconstitutional on its face.

**16.9(2)** A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final authority action on the petition.

**16.9(3)** Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

**265—16.10(17A) Contents of declaratory order—effective date.** In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

**265—16.11(17A) Copies of orders.** A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

**265—16.12(17A) Effect of a declaratory order.** A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the authority, the petitioner, and any intervenors (who consent to be bound) and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other

persons, a declaratory order serves only as precedent and is not binding on the authority. The issuance of a declaratory order constitutes final authority action on the petition.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed emergency 9/3/99 after Notice 4/21/99—published 9/22/99, effective 9/3/99]

# CHAPTER 17
# PROCEDURE FOR RULE MAKING

**265—17.1(17A) Applicability.** Except to the extent otherwise expressly provided by statute, all rules adopted by the authority are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

**265—17.2(17A) Advice on possible rules before notice of proposed rule adoption.** In addition to seeking information by other methods, the authority may, before publication of a Notice of Intended Action under Iowa Code subsection 17A.4(1)*"a,"* solicit comments from the public on a subject matter of possible rule making by the authority by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

**265—17.3(17A) Public rule-making docket.**

**17.3(1)** *Docket maintained.* The authority shall maintain a current public rule-making docket.

**17.3(2)** *Anticipated rule making.* The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed for internal discussion within the authority. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the authority for subsequent proposal under the provisions of Iowa Code section 17A.4(1)*"a,"* the name and address of authority personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the authority of that possible rule. The authority may also include in the docket other subjects upon which public comment is desired.

**17.3(3)** *Pending rule-making proceedings.* The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)*"a,"* to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

*a.* The subject matter of the proposed rule;

*b.* A citation to all published notices relating to the proceeding;

*c.* Where written submissions on the proposed rule may be inspected;

*d.* The time during which written submissions may be made;

*e.* The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;

*f.* Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected;

*g.* The current status of the proposed rule and any authority determinations with respect thereto;

*h.* Any known timetable for authority decisions or other action in the proceeding;

*i.* The date of the rule's adoption;

*j.* The date of the rule's filing, indexing, and publication;

*k.* The date on which the rule will become effective; and

*l.* Where the rule-making record may be inspected.

**265—17.4(17A) Notice of proposed rule making.**

**17.4(1)** *Contents.* At least 35 days before the adoption of a rule the authority shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

*a.* A brief explanation of the purpose of the proposed rule;

*b.* The specific legal authority for the proposed rule;

*c.* Except to the extent impracticable, the text of the proposed rule;

*d.* Where, when, and how persons may present their views on the proposed rule; and

*e.* Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the authority shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the authority for the resolution of each of those issues.

**17.4(2)** *Incorporation by reference.* A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 17.12(2) of this chapter.

**17.4(3)** *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the authority a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the authority shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the authority for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of six months.

**265—17.5(17A) Public participation.**

**17.5(1)** *Written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the Executive Director, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312, or the person designated in the Notice of Intended Action.

**17.5(2)** *Oral proceedings.* The authority may, at any time, schedule an oral proceeding on a proposed rule. The authority shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the authority by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

3. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

**17.5(3)** *Conduct of oral proceedings.*

*a. Applicability.* This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)*"b"* as amended by 1998 Iowa Acts, chapter 1202, section 8, or this chapter.

*b. Scheduling and notice.* An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

*c. Presiding officer.* The authority, a member of the authority, or another person designated by the authority who will be familiar with the substance of the proposed rule, shall preside at the oral

proceeding on a proposed rule. If the authority does not preside, the presiding officer shall prepare a memorandum for consideration by the authority summarizing the contents of the presentations made at the oral proceeding unless the authority determines that such a memorandum is unnecessary because the authority will personally listen to or read the entire transcript of the oral proceeding.

*d.* *Conduct of proceeding.* At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the authority at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the authority decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the authority.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

**17.5(4)** *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the authority may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

**17.5(5)** *Accessibility.* The authority shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the Executive Director, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312, telephone number (515)725-4900, in advance to arrange access or other needed services.

**265—17.6(17A) Regulatory analysis.**

**17.6(1)** *Definition of small business.* A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

**17.6(2)** *Mailing list.* Small businesses or organizations of small businesses may be registered on the authority's small business impact list by making a written application addressed to the Executive Director, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. The application for registration shall state:

*a.* The name of the small business or organization of small businesses;

*b.* Its address;

*c.* The name of a person authorized to transact business for the applicant;

*d.* A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.

*e.* Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The authority may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The authority may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

**17.6(3)** *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the authority shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the authority shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

**17.6(4)** *Qualified requesters for regulatory analysis—economic impact.* The authority shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), after a proper request from:

*a.* The administrative rules coordinator;

*b.* The administrative rules review committee.

**17.6(5)** *Qualified requesters for regulatory analysis—business impact.* The authority shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b), after a proper request from:

*a.* The administrative rules review committee;

*b.* The administrative rules coordinator;

*c.* At least 25 or more persons who sign the request provided that each represents a different small business;

*d.* An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

**17.6(6)** *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis the authority shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

**17.6(7)** *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the authority. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

**17.6(8)** *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(4,5).

**17.6(9)** *Publication of a concise summary.* The authority shall make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

**17.6(10)** *Regulatory analysis contents—rules review committee or rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), unless a written request expressly waives one or more of the items listed in the section.

**17.6(11)** *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b).

**265—17.7(17A,25B) Fiscal impact statement.**

**17.7(1)** A proposed rule that mandates additional combined expenditures exceeding $100,000 by all affected political subdivisions, or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

**17.7(2)** If the authority determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the authority shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

**265—17.8(17A) Time and manner of rule adoption.**

**17.8(1)** *Time of adoption.* The authority shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the authority shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

**17.8(2)** *Consideration of public comment.* Before the adoption of a rule, the authority shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis, or fiscal impact statement issued in that rule-making proceeding.

**17.8(3)** *Reliance on authority expertise.* Except as otherwise provided by law, the authority may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

**265—17.9(17A) Variance between adopted rule and published notice of proposed rule adoption.**

**17.9(1)** The authority shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

*a.* The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

*b.* The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

*c.* The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

**17.9(2)** In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the authority shall consider the following factors:

*a.* The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

*b.* The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and

*c.* The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

**17.9(3)** The authority shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the authority finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within 3 days of its issuance.

**17.9(4)** Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the authority to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

**265—17.10(17A) Exemptions from public rule-making procedures.**

**17.10(1)** *Omission of notice and comment.* To the extent the authority for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the authority may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The authority shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**17.10(2)** *Categories exempt.* The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class:

*a.* Emergency housing assistance in the event of a disaster.

*b.* Conduit financing to aid victims of a disaster.

**17.10(3)** *Public proceedings on rules adopted without them.* The authority may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 17.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the authority shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 17.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the authority may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 17.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

**265—17.11(17A) Concise statement of reasons.**

**17.11(1)** *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the authority shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Executive Director, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

**17.11(2)** *Contents.* The concise statement of reasons shall contain:

*a.* The reasons for adopting the rule;

*b.* An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;

*c.* The principal reasons urged in the rule-making proceeding for and against the rule, and the authority's reasons for overruling the arguments made against the rule.

**17.11(3)** *Time of issuance.* After a proper request, the authority shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

**265—17.12(17A) Contents, style, and form of rule.**

**17.12(1)** *Contents.* Each rule adopted by the authority shall contain the text of the rule and, in addition:

*a.* The date the authority adopted the rule;

*b.* A brief explanation of the principal reasons for the rule-making action if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or if the authority in its discretion decides to include such reasons;

*c.* A reference to all rules repealed, amended, or suspended by the rule;

*d.* A reference to the specific statutory or other authority authorizing adoption of the rule;

*e.* Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

*f.* A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the authority in its discretion decides to include such reasons; and

*g.* The effective date of the rule.

**17.12(2)** *Incorporation by reference.* The authority may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the authority finds that the incorporation of its text in the authority proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the authority proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The authority may incorporate such matter by reference in a proposed or adopted rule only if the authority makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this authority, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The authority shall retain permanently a copy of any materials incorporated by reference in a rule of the authority.

If the authority adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

**17.12(3)** *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the authority shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the authority. The authority will provide a copy of that full text at actual cost upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the authority shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

**17.12(4)** *Style and form.* In preparing its rules, the authority shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

**265—17.13(17A) Authority rule-making record.**

**17.13(1)** *Requirement.* The authority shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

**17.13(2)** *Contents.* The authority rule-making record shall contain:

*a.* Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of authority submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

*b.* Copies of any portions of the authority's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

*c.* All written petitions, requests, and submissions received by the authority, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the authority and considered by the authority, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the authority is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the authority shall identify in the record the particular materials deleted and state the reasons for that deletion;

*d.* Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

*e.* A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

*f.* A copy of the rule and any concise statement of reasons prepared for that rule;

*g.* All petitions for amendment or repeal or suspension of the rule;

*h.* A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

*i.* A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any authority response to that objection;

*j.* A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

*k.* A copy of any executive order concerning the rule.

**17.13(3)** *Effect of record.* Except as otherwise required by a provision of law, the authority rule-making record required by this rule need not constitute the exclusive basis for authority action on that rule.

**17.13(4)** *Maintenance of record.* The authority shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in 17.13(2)*"g," "h," "i,"* or *"j."*

**265—17.14(17A) Filing of rules.** The authority shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the authority shall use the standard form prescribed by the administrative rules coordinator.

**265—17.15(17A) Effectiveness of rules prior to publication.**

**17.15(1)** *Grounds.* The authority may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The authority shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**17.15(2)** *Special notice.* When the authority makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3), the authority shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the authority to employ the most effective and prompt means of notice rationally calculated to inform potentially

affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the authority of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication, in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3), shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 17.15(2).

**265—17.16(17A) General statements of policy.**

**17.16(1)** *Compilation, indexing, public inspection.* The authority shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10)*"a," "c," "f," "g," "h," "k."* Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(10)*"f,"* or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

**17.16(2)** *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the authority to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 17.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

**265—17.17(17A) Review by authority of rules.**

**17.17(1)** Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the authority to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the authority shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The authority may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

**17.17(2)** In conducting the formal review, the authority shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the authority's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the authority or granted by the authority. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the authority's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed emergency 9/3/99 after Notice 4/21/99—published 9/22/99, effective 9/3/99]

# CHAPTER 18
# WAIVERS AND VARIANCES FROM ADMINISTRATIVE RULES

**265—18.1(17A,16) Definitions.** The following words and phrases, when used in this chapter, shall have the meanings set forth below unless a meaning is inconsistent with the manifest intent or the context of a particular rule:zl

*"Authority"* means the Iowa finance authority whose powers are exercised by a board of nine members appointed by the governor pursuant to Iowa Code section 16.2.

*"Executive director"* means the executive director of the authority appointed by the governor pursuant to Iowa Code section 16.6, or the executive director's designee.

*"Person"* means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, trust, partnership or association, or any legal entity.

*"Waiver"* or *"variance"* means an action by the authority which suspends in whole or in part the requirements or provisions of a rule as applied to a person on the basis of the particular circumstances of that person.

**265—18.2(17A,16) Scope.** This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the authority in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

**265—18.3(17A,16) Applicability of chapter.** The authority may grant a waiver from a rule only if the authority has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The authority may not waive requirements created or duties imposed by statute.

**265—18.4(17A,16) Criteria for waiver or variance.** In response to a petition completed pursuant to rule 18.6(17A,16), the authority may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the authority finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

In determining whether a waiver or variance should be granted, the authority shall consider the public interest, policies and legislative intent of the statute on which the rule is based.

**265—18.5(17A,16) Filing of petition.** A petition for a waiver must be submitted in writing to the authority as follows:

**18.5(1)** *Contested cases.* If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case. A copy of the request shall also be served on all parties to the contested case proceeding.

**18.5(2)** *Other.* If the petition does not relate to a pending contested case, the petition may be submitted to the attention of the executive director of the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312.

**265—18.6(17A,16) Content of petition.** A petition for waiver shall include the following information where applicable and known to the requester (for an example of a petition for waiver or variance, see Exhibit A at the end of this chapter):

1. The name, address, and telephone number of the person for whom a waiver is being requested and the case number of any related contested case.

2. A description and citation of the specific rule from which a waiver is requested.

3. The specific waiver requested, including the precise scope and duration.

4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 18.4(17A,16). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

5. A history of any prior contacts between the authority and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.

6. Any information known to the requester regarding the authority's treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the granting of a waiver.

8. The name, address, and telephone number of any person who would be adversely affected by the granting of a petition.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the authority with information relevant to the waiver.

**265—18.7(17A,16) Additional information.** Prior to issuing an order granting or denying a waiver, the executive director may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the executive director may schedule a telephonic or in-person meeting between the petitioner and the authority's executive director, or authority staff.

**265—18.8(17A,16) Notice.** The executive director shall acknowledge a petition upon receipt. The executive director shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the executive director may give notice to other persons. To accomplish this notice provision, the executive director may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the executive director attesting that notice has been provided.

**265—18.9(17A,16) Hearing procedures.** The provisions of Iowa Code sections 17A.10 through 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case. These provisions shall otherwise apply to agency proceedings for a waiver only when the authority so provides by rule or order or is required to do so by statute.

**265—18.10(17A,16) Ruling.** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains. The order shall include a statement of the relevant facts and reasons upon which the action is based and a description of the precise scope and duration of the waiver if one is issued.

**18.10(1)** *Executive director review.* The executive director may take up to 60 days to fully investigate and review the petition and, at the next board meeting thereafter, may present to the authority a suggested order based upon the executive director's investigation and review. The authority shall adopt, amend, or reject the suggested order. If the suggested order is rejected, the authority shall instruct the executive director to prepare an alternative order to be considered at a subsequent board meeting.

**18.10(2)** *Authority discretion.* The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the authority upon consideration of all relevant factors.

The authority shall evaluate each petition for a waiver based on the unique, individual circumstances set out in the petition.

**18.10(3)** *Burden of persuasion.* The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the authority should exercise its discretion to grant a waiver from an authority rule.

**18.10(4)** *Narrowly tailored exception.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

**18.10(5)** *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the authority shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

**18.10(6)** *Conditions.* The authority may place any condition on a waiver that the authority finds desirable to protect the public health, safety, and welfare.

**18.10(7)** *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the authority, a waiver may be renewed if the authority finds that grounds for a waiver continue to exist.

**18.10(8)** *Time for ruling.* The authority shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the authority shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**18.10(9)** *When deemed denied.* Failure of the authority to grant or deny a petition within the required time period shall be deemed a denial of that petition by the authority. However, the authority shall remain responsible for issuing an order denying a waiver.

**18.10(10)** *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

**265—18.11(17A,16) Public availability.** All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the authority is authorized or required to keep confidential. The authority may accordingly redact confidential information from petitions or orders prior to public inspection.

**265—18.12(17A,16) Summary reports.** The authority shall semiannually prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the authority's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

**265—18.13(17A,16) Voiding or cancellation.** A waiver or variance is void if the material facts upon which the petition is based are not true or if material facts have been withheld. A waiver or variance issued by the authority pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the authority issues an order finding any of the following:

1. That the petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. That the alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. That the subject of the waiver order has failed to comply with all conditions contained in the order.

**265—18.14(17A,16) Violations.** Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

**265—18.15(17A,16) Defense.** After the authority issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

**265—18.16(17A,16) Judicial review.** Granting or denying a waiver petition is final agency action under Iowa Code chapter 17A. Any petition for judicial review by the district court shall be filed within 30 days of the issuance of the order in response to the petition unless a different time is provided by rule or statute.

These rules are intended to implement Iowa Code section 17A.9A and chapter 16.

[Filed 6/8/01, Notice 4/4/01—published 6/27/01, effective 8/1/01]

[Filed 12/11/07, Notice 10/24/07—published 1/2/08, effective 2/6/08]

Exhibit A

Sample Petition for Waiver/Variance

BEFORE THE IOWA FINANCE AUTHORITY

| | | |
|---|---|---|
| Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter). | } | PETITION FOR WAIVER |

A petition for waiver or variance from a rule adopted by the authority shall include the following information in the petition for waiver or variance where applicable and known:

*a.* Provide the petitioner's (person asking for a waiver or variance) name, address, and telephone number.

*b.* Describe and cite the specific rule from which a waiver or variance is requested.

*c.* Describe the specific waiver or variance requested; include the exact scope and operative time period that the waiver or variance will extend.

*d.* Explain the important facts that the petitioner believes justify a waiver or variance. Include in your answer (1) why applying the rule will result in undue hardship on the petitioner; and (2) how granting the waiver or variance will not prejudice the substantial legal rights of any person; and (3) that the provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

*e.* Provide a history of prior contacts between the authority and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver or variance; include a description of each affected license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative or examination reports relating to the regulated activity, license, grant or loan within the past five years.

*f.* Provide information known to the petitioner regarding the treatment by the authority of similar cases.

*g.* Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver or variance.

*h.* Provide the name, address, and telephone number of any person that would be adversely affected or disadvantaged by the granting of the waiver or variance.

*i.* Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver or variance.

*j.* Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the authority with information relevant to the waiver or variance.

I hereby attest to the accuracy and truthfulness of the above information.

_____ _____

Petitioner's signature Date

Petitioner should note the following when requesting or petitioning for a waiver or variance:

1. The petitioner has the burden of proving to the authority, by clear and convincing evidence, the following: (a) application of the rule to the petitioner would result in an undue hardship on the petitioner; and (b) waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and (c) the provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and (d) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

2. The executive director may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver or variance.

3. All petitions for waiver or variance must be submitted in writing to the attention of the executive director of the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

# CHAPTER 19
# STATE HOUSING TRUST FUND

**265—19.1(16) Trust fund allocation plans.** The trust fund allocation plan entitled Iowa Finance Authority State Housing Trust Fund Allocation Plan for the Local Housing Trust Fund Program dated June 2009 shall be the allocation plan for the award, pursuant to the local housing trust fund program, of funds held within the state housing trust fund established in Iowa Code section 16.181. The trust fund allocation plan entitled Iowa Finance Authority State Housing Trust Fund Allocation Plan for the Project-Based Housing Program dated June 2009 shall be the allocation plan for the distribution, pursuant to the project-based housing program, of funds held within the state housing trust fund. The trust fund allocation plans for the local housing trust fund program and the project-based housing program include the plans, applications, and application instructions. The trust fund allocation plans for the local housing trust fund program and the project-based housing program are incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).
[**ARC 8073B**, IAB 8/26/09, effective 9/30/09]

**265—19.2(16) Location of copies of the plans.** The trust fund allocation plans for the local housing trust fund program and the project-based housing program may be reviewed and copied in their entirety on the authority's Web site at www.iowafinanceauthority.gov. Copies of the trust fund allocation plans for the local housing trust fund program and the project-based housing program, the applications, and all related attachments and exhibits, if any, shall be deposited with the administrative rules coordinator and at the state law library. The plans incorporate by reference Iowa Code section 16.181.

These rules are intended to implement Iowa Code Supplement sections 16.5(1)*"r"* and 16.181.

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[Filed ARC 8073B (Notice ARC 7895B, IAB 7/1/09), IAB 8/26/09, effective 9/30/09]

# CHAPTER 20
# SENIOR LIVING REVOLVING LOAN PROGRAM

**265—20.1(16) Purpose.** Through its senior living revolving loan program (program), the authority seeks to assist in the development of affordable assisted living and service-enriched affordable housing for seniors and persons with disabilities. This chapter implements 2004 Iowa Acts, Senate File 2298, section 170, which adds Iowa Code section 16.182 to the authority's enabling statute and furthers the goal of the senior living program as specified in Iowa Code section 249H.2.

**265—20.2(16) Priority of loan awards.** It is the authority's intent to award loans under the program to those applicants that meet all of the requirements of this chapter and satisfy all threshold and underwriting requirements of the applicable qualified allocation plan adopted by the authority pursuant to 265 IAC 12.1(16). The authority intends to award the available funds under this program each year if applicants meet all applicable requirements; provided, however, that the authority may allocate funds available between affordable assisted living and service-enriched housing in the manner it deems most appropriate. For example, the authority may choose to allocate 80 percent of available funds under the program to affordable assisted living housing and 20 percent to service-enriched housing. The authority will announce its expected allocation of funds prior to each tax credit application deadline. To the extent that sufficient funds are not available to fully fund all applications, taking into consideration the authority's allocation of funds as described above, loans under this program will be funded in the following order of priority:

1. Applicants awarded tax credits under the affordable assisted living set-aside;
2. Applicants awarded tax credits under the service-enriched set-aside; and
3. Applicants awarded tax credits outside of a set-aside.

Applicants within a set-aside will compete based on points awarded under the qualified allocation plan.

**265—20.3(16) Application process.** Applications will be reviewed as part of an annual competition. Applications must be submitted in conjunction with the applicant's application for low-income housing tax credits, as set forth in the applicable qualified allocation plan. Once funds have been allocated, the authority will not accept for review any applications seeking funding until the next low-income housing tax credit application deadline. Applications for assistance under this program must be made on forms and in the manner provided by the authority. Inquiries with respect to this program should be made to those persons identified on the authority's Web site at www.iowafinanceauthority.gov as contacts for this program.

**265—20.4(16) Program guidelines.** For-profit and nonprofit sponsors are eligible to apply for assistance under this program based on the following program guidelines:

**20.4(1)** Projects eligible for assistance must meet the following criteria:

*a.* Projects must be developed using low-income housing tax credits.

*b.* Applicants must satisfy all of the requirements of the applicable qualified allocation plan, including the plan, application and application instructions, all applicable attachments and exhibits, and applicable provisions of the Internal Revenue Code and the accompanying Treasury regulations.

*c.* Assistance provided under this program must enable the project to maintain financial feasibility and affordability for at least the term of the assistance.

*d.* Operating and replacement reserve funds must be adequately funded in the amounts required by the applicable qualified allocation plan.

**20.4(2)** The following types of activities are eligible for assistance:

*a.* Acquisition and rehabilitation.

*b.* New construction.

*c.* Such other similar activities as may be determined by the authority to fall within the guidelines and purposes established for this program.

**20.4(3)** Assistance will be provided upon the following terms and conditions:

*a.* Generally, the minimum loan amount is $100,000, and the maximum loan amount is $2,000,000. The maximum loan term and amortization period are each 30 years.

*b.* The debt service ratio must be at least 1.25:1 for the authority's first mortgage, as calculated by the authority.

*c.* Interest rates will be set by the authority, in its sole discretion, at or below the applicable federal rate in effect at the time of closing.

*d.* Loans shall be secured by a first mortgage. Construction financing may be awarded to projects.

*e.* Recipients of assistance must agree to observe several covenants and restrictions, including but not limited to recorded affordability and transfer restrictions, all in accordance with such loan and mortgage documents as may be required by the authority under this program.

*f.* The recipient must provide adequate evidence that its title in the real estate on which the project is to be located is a marketable title pursuant to Iowa Land Title Examination Standards, or other applicable law. Adequate evidence of marketable title is demonstrated by either (1) a title opinion of an attorney authorized to practice law in Iowa showing that the loan recipient has marketable title, or (2) a title guaranty certificate issued by the title guaranty division of the Iowa finance authority showing the recipient as the guaranteed.

*g.* Recipients must execute such documents and instruments and must provide such information, certificates and other items as determined necessary by the authority, in its sole discretion, in connection with any assistance.

**20.4(4)** Loan fees.

*a.* Loan fees are as follows:

(1) Commitment fee (construction period) – 1.0 percent of loan amount.

(2) Commitment fee (permanent loan) – 2.0 percent of loan amount.

(3) Inspection fee (construction loan) – 0.5 percent of loan amount.

*b.* The authority may, in limited cases, reduce such fees if necessary in connection with assistance provided under this program. Such decision will be made in the sole discretion of the authority.

**265—20.5(16) Authority analysis of applications.** Authority staff will analyze and underwrite each potential project and will make recommendations for funding assistance to the board of the authority. Authority staff will use such procedures and processes in its underwriting and analysis as it deems necessary and appropriate in connection with furthering the purposes of this program. In addition, the authority anticipates that, because of the complex nature of each transaction and the particular set of circumstances attributable to each particular application/transaction, the terms and conditions of loans will vary from project to project. The authority will make available its general operating procedures and guidelines for this program.

**265—20.6(16) Discretion of authority board.** The authority board of directors has the sole and final discretion to award or not award assistance and to approve final loan terms.

**265—20.7(16) Closing/advance of funds.** If all requirements of the authority are not met in accordance with any time frames set by the authority and to the complete satisfaction of the authority, all in the sole discretion of the authority, the authority may determine to cease work on an approved project and, accordingly, not advance any funds for such project.

These rules are intended to implement Iowa Code section 16.5(17) and 2004 Iowa Acts, Senate File 2298, section 170.

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# CHAPTER 21
# HOME AND COMMUNITY-BASED SERVICES REVOLVING LOAN PROGRAM

**265—21.1(16) Purpose.** Through its home and community-based services revolving loan program (program), the authority seeks to assist in the development and expansion of specific community-based services (adult day services, respite services, congregate meals, health and wellness, health screening, and nutritional assessments) that will allow older persons of low income to remain in their homes. This chapter implements Iowa Code section 16.183 as amended by 2006 Iowa Acts, House File 2734, section 34, and furthers the goals specified in Iowa Code section 231.3.

**265—21.2(16) Available funds.** The authority anticipates that it will, at least annually, publicize the approximate amount of funds available under this program for the applicable fiscal year on the authority's Web site at www.iowafinanceauthority.gov. Any unallocated or recovered funds, or payments of interest and principal, or any combination thereof, may be awarded or may be carried over to the next year's cycle of loans at the discretion of the authority.

**265—21.3(16) Intent of the authority.** It is the authority's intent to allow maximum discretion and flexibility to be used by those applying for assistance under this program, and to allow discretion and flexibility to be used by the authority in its analysis and awarding of assistance under this program. It is the position of the authority that such discretion and flexibility are essential to structuring transactions that will serve to develop and expand facilities and infrastructure that provide adult day services, respite services, congregate meals, and programming space for health and wellness, health screening, and nutritional assessments that address the needs of persons with low incomes in a manner that best serves the citizens of the state.

**265—21.4(16) Application procedure.** Applications for assistance under this program must be made on forms and in the manner provided by the authority. Inquiries with respect to this program should be made to those persons identified on the authority's Web site as contacts for this program. Once contacted with an inquiry, the authority will send an application package to the potential applicant. In the event it becomes necessary to amend the application, the authority will post the amended version of the application on its Web site. The authority will take such applications from time to time and will analyze and award loans to applicants on an ongoing basis, beginning on or after December 6, 2004. It is the position of the authority that such flexibility in taking and reviewing applications and making awards will best serve to develop and expand facilities and infrastructure that provide adult day services, respite services, and congregate meals that address the needs of persons with low incomes in the state.

**265—21.5(16) Program guidelines.** For-profit and nonprofit sponsors are eligible to apply for assistance under this program based on the following program guidelines:

**21.5(1)** Projects eligible for assistance must meet the following criteria:

*a.* In the case of adult day services, the project must:

(1) Set aside 40 percent of the admissions for those with incomes at or below 40 percent of area median income (AMI) for the county in which the property is located;

(2) Establish a service fee that is affordable to those with incomes at or below 40 percent of AMI for the county in which the property is located, or agree to adjust fees based on a person's ability to pay;

(3) Accept third-party reimbursement, including Medicaid 1915(c) waiver(s), and meet the standards set forth in 441—Chapter 77; and

(4) Become and remain certified as an adult day services provider, as set forth in 321—Chapter 24.

*b.* In the case of respite services, the project must:

(1) Provide services to underserved people in the community;

(2) Establish a service fee that is affordable to those with incomes at or below 40 percent of AMI for the county in which the property is located, or agree to adjust fees based on a person's ability to pay;

(3) Accept third-party reimbursement, including Medicaid 1915(c) waiver(s), and meet the standards set forth in 441—Chapter 77; and

(4) Meet all local, state and federal requirements subject to health care limits of the proposed setting.

*c.* In the case of congregate meals, the project must establish and maintain a contract with the area agency on aging to provide congregate meals under the standards established for such a program under the federal Older Americans Act.

*d.* In the case of programming space for health and wellness, the program must:

(1) Adopt research-based practices to prevent disease and improve overall wellness, resulting in measurable outcomes for participants;

(2) Provide educational opportunities on disease prevention, physical activity, and nutritional choices; and

(3) Establish a service fee that is affordable to those with incomes at or below 40 percent of AMI for the county in which the property is located, or agree to adjust fees based on a person's ability to pay.

*e.* In the case of programming space for health screening, the program must:

(1) Use a licensed health care professional to provide screening and assessment services within the limits of the professional's license;

(2) Provide services to underserved people in the community; and

(3) Establish a service fee that is affordable to those with incomes at or below 40 percent of AMI for the county in which the property is located, or agree to adjust fees based on a person's ability to pay.

*f.* In the case of programming space for nutritional assessments, the program must:

(1) Use a registered dietitian to provide assessment and counseling services;

(2) Establish a service fee that is affordable to those with incomes at or below 40 percent of AMI for the county in which the property is located, or agree to adjust fees based on a person's ability to pay; and

(3) Accept third-party reimbursement for nutritional counseling, including one or both of the following:

1. Medicaid 1915(c) waiver(s) and meet the standards set forth in human services department rules in 441—Chapters 77 and 78;

2. The Older Americans Act, 42 U.S.C. § 3001 et seq., and meet the standards set forth in elder affairs department rules in 321—Chapter 7.

*g.* A demonstrated market need for the project must exist and the project must be in a good location, both as determined by the authority in its sole discretion.

*h.* Assistance provided under this program must enable the project to maintain financial feasibility and affordability for at least the term of the loan.

*i.* Maintenance and debt service reserve funds must be adequately funded, as determined by the authority in its sole discretion.

*j.* Programs shall comply with all applicable federal, state and local laws and rules related to the specified service or services offered by the sponsor.

**21.5(2)** The following types of activities are eligible for assistance:

*a.* Acquisition and rehabilitation.

*b.* New construction.

*c.* Rehabilitation to expand a current program.

*d.* Such other similar activities as may be determined by the authority to fall within the guidelines and purposes established for this program.

**21.5(3)** Assistance will be provided upon the following terms and conditions:

*a.* Generally, the minimum loan amount is $50,000, and the maximum loan amount is $1,000,000. The maximum loan term and amortization period are each 20 years.

*b.* The debt service ratio must be at least 1.30:1, as calculated by the authority. In addition, the loan-to-value ratio of the project, as calculated by the authority, will be considered. Notwithstanding the above, the authority may, in its sole discretion, accept a lower debt service ratio based on the final underwriting of the project.

*c.* Interest rates will be set by the authority, in its sole discretion.

*d.* Loans shall be secured by a first mortgage; provided, however, that in limited cases the authority may consider a subordinate mortgage when the first mortgage is held by another entity.

*e.* Recipients of assistance must agree to observe several covenants and restrictions, including but not limited to recorded affordability and transfer restrictions, all in accordance with such loan and mortgage documents as may be required by the authority under this program.

*f.* Each project receiving assistance must demonstrate a local contributing effort, as such term is used in Iowa Code section 16.4, of not less than 1 percent of the total loan amount.

*g.* Recipients shall execute such documents and instruments and must provide such information, certificates and other items as determined necessary by the authority, in its sole discretion, in connection with any assistance.

**21.5(4)** Loan fees.

*a.* Loan fees are as follows:

(1) Commitment fee (construction period) – 1.0 percent of the loan amount.

(2) Commitment fee (permanent loan) – 2.0 percent of the loan amount.

(3) Inspection fee – 0.5 percent of construction loan amount.

(4) Application fee – 0.3 percent of total loan amount requested, payable with the submission of loan application.

*b.* The authority may, in limited cases, reduce such fees if necessary in connection with assistance provided under this program. Such decision will be made in the sole discretion of the authority.

*c.* The authority will refund to the borrower one-half of the permanent loan commitment fee if the borrower's loan is paid off within five years of the closing of the loan.

**265—21.6(16) Authority analysis of applications.** Authority staff, in cooperation with the department of elder affairs staff, will analyze and underwrite each potential project and will make recommendations for funding assistance to the board of the authority. Authority staff will use such procedures and processes in its underwriting and analysis as it deems necessary and appropriate in connection with furthering the purposes of this program. In addition, the authority anticipates that, because of the complex nature of each transaction, and the particular set of circumstances attributable to each particular application/transaction, the terms and conditions of loans may vary from project to project. The authority will make available its general operating procedures and guidelines for this program.

**265—21.7(16) Discretion of authority board.** The authority board of directors has the sole and final discretion to award or not award assistance and to approve final loan terms.

**265—21.8(16) Closing/advance of funds.** If all requirements of the authority are not met in accordance with any time frames set by the authority and to the complete satisfaction of the authority, all in the sole discretion of the authority, the authority may determine to cease work on an approved project and, accordingly, not advance any funds for such project.

These rules are intended to implement Iowa Code section 16.5(17) and section 16.183 as amended by 2006 Iowa Acts, House File 2734, section 34.

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# CHAPTER 22
# IOWA AFTERCARE SERVICES RENT SUBSIDY PROGRAM

**265—22.1(16,PL106-169) Purpose.** Through the Iowa aftercare services rent subsidy program (program), the authority, working with the department of human services, seeks to assist youth who are participating in the department of human services' program of aftercare services for former foster care recipients. The program also includes a transitional apartment subsidy for agencies that provide housing and life skills training for these youth.

**265—22.2(16,PL106-169) Definitions.**

*"Aftercare services"* means activities established in an individualized service plan developed with a self-sufficiency advocate which complement the youth's own efforts in achieving self-sufficiency, such as linking to appropriate community resources and having a safe and stable place to live.

*"Authority"* means the Iowa finance authority.

*"Organization"* means a contractor or subcontractor of the department of human services' program of aftercare services.

*"Rental unit"* means an apartment, mobile home, or private room for which a signed, written lease exists and which is governed by Iowa Code chapter 562A.

*"Self-sufficiency advocate"* means an employee of the organization, designated by the organization as a case manager to assist youth.

*"Transitional apartment"* means a rental unit, rented by the organization to the youth and used to provide housing and life skills training required to assist the youth to recognize and accept the personal responsibility related to being a renter.

*"Youth"* means a person at least 18 but not yet 21 years of age who has left foster care on or after the person's eighteenth birthday, and who is participating in the program of aftercare services.

**265—22.3(16,PL106-169) Eligibility requirements for direct rent subsidy.** All of the following criteria shall be met.

**22.3(1)** *Aftercare services participant.* The youth shall be an active participant in aftercare services, making progress toward an identified goal of obtaining or maintaining stable housing.

**22.3(2)** *Demonstrated need.* To demonstrate need, the youth must provide evidence that the youth is responsible for paying more than 30 percent of the youth's gross earned and unearned income for rent and that the youth cannot obtain other rental assistance because the youth has been determined ineligible or is on a waiting list for rent subsidy under the U.S. Department of Housing and Urban Development (HUD) or any other available rent subsidy program or because a waiting list for the HUD rent subsidy program or any other rent subsidy program is closed. This program may not be used to substitute for any other subsidy that the youth had been receiving at the time of or immediately prior to the time of application to this program. Youth receiving rental assistance at the time of or immediately prior to the time of application to this program shall not be eligible.

**22.3(3)** *Education on renter rights and responsibilities.* To demonstrate that the youth understands the rights and responsibilities of being a renter, the youth must have either lived in a transitional apartment, completed a renter education and awareness program, be enrolled to participate or be currently participating in a renter education and awareness program.

**22.3(4)** *Budget.* The youth must submit a budget that demonstrates that the subsidy, when combined with the youth's gross earned and unearned income, will enable the youth to cover all remaining living expenses (i.e., housing, utilities, clothing, and food).

**265—22.4(16,PL106-169) Application for direct rent subsidy.** Applications for the program may be obtained on the authority's Web site at www.iowafinanceauthority.gov or by contacting the authority at the address set forth in 265—Chapter 1.

**22.4(1)** *Application process.* The application for aftercare rent subsidy and a monthly budget form must be completed, verified by the self-sufficiency advocate and submitted to the authority by the youth's self-sufficiency advocate. The application and referenced forms will require the following information:

*a.* The youth's estimated monthly gross earned and unearned income for the 12 months following application.

*b.* Written evidence from sources of local rental assistance available in the youth's community that the youth has applied for that rental assistance and that the youth has been determined ineligible or placed on a waiting list for that rental assistance, or that the waiting list is closed.

*c.* The amount of the total rent for the rental unit.

*d.* Number of bedrooms in the rental unit.

*e.* Names of the people who are on, or will be on, the lease.

*f.* Number of the youth's minor dependents.

*g.* Evidence that the youth has lived in a transitional apartment, completed a renter education and awareness program, or is enrolled to participate or is currently participating in a renter education and awareness program.

*h.* Date of the youth's birth.

**22.4(2)** *Date of application.* The date of the application shall be the date the completed application is received by the authority. Any applications received after a monthly payment calculation will not receive a subsidy payment until the next succeeding payment cycle after approval of the application. No back payment for rent will be paid.

**22.4(3)** *Payment determination.* The self-sufficiency advocate shall be notified by the authority on or about the date that the authority calculates the payment for that month as to whether the youth's application has been approved.

**22.4(4)** *Waiting list.* After funds available for this program are committed, the authority shall deny pending applications.

*a.* Youth not awarded funding who meet the eligibility requirements shall be placed on a statewide waiting list according to the order in which the completed applications were received by the authority. In the event that more than one application is received at one time, the youth shall be entered on the waiting list on the basis of the day of the youth's birthday, lowest number being first on the waiting list. Any subsequent tie shall be decided by the month of birth, with January being month one.

*b.* The self-sufficiency advocate shall be notified of the waiting list decision on or about the date that the authority calculates the payment for that month. The notice shall state that the youth meets eligibility requirements but no funds are available and that the youth shall be placed on the waiting list.

*c.* When funding allows additional youth to be added to the program, they shall be taken from the statewide waiting list, and their eligibility shall be redetermined at that time. An application packet, which includes instructions and necessary forms for verification of continuing eligibility, shall be sent to the self-sufficiency advocate for completion, with such application to be returned to the authority within time lines specified by the authority. If the signed application and verification of continuing eligibility are not received by the time line specified by the authority, the youth's name shall be dropped from consideration for receipt of the rent subsidy payment.

**265—22.5(16,PL106-169) Amount of rent subsidy.**

**22.5(1)** *Use of subsidy.* Assistance shall be used for rental expense directly related to the youth's lease of a rental unit. The monthly payment shall be for a rental unit with one bedroom or a proportionate share of rental costs in units containing more than one bedroom. An exception for additional bedrooms will be made for minor dependents residing in the rental unit.

**22.5(2)** *Subsidy amount.* The subsidy amount is the difference, not to exceed $350, between:

*a.* The lesser of the actual rent or fair market rent under guidelines of the applicable HUD low-rent housing program in the county where the youth's residence is located, and

*b.* Thirty percent of the youth's monthly gross earned and unearned income.

**22.5(3)** *Monthly payment.* So long as funds remain and eligibility requirements of this chapter continue to be met, the organization shall receive an ongoing monthly payment on behalf of the youth

approved for rent subsidy. The monthly payment will equal the amount determined pursuant to subrule 22.5(2).

**265—22.6(16,PL106-169) Redetermination of direct rent subsidy eligibility.**

**22.6(1)** *Time of completion.* A redetermination of eligibility for direct rent subsidy payments shall be completed:

*a.* At least once every 12 months.

*b.* When a change in circumstances occurs that affects eligibility requirements of rule 265—22.3(16,PL106-169).

*c.* If the youth moves from the rental unit stated on the application.

*d.* When there is a change in income.

*e.* When there is a change in the names of the people on the lease or number of minor dependents.

*f.* When there is an unapproved person residing in the rental unit.

*g.* If the youth fails to complete the renter education and awareness program within the time period stated in the application.

**22.6(2)** *Review packet.* The authority shall send a review packet, which shall include instructions and necessary forms for verification of continuing eligibility, to the youth's self-sufficiency advocate at least 60 calendar days before the deadline date for annual redetermination of eligibility.

*a.* The self-sufficiency advocate shall submit the completed forms to the authority.

*b.* If the authority does not receive the completed forms verifying continued eligibility by the stated deadline, the youth's subsidy shall be terminated.

**265—22.7(16,PL106-169) Termination of rent subsidy payments.**

**22.7(1)** *Reasons for termination.* The rent subsidy shall terminate at the end of the month in which any of the following occurs, and a notice shall be sent to the self-sufficiency advocate which states the reason for the termination:

*a.* The youth does not meet one or more of the eligibility criteria listed in rule 265—22.3(16,PL106-169).

*b.* The youth does not meet the youth's obligations and personal responsibility as a renter, as determined by the youth's self-sufficiency advocate.

*c.* No additional uncommitted funds are available for the rent subsidy program.

**22.7(2)** *Reporting of changes.* The youth is required to report to the youth's self-sufficiency advocate within ten calendar days any changes which may affect eligibility. Failure to do so may result in termination of the subsidy. The self-sufficiency advocate shall inform the authority of changes upon the advocate's discovery of such information.

**22.7(3)** *Insufficient funding.* If funds are not sufficient to cover payments for all youth on the subsidy, youth shall be terminated from the subsidy in the inverse order in which they began receiving payments, i.e., the last youth to be added to the subsidy being the first youth to be removed. The youth terminated shall move back to the waiting list with the original application date dictating the youth's position on the waiting list, as stated in subrule 22.4(4).

**265—22.8(16,PL106-169) Eligibility requirements for transitional apartment subsidy.** All of the following criteria shall be met:

**22.8(1)** The participating organization shall be a contractor or subcontractor of the department of human services' program of aftercare services.

**22.8(2)** The organization shall submit a statement to the authority that the transitional apartment will be used to provide housing and life skills training to assist youth to recognize and accept their personal responsibility related to being a renter.

**22.8(3)** The organization will lease or sublease the apartment to qualified aftercare services participants who have left foster care on or after their eighteenth birthday.

**265—22.9(16,PL106-169) Application for transitional apartment subsidy.** Applications for the transitional apartment subsidy may be obtained on the authority's Web site or by contacting the authority at the address set forth in 265—Chapter 1. The organization shall submit the completed aftercare transitional apartment application, which must include a written narrative of the plan specified in subrule 22.8(2).

**265—22.10(16,PL106-169) Amount of transitional apartment subsidy.** The amount of transitional apartment subsidy is based on the lesser of the actual rent or 100 percent of the fair market rent under guidelines of the applicable HUD low-rent housing program in the county where the rental unit is located.

**265—22.11(16,PL106-169) Redetermination of transitional apartment subsidy eligibility.** A redetermination of eligibility for transitional apartment subsidy payments shall be completed:

1. At least once every 12 months.
2. When a change in circumstances occurs that affects eligibility requirements of rule 265—22.8(16,PL106-169).

**265—22.12(16,PL106-169) Termination of transitional apartment subsidy payments.**

**22.12(1)** *Reasons for termination.* The rent subsidy shall terminate at the end of the month in which any of the following occurs, and a notice shall be sent to the participating organization which states the reason for the termination:

*a.* The organization no longer meets the eligibility criteria listed in rule 265—22.8(16,PL106-169).

*b.* No additional unobligated funds are available for the transitional apartment subsidy program.

**22.12(2)** *Reporting of changes.* The organization shall report to the authority any changes which may affect eligibility. Failure to do so may result in termination of the subsidy.

**265—22.13(16,PL106-169) Fraudulent practices relating to the aftercare rent subsidy program.** If a youth, self-sufficiency advocate, or organization knowingly makes or causes to be made a false statement or representation or knowingly fails to report to the authority any change in circumstances affecting the youth's or organization's eligibility for financial assistance under this chapter, the authority may require repayment of the amount that was paid to or on behalf of the youth or organization while the youth or organization was ineligible, as a condition of continued participation in the program.

**265—22.14(16,PL106-169) Appeals.**

**22.14(1)** An applicant whose application has been timely filed may appeal the authority's decision by filing a written notice of appeal within 14 days of the decision before the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. The notice of appeal must actually be received at the above address within the time frame specified in order to be considered timely.

**22.14(2)** The notice of appeal shall state the grounds upon which the applicant challenges the decision.

**22.14(3)** An appeal shall be heard by the executive director of the Iowa finance authority. The executive director shall grant the appellant reasonable opportunity to gather information and inquire as to why the decision in question was made. The executive director shall allow the appellant to present all the relevant facts supporting the appellant's position. Such presentation shall be held not later than 30 days after the filing of an appeal, unless the parties agree to hold the presentation on a later date.

**22.14(4)** Within 7 days of the presentation, the executive director shall issue a written decision which clearly states whether or not the authority's decision was appropriate. Such decision shall be delivered to the appellant and the board of directors of the authority.

**22.14(5)** If the executive director determines that the authority's decision was not appropriate, the executive director shall recommend to the authority's board a proper remedy.

**22.14(6)** Final agency action. After receiving a written decision from the executive director, the board must either approve or decline to approve the executive director's recommendation no later than the next regularly scheduled board meeting. Such action by the board shall be the final decision of the agency.

**22.14(7)** Judicial review. Judicial review of the authority's final decisions may be sought in accordance with Iowa Code section 17A.19.

These rules are intended to implement Iowa Code sections 16.5(5), 16.5(10), 16.5(13), 16.5(17), and 16.15(7) and Public Law 106-169, Section 101 (Improved Independent Living Program).

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# CHAPTER 23
# TRANSITIONAL HOUSING REVOLVING LOAN PROGRAM

**265—23.1(16) Purpose.** Through its transitional housing revolving loan program (program), the authority seeks to assist in the development of affordable housing for parents who are reuniting with their children while completing or participating in substance abuse treatment. This chapter implements 2005 Iowa Acts, House File 825, section 55, which adds Iowa Code section 16.184 to the authority's enabling statute.

**265—23.2(16) Priority of loan awards.** It is the authority's intent to award loans under the program to those applicants that meet all of the requirements of this chapter and satisfy all threshold and underwriting requirements of the applicable qualified allocation plan adopted by the authority pursuant to 265—12.1(16). The authority intends to award the available funds under this program each year if applicants meet all applicable requirements, provided, however, that the authority shall give preference in the manner it deems most appropriate to projects that reunite mothers with their children. The authority will announce its expected amount of funds available prior to each tax credit application deadline. To the extent that sufficient funds are not available to fully fund all applications, awards under this program will be funded in the following order of priority:

1. Applicants awarded tax credits under the service-enriched set-aside;
2. Applicants awarded tax credits under any other set-aside; and
3. Applicants awarded tax credits outside of a set-aside.

Applicants within set-asides will compete based on points awarded under the qualified allocation plan.

**265—23.3(16) Application process.** Applications will be reviewed as part of an annual competition. Applications must be submitted in conjunction with the applicant's application for low-income housing tax credits, as set forth in the applicable qualified allocation plan. Once funds have been allocated, the authority will not accept for review any applications seeking funding until the next low-income housing tax credit application deadline. Applications for assistance under this program must be made on forms and in the manner provided by the authority. Inquiries with respect to this program should be made to those persons identified on the authority's Web site at www.iowafinanceauthority.gov as contacts for this program.

**265—23.4(16) Program guidelines.** For-profit and nonprofit sponsors are eligible to apply for assistance under this program based on the following program guidelines:

**23.4(1)** A project eligible for assistance must meet the following criteria:

*a.* A project must be geographically located in close proximity to a substance abuse treatment program, licensed pursuant to Iowa Code sections 125.13 and 125.21. Close proximity is defined as within a ten-mile radius of the substance abuse treatment program.

*b.* A project must be developed using low-income housing tax credits.

*c.* Applicants must satisfy all of the requirements of the applicable qualified allocation plan, including the plan, application and application instructions, all applicable attachments and exhibits, and applicable provisions of the Internal Revenue Code and the accompanying Treasury regulations.

*d.* Assistance provided under this program must enable the project to maintain financial feasibility and affordability for at least the term of the assistance.

*e.* Operating and replacement reserve funds must be adequately funded in the amounts required by the applicable qualified allocation plan.

**23.4(2)** The following types of activities are eligible for assistance:

*a.* Acquisition and rehabilitation.

*b.* New construction.

*c.* Such other similar activities as may be determined by the authority to fall within the guidelines and purposes established for this program.

**23.4(3)** Assistance will be provided upon the following terms and conditions:

*a.* Generally, the minimum loan amount is $100,000, and the maximum loan amount is $700,000. The maximum loan term and amortization period are each 20 years. Notwithstanding the above loan term and amortization period, the authority may, in its sole discretion, extend the loan term and amortization period to no more than 30 years.

*b.* The debt service ratio must be at least 1.25:1, as calculated by the authority. In addition, the loan-to-value ratio of the project, as calculated by the authority, will be considered. Notwithstanding the above debt service ratio, the authority may, in its sole discretion, accept a lower debt service ratio based on the final underwriting of the project.

*c.* Interest rates will be set by the authority, in its sole discretion.

*d.* Loans shall be secured by a first mortgage. Construction financing may be awarded to projects.

*e.* Recipients of assistance must agree to observe several covenants and restrictions, including but not limited to recorded affordability and transfer restrictions, all in accordance with such loan and mortgage documents as may be required by the authority under this program.

*f.* The recipient must provide adequate evidence that its title in the real estate on which the project is to be located is a marketable title pursuant to Iowa Land Title Examination Standards, or other applicable law. Adequate evidence of marketable title is demonstrated by either (1) a title opinion of an attorney authorized to practice law in Iowa showing that the loan recipient has marketable title, or (2) a title guaranty certificate issued by the title guaranty division of the Iowa finance authority showing the recipient as the guaranteed.

*g.* Recipients must execute such documents and instruments and must provide such information, certificates and other items as determined necessary by the authority, in its sole discretion, in connection with any assistance.

**23.4(4)** Loan fees.

*a.* Loan fees are as follows:

(1) Commitment fee (construction period) – 1.0 percent of loan amount.

(2) Commitment fee (permanent loan) – 2.0 percent of loan amount.

(3) Inspection fee (construction loan) – 0.5 percent of loan amount.

*b.* The authority may, in limited cases, reduce such fees if necessary in connection with assistance provided under this program. Such decision will be made in the sole discretion of the authority.

**265—23.5(16) Authority analysis of applications.** Authority staff will analyze and underwrite each potential project and will make recommendations for funding assistance to the board of the authority. Authority staff will use such procedures and processes in its underwriting and analysis as it deems necessary and appropriate in connection with furthering the purposes of this program. In addition, the authority anticipates that, because of the complex nature of each transaction and the particular sets of circumstances attributable to each particular application/transaction, the terms and conditions of loans will vary from project to project. The authority will make available its general operating procedures and guidelines for this program.

**265—23.6(16) Discretion of authority board.** The authority board of directors has the sole and final discretion to award or not award assistance and to approve final loan terms.

**265—23.7(16) Closing/advance of funds.** If all requirements of the authority are not met in accordance with any time frames set by the authority and to the complete satisfaction of the authority, all in the sole discretion of the authority, the authority may determine to cease work on an approved project and, accordingly, not advance any funds for such project.

These rules are intended to implement Iowa Code section 16.5(17) and 2005 Iowa Acts, House File 825, section 55.

[Filed 9/9/05, Notice 8/3/05—published 9/28/05, effective 11/2/05]

# CHAPTER 24
# HOME AND COMMUNITY-BASED SERVICES RENT SUBSIDY PROGRAM

**265—24.1(16) Purpose.** This chapter defines and structures the rent subsidy program for persons who participate in a home- and community-based services (HCBS) waiver program and who meet the nursing facility level of care for HCBS waiver services as established on or after July 1, 2005. This program is designed to provide rent assistance to these persons to help them live successfully in their own home and community until they become eligible for any other local, state or federal rent assistance.

**265—24.2(16) Definitions.**

*"Adult"* means a person aged 18 or over.

*"Authority"* means the Iowa finance authority.

*"Child"* or *"children"* means a person or persons under 18 years of age.

*"Dependent relative"* or *"dependent relatives"* means a person or persons as defined by the department of human services under the provisions set forth in 441—subrule 51.4(4).

*"Home- and community-based services waiver program"* or *"HCBS"* means any of the waiver programs administered by the department of human services under the provisions set forth in 441—Chapter 83 including, but not limited to, the ill and handicapped waiver, the elderly waiver, the AIDS/HIV waiver, the mental retardation waiver, the brain injury waiver, and the physical disabilities waiver.

*"Legal representative"* for personal or health care decisions means a person possessing a durable power of attorney for health care, guardian, or next of kin (spouse, adult children, parents, adult siblings under Iowa Code chapter 144A). "Legal representative" for financial decisions means a person possessing a power of attorney, a representative payee, fiduciary or conservator.

*"Qualified rental unit"* means an apartment, mobile home, or private room for which a signed written lease exists and which is governed by Iowa Code chapter 562A. A qualified rental unit does not include a home owned by a family member.

*"Residential-based supported community living services"* means residential-based supported community living services as defined in 441—subrule 78.41(10).

**265—24.3(16) Eligibility requirements.** All of the following criteria shall be met.

**24.3(1)** *HCBS recipient.* The person shall be an adult recipient of one of the HCBS waiver programs or a child receiving residential-based supported community living services under the mental retardation HCBS waiver program.

**24.3(2)** *Demonstrated need.* To demonstrate need, adult applicants must provide evidence that they are responsible for paying more than 30 percent of their gross income for rent and that they are not receiving and are ineligible for other rental assistance. In the case of children receiving residential-based supported community living services under the mental retardation HCBS waiver program, they or their families or guardians must provide evidence that the children are not receiving and are ineligible for other rental assistance and that more than 30 percent of the children's gross income is obligated for rent. A minimum contribution of $25 toward the cost of rent is expected from all applicants. This program may not be used to substitute for any other rent subsidy that a person had been receiving at the time of or immediately prior to the time of application to this program. Persons receiving rental assistance at the time of or immediately prior to the time of application to this program shall not be eligible.

**24.3(3)** *Risk of nursing facility care.* Applicants must be able to demonstrate both of the following:

*a.* That they have been assessed as needing, at a minimum, nursing facility level of care for HCBS waiver services; and

*b.* That they have insufficient funds to pay their community housing costs and that insufficient funds will cause them to enter a facility that provides, at a minimum, nursing facility level of care.

**24.3(4)** *Ineligible for other rent subsidies.* The person shall have been determined ineligible or be on the waiting list for rent subsidy programs under the U.S. Department of Housing and Urban Development (HUD) and any other available rent subsidy programs.

**24.3(5)** *Responsible for rent.* Adult program participants shall be financially responsible for rent. In the case of children receiving residential-based supported community living services under the mental retardation HCBS waiver program, they or their families must demonstrate this financial responsibility.

**265—24.4(16) Application.** Applications for the HCBS rent subsidy program may be obtained on the authority's Web site at www.iowafinanceauthority.gov. Applications shall be submitted to the Iowa Finance Authority, HCBS Rent Subsidy Program, 2015 Grand Avenue, Des Moines, Iowa 50312.

**24.4(1)** *Application process.* A person who wishes to apply shall complete the Application for HCBS Rent Subsidy and provide verification of the following:

*a.* The applicant's estimated monthly gross income for the 12 months following application, including written evidence from the income sources used to determine that income.

*b.* Written evidence from sources of local rental assistance available in the applicant's community that the applicant has applied for that rental assistance and that the applicant has been determined ineligible or placed on a waiting list for that rental assistance. If the waiting list for rental assistance has been closed, a copy of that notice is considered written documentation if signed and dated by a representative of the local rental assistance program.

*c.* The total amount of the monthly rent for the qualified rental unit.

*d.* The total number of bedrooms in the qualified rental unit.

*e.* The applicant's number of dependent relatives living full-time in the qualified rental unit.

**24.4(2)** *Date of application.* The date of the application shall be the date the completed application is received by the authority, including written verification of gross income, written verification of application to other rental assistance programs or a signed, dated copy of the waiting list closure notice, and written verification that the applicant needs nursing facility level of care for HCBS waiver services.

**24.4(3)** *Eligibility determination.* The applicant, the applicant's legal representative, or the applicant's case manager shall be notified of the amount of monthly rent subsidy within 25 business days of the authority's receipt of a complete application. The notice shall be sent on or about the date when the authority determines that funding is available to approve the applicant's rent subsidy.

**24.4(4)** *Waiting list.* After funds appropriated for this purpose are obligated, the authority shall deny pending applications.

*a.* A denial shall be accompanied by a notice of decision, which will be sent within 25 business days of the authority's receipt of a complete application. The notice shall state that no funds are available and that the applicant will be placed on the waiting list, or that the applicant does not meet eligibility requirements.

*b.* Applicants not awarded funding shall be placed on a statewide waiting list according to the order in which the completed applications and verification were received by the authority. In the event that more than one application is received on the same day, the person shall be entered on the waiting list on the basis of the day of the month of the person's birthday, with the lowest number being first on the waiting list. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.

*c.* When funding allows additional persons to be added to the rent subsidy program, their names shall be taken from the statewide waiting list, and their eligibility shall be determined at that time. If the completed application and verification of eligibility are not received by the time line specified by the authority, the person's name shall be dropped from consideration for receipt of the rent subsidy payment.

**265—24.5(16) Amount of rent subsidy.**

**24.5(1)** *Use of subsidy.* Assistance shall be used for rental expense.

**24.5(2)** *Maximum monthly payment for rent.* Assistance for rent shall be equal to the rent paid, not to exceed 100 percent of the current fair market rent under guidelines of the applicable HUD low-rent housing program in the area where the person's residence is located, less 30 percent of the gross income of the applicant. The fair market rent used shall be that for a one-bedroom unit or a proportionate share of the fair market rent in living units containing more than one bedroom. When the applicant resides

with a dependent relative(s), the proportionate share may consist of additional bedrooms, applying the same maximum monthly payment standard.

**24.5(3)** *Monthly payment.* Applicants approved for rent subsidy payments shall receive an ongoing monthly payment which is equal to the amount determined pursuant to subrule 24.5(2), provided, however, that the authority will not send any payments that amount to less than $25 but will accrue subsidy payments until such time as at least $25 is accumulated. An approved rent subsidy shall be payable on a monthly basis following approval.

**265—24.6(16) Redetermination of eligibility.**

**24.6(1)** *Time of completion.* A redetermination of eligibility for rent subsidy payments shall be completed:

*a.* At least once every 12 months.

*b.* When a change in circumstances occurs that affects eligibility in accordance with rule 265—24.3(16).

*c.* If the person moves from the residence stated on the application.

*d.* When there is a change greater than $40 in estimated gross monthly income.

**24.6(2)** *Renewal notice.* The authority shall send a renewal notice at least 60 calendar days before the deadline date for annual redetermination of eligibility.

*a.* The recipient shall submit the completed Application for HCBS Rent Subsidy and required verification materials to the Iowa Finance Authority, HCBS Rent Subsidy Program, 2015 Grand Avenue, Des Moines, Iowa 50312.

*b.* If the authority does not receive the completed application and verification of continuing eligibility by the thirtieth day following the date of notification, the person's rent subsidy shall be terminated.

**265—24.7(16) Termination of rent subsidy payments.**

**24.7(1)** *Reasons for termination.* The rent subsidy shall terminate at the end of the month in which any of the following occur, and a notice shall be sent which states the reason for the termination:

*a.* The person does not meet one or more of the eligibility criteria listed in rule 265—24.3(16).

*b.* The person dies.

*c.* Completion of the required documentation is not received.

*d.* No further funds are available for the rent subsidy program.

**24.7(2)** *Reporting of changes.* The person is required to report to the authority within ten business days any changes that may affect eligibility. Failure to do so may result in responsibility for repayment of funds and termination of the rent subsidy. (See rule 265—24.8(16).)

**24.7(3)** *Insufficient funding.* If funds are not sufficient to cover payments for all persons on the rent subsidy, persons shall be terminated from the rent subsidy in inverse order based on the date of initial application. The person terminated shall move back to the waiting list with the person's original application date dictating the person's position on the waiting list as stated at subrule 24.4(4). The authority is responsible for notifying the persons who will be removed from the rent subsidy for this reason.

**265—24.8(16) Fraudulent practices relating to the rent subsidy program.** A person is guilty of a fraudulent practice if that person, or the person's representative, with the intent to gain financial assistance for which that person is not eligible, knowingly makes or causes to be made a false statement or representation, or knowingly fails to report to an employee of the authority any change in circumstances affecting that person's eligibility for financial assistance. In cases of found fraudulent practices, the authority may require, as a condition of continued participation in the rent subsidy program, repayment of the amount that was received by the recipient while the recipient was ineligible.

**265—24.9(16) Appeals.**

**24.9(1)** An applicant whose application has been timely filed may appeal the authority's decision by filing a written notice of appeal within 14 days of the decision before the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. To be considered timely, the notice of appeal must actually be received at the above address within the time frame specified.

**24.9(2)** The notice of appeal shall state the grounds upon which the applicant challenges the decision.

**24.9(3)** An appeal shall be heard by the executive director of the authority. The executive director shall grant the appellant reasonable opportunity to gather information and inquire as to why the decision in question was made. The executive director shall allow the appellant to present all the relevant facts supporting the appellant's position. Such presentation shall be held not later than 30 days after the filing of an appeal, unless the parties agree to hold the presentation on a later date.

**24.9(4)** Within 7 days of the presentation, the executive director shall issue a written decision which clearly states whether or not the authority's decision was appropriate. Such decision shall be delivered to the appellant and the board of the authority.

**24.9(5)** If the executive director determines that the authority's decision was not appropriate, the executive director shall recommend to the board of the authority a proper remedy.

**24.9(6)** Final agency action. After receiving a written decision from the executive director, the board must either approve or decline to approve the executive director's recommendation no later than the next regularly scheduled board meeting. Such action by the board shall be the final decision of the agency.

**24.9(7)** Judicial review. Judicial review of the authority's final decisions may be sought in accordance with Iowa Code section 17A.19.

These rules are intended to implement Iowa Code section 16.5(17) and 2005 Iowa Acts, House File 825, section 45.

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# CHAPTER 25
# ENTREPRENEURS WITH DISABILITIES PROGRAM

**265—25.1(16) Purpose.** The Iowa finance authority works in collaboration with the department of education, division of Iowa vocational rehabilitation services, and the Iowa department for the blind to administer the entrepreneurs with disabilities program. The purpose of the entrepreneurs with disabilities program is to provide technical assistance, business development grants, and financial assistance grants to qualified Iowans with disabilities.

**265—25.2(16) Definitions.** As used in this chapter, unless the context otherwise requires:

*"Applicant"* means an individual who is an active client of the department of education, division of Iowa vocational rehabilitation services, or the Iowa department for the blind.

*"Authority"* means the Iowa finance authority.

*"Business plan"* means a written document which includes the following components: (1) a description of the business, (2) an organization plan including information regarding the legal form of business/owner and owner/operator qualifications, (3) a marketing plan which includes information regarding competition, location, targeted markets, product/service description, market need, promotional plan, and sales/marketing methods, (4) a financial plan including information relative to fixed assets owned or needed, working capital needs, a two-year cash flow projection, a two-year projected profit and loss statement, and a personal budget, and (5) other information deemed necessary by the counselor and the consultant for a clearer understanding of the business plan.

*"Business planner"* means a designated business developer working for IVRS that provides business planning assistance to clients of IVRS or the Iowa department for the blind.

*"Consultant"* means a contracted vendor from whom specific technical expertise can be purchased to assist with the development of a small business.

*"Counselor"* means a designated case counselor working for the department of education, division of Iowa vocational rehabilitation services, or the Iowa department for the blind.

*"Financial assistance grant"* means moneys determined necessary for an applicant to start or expand a small business that can be further developed and based upon a sources and uses statement form. These moneys may be used for, but are not limited to, equipment purchases and working capital. Working capital may include, but is not limited to, design and printing of marketing materials, advertising, rent (up to six months), direct mail postage costs, raw materials, inventory, insurance, and other start-up, expansion or acquisition costs. Financial assistance grants shall not exceed 50 percent of the financial package required to start up, expand or acquire a business unless authorized by the administrator of IVRS or Iowa department for the blind. Financial assistance is provided in three phases, with each phase requiring full monitoring of the business results. When a phase is completed successfully and the need for additional funding is demonstrated, then the next payment is approved. The maximum grant award cannot exceed $10,000 for all phases combined.

*"Follow-up technical assistance"* means grant moneys provided on behalf of an applicant to hire a consultant(s) for a specified number of hours to provide business technical assistance subsequent to the start-up, expansion or acquisition of a business.

*"IDB"* means the Iowa department for the blind.

*"IVRS"* means the Iowa department of education, division of vocational rehabilitation services.

*"Program"* means the entrepreneurs with disabilities program.

*"Program manager"* means the designated manager of the program for IVRS.

*"Project plan and budget form"* means a form that identifies specific steps in the business planning process, the consultant(s) who will provide such service, budgetary guidelines, and a time line. Project plan and budget forms are provided by the counselor or business planner following evaluation and scoring of an application for the program.

*"Sources and uses statement form"* means a form that defines the specific financial needs for business start-up, expansion, or acquisition. Sources and uses statement forms are provided to an applicant by the

counselor or business planner following evaluation and scoring of an application for the program and the submission and review by the counselor and the business planner of a business plan.

*"Technical assistance grant"* means moneys authorized on behalf of an applicant to hire consultants to assist an applicant with specialized technical assistance such as a market analysis; marketing plans; engineering, legal, computer services; financial packaging; or follow-up technical assistance. These moneys may not be used to subsidize business operations and are based upon the project plan and budget form. Technical assistance grants shall not exceed $10,000 per client unless authorized by the administrator of the IVRS or IDB.

**265—25.3(16) Eligibility requirements.** Clients of the IVRS or the IDB may apply for the program.

**265—25.4(16) Application procedure.**

**25.4(1)** *Application.* Application materials for the program are available from IVRS, IDB, and the authority.

**25.4(2)** *Submittal.* Completed applications shall be submitted to the IVRS or the IDB counselor.

**25.4(3)** *Review.* Applications will be forwarded to the business planner and the counselor for review. Applications receiving a minimum of 60 points out of a total 100 points will be eligible to pursue a technical assistance grant or a financial assistance grant. If the application is for financial assistance only, a business plan will be required at the time of submission of the application. Business plans receiving a minimum score of 75 points out of a total of 100 points will be able to pursue a financial assistance grant. Approval of a technical assistance grant is based upon acceptance of a project plan and budget form. Approval of a financial assistance grant is based upon acceptance of a business plan and a sources and uses statement form. A decision on all applications and forms will generally be issued within 30 days of submission with notification by letter to the applicant.

**25.4(4)** *Applications for technical assistance—evaluation factors.* Applications for the program will be reviewed and evaluated using a 100-point system, based upon the following criteria:

*a. Descriptive and organization information: 0 – 30 points.* Does the applicant have education, skills, and work experience relevant to the proposed business venture? Does the applicant document previous management or accounting experience? Is the applicant clear on the nature of the business?

*b. Market information: 0 - 30 points.* Does the application indicate a clear understanding of potential customer groups and how to reach them? Does the application show sufficient knowledge of products/services, competition, and marketing methods? Does the applicant understand the critical issue of location?

*c. Financial information: 0 - 30 points.* Does the applicant demonstrate an understanding of how to estimate sales potential? Does the applicant indicate knowledge of estimated capital requirements for business start-up, expansion, or acquisition?

*d. Creditworthiness: 0 - 10 points.* Does the applicant's past credit history demonstrate responsible behavior? Awards will not be made if the applicant has a credit history showing delinquent credit obligations including, but not limited to, unpaid income tax, delinquent child support obligations, or defaulted student loans.

**25.4(5)** *Applications for financial assistance—evaluation factors for business plans.* Applications for financial assistance from the program will be reviewed and evaluated using a 100-point system, based upon the following criteria:

*a. Feasibility: 0 - 25 points.* Feasibility will be considered based upon the overall business plan. Rating factors for this criterion include, but are not limited to: market analysis, financial projections, initial capitalization, management, and historic data relative to similar businesses. A minimum of 15 points is required for this rating factor.

*b. Market plan: 0 - 25 points.* Does the business plan contain sufficient information to demonstrate that the applicant fully understands who the applicant's customers will be and how to reach them? Is there adequate information about competition, market need, location, sales/marketing methods and a product/service description? Is a promotional plan included in the business plan? A minimum of 15 points is required for this rating factor.

*c. Financial plan: 0 - 25 points.* Does the business plan contain a two-year cash flow projection and profit and loss projection? Is there an itemized listing of fixed assets, working capital, and other start-up, expansion and acquisition needs, including detailed descriptions of equipment to be purchased? Is there a clear statement regarding the composition of the anticipated financial package? Has the applicant provided a personal financial statement along with a detailed personal monthly budget form? A minimum of 15 points is required for this rating factor.

*d. Organizational information: 0 - 25 points.* Does the business plan document sufficient education and work experience relevant to the proposed business? Does the business plan demonstrate adequate management experience by the principal party(ies)? A minimum of 15 points is required for this rating factor.

**25.4(6)** *Appeal of application evaluation.* If an application is denied based upon the assignment of an inadequate evaluation score, an applicant may appeal the decision to the IVRS or the IDB. An appeal shall be consistent with the IVRS and the IDB appeal processes.

**265—25.5(16) Award of technical assistance grants.**

**25.5(1)** *Awards.* Technical assistance grants may be used for specialized consulting services as determined necessary by the counselor, business planner, and the client. Technical assistance grants may be awarded up to a maximum of $10,000 per applicant. Specialized technical assistance may include, but is not limited to, market analysis; marketing plans; engineering, legal, computer services; preliminary business plan development; financial packaging; and other consulting services that require specialized education and training.

**25.5(2)** *Award process.* Upon approval of the application by the counselor and the business planner, generally within 30 days, an applicant will receive notification of eligibility to pursue technical or financial assistance. The letter will request that a project plan and budget be submitted to the counselor if the applicant is pursuing technical assistance or that a sources and uses statement be submitted to the counselor if the applicant is pursuing financial assistance.

**25.5(3)** *Approval of project plan and budget.* A project plan and budget form will accompany notification letters. The project plan and budget form will require an applicant to identify specific steps in the business planning process, who will be involved in each step of the process, budgetary guidelines, and a time line. The completed project plan and budget form must be signed by the applicant and submitted to the counselor for approval.

**25.5(4)** *Technical assistance grant contracts.* IVRS shall negotiate contracts with qualified consultants for delivery of services to an applicant. The contracts shall state hourly fees for services, type of service to be provided and a time line for delivery of services. Authorization of payment will be made by the IVRS or the IDB counselor based upon the negotiated rate as noted in the project plan and budget form. A copy of each contract shall be provided to the authority, at the authority's request.

**25.5(5)** *Consultants.* Applicants will be provided a list of qualified business consultants by the business planner. The selection of consultant(s) shall be the responsibility of the applicant.

**25.5(6)** *Case management.* The business planner will commit a specific number of hours of direct consultation to each applicant to ensure that quality services for business planning are provided in a timely manner.

**265—25.6(16) Financial assistance grants.**

**25.6(1)** *Grant awards.* Financial assistance grants may be awarded based upon the demonstrated need and evidence of business progression. The applicant must provide 50 percent of the equipment or working capital needed to start, expand, or acquire a business as defined in the sources and uses statement form. The applicant may provide the 50 percent through conventional financing or other sources. Working capital may include, but is not limited to, design and printing of marketing materials, advertising, rent (up to six months), direct mail postage, raw materials, inventory, insurance (up to six months), and other start-up, expansion, or acquisition costs. The amount that may be awarded by the program shall be provided in three phases of business operations when each phase meets specified business results, and the need for additional award money is indicated. The timing of each phase and the

amount of funds for each phase shall be established in the approved project plan and budget, as reviewed by the business planner and approved by the program manager. It is a goal of the program that program funds assist an applicant in also securing financing from a commercial or private source.

**25.6(2)** *Approval of sources and uses forms.* The sources and uses form will define specific financial needs for business start-up, expansion, or acquisition. Sources and uses forms shall be provided to an applicant by the counselor following evaluation of the application for the program and the submission and review of the business plan. Completed sources and uses forms shall be submitted to the counselor and the business planner. The counselor, the business planner, and the applicant will meet to review the sources and uses form. Generally, this process shall be completed within 30 days from submission.

**25.6(3)** *Award process.* Upon the business planner's approval of the sources and uses form, the counselor shall send an applicant a notification letter which shall state the amount and conditions of the award.

**25.6(4)** *Financial assistance grant contracts.* Contracts for financial assistance grants shall be the responsibility of the IVRS or the IDB and will be consistent with the authorized use of Title I vocational rehabilitation funds and policy.

**265—25.7(16) Monitoring.** The authority reserves the right to monitor the IVRS and IDB records related to the program to ensure compliance with the rules.

These rules are intended to implement 2005 Iowa Acts, chapter 179, sections 161 and 162, and 2007 Iowa Acts, Senate File 431, section 7.

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# CHAPTER 26
# WATER POLLUTION CONTROL WORKS AND DRINKING WATER FACILITIES FINANCING

**265—26.1(16) Statutory authority.** The authority to provide loans to eligible applicants to assist in financing drinking water and wastewater treatment facilities and water pollution control projects is provided by Iowa Code sections 16.131 through 16.133.

**265—26.2(16) Purpose.** The Iowa finance authority provides financing to carry out the functions of the state revolving fund (SRF) loan programs. Under an agreement with the United States Environmental Protection Agency, the Iowa SRF is administered by the Iowa department of natural resources in partnership with the Iowa finance authority.
[**ARC 8457B**, IAB 1/13/10, effective 2/17/10]

**265—26.3(16) Definitions.**

*"Authority"* or *"IFA"* means the Iowa finance authority.

*"Clean Water Act"* or *"CWA"* means the federal Water Pollution Control Act of 1972, as amended by the Water Quality Act of 1987.

*"Commission"* means the environmental protection commission of the Iowa department of natural resources.

*"Common ownership"* means the ownership of an animal feeding operation as a sole proprietor, or a majority ownership interest held by a person, in each of two or more animal feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The majority ownership interest is a common ownership interest when it is held directly, indirectly through a spouse or dependent child, or both.

*"Department"* or *"DNR"* means the Iowa department of natural resources.

*"Director"* means the director of the authority.

*"DWSRF"* means the drinking water state revolving fund.

*"Eligible costs"* means all costs related to the completion of a project as defined in the CWA and SDWA and 567—Chapters 40 and 90.

*"EPA"* means the United States Environmental Protection Agency.

*"Intended use plan"* or *"IUP"* means the program document identifying the intended uses of funds available for loans pursuant to the WPCSRF and the DWSRF.

*"Nonpoint source"* means any project described in Section 319 of the Clean Water Act.

*"Recipient"* means the entity receiving funds from the SRF.

*"Safe Drinking Water Act"* or *"SDWA"* means Title XIV of the federal Public Health Service Act, commonly known as the "Safe Drinking Water Act," as amended by the Safe Drinking Water Amendments of 1996.

*"SRF"* means the state revolving fund.

*"WPCSRF"* means the water pollution control state revolving fund.
[**ARC 8457B**, IAB 1/13/10, effective 2/17/10]

**265—26.4(16) Project funding.**

**26.4(1)** *Intended use plans/state project priority lists.* The state project priority lists shall include projects eligible for SRF loans as provided in 567—Chapters 44 and 92. The authority will consider the following when determining whether to provide a loan to an eligible recipient:

*a.* Recipient's financial capability to repay the loan and to provide operation and maintenance, replacement reserves, and, if required, debt service reserves;

*b.* Recipient's statement of willingness to accept all loan terms and conditions;

*c.* The priority of the project;

*d.* Funds available; and

*e.* The technical review and approval of the project by the department.

**26.4(2)** *Phased or segmented projects.* Loan funds for future portions of phased or segmented projects cannot be ensured, although subsequent segments of a project which has been awarded financial assistance will receive priority over other new projects. Loans made for separate phases or segments of a project will be administered separately.

**26.4(3)** *Loan adjustments.* Loan amounts may be adjusted to reflect eligible costs.

**26.4(4)** *Recipient record keeping.* The recipient shall maintain records that document all costs associated with the project. Moneys from the SRF and those contributed by the recipient shall be accounted for separately. Accounting procedures shall conform to generally accepted government accounting standards. The recipient shall agree to provide access to these records to the department, the authority, the state auditor, the state or EPA, and the Office of the Inspector General at the EPA. The recipient shall retain such records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment.

**26.4(5)** *Site access.* The recipient shall agree to provide the department and the department's agent access to the project site at all times to verify that the loan funds are being used for the intended purpose and that the construction work meets all applicable state and federal requirements. Recipients shall also agree to provide the department periodic access to the project site for the duration of the loan to ensure that the project is being operated and maintained as designed.

**26.4(6)** *Cross-cutting laws.* Other federal and state statutes and programs may affect an SRF project. Loan agreements will include an assurance that a recipient will comply with all applicable federal and state requirements.

**265—26.5(16) WPCSRF/DWSRF infrastructure construction loans.**

**26.5(1)** *Loan agreements.* The authority will prepare a loan agreement when the application has been determined to be in compliance with the requirements of the CWA/SDWA and applicable state rules for SRF funding. The loan shall be accompanied by an enforceability opinion in a form acceptable to the authority and, if applicable, a bond counsel opinion as to the status of interest on the obligation, in a form acceptable to the authority. A copy of the current form of the loan agreement shall be provided to the applicant upon request.

**26.5(2)** *Loan rates and terms.* Loan terms for point source projects shall include the following:

*a.* *Interest rates.* Loan interest rates shall be established in the IUP and shall be established by taking into account factors including, but not limited to, the following:

(1) Interest rate cost of funds to the SRF;

(2) Availability of other SRF funds;

(3) Prevailing market interest rates of comparable non-SRF loans; and

(4) Long-term SRF viability.

*b.* *Loan initiation fee.* The loan initiation fee shall be established in the IUP. The fee shall be payable on the closing date of the loan agreement.

*c.* *Annual loan servicing fee.* The annual loan servicing fee shall be established in the IUP. The fee shall be due at the time of each annual principal repayment.

*d.* *Revenue pledge.* The recipient shall establish sufficient revenue sources that are acceptable to the director for the repayment of the loan. To ensure repayment of obligations according to the terms of the loan agreement, the recipient shall agree to impose, collect, and increase, if necessary, user charges, taxes, or other dedicated revenue sources identified for the loan repayment in order to maintain annual net revenues at a level equal to at least 110 percent of the amount necessary to pay debt service on all revenue obligations during the next fiscal year, provided, however, that, at the discretion of the director, the authority may allow other revenue sources and coverage of less than 110 percent as security. In case of loan default, the authority shall have authority to require revenue adjustment, through the manner described above, to collect delinquent loan payments.

*e.* *Security.* The loan shall be secured by a first lien upon the dedicated source of repayment which may rank on a parity basis with other obligations. The dedicated source of repayment is expected to be the net revenues of the recipient's system and the loan is expected to be secured by a first lien on said net revenues. Loans secured by revenues of a system may rank on a parity basis with other outstanding

obligations or, with the approval of the director, may be subordinate in right of payment to the recipient's other outstanding revenue obligations. Loans may also be secured by a general obligation of the recipient through the provision for a levy of taxes to repay the loan.

*f.* *Construction payment schedules.* An estimated construction drawdown schedule provided by the recipient shall be part of the loan agreement.

**26.5(3)** *Loan commitments.* A loan agreement shall be a binding commitment of the recipient.

**26.5(4)** *Purpose of payments.* The recipient shall use the proceeds of the WPCSRF/DWSRF loan solely for the purpose of funding the approved project.

**26.5(5)** *Costs.* All eligible costs must be documented to the satisfaction of the authority and the department before proceeds of the loan will be disbursed.

**26.5(6)** *Loan amount and repayment period.* All loans shall be made contingent on the availability of funds, the maximum loan term will be that allowed by EPA, and repayment of the loan must begin no later than one year after the project is completed or by the date specified in the loan agreement.

**26.5(7)** *Prepayment.* The loan may be prepaid, in whole or in part, on any date with the prior written consent of the authority.

[**ARC 8457B**, IAB 1/13/10, effective 2/17/10]

**265—26.6(16) Planning and design loans.**

**26.6(1)** *Timing of loan.* Prior to a recipient's execution of a loan agreement for project construction, funds may be loaned to the recipient to pay for initial eligible costs, including the cost of facility planning and design engineering.

**26.6(2)** *Duration.* Planning and design loans may not have a duration of longer than three years from their date of execution, unless the director provides written consent to a longer term.

**26.6(3)** *Interest rate.* The interest rate will be that rate specified in the most recent IUP.

**26.6(4)** *Rollover to construction loan.* All funds borrowed by the recipient as a planning and design loan may be financed as a part of a construction loan agreement upon expiration of the term of the planning and design loan.

**26.6(5)** *Repayment.* If the recipient does not execute an SRF construction loan, the planning and design loan shall be paid in full at the end of the three-year term, unless the loan term is extended by written consent of the director.

[**ARC 8079B**, IAB 8/26/09, effective 8/7/09]

**265—26.7(16) Disadvantaged community status.**

**26.7(1)** *Criteria for disadvantaged community status.* The authority, in conjunction with the department, may develop criteria to determine disadvantaged community status. Factors included in the criteria include, but are not limited to, the community's median household income and target user charges. Criteria to determine disadvantaged community status shall be established in the IUP.

**26.7(2)** *Interest rate.* Interest rates for disadvantaged communities shall be established in the IUP.

[**ARC 8457B**, IAB 1/13/10, effective 2/17/10]

**265—26.8(16) WPCSRF nonpoint source set-aside loan programs.**

**26.8(1)** *Nonpoint source loan assistance.* Loan assistance for nonpoint source projects shall be in the form of low-interest loans or through linked deposits or loan participations through participating lending institutions.

**26.8(2)** *Application for loan assistance.* Application for loan assistance may be made at any participating lending institution or submitted to the authority or the authority's agent, as applicable. A list of participating lending institutions will be made available by the authority, financial agent or other entity that the authority may use to administer this program. Application for loan assistance shall be made on forms provided by the authority or its agent.

**26.8(3)** *Project approval.* Each project must be approved by the appropriate environmental or conservation agency as determined by the department.

**26.8(4)** *Loan approval.* For linked deposit programs, the participating lending institution shall, upon receipt of a completed loan application form, either approve or deny the loan in accordance with the

program requirements. If the loan is approved, the lending institution shall notify the authority or its agent in order to reserve funds in that amount to ensure that funds are available at the time of disbursement. If the loan is denied, the lending institution shall notify the loan applicant, clearly stating the reasons for the loan denial. For low-interest loans with the authority, the authority, or its agent, shall notify the applicant of the loan approval or denial.

**26.8(5)** *Availability of funds.* Before acting on a loan application, the lending institution shall ensure that adequate funds are available for the project and that the completed project has been inspected and approved by the appropriate environmental or conservation agency as determined by the department.

**26.8(6)** *Property transfer.* In the event of property transfer from the applicant to another person or entity during the repayment period specified in the loan agreement, the balance of the loan shall be immediately due in full.

**26.8(7)** *Loan amount and period.* All loans shall be made contingent on the availability of funds in the applicable fund or set-aside program as indicated in the IUP. The minimum and maximum loan amounts that will be considered are dependent on project type and are set forth as follows:

| Type of Project | Type of Assistance | Minimum Loan Amount | Maximum Outstanding Balance | Maximum Loan Term | Project Approval Agency |
|---|---|---|---|---|---|
| General Nonpoint Source | Low-interest loans, Linked deposit or Loan participations | $5,000 | No maximum | 20 years | DNR |
| Local Water Protection | Linked deposit | $5,000 | $500,000 per common ownership | 10 years | Division of Soil Conservation |
| Livestock Water Quality Facilities | Linked deposit | $10,000 | $500,000 per common ownership | 15 years* | Division of Soil Conservation |
| Onsite Wastewater Systems Assistance | Linked deposit | $2,000 | No maximum | 10 years | County |

*If the loan is made only for preparation of a comprehensive nutrient management plan, the loan period shall not exceed 5 years.

**26.8(8)** *Prepayment.* For direct loans, prepayment of the loan principal in whole or in part shall be allowed without penalty.

**26.8(9)** *Loan adjustments.* If the eligible costs exceed the loan amount, the recipient may request an increase in the loan amount. The lending institution is authorized to execute a loan for a principal amount of up to 10 percent above the amount of the loan application if the eligible costs exceed the application amount. To determine the appropriate action, the authority will evaluate the request by considering available moneys in the fund as well as the financial risk. Should the eligible costs be less than the loan amount, the loan shall be appropriately adjusted.

**26.8(10)** *Disbursement of funds.* Funds shall be disbursed in accordance with the loan agreement. The loan agreement may allow for periodic disbursement of funds.

[**ARC 8457B**, IAB 1/13/10, effective 2/17/10; **ARC 8906B**, IAB 6/30/10, effective 6/10/10]

**265—26.9(16) Termination and rectification of disputes.**

**26.9(1)** *Termination.* The authority shall have the right to terminate any loan if a term of the agreement has been violated. Loans are subject to termination if construction has not begun within one year of the execution of a loan agreement. The director will establish a repayment schedule for funds already loaned to the recipient. Every termination must be in writing.

**26.9(2)** *Rectification and disputes.* Failure of the recipient to implement the approved project or to comply with the applicable requirements constitutes grounds for the authority, the authority's agent, or

the participating lending institution to withhold loan disbursements. The recipient is responsible for ensuring that the identified problem(s) is rectified. Once the deficiency is corrected, the loan funds can be released. A recipient that disagrees with the director's withholding of loan funds may request a formal review of the action. The recipient must submit to the director a written request for a formal review of the action within 30 days of receiving notice that loan disbursements will not be released.

These rules are intended to implement Iowa Code sections 16.5(17) and 16.133.

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# CHAPTER 27
# MILITARY SERVICE MEMBER HOME OWNERSHIP ASSISTANCE PROGRAM

**265—27.1(16) Purpose.** The purpose of the military service member home ownership assistance program is to help eligible members of the armed forces of the United States to purchase qualified homes in Iowa.

**265—27.2(16) Definitions.** As used in this chapter, unless the context otherwise requires:

*"Closing agent"* means the attorney, real estate firm, or closing company that is closing the cash sale qualifying purchase transaction and that prepares the cash sale settlement statement.

*"Eligible service member"* means a person purchasing his or her primary residence in the state of Iowa who, at the time of applying for a grant under the program, (1) is or was a member of the national guard, reserve, or regular component of the armed forces of the United States under Title 10 or Title 32 and has served at least 90 days of active duty service, other than training, beginning on or after September 11, 2001, and, if no longer in active service, was discharged in character other than dishonorable; (2) was honorably discharged due to injuries incurred while on active federal service beginning on or after September 11, 2001; or (3) is a surviving spouse of a service member who met the eligibility criteria of (1) or (2) above.

*"Home ownership assistance"* means the one-time assistance of up to $5,000 per eligible service member that may be used toward down payment or closing costs, or both, in the purchase of a qualified home. This assistance does not require repayment except pursuant to rule 265—27.4(16).

*"Participating lender"* means a lender approved for participation in one or more of the authority's home buyer programs and a lender approved to facilitate loans under the military home ownership assistance program only. Eligible home buyer program participating lenders are those that make available the authority's home buyer program to customers in the same manner as other mortgage loan programs. This requirement applies to branch and affiliate organizations that facilitate mortgage financing with the military assistance. The authority may require participating lenders to provide evidence of proof of compliance, such as origination of mortgage loans made pursuant to one or more of the authority's home buyer mortgage programs or mortgage rate sheets evidencing availability of the authority's mortgage programs. The authority maintains a list of participating lenders on its Web site: www.iowafinanceauthority.gov.

*"Program"* or *"military home ownership assistance program"* or *"MHOA"* means the military service member home ownership assistance program authorized by Iowa Code section 16.54 as amended by 2010 Iowa Acts, House File 2148.

*"Qualified home"* means a home that is located in the state of Iowa, that is purchased by an eligible service member as the service member's primary residence, that will be immediately occupied by the service member or spouse, and that falls into one of the following categories:

1. Single-family residence, including "stick-built" homes, modular homes, or manufactured homes, provided the home is attached to a permanent foundation and is taxed as real estate;
2. Condominium;
3. Townhome;
4. A property containing two to four residential units, where one unit is to be occupied by the eligible service member as his or her primary residence.

The following categories of property shall not constitute a qualified home:

- Multifamily properties of five units or more;
- Commercial or nonresidential property;
- Farmland or other investment property;
- Recreational vehicles, mobile homes, or trailers that are not both attached to a permanent foundation and taxed as real estate.

*"Qualified mortgage"* means a permanent mortgage loan made pursuant to one of the authority's home buyer mortgage programs unless the lender offers a lower annual percentage interest rate (APR), fixed-rate, fully amortizing first mortgage or, in cases where the home buyer is not eligible for standard

30-year, fixed-rate FHA, RD, VA, Fannie Mae, or Freddie Mac mortgage financing, any permanent, fully amortizing, fixed-rate mortgage loan made by a participating lender with a maturity date of not less than five years. The authority's home buyer mortgage program information may be obtained on the authority's Web site at www.iowafinanceauthority.gov.

*"Status documentation"* means written documentation of the applicant's status with the armed forces of the United States, typically a copy of a valid DD Form 214, showing character of service other than dishonorable, or the applicant's most recent four months of leave and earnings statements.

*"Title guaranty certificate"* means the certificate issued by the title guaranty division of the authority pursuant to Iowa Code section 16.92 to ensure marketable title to the lender or the homeowner, or both. Information about title guaranty may be obtained at the title guaranty Web site at www.iowafinanceauthority.gov.

[**ARC 8945B**, IAB 7/28/10, effective 7/6/10]

**265—27.3(16) Application procedure and determination of eligibility.**

**27.3(1)** *Prior approval.* Whether the purchase of a qualified home is by mortgage financing or cash, prior approval of the assistance by the authority is required. Approval of the request will entail application and supporting document review by the authority and a determination of the service member's eligibility by the Iowa department of veterans affairs. A minimum of two weeks should be allowed for response from the authority.

**27.3(2)** *Financed home purchases.*

*a.* In the case of the purchase of a qualified home that is to be financed, the eligible service member must apply for assistance under the program through a participating lender or a lender approved to facilitate MHOA assistance. The mortgage financing provided shall be a mortgage loan made pursuant to one of the authority's home buyer mortgage programs if the service member qualifies for it, unless lower APR, fixed-rate, fully amortizing mortgage financing is available or unless another permanent, fixed-rate, fully amortizing mortgage is available if the service member does not qualify for one of the authority's home buyer mortgage programs.

*b.* To apply for the military assistance, the eligible service member shall provide the lender with all of the following:

(1) Status documentation;

(2) A bona fide purchase agreement with any addenda or attachments for a primary residence;

(3) A complete loan application on Form 1003;

(4) A copy of a government-issued photo identification card;

(5) A copy of the subject appraisal; and

(6) Documentation that demonstrates the home will be occupied as a primary residence.

*c.* The eligible service member shall assist the participating lender in completing an MHOA application on a form approved by the authority stating the amount of the assistance being requested. In the event the service member is not using one of the authority's mortgage programs, the request submission must include early truth-in-lending and good-faith estimate disclosures, and, if the service member is not eligible for a 30-year, fixed-rate mortgage loan, the request submission must also include fully amortized financing and information documenting ineligibility for FHA, VA, RD, Fannie Mae or Freddie Mac financing.

*d.* Once it has received all of the information required by this subrule, the lender shall transmit copies of the loan application, the status documentation, the purchase agreement, the photo ID, the appraisal, any necessary supporting documentation, and the MHOA application to the authority.

*e.* Service members who were otherwise eligible for the program, but who were ineligible for assistance under the program at the time of closing due to the fact that they purchased a home using a mortgage loan other than one made through one of IFA's home buyer programs, may retroactively receive assistance under the program provided that:

(1) The mortgage loan used by the service member had a lower annual percentage rate than the mortgage loans being made through the authority's home buyer programs at the time the service member closed on the service member's mortgage loan; and

(2) The service member and the service member's lender provide all documentation as required by paragraphs *"b"* through *"d,"* above.

**27.3(3)** *Cash home purchases.* In the case of a cash purchase of a qualified home, the eligible service member shall provide directly to the authority status documentation, a completed MHOA application form obtained from the authority, and a bona fide purchase agreement with any addenda or attachments for a primary residence.

**27.3(4)** *Referral of status documentation to Iowa department of veterans affairs.* Upon receipt of the completed MHOA application, the authority shall submit the status documentation to the Iowa department of veterans affairs for verification that the applicant's duty status is consistent with the definition of "eligible service member." The Iowa department of veterans affairs shall be the final authority as to whether an applicant's duty status is consistent with the definition of "eligible service member."

**27.3(5)** *Notice of MHOA approval.* Upon confirmation of the applicant's service record by the Iowa department of veterans affairs, provided that the information submitted on the application form complies with the requirements of this chapter, the authority shall notify the lender, or eligible service member in the case of a cash purchase, that the MHOA application has been approved.

**27.3(6)** *Gaps in funding.* In cases where the military assistance funds are unavailable during the home purchase process, MHOA requests for approval shall be placed on a waiting list. When funds are again available, provided that all other criteria have been met, including issuance of the title guaranty certificate, and where the home purchase closed without the benefit of military assistance funds being applied toward closing costs or down payment, the proceeds of the assistance shall be paid (1) directly to the participating lender/servicing lender to be applied toward the qualified mortgage loan's principal balance, or (2) if the qualified home was purchased pursuant to a cash purchase transaction, directly to the eligible service member. Additional documentation required shall include a statement executed by the applicant authorizing the assistance to be applied to the principal balance.

**27.3(7)** *Approval process for facilitating lender status.* An Iowa-regulated or federally regulated lender with a physical location in the state of Iowa may submit an application to the authority for approval, even if such lender does not participate in the authority's home ownership programs for home buyers. The application shall include a written request to be approved as an MHOA facilitating lender, a check for $500 payable to the authority, a narrative describing the lender's mortgage origination process, including mortgage loan products offered through the lender, documentation of Iowa or federal regulation showing that the applicant is in good standing, an errors and omissions insurance declaration evidencing coverage of at least $300,000, and a completed electronic funds transfer form. Lenders should allow a minimum of two weeks' response time from the authority. The approval to be a facilitating lender shall be valid for one year, and lenders annually will need to submit an application, including the application fee. The application fee may not be charged in part or in full to a service member or to a property seller.

[**ARC 8945B**, IAB 7/28/10, effective 7/6/10]

**265—27.4(16) MHOA award.** Assistance awarded hereunder shall be up to $5,000 toward the purchase of a qualified home and may be used for down payment or for closing costs, or for both. Assistance funds must be applied to the purchase of a qualified home and, in the case of mortgage financing, the mortgage must be a qualified mortgage. Any assistance proceeds which are not used for down payment or closing costs toward the purchase of a qualified home which is financed by a mortgage or cash purchase transaction must be returned to the authority.

**27.4(1)** *MHOA reimbursement.* The participating lender or cash payment home buyer shall advance funds at closing in an amount equal to the amount of the assistance on behalf of the eligible service member to be applied toward closing costs or the down payment. The lender or cash payment home buyer, as applicable, shall, within 30 days of closing, submit to the authority a copy of the executed HUD-1 Settlement Statement (or, if the transaction is a cash purchase, the eligible service member may use the settlement statement certified by a closing agent and the eligible service member), a copy of the deed conveying title to the qualified home, a copy of a title guaranty certificate issued for the

qualified home, and the military grant agreement and certification (form obtained from the authority) for reimbursement for the amount of the assistance. In the event the mortgage financing is not made pursuant to one of the authority's home buyer programs, reimbursement documentation shall include a certified copy of the promissory note, mortgage, and final truth-in-lending disclosure.

**27.4(2)** *MHOA assistance restrictions and limitations.* All assistance under the program is subject to funding availability. Assistance will be awarded in the order in which completed MHOA applications are received. Assistance awarded pursuant to the program is personal to its recipient and may not be assigned. Only one award of assistance shall be awarded per home purchase. An eligible service member shall receive only one award under the program. While program funds are available, the award shall be valid for 60 days in the case of purchases of existing or completed property and 120 days in the case of purchases of property being constructed or renovated. A reasonable extension may be granted with evidence of a purchase loan in progress which has been delayed due to circumstances beyond the service member's control.

[**ARC 8945B**, IAB 7/28/10, effective 7/6/10]

**265—27.5(16) Income, purchase price and qualified mortgage.** There are no income or purchase price limits under the program except for eligible service members purchasing with mortgage financing under one of the authority's home buyer programs. Service members who are not eligible for one of the authority's home buyer mortgage programs and are not purchasing on a cash basis must use other permanent mortgages made by the lender. Service members may also, if eligible, use other subsidy funds from the authority as allowed by one or more of the authority's programs, grant fund assistance available through other public agencies, nonprofit organizations, or the service member's employer, or any forgivable, "soft second" lien subsidy. Information about the authority's home buyer programs or how to contact a participating lender may be obtained on the authority's Web site at www.iowafinanceauthority.gov.

[**ARC 8945B**, IAB 7/28/10, effective 7/6/10]

These rules are intended to implement Iowa Code section 16.5(1)*"r"* and section 16.54 as amended by 2010 Iowa Acts, House File 2148.

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# CHAPTER 28
# WASTEWATER TREATMENT FINANCIAL ASSISTANCE PROGRAM

**265—28.1(81GA,HF2782) Overview.**

**28.1(1)** *Statutory authority.* The authority to provide financial assistance to communities that must install or upgrade wastewater treatment facilities and systems is provided by 2006 Iowa Acts, House File 2782, section 63. The wastewater treatment financial assistance fund shall consist of appropriations made to the fund and transfers of interest, earnings, and moneys from other funds as provided by law.

**28.1(2)** *Purpose.* The purpose of the program is to provide grants to enhance water quality and to assist communities to comply with water quality standards adopted by the department of natural resources. Financial assistance under the program shall be used to install or upgrade wastewater treatment facilities and systems, and for engineering or technical assistance for facility planning and design.

**265—28.2(81GA,HF2782) Definitions.**

*"Authority"* or *"IFA"* means the Iowa finance authority as established by Iowa Code chapter 16.

*"Community"* means a city, county, sanitary district, rural water district, or other governmental body empowered to provide sewage collection and treatment services in connection with a project.

*"Department"* or *"DNR"* means the Iowa department of natural resources.

*"Director"* means the director of the authority.

*"Program"* means the wastewater treatment financial assistance program created in 2006 Iowa Acts, House File 2782, section 63.

*"Project"* means the acquisition, construction, reconstruction, extension, equipping, improvement or rehabilitation of any works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner.

*"Recipient"* means the entity receiving funds from the program.

*"SRF"* means the state revolving fund, which is the Iowa water pollution control works and drinking water facilities financing program administered by IFA and DNR.

**265—28.3(81GA,HF2782) Project funding.**

**28.3(1)** *Recipient eligibility.* Communities eligible to apply for assistance shall meet the following criteria:

*a.* The project will serve a community that qualifies as a disadvantaged community as defined by DNR for the drinking water facilities revolving loan fund established in Iowa Code section 455B.295;

*b.* The community is required to install or upgrade wastewater treatment facilities or systems due to regulatory activity in response to water quality standards adopted by DNR in calendar year 2006; and

*c.* The population of the community served by the project is less than 3,000.

**28.3(2)** *Project eligibility and priority.* Financial assistance is available for the upgrade or installation of wastewater treatment facilities and systems attributable to compliance with changes to the water quality standards adopted by DNR in calendar year 2006. Financial assistance shall be available under the program only for projects for which DNR determines that completion of the project, or a part of the project, is necessary for the community to meet water quality standards. Priority shall be given to projects in which the program financial assistance is used in connection with financing under the SRF, or is used in connection with other federal or state financing. Priority shall also be given to projects that will provide the most significant improvement to water quality; this criterion will be determined by the score given to a project by the department pursuant to the project priority rating system used for the water pollution control state revolving fund and set forth in 567—Chapter 91.

**28.3(3)** *Applications.* Applications will be accepted quarterly on forms developed by IFA and available at www.iowafinanceauthority.gov. Grants will be awarded quarterly. IFA will coordinate with other applicable state or federal financing programs when possible.

**28.3(4)** *Required matching funds.* Communities approved for financing shall provide matching moneys in the following amounts:

*a.* Sewered communities and unsewered incorporated communities with a population of less than 500 shall provide a 5 percent match.

*b.* Communities with a population of 500 or more but less than 1,000 shall provide a 10 percent match.

*c.* Communities with a population of 1,000 or more but less than 1,500 shall provide a 20 percent match.

*d.* Communities with a population of 1,500 or more but less than 2,000 shall provide a 30 percent match.

*e.* Communities with a population of 2,000 or more but less than 3,000 shall provide a 40 percent match.

**28.3(5)** *Costs.* All eligible costs must be documented to the satisfaction of the authority before proceeds may be disbursed. The applicant must declare how much of the total project costs are attributable to complying with the changes to the water quality standards adopted by DNR in calendar year 2006.

**28.3(6)** *Record retention.* The recipient shall maintain records that document all costs associated with the project. The recipient shall agree to provide access to these records to the authority. The recipient shall retain such records and documents for inspection and audit purposes for a period of three years from the date of the final disbursement of grant funds.

**28.3(7)** *Site access.* The recipient shall agree to provide the authority, the department and the department's agent access to the project site at all times during the construction process to verify that the funds are being used for the purpose intended and that the construction work meets applicable state and federal requirements.

**265—28.4(81GA,HF2782) Termination; rectification of deficiencies; disputes.**

**28.4(1)** *Termination.* The authority shall have the right to terminate any grant when terms of the agreement have been violated. Grants are subject to termination if construction has not begun within one year of the execution of a grant agreement. The director shall establish a repayment schedule for funds already disbursed to the recipient. All terminations shall be in writing.

**28.4(2)** *Rectification of deficiencies.* Failure of the recipient to implement the approved project or to comply with the applicable requirements constitutes grounds for the authority to recapture or withhold funds. The recipient is responsible for ensuring that the identified deficiency is rectified. Once the deficiency is corrected, the funds can be released.

**28.4(3)** *Disputes.* A recipient that disagrees with the director's withholding of funds may request a formal review of the action. The recipient must submit a request in writing to the director within 30 days of notification by the authority of its planned action.

These rules are intended to implement 2006 Iowa Acts, House File 2782, section 63.

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# CHAPTER 29
# JUMP-START HOUSING ASSISTANCE PROGRAM

**265—29.1(16) Purpose.** This chapter defines and structures the jump-start housing assistance program to aid individuals whose homes, located in parts of Iowa declared by the President of the United States to be disaster areas, were destroyed or damaged by the natural disasters of 2008. Under the program, the authority may grant funds in accordance with this chapter to local government participants, including certain Iowa councils of governments, cities, and counties. The local government participants shall, in turn, loan funds to eligible residents under the conditions specified in this chapter to assist those eligible residents in purchasing homes generally comparable to those they lived in prior to the occurrence of the natural disasters of 2008, in repairing or rehabilitating disaster-affected homes, and in making mortgage payments and paying for other eligible property-carrying costs while the eligible residents await a property acquisition of their disaster-affected homes.

**265—29.2(16) Definitions.** For purposes of this chapter, the following definitions apply.

*"Authority"* means the Iowa finance authority.

*"COG"* means an Iowa council of governments as identified by Iowa Code chapter 28H.

*"Disaster-affected home"* means a primary residence that was destroyed or damaged by the natural disasters of 2008.

*"Disaster compensation"* means moneys received by an eligible resident as a result of damage caused to the eligible resident's disaster-affected home by the natural disasters of 2008 from any of the following sources: (1) FEMA, (2) any other governmental assistance, or (3) proceeds of any insurance policy. "Disaster compensation" shall not include rental assistance received from FEMA or other sources.

*"Eligible energy-efficient home appliances and improvements"* means energy-efficient furnaces, boilers, appliances, air conditioners, hot water heaters, windows, and insulation that meet standards set by the office of energy independence.

*"Eligible property-carrying costs"* means the following expenses associated with the ownership of a disaster-affected home: liability insurance premiums, flood insurance premiums, property tax payments, installment payments on a real estate purchase contract for the disaster-affected home provided that the real estate purchase contract was executed prior to the first date on which the disaster-affected home sustained damage as a result of the natural disasters of 2008, and special assessments.

*"Eligible repair expenses"* means the reasonable cost of repairing damage to a disaster-affected home necessitated by the natural disasters of 2008. "Eligible repair expenses" shall not include additions to or expansions of a disaster-affected home or the purchase or installation of luxury items that were not part of the disaster-affected home prior to the natural disasters of 2008.

*"Eligible resident"* means an individual or family who resided in a disaster-affected home at the time of the natural disasters of 2008 and who:

1. Is the owner of record of a right, title or interest in the disaster-affected home; and
2. Has been approved by FEMA for housing assistance as a result of the natural disasters of 2008.

In cases where multiple persons own a disaster-affected home together, such as by a tenancy in common or joint tenancy, such persons will generally be deemed collectively to be the "eligible resident," provided the requirements set forth above are met. In the event that multiple persons assert inconsistent claims as to who the owner of a disaster-affected home is, the local government participant shall review the facts and, if necessary, make an allocation among the various applicants.

*"FEMA"* means the Federal Emergency Management Agency.

*"Forgivable loan"* means a loan made to an eligible resident pursuant to the requirements of this chapter.

*"Local government participant"* means:

1. Any of the following Iowa cities: Ames, Cedar Falls, Cedar Rapids, Council Bluffs, Davenport, Des Moines, Dubuque, Iowa City, Waterloo, and West Des Moines;

2. Any COG whose territory encompasses one or more Iowa counties that have been declared by the President of the United States to be disaster areas; and

3. Any county that is not part of any Iowa council of governments and has been declared by the President of the United States to be a disaster area.

*"Natural disasters of 2008"* means the severe storms, tornadoes, and flooding that occurred in Iowa between May 25, 2008, and August 13, 2008, and designated by FEMA as FEMA-1763-DR.

*"Program"* means the jump-start housing assistance program described in this chapter.

*"Retention agreement"* means an agreement, to be recorded as a lien against the property for which assistance is provided, requiring that if an eligible resident sells a home that was purchased or repaired or for which a mortgage loan was paid with the assistance of a loan made under this chapter, then that portion of the original principal amount that has not been forgiven, if any, shall be repaid.

**265—29.3(16) Grants to local government participants.**

**29.3(1)** *Allocation criteria.*

*a. Initial allocation, loans to local government participants.* The authority shall make an initial allocation of the funds made available for the program to the local government participants pro rata based on the funds awarded by FEMA under its housing assistance program to each local government participant's jurisdiction as a percentage of the total amount of funds awarded as a result of the natural disasters of 2008. The authority shall enter into a grant agreement with each local government participant, pursuant to which the authority may disburse funds to the local government participant for the purposes described in this chapter. The grant agreement shall be prepared by the authority and may contain such terms and conditions, in addition to those specified in this chapter, as the executive director may deem to be necessary and convenient to the administration of the program and to the efficient and responsible use of the granted funds.

*b. Funds made available pursuant to 2009 Iowa Acts, Senate File 376.* The authority shall allocate program funds made available under 2009 Iowa Acts, Senate File 376, section 29, Disaster Damage Housing Assistance Grant Fund [creating Iowa Code section 16.186], by inviting local government participants to submit an application for funding. The authority shall award program funding made available under this paragraph based upon priority criteria to be specified in the application form including, but not limited to, the following:

(1) The applicant's demonstrated maximum use and leverage of other disaster recovery resources; and

(2) Provision of program assistance to the maximum number of potential eligible residents with priority given to eligible residents who:

1. Have not received any moneys under the program;

2. Are in need of an interim mortgage assistance extension meeting the conditions specified in subrule 29.5(2); and

3. Are not eligible for assistance under the requirements of other available disaster recovery assistance programs.

**29.3(2)** *Review of requests for assistance.* The local government participant shall accept and review each request for assistance and shall determine whether the requesting party is an eligible resident. If the requesting party is determined an eligible resident, the local government participant shall determine whether the funds are being requested for a use permitted under the program and the amount available to the eligible resident under the terms of the program.

**29.3(3)** *Coordination with the jump-start business assistance program.* For presidentially declared disaster areas outside a COG region, counties may elect to apply singly, join with other counties, or join with an adjacent COG region. Likewise, a city named in the definition of "local government participant" in rule 265—29.2(16) may join with a COG, county, or multicounty entity. To the extent local government participants act jointly or cooperatively in their participation in the small business disaster recovery financial assistance program administered by the Iowa department of economic development pursuant to 261—Chapter 78, Iowa Administrative Code, the authority may require the

local government participants to similarly act jointly or cooperatively in their participation under this chapter.

**29.3(4)** *Reallocation of unused funds.* Following one year, or following any three-month period during which a local government participant has requested no draws, the authority may reallocate all or part of any remaining portion of funds allocated to that local government participant to another local government participant with a demonstrated need for program funds.

**29.3(5)** *Administrative fees.* Each local government participant shall be entitled to receive an administrative fee equal to 5 percent of its initial disbursement, which shall consist of 30 percent of the local government participant's initial allocation. Subsequent thereto, each local government participant shall receive 5 percent of the funds loaned by the local government participant to eligible residents under the program from subsequent disbursements. The administrative fee shall be paid from the allocation made to each such local government participant by the authority pursuant to subrule 29.3(1).

**29.3(6)** *Proceeds of repayments.* All loan amounts repaid to a local government participant by an eligible resident pursuant to this chapter shall be returned to the authority's housing assistance fund created by Iowa Code Supplement section 16.40.

[**ARC 7899B**, IAB 7/1/09, effective 6/10/09; **ARC 8074B**, IAB 8/26/09, effective 9/30/09]

**265—29.4** Reserved.

**265—29.5(16) Eligible uses.**

**29.5(1)** *Forgivable loans.* Local government participants may make forgivable loans, pursuant to the conditions set forth in rule 265—29.7(16), to eligible residents for the following eligible uses:

*a. Down payment assistance.* An eligible resident whose disaster-affected home was destroyed or damaged beyond reasonable repair may be provided down payment assistance for the purchase of replacement housing located within the local government participant's jurisdiction and, if necessary, for the cost of making reasonable repairs to the home being purchased to make it safe, decent, and habitable. The amount of down payment assistance available to an eligible resident shall generally not exceed 25 percent of the purchase price of the home being purchased and, in no event, shall the down payment assistance and any amount allowed for repairs collectively exceed $50,000.

(1) For purposes of calculating the amount of down payment assistance available to the eligible resident, the amount of the down payment assistance shall be reduced by the amount of any disaster compensation received by the eligible resident in excess of any amount necessary to pay off a mortgage or real estate purchase contract on the disaster-affected home.

(2) As a condition of receiving down payment assistance, the eligible resident shall agree that any disaster compensation received subsequent to the closing of the forgivable loan, if not applied toward repayment of a mortgage on the disaster-affected home, shall be used by the eligible resident to pay down the balance of the forgivable loan outstanding at the time the eligible resident receives such disaster compensation.

(3) Down payment assistance shall be allowed only for the purchase of a primary residence by means of a fully amortized mortgage loan from a regulated lender featuring a rate of interest that is fixed for at least 5 years and that has a term not to exceed 30 years.

(4) Eligible residents who receive down payment assistance under this subrule may also receive the assistance available under subrule 29.5(2), but not the assistance available under paragraph 29.5(1)*"b."*

(5) An eligible resident shall not use the assistance allowed under this subrule for the purchase of more than one home.

*b. Housing repair or rehabilitation.* An eligible resident whose disaster-affected home is not proposed, or located in an area proposed, by a municipality or county to the Iowa homeland security and emergency management division for property acquisition under the hazard mitigation grant program set forth in Iowa Code chapter 29C (or under any other comparable program implemented in whole or in part to assist in recovery from the natural disasters of 2008) may receive financial assistance to pay for eligible repair expenses up to an amount not to exceed the lesser of $50,000 or 60 percent of the latest available assessed value of the disaster-affected home, not including the assessed value of the land on

which it is situated, dated prior to the natural disasters of 2008; provided, however, that for application purposes under paragraph 29.3(1)*"b"* allocating program funds under 2009 Iowa Acts, Senate File 376, section 29, the local government participant may elect to establish its own measure of housing repair or rehabilitation financial feasibility in lieu of 60 percent of the latest available assessed value of the disaster-affected home, not including the assessed value of the land on which it is situated, dated prior to the natural disasters of 2008. The eligible resident shall establish the necessity and reasonable cost of the repairs or rehabilitation to the reasonable satisfaction of the local government participant.

(1) For purposes of calculating the amount of assistance available to the eligible resident pursuant to this paragraph, the cost of repairs to, or rehabilitation of, the disaster-affected home shall be reduced by the amount of any disaster compensation received.

(2) As a condition of receiving assistance pursuant to this paragraph, the eligible resident shall agree that any disaster compensation received subsequent to the closing of the forgivable loan shall be used by the eligible resident to pay down the balance of the forgivable loan outstanding at the time the eligible resident receives such disaster compensation.

(3) An eligible resident who receives assistance pursuant to this paragraph shall not be eligible for assistance under either paragraph 29.5(1)*"a"* or subrule 29.5(2).

**29.5(2)** *Interim mortgage assistance loans.* An eligible resident whose disaster-affected home is proposed, or is located in an area proposed, by a municipality or county to the Iowa homeland security and emergency management division for property acquisition under the hazard mitigation grant program set forth in Iowa Code chapter 29C (or any other comparable program implemented in whole or in part to assist in recovery from the natural disasters of 2008) may receive financial assistance equivalent to an amount of up to $1,000 per month for the purpose of paying mortgage payments and other eligible property-carrying costs for the disaster-affected home for a period not to exceed 12 months. An eligible resident who receives assistance pursuant to this subrule shall not be eligible for assistance under paragraph 29.5(1)*"b."* If, however, it subsequently is determined by the Iowa homeland security and emergency management division that the disaster-affected home of the eligible resident will not be acquired under the hazard mitigation grant program, then the eligible resident shall be eligible for assistance under paragraph 29.5(1)*"b"* on the condition that the amount of assistance available under that paragraph shall be reduced by the amount of assistance received by the eligible resident under subrule 29.5(2). Financial assistance provided pursuant to this subrule shall be in the form of a forgivable loan.

*a.* Notwithstanding the foregoing, with the approval of the applicable local government participant, an eligible resident may receive financial assistance under this subrule for up to an additional 6 months (beyond the usual 12-month limit set forth above), provided that all of the following conditions are met:

(1) The eligible resident must reapply for or request an extension of financial assistance on forms to be provided by the applicable local government participant;

(2) The disaster-affected home for which an extension of financial assistance is sought must continue to be on the current hazard mitigation grant program (or comparable program) property acquisition list (i.e., it must continue to be proposed for buyout);

(3) The disaster-affected home for which an extension of financial assistance is sought must have been destroyed or damaged beyond reasonable repair such that the eligible resident is displaced from the home;

(4) The eligible resident must have contacted or must agree to contact the mortgage holder or an Iowa Mortgage Help counseling agency (Web site: www.iowamortgagehelp.com) to discuss the situation and, if possible, negotiate better terms.

*b.* Local government participants may fund extensions of financial assistance only from funds already allocated to their region. Local government participants shall give priority for extensions of financial assistance to those eligible residents who are supporting the costs of both the disaster-affected home and a new primary residence through a second mortgage payment or a rental payment.

**29.5(3)** *Energy efficiency assistance.* An eligible resident who receives either down payment assistance pursuant to paragraph 29.5(1)*"a"* or housing repair or rehabilitation assistance pursuant to

paragraph 29.5(1)*"b"* shall also be eligible to receive an additional loan amount, up to a maximum of $10,000, as reimbursement for the purchase and installation costs for eligible energy-efficient home appliances and improvements. Any amount allowed pursuant to this subrule shall be added to the principal balance of the forgivable loan. Amounts loaned pursuant to this subrule may be loaned either at the time the forgivable loan is first made or subsequent thereto within three months.

**29.5(4)** *Expenses incurred prior to September 19, 2008.* In the event an eligible resident purchased a home, made or caused to be made repairs to a disaster-affected home, or made mortgage payments (or paid for other eligible property-carrying costs) for a disaster-affected home located within the jurisdiction of a local government participant prior to September 19, 2008 (the effective date of this chapter), the eligible resident shall be eligible for reimbursement therefor under this chapter as though the purchase, repairs, or payments had taken place following September 19, 2008.

**29.5(5)** *Applications for assistance.* To apply for down payment assistance or down payment assistance plus interim mortgage assistance, the eligible resident shall apply to the local government participant in whose jurisdiction the home being purchased is located. To apply for assistance for repair or rehabilitation of a disaster-affected home, the eligible resident shall apply to the local government participant in whose jurisdiction the disaster-affected home is located. To apply for interim mortgage assistance only, the eligible resident shall apply to the local government participant in whose jurisdiction the disaster-affected home is located.

[**ARC 7842B**, IAB 6/17/09, effective 5/14/09; **ARC 7899B**, IAB 7/1/09, effective 6/10/09; **ARC 8074B**, IAB 8/26/09, effective 9/30/09; **ARC 8075B**, IAB 8/26/09, effective 9/30/09; **ARC 8907B**, IAB 6/30/10, effective 6/10/10; **ARC 9029B**, IAB 8/25/10, effective 9/29/10]

**265—29.6(16) Loan terms.** Loans made under the program shall, at a minimum, contain the following terms:

**29.6(1)** *Forgivability.* Forgivable loans made pursuant to the program shall be forgivable over a five-year period. One-fifth of the total principal amount loaned shall be forgiven following each full year the eligible resident owns the home for which the loan was made, beginning on the date of the final disbursement of forgivable loan proceeds.

**29.6(2)** *Zero percent interest.* Loans made pursuant to the program shall bear no interest.

**29.6(3)** *Five-year term.* All loans made pursuant to the program shall be for a term of five years.

**29.6(4)** *Repayment due upon sale of home.* Any principal of a forgivable loan that has not yet been forgiven at the time the home for which the forgivable loan was made is sold by the eligible resident (including property acquisitions) shall be due and payable upon such sale.

**29.6(5)** *Retention agreement.* Each loan made pursuant to this program shall be secured by a retention agreement which shall constitute a lien on the title of the real property for which the forgivable loan is made until such time as the forgivable loan has either been fully forgiven or paid in full; provided, however, that in the case of a property acquisition under the hazard mitigation grant program set forth in Iowa Code chapter 29C (or under any other comparable program implemented in whole or in part to assist in recovery from the natural disasters of 2008), payment of the following shall be waived:

*a.* That portion of the repayment due for a down payment assistance loan made under paragraph 29.5(1)*"a"* or an interim mortgage assistance loan made under subrule 29.5(2), provided that the amount so waived shall not exceed $25,000;

*b.* That portion of the repayment due for a housing repair or rehabilitation assistance loan made under paragraph 29.5(1)*"b"* for which the eligible resident provides documentation that the assistance was expended for the purpose for which it was awarded; and

*c.* That portion of the repayment due for an energy efficiency assistance loan made under subrule 29.5(3) for which the eligible resident provides documentation that the assistance was expended for the purpose for which it was awarded.

[**ARC 7842B**, IAB 6/17/09, effective 5/14/09; **ARC 8075B**, IAB 8/26/09, effective 9/30/09; **ARC 8323B**, IAB 12/2/09, effective 11/4/09; **ARC 8546B**, IAB 2/24/10, effective 3/31/10; **ARC 8907B**, IAB 6/30/10, effective 6/10/10; **ARC 9029B**, IAB 8/25/10, effective 9/29/10]

**265—29.7(16) Financial assistance subject to availability of funding.** All financial assistance authorized pursuant to this chapter shall be subject to funds being made available to the authority for the purposes set forth herein.

**265—29.8(16) Funds allocated pursuant to 2009 Iowa Acts, House File 64, division I.** Notwithstanding the foregoing, the following additional restrictions shall apply to loans made pursuant to program funding allocated under 2009 Iowa Acts, House File 64, division I:

**29.8(1)** *Income.* An eligible resident must have a family income equal to or less than 150 percent of the area median family income.

**29.8(2)** *Application deadline.* An eligible resident must submit an application for assistance by September 1, 2009.

**29.8(3)** *Priorities.* Forgivable loans awarded under this rule shall be awarded pursuant to the following priorities:

*a.* *First priority.* First priority shall be given to eligible residents who have not received any moneys under the program.

*b.* *Second priority.* Second priority shall be given to eligible residents who have received less than $24,999 under the program.

*c.* *Third priority.* Third priority shall be given to eligible residents who have received $24,999 under the program and who continue to have unmet needs for down payment assistance, emergency housing repair or rehabilitation, interim mortgage assistance, or energy efficiency assistance. An eligible resident shall not receive more than an additional $24,999 under this paragraph.

**29.8(4)** *Maximum assistance.* Except as provided in paragraph 29.8(3)*"c,"* an eligible resident who meets the area median family income requirement shall not receive more than $24,999 under the program.
[**ARC 7899B**, IAB 7/1/09, effective 6/10/09; **ARC 8074B**, IAB 8/26/09, effective 9/30/09]

These rules are intended to implement Iowa Code sections 16.5(1)*"r"* and 16.40, 2009 Iowa Acts, Senate File 376, section 29, and 2009 Iowa Acts, House File 64, division I.

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# CHAPTER 30
# QUALIFIED MIDWESTERN DISASTER AREA BOND ALLOCATION

**265—30.1(16) General.** The governor has appointed the executive director of the Iowa finance authority as the governor's designee responsible for administration of the law which establishes procedures for allocating the authority to issue up to a specified amount of qualified midwestern disaster area ("MDA") bonds as defined in Section 1400N of the Internal Revenue Code, as amended by the Heartland Disaster Tax Relief Act ("Act") of 2008. The Act was passed in response to the disasters attributable to the severe storms, tornadoes, and flooding that gave rise to any of the presidential declarations of a major disaster on or after May 20, 2008, and before August 1, 2008, under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act and that were determined by the President to warrant individual or individual and public assistance from the federal government under such Act with respect to damages attributable to such severe storms, tornadoes, or flooding (collectively, "disasters"). The Act limits the aggregate face amount of bonds that may be designated as MDA bonds. The role of the governor's designee is to allocate on behalf of particular projects authorization to issue specified allotments of MDA bonds from the total aggregate face amount permitted under the Act. The authority to issue up to a specified face amount of MDA bonds, as allocated to a particular project pursuant to this chapter, may be referred to herein as an "allotment." Procedures set out in the Act and in these rules shall be followed in allocating allotments for the various purposes authorized by the Act. The allotments shall be allocated among all eligible applicants for those various purposes in accordance with the Act, Executive Order Number 9, and these rules.
[**ARC 7703B**, IAB 4/8/09, effective 5/13/09]

**265—30.2(16) Forms.** Information and forms necessary for compliance with provisions of the law are available upon request from the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. The telephone number of the authority is (515)725-4900. Information and forms are also available at www.iowafinanceauthority.gov.
[**ARC 7703B**, IAB 4/8/09, effective 5/13/09]

**265—30.3(16) Eligibility for allocation.**

**30.3(1)** In the case of a project involving a private business use (as defined in Section 141(b)(6) of the Internal Revenue Code), to be eligible for an allotment, the applicant must certify that the entity using the property either:

*a.* Suffered a loss in a trade or business attributable to the disasters; or

*b.* Is a person replacing a trade or business with respect to which another person suffered such a loss.

**30.3(2)** In the case of a project relating to public utility property (as defined in Section 168(i)(10) of the Internal Revenue Code), to be eligible for an allotment, the applicant must certify that the project involves repair or reconstruction of public utility property damaged by the disasters.

**30.3(3)** For a project to be eligible for an allotment as a qualified mortgage issue, the applicant must certify that 95 percent or more of the net proceeds (as defined in Section 150(a)(3) of the Internal Revenue Code) of the issue are to be used to provide financing for mortgagors who suffered damages to their principal residences attributable to the disasters.
[**ARC 7703B**, IAB 4/8/09, effective 5/13/09; **ARC 8548B**, IAB 2/24/10, effective 2/4/10; **ARC 8724B**, IAB 5/5/10, effective 6/9/10]

**265—30.4(16) Allocation limit and Iowa department of economic development set-aside.**

**30.4(1)** Per-applicant cap; set-aside.

*a.* Through December 31, 2011, allotments shall be limited to not more than $200 million per applicant, with any related party, as defined under Section 267 of the Internal Revenue Code, being included within the meaning of applicant for the application of subrule 30.4(1). This limitation shall not apply to any project recommended by the Iowa department of economic development.

*b.* Through December 31, 2011, an amount of $300 million shall be set aside and made available to applicants selected by the Iowa department of economic development. The director of the Iowa

department of economic development shall notify the authority in writing of the name of each applicant that is to receive an allotment under subrule 30.4(1) and the amount allotted to each applicant. Promptly upon receipt of this written notice, the authority shall award the designated allotment to said applicant.

*c.* Following December 31, 2011, all unallocated allotments under paragraph 30.4(1)*"b"* shall be available to all eligible projects. Following December 31, 2011, the per-applicant cap set forth in paragraph 30.4(1)*"a"* shall not apply.

**30.4(2)** Subject to subrule 30.4(1) above, allotments shall be allocated among eligible applications on the basis of the chronological order of receipt of applications. Chronological order of receipt shall be determined by the date, hour and minute indicated by the time stamp as affixed to the application at the offices of the governor's designee.

**30.4(3)** All applications that are received by the governor's designee on or prior to December 22, 2008, pursuant to the provisions of rule 265—30.5(16) shall be considered simultaneously received at the opening of business on December 22, 2008, and the same date, hour and minute shall be stamped on each application so received. If the total amount of allotments requested in all of the applications received for projects located in a particular county exceeds the total amount that may be allocated for such county, the applications will be considered for allocation in the order determined pursuant to the procedures set forth in subrule 30.4(4).

**30.4(4)** In order to determine the order of allocation of the allotments to two or more applications that are simultaneously received pursuant to subrule 30.4(3) and for which there is insufficient capacity to allocate to each the full allotment requested, each such application shall be assigned a preference number determined by a random drawing to be conducted at the Iowa finance authority offices within one week following the receipt of the applications. The authority shall notify the affected applicants in writing and shall post a notice at its offices of the time and place of the drawing not less than three days prior to the scheduled drawing. Any person desiring to attend and witness the drawing and assigning of preference numbers may do so. Each application shall be assigned an identification code that shall be written on the outside of the sealed envelope containing the application. The identification codes shall be written on strips of paper and placed in individual envelopes and sealed. The sealed envelopes containing identification codes shall be placed in a container, mixed, and drawn from the container at random by a member of the authority's staff. The application that corresponds to the identification code that is drawn first shall be placed first on the list of applicants to receive an allotment. The application that corresponds to the identification code that is selected second shall be placed second on the list, and so forth. Drawings shall continue until all applications are assigned a place on the list of applications received.

**30.4(5)** The governor's designee shall maintain a list of applications for MDA bonds. Any applications that are deemed to be simultaneously received shall be listed in the order of preferences established pursuant to subrule 30.4(4). Applications received after December 22, 2008, shall be added to the appropriate list depending upon the subject of the application in the chronological order received.
[**ARC 7703B**, IAB 4/8/09, effective 5/13/09; **ARC 8548B**, IAB 2/24/10, effective 2/4/10; **ARC 8724B**, IAB 5/5/10, effective 6/9/10]

**265—30.5(16) Application for allocation.**

**30.5(1)** An applicant must produce to the governor's designee an inducement resolution adopted by a governmental entity authorized to issue bonds.

**30.5(2)** An applicant or beneficiary, or the duly authorized agent of an applicant or beneficiary, must make an application by filing the form entitled "Application for Midwestern Disaster Area Bonds" available from the governor's designee for the allocation of an allotment.

**30.5(3)** Applications may be submitted to the Iowa finance authority offices at any time. All applications received on or prior to December 22, 2008, will be deemed received simultaneously as of the date, hour and minute of the opening of business of the Iowa finance authority on the first business day immediately following December 22, 2008.
[**ARC 7703B**, IAB 4/8/09, effective 5/13/09]

**265—30.6(16) Certification of allocation.** Upon receipt of a completed application, the governor's designee shall promptly certify to the applicant the amount of the allotment allocated to the project for

which the application was submitted. Subject to subrule 30.4(1), the governor's designee shall continue to allocate allotments for eligible projects until the allotments allocated equal the maximum aggregate face amount that may be designated as MDA bonds under the Act or until there are no more applications, whichever occurs first. If the remaining allotment capacity is not sufficient to fully fund an application which is next in order for allocation, the governor's designee shall notify the applicant of the amount that is available and the applicant shall have the option to take what is available within five calendar days of receiving notice of availability. If the applicant does not notify the governor's designee of its decision to take the available allocation within five calendar days of receiving notice of that option, an allotment shall be offered to the next application on the list under the same conditions. If the partial allocation is accepted, the applicant shall submit a new application for an additional allotment and that application will be added to the bottom of the list in the chronological order of its receipt. If the bonds are issued and delivered prior to the expiration date of the allocation, then the applicant or the applicant's attorney shall within ten days following the issuance and delivery of the bonds notify the governor's designee by filing the form captioned "Notice of Issuance and Delivery of Bonds."
[**ARC 7703B**, IAB 4/8/09, effective 5/13/09; **ARC 8548B**, IAB 2/24/10, effective 2/4/10; **ARC 8724B**, IAB 5/5/10, effective 6/9/10]

**265—30.7(16) Expiration of allocations.** An allocation of an allotment pursuant to this chapter shall remain valid for 150 days from the date of allocation. If the sale of bonds for which an allocation was made has not closed within such time, the allocation shall expire and the allotment shall revert to the governor's designee to be reallocated, if possible; provided, however, that if the 150th day following the date of allocation is a Saturday, Sunday, or any day on which the offices of the state banking institutions or savings and loan associations in the state are authorized or required to close, the expiration date shall be extended to the first day thereafter which is not a Saturday, Sunday or previously described day. All MDA bonds must be issued prior to January 1, 2013.
[**ARC 7703B**, IAB 4/8/09, effective 5/13/09]

**265—30.8(16) Resubmission of expired allocations.** If an allocation expires, the applicant may resubmit its application for the same project or purpose. However, the resubmitted application shall be treated as a new application, and preference, priority or prejudice shall not be given to the application or the applicant as a result of the prior application.
[**ARC 7703B**, IAB 4/8/09, effective 5/13/09]

**265—30.9(16) Application and allocation fees.** The Iowa finance authority may set and charge reasonable fees for providing administrative assistance with regard to the filing of applications and the allocation of the qualified MDA bond allotments in accordance with these rules.
[**ARC 7703B**, IAB 4/8/09, effective 5/13/09]

These rules are intended to implement Iowa Code section 16.5(1)*"r,"* the Heartland Disaster Tax Relief Act of 2008, and Executive Order Number 9.

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# CHAPTER 31
# COUNCIL ON HOMELESSNESS

**265—31.1(16) Organization.**

**31.1(1)** *Location.* The main office of the council is located at 2015 Grand Avenue, Des Moines, Iowa 50312, the Iowa Finance Authority. Office hours for the council shall be 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Written requests may be submitted to the council at this address. Information about the council is available at this Web site address: http://www.iowafinanceauthority.gov. The council's telephone numbers are: (515)725-4900 (general); 1-800-432-7230 (toll-free); 1-800-618-4718 (TTY); and (515)725-4901 (facsimile).

**31.1(2)** *Council members and staff.* The powers of the council are vested in and exercised by 38 voting members appointed by the governor in accordance with Iowa Code section 16.100A. The 26 voting members selected from the general public shall each serve a two-year term. Terms shall be staggered so half of the voting members are appointed in one year and half are appointed in the year thereafter. Initially, the council shall, as soon as all members have been appointed, promptly elect a chairperson and a vice chairperson, both to a term not to exceed two years ending in May. The chairperson and vice chairperson shall not both be either general public members or agency director members. Thereafter, the chairperson and vice chairperson positions shall rotate between agency director members and general public members so that the chairperson and vice chairperson shall not both be either general public members or agency director members at the same time. Staff assistance and administrative support shall be provided by the Iowa finance authority as approved by the executive director.

**31.1(3)** *Council action.* A majority of the members of the council shall constitute a quorum. Any action taken by the council must be adopted by an affirmative vote of a majority of its membership.

**31.1(4)** *Meetings.* Regular meetings of the council shall be held on the third Friday of the following months: January, March, May, July, September, and November, unless another time of meeting is designated by the council. Meetings may also be held at the call of the chairperson or whenever a majority of the members so request. The council shall comply with the requirements of Iowa Code chapters 21 and 22. Interested parties are encouraged to attend and participate in council meetings where feasible.

**31.1(5)** *Committees.* The council shall form an executive committee consisting of the council's chairperson, vice chairperson, and seven members, one of whom shall be the immediate past chairperson if a current member of the council. The chairperson shall appoint the remaining members of the executive committee. The executive committee shall be responsible for reviewing and making recommendations for amendments or changes to the internal rules of procedure. The executive committee shall carry out the business of the council between regularly scheduled council meetings. A majority of the members of the executive committee shall constitute a quorum. Any action taken by the executive committee must be adopted by an affirmative vote of a majority of its members.

*a.* *Nominating committee.* The nominating committee shall initially consist of all 12 agency director members. Following the initial appointment of the general public members to the council, the council shall annually at its March meeting elect six members, three of whom shall be agency director members and three of whom shall be general public members. The chairperson of the council shall also be a voting member. The nominating committee shall nominate persons to the governor to fill the general public member positions when they become open. A majority of the members of the nominating committee shall constitute a quorum. Any action taken by the nominating committee must be adopted by an affirmative vote of a majority of its members.

*b.* *Other committees.* Other committees may be assembled by the executive committee to carry out various responsibilities of the council. A majority of the members of such a committee shall constitute a quorum. Any action taken by a committee must be adopted by an affirmative vote of a majority of its members.

*c.* *Informal working groups.* Informal working groups may be assembled from time to time by the chairperson for various tasks.

[**ARC 7704B**, IAB 4/8/09, effective 5/13/09]

**265—31.2(16) Duties of the council.** The duties of the council shall be to:

1. Develop a process for evaluating state policies, programs, statutes, and rules to determine whether any state policies, programs, statutes, or rules should be revised to help prevent and alleviate homelessness.
2. Evaluate whether state agency resources could be more efficiently coordinated with other state agencies to prevent and alleviate homelessness.
3. Work to develop a coordinated and seamless service delivery system to prevent and alleviate homelessness.
4. Use existing resources to identify and prioritize efforts to prevent persons from becoming homeless and to eliminate factors that keep people homeless.
5. Identify and use federal and other funding opportunities to address and reduce homelessness within the state.
6. Work to identify causes and effects of homelessness and increase awareness among policymakers and the general public.
7. Advise the governor's office, the Iowa finance authority, state agencies, and private organizations on strategies to prevent and eliminate homelessness.
8. Make annual recommendations to the governor regarding matters which impact homelessness on or before September 15.
9. Prepare and file with the governor and the general assembly on or before the first day of December in each odd-numbered year a report on homelessness in Iowa.
10. Assist in the completion of the state's continuum of care application to the U.S. Department of Housing and Urban Development.

[**ARC 7704B**, IAB 4/8/09, effective 5/13/09]

These rules are intended to implement Iowa Code sections 16.5(1)*"r"* and 16.100A.

[Filed emergency 12/22/08—published 1/14/09, effective 12/22/08]

[Filed ARC 7704B (Notice ARC 7514B, IAB 1/14/09), IAB 4/8/09, effective 5/13/09]

# CHAPTER 32
# IOWA JOBS PROGRAM

**265—32.1(16) Purpose.** The Iowa jobs board is charged by the Iowa legislature and the governor with establishing, overseeing and providing approval of the administration of the Iowa jobs program. The board will encourage and support public construction projects relating to disaster relief and mitigation and to local infrastructure.
[**ARC 7941B**, IAB 7/15/09, effective 6/15/09]

**265—32.2(16) Definitions.** When used in this chapter, the following definitions apply unless the context otherwise requires:

*"Authority"* or *"IFA"* means the Iowa finance authority.

*"Board"* means the Iowa jobs board as established in 2009 Iowa Acts, Senate File 376, section 5.

*"Disaster"* means the severe storms, tornadoes, and flooding that occurred in Iowa between May 25, 2008, and August 13, 2008, and designated by FEMA as FEMA-1763-DR; additionally, the Iowa jobs board may, by resolution, designate an event that occurs subsequent to June 15, 2009, as a disaster.

*"Financial feasibility"* means the ability of a project, once completed, to be maintained and operated for its useful life with funds either generated by the project itself or from an identifiable source of funds available for such purpose.

*"Future flood prevention"* means measures intended to mitigate or lessen the damages caused by future flooding.

*"Indirect jobs"* means jobs created by suppliers of materials used in the construction or operation of the project.

*"Induced jobs"* means jobs collaterally created throughout the economy by a project as employed workers and firms buy other goods and services.

*"Iowa jobs program review committee"* or *"review committee"* means the committee established by 2009 Iowa Acts, Senate File 376, section 9(2), and constituted as described in this chapter.

*"Local infrastructure"* means:

1. Projects relating to disaster rebuilding;
2. Reconstruction and replacement of local public buildings;
3. Flood control and flood protection; and
4. Future flood prevention.

"Local infrastructure" does not include routine, recurring maintenance or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

*"Local support"* means endorsement of a proposed project by local individuals, organizations, or governmental bodies that have a substantial interest in a project.

*"Program"* means the Iowa jobs program established in 2009 Iowa Acts, Senate File 376, sections 5 to 12.

*"Public construction project"* means a project for the construction of local infrastructure by a county, city, or public organization.

*"Public organization"* means a nonprofit organization that sponsors or supports the public needs of one or more local Iowa communities and that was in operation prior to January 1, 2009; provided that (1) such organization is described in Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code and is exempt from federal tax under Section 501(a) of the Internal Revenue Code, and (2) such organization is determined by the board not to be affiliated with or controlled by a for-profit organization.

*"Recipient"* means an entity under contract with the Iowa jobs board to receive Iowa jobs funds and undertake a funded project.

*"Sustainability"* means the use, development, and protection of resources at a rate and in a manner that enables people to meet their current needs while allowing future generations to meet their own needs; "sustainability" requires simultaneously meeting environmental, economic and community needs.
[**ARC 7941B**, IAB 7/15/09, effective 6/15/09]

**265—32.3(16) Allocation of funds.** All Iowa jobs funds shall be awarded and used as specified in 2009 Iowa Acts, Senate File 376, and these rules. Any portion of an amount allocated for projects that remains unexpended or unencumbered one year after the allocation has been made by the board may be reallocated by the board to another project category, at the discretion of the board. All bond proceeds shall be expended within three years from when the allocation was initially made. The total amount of allocations for future flood prevention, reconstruction and replacement of local public buildings, disaster rebuilding, flood control and flood protection projects (pursuant to the local infrastructure competitive grant program) shall not exceed $165 million for the fiscal year beginning July 1, 2009.
[**ARC 7941B**, IAB 7/15/09, effective 6/15/09]

**265—32.4(16) Local infrastructure competitive grant program.** The board shall assist in the development and completion of public construction projects relating to disaster relief and mitigation and to local infrastructure by overseeing and providing approval of the administration of a local infrastructure competitive grant program, as set forth herein.

**32.4(1)** *Iowa jobs program review committee.* The Iowa jobs program review committee shall comprise five members, consisting of the following members of the Iowa jobs board: three of the general public members, as appointed to the review committee by the Iowa jobs chair, the executive director of the Iowa finance authority (or designee), and the director of Iowa workforce development (or designee). The review committee shall comply with Iowa Code chapter 21 and with Iowa Code sections 69.16 and 69.16A. From its public members, the review committee shall elect a chair and a vice chair. Two-thirds of the review committee members eligible to vote shall constitute a quorum authorized to act in the name of the review committee.

**32.4(2)** *Eligible applicants.* Eligible applicants for Iowa jobs local infrastructure competitive grant program funds shall be Iowa cities, Iowa counties, and public organizations.

**32.4(3)** *Eligible projects and forms of assistance.* For a project to be eligible to receive a competitive grant from the board, the project must be a public construction project in the state of Iowa with a demonstrated substantial local, regional, or statewide economic impact. Financial assistance shall be awarded only in the form of grants. An applicant for a competitive grant shall not receive more than $50 million in financial assistance from the Iowa jobs restricted capitals fund.

*a.* Any award of a competitive grant to a project shall be limited as follows:

(1) Up to 75 percent of the total cost of a project for replacing or rebuilding existing disaster-related damaged property; or

(2) Up to 50 percent of the total cost for all other projects.

*b.* The authority, with the approval of the chair and vice chair of the Iowa jobs board, shall have the ability to make technical corrections to an award that are within the intent of the terms of a board-approved award.

**32.4(4)** *Ineligible projects.* The board shall not approve an application for a competitive grant for either of the following purposes:

*a.* To refinance a loan existing prior to the date of the initial financial assistance application.

*b.* For a project that has previously received financial assistance under the local infrastructure competitive grant program, unless the applicant demonstrates that the financial assistance would be used for a significant expansion of such a project.

**32.4(5)** *Threshold application requirements.* To be considered for a competitive grant, an application shall meet all of the following threshold requirements:

*a.* Prior to filing an application, the applicant must file, on the form and in the manner prescribed by the authority, a notice of intent to apply not less than 20 days prior to submitting its application;

*b.* The application must be submitted by an eligible applicant, must be complete and on forms or in the format specified for such purpose by the authority (the authority may, in its discretion, require the use of a Web-based application format), and must be received by the authority by the applicable deadline;

*c.* The proposed project must be for the development and completion of one or more public construction projects relating to disaster relief and mitigation or to local infrastructure;

*d.* There must be demonstrated local support for the proposed project;

*e.* The proposed public construction project must have a demonstrated substantial local, regional, or statewide economic impact; and

*f.* The application must coordinate any federal funds with state, local, and private funds and shall avoid any duplication of benefits that would limit or cause the loss of federal funding.

Prior to submitting an application to the review committee, the authority may contact the applicant to clarify information contained in the application. An application may be amended one time prior to being sent to the review committee. Applications may be otherwise amended with the approval of a majority of the review committee.

**32.4(6)** *Application procedure.*

*a.* Applications shall be reviewed and scored in rounds. The deadline for submission for the first round of applications shall be August 3, 2009. Subsequent rounds shall be at the discretion of the board as funding is available. Applications for each such round shall be due not later than January 1, April 1, July 1, and October 1 of each year, respectively.

*b.* Subject to availability of funds, applications will be reviewed by IFA staff on an ongoing basis. Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be requested, in writing, to submit additional information. For applications that meet the threshold requirements, authority staff shall submit to the members of the review committee a copy of the application along with a review, analysis, and evaluation of complete applications.

*c.* The review committee members will score the applications according to the criteria set forth in subrule 32.4(7), and IFA staff shall compile the scores. To be eligible for a grant, a proposed project must receive a minimum score of at least 100 points. The review committee shall meet to review the ratings for each round of applications. Those applications meeting the minimum criteria shall be referred to the Iowa jobs board with a recommendation of final approval, denial, or deferral.

*d.* Once an application has been referred to the Iowa jobs board, the applicant may, upon request of the applicant and at the discretion of the chair of the board, make a presentation to the board. The board may impose reasonable limitations on the length and format of such presentations.

*e.* If the board determines that an application should be approved, the board shall send the application to negotiations. Negotiations shall be conducted by IFA staff, who may work in cooperation with members of the Iowa jobs board. The negotiators shall negotiate the terms and conditions of a grant agreement to recommend to the board.

*f.* Following negotiations, the negotiating team shall report back to the Iowa jobs board as to whether it was able to agree with the applicant on the terms of a proposed grant agreement and, if so, the proposed terms and conditions resulting from the negotiations. The Iowa jobs board shall then vote, without further substantive revision, on whether to agree to the negotiated terms.

*g.* If the negotiated terms are agreed to by the Iowa jobs board, a grant agreement memorializing the negotiated terms shall be executed by the chair or vice chair of the Iowa jobs board.

*h.* Application resources for the Iowa jobs program are available at the Iowa jobs Web site: www.ijobsiowa.gov.

*i.* IFA may provide technical assistance as necessary to applicants. IFA staff may conduct on-site evaluations of proposed projects.

*j.* A denied or deferred application may be revised and resubmitted as a new application in a subsequent round, if any. Unless a deferred application is withdrawn by the applicant or revised and resubmitted as a new application, the authority shall keep it on file, and its score shall automatically be ranked among new applications submitted for the next round, if any, once such new applications have been scored.

**32.4(7)** *Application review criteria.* The Iowa jobs program review committee shall evaluate and rank applications based on the following criteria:

*a. The total number and quality of jobs to be created and the benefits likely to accrue to areas distressed by high unemployment (0-40 points).* The number of jobs created and other measures of economic impact to areas distressed by high unemployment, including long-term tax generation, shall be evaluated. Rating factors for this criterion include, but are not necessarily limited to, the following:

(1) Number of jobs. The number of jobs reasonably projected to be created or retained and the number of hours anticipated for each such job shall be compared and ranked.

(2) Quality of jobs. The wages to be paid for each position to be created or retained, the average benefits (including health benefits) to be provided, as well as other subjective qualitative factors, such as work conditions and safety, shall be compared and ranked.

(3) Other benefits likely to accrue to areas distressed by high unemployment, such as the degree to which the project enhances the quality of life in a region and contributes to the community's efforts to retain and attract a skilled workforce.

In order to be eligible for funding, proposals must score at least 20 points on this criterion.

*b. Financial feasibility, including the ability of projects to fund depreciation costs or replacement reserves, and the availability of other federal, state, local, and private sources of funds (0-40 points).* The feasibility of the proposed project shall be evaluated. Rating factors for this criterion include, but are not limited to, the following:

(1) A financial analysis of the project, which shall include a description of sources of funding, project budget, and detailed projections of the project's revenues and expenses for the projected useful life of the project;

(2) An analysis of the operational plan, which shall provide detailed information about how the proposed project will be operated and maintained, including a time line for implementing the project;

(3) The availability of other federal, state, local, and private sources of funds for the project.

In order to be eligible for funding, proposals must score at least 20 points on this criterion.

*c. Sustainability and energy efficiency.* The sustainability and energy efficiency of the proposed project shall be evaluated. Rating factors for this criterion include, but are not limited to, the following:

(1) Sustainability (0-20 points). The extent to which the project has taken sustainability planning principles into consideration.

1. The project shall be evaluated based on the following specific factors:

- Efficient and effective use of land resources and existing infrastructure by encouraging compact development in areas with existing infrastructure or capacity to avoid costly duplication of services and costly use of land; conservation of open space and farmland and preservation of critical environmental areas; and promotion of the safety, livability, and revitalization of existing urban and rural communities. Compact development maximizes public infrastructure investment and promotes mixed uses, greater density, bicycle and pedestrian networks, and interconnection with the existing street grid.
- Provision for a variety of transportation choices, including public transit and pedestrian and bicycle traffic.
- Construction and promotion of developments, buildings, and infrastructure that conserve natural resources by reducing waste and pollution through efficient use of land, energy, water, and materials.
- Capture, retention, infiltration and harvesting of rainfall using storm water best management practices such as permeable pavement, bioretention cells, bioswales, and rain gardens to protect water resources.
- The extent to which project design, construction, and use incorporate renewable energy sources including, but not limited to, solar, wind, geothermal, and biofuels, and support the following state of Iowa plans and goals: (1) office of energy independence's Iowa energy independence plan; and (2) general reduction of greenhouse gas emissions.

2. Alternatively, in lieu of being evaluated on each of the criteria set forth above, projects which are designed to receive certification (either platinum level, gold level, silver level, or basic LEED certification) from the United States Green Building Council in the Leadership in Energy and Environmental Design (LEED) Green Building Rating System version 3.0, and which comply with the requirements of ASHRAE 90.1-2007, Energy Standard for Buildings Except Low-Rise Residential Buildings, published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tullie Circle, N.E., Atlanta, GA 30329, shall receive 20 points.

(2) Energy efficiency (0-20 points). The extent to which the project has taken energy efficiency planning principles into consideration.

1. In the case of new construction, whether the project is designed to meet the current state building energy code. The application for the project must include a letter from the engineer or architect to IFA certifying whether the proposed construction meets the current state building energy code. Additionally, the application should address whether the proposed project is designed to meet energy star standards. If the project is of such a nature that the current state building energy code does not apply to it, the letter shall so state.

2. In the case of rehabilitation of existing structures, an energy audit conducted by a certified energy rater should be provided on each building prior to the preparation of the final work rehabilitation order to determine the feasibility of meeting the requirements of the current state building energy code and energy star standards prior to the start of the rehabilitation. If it is determined to be feasible to meet the current state building energy code standards and energy star standards, appropriate specifications will be written into the work order. If it is not feasible to meet the requirements of the current state building energy code and energy star standards (or either of them), the application will provide information indicating what effective and cost-effective energy improvements will be included as a part of the rehabilitation project.

*d. Benefits for disaster recovery (0-40 points).* The likely benefits for disaster recovery of the proposed project shall be evaluated. Wherever applicable, rating factors for this criterion include, but are not limited to, the following:

(1) Whether the proposed project replaces or repairs a structure or facility damaged by the disaster and incorporates measures for reducing or eliminating future disaster losses;

(2) Whether the proposed project would help achieve the community's or region's overall post-disaster recovery vision;

(3) Whether the proposed project benefits the economic recovery of individuals, businesses, or nonprofit organizations.

*e. The project's readiness to proceed (0-40 points).* The readiness of the project to proceed shall be evaluated. Wherever applicable, rating factors for this criterion include, but are not limited to, the following:

(1) Whether all engineering and architectural work required for construction to begin has been completed;

(2) Whether all financing for the project (other than competitive grant funds awarded under this chapter) has been committed and is available;

(3) Whether all real property interests (including easements and temporary construction easements) necessary for the construction of the project have been acquired;

(4) Whether all necessary governmental approvals, at the federal, state, and local levels (including, but not limited to, zoning variances, building permits, approval from the Army Corps of Engineers, etc.), have been obtained;

(5) Whether the project has demonstrated a reasonable likelihood of incurring at least 10 percent of the project's total projected development cost within three months of execution of the grant award agreement.

*f. General scoring criteria.*

(1) In instances where a given criterion is not applicable to a proposed project due to the nature of the project, the review committee members may adjust scoring so that the project is not disadvantaged as a result of the inapplicable criterion. For example, if an earthen levee is proposed as a means of flood control, it should not lose points relative to other proposed projects because it does not comply with the current state building energy code (which does not apply to earthen levees).

(2) Any proposed project that is identified in an Iowa great places agreement, pursuant to Iowa Code section 303.3C, shall have an additional two points added to its cumulative point total.

[**ARC 7941B**, IAB 7/15/09, effective 6/15/09; **ARC 8103B**, IAB 9/9/09, effective 8/19/09; **ARC 8327B**, IAB 12/2/09, effective 11/4/09; **ARC 8456B**, IAB 1/13/10, effective 2/17/10; **ARC 8545B**, IAB 2/24/10, effective 3/31/10]

**265—32.5(16) Noncompetitive grants.**

**32.5(1)** Pursuant to 2010 Iowa Acts, Senate File 2389, section 10(4)*"a,"* the board shall award $30,900,000 as follows for disaster relief and mitigation renovation and construction projects, notwithstanding any limitation on the state's percentage participation in funding as contained in Iowa Code section 29C.6(17):

*a.* To a county with a population between 189,000 and 196,000 in the last preceding certified federal census for the renovation and expansion of an administrative office building: $4,400,000.

*b.* To a city with a population between 120,500 and 120,800 in the last preceding certified federal census, for the following projects:

(1) For renovation of an existing public building to make the building useful for city department offices: $4,400,000.

(2) For flood mitigation or renovation in and around an existing courthouse: $2,000,000.

*c.* To a city with a population between 198,000 and 199,000 in the last preceding certified federal census to be allocated as follows:

(1) For site acquisition, design, engineering, and construction of a fire training and logistics center: $3,000,000.

(2) For land acquisition, design, and construction of sewers, structures, and pumping facilities necessary to separate and convey sewer flow within the riverpoint service area: $1,250,000.

(3) For land acquisition, design, and construction of sewers, structures, and pumping facilities necessary to separate or convey sewer flow within the Court Avenue service area: $3,050,000.

(4) For bank stabilization, stream bed stabilization, and erosion control on highly erodible ground that is impacting utilities, road infrastructure, and water quality: $700,000.

(5) To improve utilization of two of the wastewater reclamation authority's existing equalization basins for the control of peak flows during wet weather events in the authority's sewer system: $500,000.

*d.* For a publicly owned acute care teaching hospital located in a county with a population of over 350,000, for the construction and renovation of patient access and care facilities, equipment replacement and upgrades, and other infrastructure improvements: $1,000,000.

*e.* For a city with a population between 98,300 and 98,400 in the last preceding certified federal census, for flood protection, replacement, and construction improvements to a recreational sports facility: $1,050,000.

*f.* For a city with a population between 68,700 and 68,800 in the last preceding certified federal census, for a public works building that will allow the city to provide for disaster-related services: $5,000,000.

*g.* For a city with a population between 62,100 and 62,250 in the last preceding certified federal census, for the demolition, relocation, and reconstruction of a public wastewater treatment plant and the development of a public green space: $2,000,000.

*h.* For a city with a population between 2,545 and 2,555 in the last preceding certified federal census, for a streetscape project that reconstructs existing horizontal infrastructure and lighting systems utilizing sustainable development practices: $1,175,000.

*i.* For a city with a population between 2,200 and 2,220 in the last preceding certified federal census, for construction of a public city building: $475,000.

*j.* For a city with a population between 2,558 and 2,565 in the last preceding certified federal census, for the installation of backflow prevention devices for the city's storm sewer system: $600,000.

*k.* For a city with a population between 6,875 and 6,890 in the last preceding certified federal census, for the construction of grade control structures and associated grading to mitigate future water damage to residential structures: $300,000.

**32.5(2)** Noncompetitive grant awards are contingent upon submission of a plan for each project by the applicable county or city governing board to the Iowa jobs board no later than September 1, 2010, on a form to be prescribed by the authority, detailing information requested thereon, such as a description of the project, the plan to rebuild, and the amount or percentage of federal, state, local, or private matching moneys which will be or have been provided for the project, and similar information.

[**ARC 7941B**, IAB 7/15/09, effective 6/15/09; **ARC 8905B**, IAB 6/30/10, effective 6/10/10]

**265—32.6(16) General grant conditions.** As a condition of receipt of Iowa jobs funds, recipients shall agree, at a minimum, to all of the following:

**32.6(1)** *Documentation of jobs created or retained.* Following the receipt of grant funds pursuant to this chapter and for two years following the completion of the project, each recipient shall report to the authority quarterly the actual number of jobs created as a result of the project along with other information relating to the quality of such jobs, including hours and wages, as requested by the authority.

**32.6(2)** *Recipient obligations.* In the event a recipient fails to comply with the requirements of this program or the recipient's grant agreement, the board may cancel the recipient's grant and require the return of any grant funds previously disbursed pursuant to this program. Recipients shall agree to hold harmless and to indemnify the Iowa jobs board, the authority, the state of Iowa, and their officers, employees and agents from any claims, costs or liabilities arising out of the development or operation of the project.

**32.6(3)** *Grant acknowledgment.* Each project shall recognize in a prominent location and manner the fact that the project was made possible, in part, through a grant from the Iowa jobs program. During the construction period the recognition (including a display of the Iowa jobs logo) may be located on temporary signage. The completed project shall feature a permanent acknowledgment, such as a plaque or a similar commemoration. Other benefactors of the project may be similarly acknowledged as well.

**32.6(4)** *Use of Iowa jobs Web site.* All positions that need to be filled for a project shall be posted on Iowa workforce development's Iowa jobs Web site: www.iowajobs.org/.

[**ARC 7941B**, IAB 7/15/09, effective 6/15/09]

**265—32.7(16) Calculation of jobs created.** For purposes of this chapter, new employment positions created and filled (or to be created and filled) as a result of the project and existing positions that would not have been continued were it not for Iowa jobs funding shall be counted when estimating the number of jobs to be created during the application process and when counting the number of actual jobs created in post-grant reporting. Both permanent and temporary positions filled by the grantee, a contractor, or a subcontractor (or sub-subcontractor, etc.), including construction work, shall be counted. To be counted, a position must be compensated. Indirect jobs and induced jobs shall not be counted.

[**ARC 7941B**, IAB 7/15/09, effective 6/15/09]

**265—32.8(16) Grant awards.** The Iowa jobs board may fund a component of a proposed project if the entire project does not qualify for funding. The board shall review awards made to ensure geographic diversity. In order to promote geographic diversity, the board may defer grant decisions on applications from areas which have received previous grant awards to allow applications from other parts of the state to be considered. In the event that a competitive grant recipient, prior to execution of an Iowa jobs grant agreement, is awarded a federal grant for its project, in whole or in part, which federal grant, or the possibility thereof, was not disclosed as part of the recipient's application, the board may withdraw all or part of the Iowa jobs program grant.

[**ARC 7941B**, IAB 7/15/09, effective 6/15/09; **ARC 8455B**, IAB 1/13/10, effective 12/14/09; **ARC 8626B**, IAB 3/24/10, effective 4/28/10]

**265—32.9(16) Administration of awards.**

**32.9(1)** A grant agreement shall be executed between successful applicants (under both the competitive and noncompetitive grant programs) and the Iowa jobs board. These rules and applicable state laws and regulations shall be part of the contract. The board reserves the right to negotiate wage rates as well as other terms and conditions of the contract.

**32.9(2)** Grant agreement.

*a.* Following the board's determination that a competitive grant application should be approved, authority staff shall propose a draft grant agreement to the recipient. Within 30 days of either transmission of the proposed grant agreement to the recipient or transmission of notice of how the proposed grant agreement may be accessed by the recipient via the Internet, the recipient shall notify the authority as to whether the recipient will execute the proposed agreement or whether the recipient would prefer to negotiate a different agreement. If the recipient elects to execute the proposed agreement, or if the

recipient fails to make a timely election, the authority shall prepare and transmit to the recipient on behalf of the board a final contract for execution.

*b.* If the recipient elects to negotiate a different agreement, the recipient shall, at the time it makes such election, notify the authority of the requested changes to the proposed grant agreement. The authority shall consider the requested changes and may make such revisions to the proposed agreement as the authority determines to be prudent and in the best interests of the Iowa jobs program and the state of Iowa under the circumstances.

*c.* Once the authority and the recipient have reached an agreement, the authority shall prepare and transmit to the recipient on behalf of the board a final contract, subject to approval by the board.

*d.* If the authority and the recipient are unable to reach an agreement, the authority shall, with the board's approval, draft and transmit to the recipient on behalf of the board a final contract consisting of the Iowa jobs board's best and final offer.

**32.9(3)** The recipient must execute and return the contract to the Iowa jobs board within 45 days of transmittal of the final contract from the Iowa jobs board. Failure to do so may be cause for the Iowa jobs board to terminate the award.

**32.9(4)** Certain projects may require that permits or clearances be obtained from other state, local, or federal agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

**32.9(5)** Awards may be conditioned upon commitment of other sources of funds necessary to complete the project.

**32.9(6)** Any substantive change to a contract shall be considered an amendment. Substantive changes include time extensions, budget revisions, and significant alterations that change the scope, location, objectives or scale of an approved project. Amendments must be requested in writing by the recipient and are not considered effective until approved by the Iowa jobs board and confirmed in writing by IFA staff following the procedure specified in the contract between the recipient and the Iowa jobs board.

[**ARC 7941B**, IAB 7/15/09, effective 6/15/09; **ARC 8455B**, IAB 1/13/10, effective 12/14/09; **ARC 8626B**, IAB 3/24/10, effective 4/28/10]

These rules are intended to implement Iowa Code section 16.5(1)*"r"* and 2009 Iowa Acts, Senate File 376, sections 5 to 12.

[Filed Emergency ARC 7941B, IAB 7/15/09, effective 6/15/09]
[Filed Emergency ARC 8103B, IAB 9/9/09, effective 8/19/09]
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[Filed Emergency ARC 8905B, IAB 6/30/10, effective 6/10/10]

# CHAPTER 33
# WATER QUALITY FINANCIAL ASSISTANCE PROGRAM

**265—33.1(16,83GA,SF376) Overview.**

**33.1(1)** *Statutory authority.* The authority to provide financial assistance to communities for water quality and wastewater improvement projects is provided by 2009 Iowa Acts, Senate File 376, section 13(4). The water quality financial assistance fund shall consist of funds appropriated from the revenue bonds capital fund created in 2009 Iowa Acts, Senate File 376, section 2.

**33.1(2)** *Purpose.* The purpose of the program shall be to provide grants to enhance water quality and to assist communities with water and wastewater improvement projects. Financial assistance under the program shall be used to provide additional assistance to communities receiving loans from the Iowa water pollution control works and drinking water facilities financing program.

[**ARC 8080B**, IAB 8/26/09, effective 9/30/09]

**265—33.2(16,83GA,SF376) Definitions.**

*"Authority"* or *"IFA"* means the Iowa finance authority as established by chapter 16 of the Code of Iowa.

*"Community"* means a city, county, sanitary district, water district, state agency, or other governmental body or corporation empowered to provide sewage collection and treatment services, or any combination of two or more of the governmental bodies or corporations acting jointly, in connection with a project.

*"Department"* or *"DNR"* means the Iowa department of natural resources.

*"Director"* means the director of the authority.

*"Program"* means the water quality financial assistance program created in 2009 Iowa Acts, Senate File 376, section 13(4).

*"Recipient"* means the entity receiving funds from the program.

*"SRF"* means the Iowa water pollution control works and drinking water facilities financing program, which is jointly administered by IFA pursuant to Iowa Code section 16.131 as amended by 2009 Iowa Acts, House File 281, and DNR pursuant to Iowa Code section 455B.294.

[**ARC 8080B**, IAB 8/26/09, effective 9/30/09]

**265—33.3(16,83GA,SF376) Small community assistance fund.**

**33.3(1)** *Program fund.* Of the amount appropriated, $35 million shall be allocated to the small community assistance fund. The maximum award for a recipient under the small community assistance fund shall be $2 million.

**33.3(2)** *Project eligibility.* Financial assistance shall only be available under the program for projects that are also receiving funding from the SRF.

**33.3(3)** *Eligible applicants.* Only communities with a population of 10,000 or less, as determined by the most recent federal census, may apply for the small community assistance fund.

[**ARC 8080B**, IAB 8/26/09, effective 9/30/09]

**265—33.4(16,83GA,SF376) Large community assistance fund.**

**33.4(1)** *Program fund.* Of the amount appropriated, $20 million shall be allocated to the large community assistance fund. The maximum award for a recipient under the large community assistance fund shall be $100 per capita. For purposes of these rules, the population of a community shall be assumed to be the United States Census Bureau's 2008 population estimate for that community.

**33.4(2)** *Project eligibility.* Eligible projects are those projects that are also receiving funding from the SRF.

**33.4(3)** *Eligible applicants.* Only communities with a population of more than 10,000, as determined by the most recent federal census, may apply for the large community assistance fund.

[**ARC 8080B**, IAB 8/26/09, effective 9/30/09; **ARC 8510B**, IAB 2/10/10, effective 1/14/10; **ARC 8725B**, IAB 5/5/10, effective 6/9/10]

**265—33.5(16,83GA,SF376) Project priority.**

**33.5(1)** *Priority for all projects.* Priority shall be given to projects that will provide significant improvement to water quality in the relevant watershed; this criterion will be determined by the score given to a project by the department pursuant to the project priority rating system used for the water pollution control state revolving fund set forth in 567—Chapter 91, Iowa Administrative Code. For drinking water projects, priority will be determined by the project priority system used for the drinking water state revolving fund set forth in 567—Chapter 44, Iowa Administrative Code. Priority will also be given to projects based on the date upon which construction could begin.

**33.5(2)** *Small community assistance fund priority.* Under the small community assistance fund, priority shall also be given to communities that have the greatest financial need. Factors used to determine need will include, but are not limited to: median household income as a percentage of the statewide median household income; residential user rates as a percentage of median household income; the existing and forecasted debt of the system; and the unemployment rate of the community.

**33.5(3)** *Large community assistance fund priority.* Under the large community assistance fund, priority will be given to communities that did not receive funds from the I-Jobs disaster recovery program, the community development block grant (CDBG) disaster allocation or the State Revolving Fund (SRF) federal American Recovery and Reinvestment Act (ARRA).

[**ARC 8080B**, IAB 8/26/09, effective 9/30/09; **ARC 8510B**, IAB 2/10/10, effective 1/14/10; **ARC 8725B**, IAB 5/5/10, effective 6/9/10]

**265—33.6(16,83GA,SF376) Project funding.**

**33.6(1)** *Applications.* Applications will be accepted on forms developed by IFA and available at www.iowafinanceauthority.gov. IFA will coordinate with other applicable state or federal financing programs when possible. Applications for the large community assistance fund will be due October 30, 2009. Applications for the small community assistance fund will be due March 30, 2010.

**33.6(2)** *Costs.* All eligible costs must be documented to the satisfaction of the authority before proceeds may be disbursed.

**33.6(3)** *Record retention.* The recipient shall maintain records that document all costs associated with the project. Recipients shall agree to provide the authority access to these records. The recipient shall retain such records and documents for inspection and audit purposes for a period of three years from the date of the final grant payment.

**33.6(4)** *Site access.* The recipient shall agree to provide the authority, the department and the department's agent access to the project site at all times during the construction process to verify that the funds are being used for the purpose intended and that the construction work meets applicable state and federal requirements.

[**ARC 8080B**, IAB 8/26/09, effective 9/30/09]

**265—33.7(16,83GA,SF376) Termination and rectification of disputes.**

**33.7(1)** *Termination.* The authority shall have the right to terminate any grant when terms of the agreement have been violated. Grants are subject to termination if construction has not begun within one year of the execution of a grant agreement. The director will establish a repayment schedule for funds already disbursed to the recipient. All terminations will be in writing.

**33.7(2)** *Rectification of disputes.* Failure of the recipient to implement the approved project or to comply with the applicable requirements constitutes grounds for the authority to recapture or withhold funds. The recipient is responsible for ensuring that the identified problem(s) is rectified. Once the deficiency is corrected, the funds can be released. A recipient that disagrees with the director's withholding of funds may request a formal review of the action. The recipient must submit a request in writing to the director within 30 days of notification by the authority of its planned action.

[**ARC 8080B**, IAB 8/26/09, effective 9/30/09]

These rules are intended to implement Iowa Code section 16.5(1)*"r"* and section 16.131 as amended by 2009 Iowa Acts, House File 281, and 2009 Iowa Acts, Senate File 376, section 13(4).

[Filed ARC 8080B (Notice ARC 7896B, IAB 7/1/09), IAB 8/26/09, effective 9/30/09]

[Filed Emergency ARC 8510B, IAB 2/10/10, effective 1/14/10]

[Filed ARC 8725B (Notice ARC 8511B, IAB 2/10/10), IAB 5/5/10, effective 6/9/10]

# CHAPTER 34
Reserved

# CHAPTER 35
# AFFORDABLE HOUSING ASSISTANCE GRANT FUND

**265—35.1(16) Affordable housing assistance grant fund allocation plan.** The affordable housing assistance grant fund allocation plan entitled Iowa Finance Authority Affordable Housing Assistance Grant Fund Allocation Plan dated November 2009 shall be the allocation plan for the award, pursuant to the affordable housing assistance grant fund program, of funds held within the affordable housing assistance grant fund established in 2009 Iowa Acts, Senate File 376, section 30. The allocation plan for the affordable housing assistance grant fund program is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).
[**ARC 7897B**, IAB 7/1/09, effective 6/10/09; **ARC 8076B**, IAB 8/26/09, effective 9/30/09; **ARC 8325B**, IAB 12/2/09, effective 11/4/09; **ARC 8547B**, IAB 2/24/10, effective 3/31/10]

**265—35.2(16) Location of copies of the plan.** The allocation plan for the affordable housing assistance grant fund program may be reviewed and copied in its entirety on the authority's Web site at www.iowafinanceauthority.gov. Copies of the allocation plan for the affordable housing assistance grant fund program, the application forms, and all related attachments and exhibits, if any, shall be deposited with the administrative rules coordinator and at the state law library. The plan incorporates by reference 2009 Iowa Acts, Senate File 376, section 30.
[**ARC 7897B**, IAB 7/1/09, effective 6/10/09; **ARC 8076B**, IAB 8/26/09, effective 9/30/09]

These rules are intended to implement Iowa Code section 16.5(1)*"r"* and 2009 Iowa Acts, Senate File 376, section 30.

[Filed Emergency ARC 7897B, IAB 7/1/09, effective 6/10/09]
[Filed ARC 8076B (Notice ARC 7898B, IAB 7/1/09), IAB 8/26/09, effective 9/30/09]
[Filed Emergency ARC 8325B, IAB 12/2/09, effective 11/4/09]
[Filed ARC 8547B (Notice ARC 8326B, IAB 12/2/09), IAB 2/24/10, effective 3/31/10]
[Editorial change: IAC Supplement 3/10/10]

# CHAPTER 36
# PUBLIC SERVICE SHELTER GRANT FUND

**265—36.1(16,83GA,SF376) Public service shelter grant fund allocation plan.** The allocation plan entitled Iowa Finance Authority Public Service Shelter Grant Fund Allocation Plan dated June 2009 shall be the allocation plan for the award, pursuant to the public service shelter grant fund program, of funds held within the public service shelter grant fund established in 2009 Iowa Acts, Senate File 376, section 28. The allocation plan for the public service shelter grant fund program is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).
[**ARC 7894B**, IAB 7/1/09, effective 6/10/09; **ARC 8077B**, IAB 8/26/09, effective 9/30/09]

**265—36.2(16,83GA,SF376) Location of copies of the plan.** The allocation plan for the public service shelter grant fund program may be reviewed and copied in its entirety on the authority's Web site at www.iowafinanceauthority.gov. Copies of the allocation plan for the public service shelter grant fund program, the application forms, and all related attachments and exhibits, if any, shall be deposited with the administrative rules coordinator and at the state law library. The plan incorporates by reference 2009 Iowa Acts, Senate File 376, section 28.
[**ARC 7894B**, IAB 7/1/09, effective 6/10/09; **ARC 8077B**, IAB 8/26/09, effective 9/30/09]

These rules are intended to implement Iowa Code section 16.5(1)*"r"* and 2009 Iowa Acts, Senate File 376, section 28.

[Filed Emergency ARC 7894B, IAB 7/1/09, effective 6/10/09]
[Filed ARC 8077B (Notice ARC 7893B, IAB 7/1/09), IAB 8/26/09, effective 9/30/09]

# CHAPTER 37
# RECOVERY ZONE BOND ALLOCATION

**265—37.1(16) General.** The American Recovery and Reinvestment Act of 2009 created two types of recovery zone ("RZ") bonds: recovery zone economic development ("RZED") bonds and recovery zone facility ("RZ facility") bonds. The applicable provisions are codified in Sections 1400U-1 – 1400U-3 of the Internal Revenue Code of 1986, as amended. The law provides that eligible issuers in Iowa may issue up to $90 million of RZED bonds and up to $135 million of RZ facility bonds. Through Notice 2009-50, the Internal Revenue Service published the applicable RZ bond allocations for Iowa, which amounts are included as Exhibit A to this chapter.

Pursuant to 2010 Iowa Acts, House File 2487 (the "Act"), the Iowa finance authority ("authority") has been charged with tracking the issuance of RZ bonds and making certain allocations of RZ bonding authority to ensure maximum use of this resource in the state.
[**ARC 8709B**, IAB 5/5/10, effective 4/12/10; **ARC 8962B**, IAB 7/28/10, effective 9/1/10]

**265—37.2(16) Forms.** Information and forms necessary for compliance with provisions of the law are available upon request from the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. The telephone number of the authority is (515)725-4900. Information and forms are also available at www.iowafinanceauthority.gov.
[**ARC 8709B**, IAB 5/5/10, effective 4/12/10; **ARC 8962B**, IAB 7/28/10, effective 9/1/10]

**265—37.3(16) Notice from the authority to issuers.** The authority will provide written notice to each county and to each large municipality (defined as a city with a population exceeding 100,000) of the amount of RZ bonding authority that has been allocated to it by the Internal Revenue Service. This written notice will include information about waiving such authority, pursuant to rule 265—37.5(16), as well as notification of the requirement that issuers provide written notice to the authority of any issuance of RZ bonds.
[**ARC 8709B**, IAB 5/5/10, effective 4/12/10; **ARC 8962B**, IAB 7/28/10, effective 9/1/10]

**265—37.4(16) Notice from issuers to the authority.** Within five business days of the issuance thereof (or within five business days of its receipt of the authority letter issued under rule 265—37.3(16), for those issuers that have issued RZ bonds prior to April 12, 2010), each county or large municipality that issues RZED bonds or RZ facility bonds (or that allocates RZ bond authority to a local issuer) shall give the authority written notice, on a form provided by the authority, detailing the amount and type of RZ bonds that were issued.
[**ARC 8709B**, IAB 5/5/10, effective 4/12/10; **ARC 8962B**, IAB 7/28/10, effective 9/1/10]

**265—37.5(16) Waiver of RZ bonding authority.**

**37.5(1)** A county or large municipality that has received an allocation of RZ bonds may, prior to July 1, 2010, voluntarily waive all or part of such allocation to the authority by completing the applicable RZ bond waiver form provided by the authority.

**37.5(2)** As provided in the Act, any portion of a county or large municipality's RZ bond allocation that has not been used by July 1, 2010, is deemed waived, and such amount will be subject to reallocation by the authority pursuant to rule 265—37.7(16). The authority will consider an allocation (or a portion thereof) used if the issuer for such allocation has taken substantive action toward issuance of the applicable RZ bonds. "Substantive action" includes, but is not limited to, (a) the adoption of resolutions or ordinances authorizing the sale or issuance of bonds, or (b) the completion of procedures, such as public hearings, referenda or related petition periods, to vest authority for the issuance of bonds.
[**ARC 8709B**, IAB 5/5/10, effective 4/12/10; **ARC 8962B**, IAB 7/28/10, effective 9/1/10]

**265—37.6(16) Application for allocation of recaptured or waived RZ bond authority.**

**37.6(1)** An applicant or beneficiary, or the duly authorized agent of an applicant or beneficiary, requesting an allocation must make an application by filing the form entitled "Application for Recovery

Zone Bonds" available from the authority. Such applicant must possess the ability to issue RZ bonds under state and federal law.

**37.6(2)** As part of its application, the applicant must include a copy of the resolution or other official action designating the recovery zone for which the application is being made.

[**ARC 8709B**, IAB 5/5/10, effective 4/12/10; **ARC 8962B**, IAB 7/28/10, effective 9/1/10]

**265—37.7(16) Allocations.**

**37.7(1)** The authority will track the amount and type of RZ bonds issued and the amount of RZ bonding authority available to be allocated.

**37.7(2)** Allocations will only be made for eligible projects in those counties that received an allocation of authority to issue RZ bonds pursuant to IRS Notice 2009-50. While the allocations will be limited to projects within those counties that originally received an allocation, the amount of the allocation from the authority will not be limited to the original allocated amounts under Notice 2009-50.

**37.7(3)** Allocations shall be made to eligible applicants on the basis of the chronological order of receipt of applications. Chronological order of receipt shall be determined by the date, hour and minute indicated by the time stamp as affixed to the application at the offices of the authority.

**37.7(4)** All applications that are received by the authority on or prior to April 12, 2010, pursuant to the provisions of rule 265—37.6(16) shall be considered simultaneously received at the opening of business on April 12, 2010, and the same date, hour and minute shall be stamped on each application so received. If the total amount of allocations requested in all of the applications received on such date exceeds the total amount determined by the authority as available to be allocated, the applications will be considered for allocation in the order determined pursuant to the procedures set forth in subrule 37.7(5).

**37.7(5)** In order to determine the order of allocation to two or more applications that are simultaneously received pursuant to subrule 37.7(4) and for which there is insufficient capacity to allocate to each the full allotment requested, each such application shall be assigned a preference number determined by a random drawing to be conducted at the authority's offices within one week following the receipt of the applications. The authority shall notify the affected applicants in writing and shall post a notice at its offices of the time and place of the drawing not less than three days prior to the scheduled drawing. Any person desiring to attend and witness the drawing and assigning of preference numbers may do so. Each application shall be assigned an identification code that shall be written on the outside of the sealed envelope containing the application. The identification codes shall also be written on strips of paper and placed in individual envelopes and sealed. The sealed envelopes containing identification codes shall be placed in a container, mixed, and drawn from the container at random by a member of the authority's staff. The application corresponding with the identification code that is drawn first shall be placed first on the list of applicants to receive an allotment. The application corresponding with the identification code that is selected second shall be placed second on the list, and so forth. Drawings shall continue until all applications are assigned a place on the list of applications received.

**37.7(6)** Applications received after April 12, 2010, shall be added to the appropriate list (whether for RZED bonds or RZ facility bonds) depending upon the subject of the application in the chronological order received.

[**ARC 8709B**, IAB 5/5/10, effective 4/12/10; **ARC 8962B**, IAB 7/28/10, effective 9/1/10]

**265—37.8(16) Certification of allocation.** Upon receipt of a completed application and verification that sufficient RZ bonding authority exists for such application, the authority shall promptly certify to the applicant the amount of the RZED bond or RZ facility bond allocation, as applicable, awarded to the project for which the application was submitted. The authority shall continue to award allocations for eligible projects until the available recovery zone bonding authority is allocated. If the remaining capacity is not sufficient to fully fund an application which is next in order for allocation, the authority shall notify the applicant of the amount that is available and the applicant shall have the option to take what is available within five calendar days of receiving notice of availability. If the applicant does not notify the authority of its decision to take the available allocation within five calendar days of receiving

notice of that option, an allotment shall be offered to the next application on the list under the same conditions.
[**ARC 8709B**, IAB 5/5/10, effective 4/12/10; **ARC 8962B**, IAB 7/28/10, effective 9/1/10]

**265—37.9(16) Expiration of allocations.** An allocation of recovery zone bonding authority pursuant to this chapter shall remain valid for 120 days from the date of allocation. If the sale of bonds for which an allocation was made has not closed within such time, the allocation shall expire and the allotment shall revert to the authority to be reallocated, if possible; provided, however, that if the 120th day following the date of allocation is a Saturday, Sunday, or any day on which the offices of the state banking institutions or savings and loan associations in the state are authorized or required to close, the expiration date shall be extended to the first day thereafter which is not a Saturday, Sunday or previously described day.
[**ARC 8709B**, IAB 5/5/10, effective 4/12/10; **ARC 8962B**, IAB 7/28/10, effective 9/1/10]

**265—37.10(16) Resubmission of expired allocations.** If an allocation expires, the applicant may resubmit its application for the same project or purpose. However, the resubmitted application shall be treated as a new application, and preference, priority or prejudice shall not be given to the application or the applicant as a result of the prior application.
[**ARC 8709B**, IAB 5/5/10, effective 4/12/10; **ARC 8962B**, IAB 7/28/10, effective 9/1/10]

**265—37.11(16) Application and allocation fees.** The Iowa finance authority may set and charge reasonable fees for providing administrative assistance with regard to the filing of applications and the allocation of the recovery zone bond allotments in accordance with these rules.
[**ARC 8709B**, IAB 5/5/10, effective 4/12/10; **ARC 8962B**, IAB 7/28/10, effective 9/1/10]

EXHIBIT A

| | **Recovery Zone Economic Development Bonds** | **Recovery Zone Facility Bonds** |
|---|---|---|
| **Iowa's Total Allocation** | **$90,000,000** | **$135,000,000** |
| **Large Municipalities** | | |
| Cedar Rapids | 1,972,000 | 2,958,000 |
| Des Moines | 5,571,000 | 8,356,000 |
| **Counties** | | |
| Adair County | 564,000 | 845,000 |
| Adams County | 0 | 0 |
| Allamakee County | 3,212,000 | 4,818,000 |
| Appanoose County | 0 | 0 |
| Audubon County | 382,000 | 574,000 |
| Benton County | 390,000 | 586,000 |
| Black Hawk County | 2,343,000 | 3,514,000 |
| Boone County | 0 | 0 |
| Bremer County | 447,000 | 670,000 |
| Buchanan County | 72,000 | 109,000 |
| Buena Vista County | 785,000 | 1,177,000 |
| Butler County | 411,000 | 616,000 |
| Calhoun County | 0 | 0 |
| Carroll County | 350,000 | 525,000 |
| Cass County | 0 | 0 |
| Cedar County | 0 | 0 |
| Cerro Gordo County | 0 | 0 |
| Cherokee County | 1,795,000 | 2,693,000 |

| | Recovery Zone Economic Development Bonds | Recovery Zone Facility Bonds |
|---|---|---|
| **Iowa's Total Allocation** | **$90,000,000** | **$135,000,000** |
| Chickasaw County | 0 | 0 |
| Clarke County | 648,000 | 972,000 |
| Clay County | 0 | 0 |
| Clayton County | 0 | 0 |
| Clinton County | 0 | 0 |
| Crawford County | 0 | 0 |
| Dallas County | 1,731,000 | 2,596,000 |
| Davis County | 612,000 | 918,000 |
| Decatur County | 865,000 | 1,298,000 |
| Delaware County | 463,000 | 694,000 |
| Des Moines County | 3,550,000 | 5,325,000 |
| Dickinson County | 0 | 0 |
| Dubuque County | 4,363,000 | 6,545,000 |
| Emmet County | 0 | 0 |
| Fayette County | 1,115,000 | 1,672,000 |
| Floyd County | 2,500,000 | 3,749,000 |
| Franklin County | 1,220,000 | 1,829,000 |
| Fremont County | 821,000 | 1,232,000 |
| Greene County | 0 | 0 |
| Grundy County | 221,000 | 332,000 |
| Guthrie County | 306,000 | 459,000 |
| Hamilton County | 1,578,000 | 2,367,000 |
| Hancock County | 853,000 | 1,280,000 |
| Hardin County | 0 | 0 |
| Harrison County | 0 | 0 |
| Henry County | 1,409,000 | 2,113,000 |
| Howard County | 1,654,000 | 2,481,000 |
| Humboldt County | 1,320,000 | 1,980,000 |
| Ida County | 0 | 0 |
| Iowa County | 0 | 0 |
| Jackson County | 32,000 | 48,000 |
| Jasper County | 692,000 | 1,038,000 |
| Jefferson County | 1,163,000 | 1,745,000 |
| Johnson County | 0 | 0 |
| Jones County | 286,000 | 429,000 |
| Keokuk County | 403,000 | 604,000 |
| Kossuth County | 604,000 | 906,000 |
| Lee County | 2,793,000 | 4,190,000 |
| Linn County | 1,280,000 | 1,920,000 |
| Louisa County | 837,000 | 1,256,000 |
| Lucas County | 0 | 0 |
| Lyon County | 370,000 | 555,000 |
| Madison County | 435,000 | 652,000 |

| | **Recovery Zone Economic Development Bonds** | **Recovery Zone Facility Bonds** |
|---|---|---|
| **Iowa's Total Allocation** | **$90,000,000** | **$135,000,000** |
| Mahaska County | 841,000 | 1,262,000 |
| Marion County | 857,000 | 1,286,000 |
| Marshall County | 2,431,000 | 3,647,000 |
| Mills County | 0 | 0 |
| Mitchell County | 962,000 | 1,443,000 |
| Monona County | 0 | 0 |
| Monroe County | 0 | 0 |
| Montgomery County | 588,000 | 882,000 |
| Muscatine County | 3,136,000 | 4,703,000 |
| O'Brien County | 149,000 | 223,000 |
| Osceola County | 0 | 0 |
| Page County | 2,274,000 | 3,411,000 |
| Palo Alto County | 547,000 | 821,000 |
| Plymouth County | 2,322,000 | 3,484,000 |
| Pocahontas County | 0 | 0 |
| Polk County | 6,992,000 | 10,487,000 |
| Pottawattamie County | 0 | 0 |
| Poweshiek County | 3,083,000 | 4,625,000 |
| Ringgold County | 246,000 | 368,000 |
| Sac County | 181,000 | 272,000 |
| Scott County | 0 | 0 |
| Shelby County | 0 | 0 |
| Sioux County | 946,000 | 1,419,000 |
| Story County | 0 | 0 |
| Tama County | 2,004,000 | 3,007,000 |
| Taylor County | 475,000 | 712,000 |
| Union County | 0 | 0 |
| Van Buren County | 125,000 | 187,000 |
| Wapello County | 910,000 | 1,365,000 |
| Warren County | 1,352,000 | 2,029,000 |
| Washington County | 0 | 0 |
| Wayne County | 0 | 0 |
| Webster County | 0 | 0 |
| Winnebago County | 1,304,000 | 1,956,000 |
| Winneshiek County | 4,090,000 | 6,134,000 |
| Woodbury County | 612,000 | 918,000 |
| Worth County | 0 | 0 |
| Wright County | 1,155,000 | 1,733,000 |

[**ARC 8709B**, IAB 5/5/10, effective 4/12/10; **ARC 8962B**, IAB 7/28/10, effective 9/1/10]

These rules are intended to implement Iowa Code section 16.5(1)*"r"* and 2010 Iowa Acts, House File 2487.

[Filed Emergency ARC 8709B, IAB 5/5/10, effective 4/12/10]
[Filed ARC 8962B (Notice ARC 8710B, IAB 5/5/10), IAB 7/28/10, effective 9/1/10]

# CHAPTER 38
# IOWA JOBS II PROGRAM

**265—38.1(16) Purpose.** The Iowa jobs board is charged by the Iowa legislature and the governor with establishing, overseeing and providing approval of the administration of the Iowa jobs II program. The board will encourage and support public construction projects relating to disaster prevention.
[**ARC 8890B**, IAB 6/30/10, effective 6/10/10]

**265—38.2(16) Definitions.** When used in this chapter, the following definitions apply unless the context otherwise requires:

*"Authority"* or *"IFA"* means the Iowa finance authority.

*"Board"* means the Iowa jobs board as established in 2009 Iowa Code Supplement section 16.191.

*"Disaster"* means an occurrence that causes widespread or extensive destruction and distress, including but not limited to floods, tornadoes, blizzards, fires, earthquakes, terrorist attacks, aviation and environmental accidents, and similar catastrophes.

*"Disaster prevention"* means the prevention, reduction (in number or in scope), mitigation, or amelioration of future disasters or the harm caused thereby.

*"Financial feasibility"* means the ability of a project, once completed, to be maintained and operated for its useful life with funds either generated by the project itself or from an identifiable source of funds available for such purpose.

*"Indirect jobs"* means jobs created by suppliers of materials used in the construction or operation of the project.

*"Induced jobs"* means jobs collaterally created throughout the economy by a project as employed workers and firms buy other goods and services.

*"Iowa jobs program review committee"* or *"review committee"* means the committee established by 2009 Iowa Code Supplement section 16.195.

*"Local infrastructure"* means projects relating to disaster prevention. "Local infrastructure" does not include routine, recurring maintenance or operational expenses or the leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

*"Local support"* means endorsement of a proposed project by local individuals, organizations, or governmental bodies that have a substantial interest in a project.

*"Program"* means the Iowa jobs II program established in 2010 Iowa Acts, Senate File 2389, section 88.

*"Public construction project"* means a project for the construction of local infrastructure by a county or city.

*"Recipient"* means an entity under contract with the Iowa jobs board to receive Iowa jobs II program funds and undertake a funded project.

*"Smart planning principles"* means the principles set forth in division VII of 2010 Iowa Acts, Senate File 2389.

*"Sustainability"* means the use, development, and protection of resources at a rate and in a manner that enable people to meet their current needs while allowing future generations to meet their own needs; "sustainability" requires simultaneously meeting environmental, economic and community needs.
[**ARC 8890B**, IAB 6/30/10, effective 6/10/10]

**265—38.3(16) Allocation of funds.** All Iowa jobs II funds shall be awarded and used as specified in 2010 Iowa Acts, Senate File 2389, division VII, and these rules. If a city or county that is awarded funds under the program has not begun drawing funds within one year of the date of the award, the grant shall terminate and no funds shall be disbursed unless the board, in its sole discretion, prior to the first anniversary of the date of the award, grants an extension due to extraordinary circumstances. Any portion of an amount allocated for projects that remains unexpended or unencumbered one year after the allocation has been made by the board may be reallocated by the board to another project category, at the discretion of the board. All bond proceeds shall be expended within three years from when the allocation was initially made. The total amount of allocations for disaster prevention projects (pursuant to the local

infrastructure competitive grant program) shall not exceed $30 million for the fiscal year beginning July 1, 2010.
[**ARC 8890B**, IAB 6/30/10, effective 6/10/10]

**265—38.4(16) Iowa jobs II program.** The board shall assist in the development and completion of public construction projects relating to disaster prevention by overseeing and providing approval of the administration of the Iowa jobs II grant program, as set forth herein.

**38.4(1)** *Eligible applicants.* Eligible applicants for Iowa jobs II local infrastructure competitive grant program funds shall be Iowa cities and counties that apply smart planning principles and guidelines pursuant to division VII of 2010 Iowa Acts, Senate File 2389. A city or county shall be deemed to apply smart planning principles if it has committed by resolution promptly to perform a review to determine the potential advantages and disadvantages to the city or county of adopting a comprehensive plan or, if the city or county already has a comprehensive plan, of amending that comprehensive plan. By such resolution, to be eligible, the city or county must also commit, in the event it is awarded a grant under the Iowa jobs II local infrastructure competitive grant program, to complete the adoption or amendment of its comprehensive plan utilizing smart planning principles within three years of the award of such grant.

**38.4(2)** *Eligible projects and forms of assistance.* For a project to be eligible to receive a competitive grant under the program, the project must be a public construction project relating to disaster prevention to be located in the state of Iowa which will have a demonstrated substantial local, regional, or statewide economic impact. Financial assistance shall be awarded only in the form of grants. In the event that a project has multiple intended uses or purposes, of which only a portion is related to disaster prevention, then only that portion of the project intended or designed for disaster prevention shall be deemed eligible.

*a.* Any award of a competitive grant to a project shall be limited as follows:

(1) Up to 90 percent of the first $500,000 in total cost of the development and completion of a public construction project relating to disaster prevention;

(2) Up to 50 percent of all additional costs of such project;

(3) An applicant or a combination of applicants for a project within the same county shall not be awarded more than 40 percent of the funds available under the program.

*b.* The authority, with the approval of the chair and vice chair of the Iowa jobs board, shall have the ability to make technical corrections to awards that are within the intent of the terms of a board-approved award.

**38.4(3)** *Ineligible projects.* The board shall not approve an application for a competitive grant for the following purposes:

*a.* To refinance a loan existing prior to the date of the initial financial assistance application.

*b.* For a project that has previously received financial assistance under the local infrastructure competitive grant program, unless the applicant demonstrates that the financial assistance would be used for a significant expansion of such a project.

**38.4(4)** *Threshold application requirements.* To be considered for a competitive grant, an application shall meet all of the following threshold requirements:

*a.* Prior to filing an application, the applicant must file, on the form and in the manner prescribed by the authority, a notice of intent to apply not less than 10 days prior to submitting its application;

*b.* The application must be submitted by an eligible applicant via the board's application Web site (http://www.ijobsiowa.gov) prior to the applicable deadline;

*c.* The proposed project must be for the development and completion of one or more public construction projects relating to disaster prevention;

*d.* There must be demonstrated local support for the proposed project;

*e.* The proposed public construction project must have a demonstrated substantial local, regional, or statewide economic impact;

*f.* The applicant must document its application of smart planning principles; and

*g.* The application must coordinate any federal funds with state, local, and private funds and shall avoid any duplication of benefits that would limit or cause the loss of federal funding.

Prior to submitting an application to the review committee, the authority may contact the applicant to clarify information contained in the application. An application may be amended one time prior to being sent to the review committee. Applications may be otherwise amended with the approval of a majority of the review committee.

**38.4(5)** *Application procedure.*

*a.* Applications shall be reviewed and scored in rounds. The deadline for submission for the first round of applications shall be August 2, 2010. Subsequent rounds, if any, shall be at the discretion of the board as funding is available.

*b.* Applications will be reviewed by authority staff for completeness and eligibility. If additional information is required, the applicant shall be requested, in writing, to submit additional information. For applications that meet the threshold requirements, authority staff shall submit to the members of the review committee a copy of the application along with a review, analysis, and evaluation of complete applications.

*c.* The review committee members will score the applications according to the criteria set forth in subrule 38.4(6), and authority staff shall compile the scores. To be eligible for a grant, a proposed project must receive a minimum score of at least 100 points on the scoring criteria listed in paragraphs 38.4(6)*"a"* to *"e."* The review committee shall meet to review the ratings for each round of applications. Those applications meeting the minimum criteria shall be referred to the Iowa jobs board with a recommendation of final approval, denial, or deferral.

*d.* If the board determines that an application should be approved, the board shall send the application to negotiations. Negotiations shall be conducted by IFA staff, who may work in cooperation with members of the Iowa jobs board. The negotiators shall negotiate the terms and conditions of a grant agreement to recommend to the board.

*e.* Following negotiations, the negotiating team shall report back to the Iowa jobs board as to whether it was able to agree with the applicant on the terms of a proposed grant agreement and, if so, the proposed terms and conditions resulting from the negotiations. The Iowa jobs board shall then vote, without further substantive revision, on whether to agree to the negotiated terms.

*f.* If the negotiated terms are agreed to by the Iowa jobs board, a grant agreement memorializing the negotiated terms shall be executed by the chair or vice chair of the Iowa jobs board.

*g.* Application resources for the Iowa jobs II program are available at the Iowa jobs Web site: www.ijobsiowa.gov.

*h.* IFA may provide technical assistance as necessary to applicants. IFA staff may conduct on-site evaluations of proposed projects.

*i.* A denied or deferred application may be revised and resubmitted as a new application in a subsequent round, if any. Unless a deferred application is withdrawn by the applicant or revised and resubmitted as a new application, the authority shall keep it on file, and its score shall automatically be ranked among new applications submitted for the next round, if any, once such new applications have been scored.

**38.4(6)** *Application review criteria.* The Iowa jobs program review committee shall evaluate and rank applications based on the following criteria:

*a. The total number and quality of jobs to be created and the benefits likely to accrue to areas distressed by high unemployment (0-40 points).* The number of jobs created and other measures of economic impact to areas distressed by high unemployment, including long-term tax generation, shall be evaluated. Rating factors for this criterion include, but are not necessarily limited to, the following:

(1) Number of jobs. The number of jobs reasonably projected to be created or retained and the number of hours anticipated for each such job shall be compared and ranked.

(2) Quality of jobs. The wages to be paid for each position to be created or retained, the average benefits (including health benefits) to be provided, as well as other subjective qualitative factors, such as work conditions and safety, shall be compared and ranked.

(3) Other benefits likely to accrue to areas distressed by high unemployment, such as the degree to which the project enhances the quality of life in a region and contributes to the community's efforts to retain and attract a skilled workforce.

In order to be eligible for funding, proposals must score at least 20 points on this criterion.

*b. Financial feasibility, including the ability of projects to fund depreciation costs or replacement reserves, and the availability of other federal, state, local, and private sources of funds (0-40 points).* The feasibility of the proposed project shall be evaluated. Rating factors for this criterion include, but are not limited to, the following:

(1) (0-15 points) A financial analysis of the project, which shall include a description of sources of funding, project budget, and detailed projections of the project's revenues and expenses for the projected useful life of the project;

(2) (0-15 points) An analysis of the operational plan, which shall provide detailed information about how the proposed project will be operated and maintained, including a time line for implementing the project;

(3) (0-10 points) The extent to which the applicant will use funds other than an Iowa jobs II grant to fund its project. For each percentage (rounded to the nearest percentage divisible by 10) of the total projected project cost that is to be funded with non-Iowa jobs II grant funds, the project shall receive one point.

In order to be eligible for funding, proposals must score at least 20 points on this criterion.

*c. Sustainability and energy efficiency.* The sustainability and energy efficiency of the proposed project shall be evaluated. Rating factors for this criterion include, but are not limited to, the following:

(1) Sustainability (0-20 points). The extent to which the project has taken sustainability planning principles into consideration.

1. The project shall be evaluated based on the following specific factors:

● Efficient and effective use of land resources and existing infrastructure by encouraging compact development in areas with existing infrastructure or capacity to avoid costly duplication of services and costly use of land; conservation of open space and farmland and preservation of critical environmental areas; and promotion of the safety, livability, and revitalization of existing urban and rural communities. Compact development maximizes public infrastructure investment and promotes mixed uses, greater density, bicycle and pedestrian networks, and interconnection with the existing street grid.

● Provision for a variety of transportation choices, including public transit and pedestrian and bicycle traffic.

● Construction and promotion of developments, buildings, and infrastructure that conserve natural resources by reducing waste and pollution through efficient use of land, energy, water, and materials.

● Capture, retention, infiltration and harvesting of rainfall using storm water best management practices such as permeable pavement, bioretention cells, bioswales, and rain gardens to protect water resources.

● The extent to which project design, construction, and use incorporate renewable energy sources including, but not limited to, solar, wind, geothermal, and biofuels, and support the following state of Iowa plans and goals: (1) office of energy independence's Iowa energy independence plan; and (2) general reduction of greenhouse gas emissions.

2. Alternatively, in lieu of being evaluated on each of the criteria set forth above, projects which are designed to receive certification (either platinum level, gold level, silver level, or basic LEED certification) from the United States Green Building Council in the Leadership in Energy and Environmental Design (LEED) Green Building Rating System version 3.0, and which comply with the requirements of ASHRAE 90.1-2007, Energy Standard for Buildings Except Low-Rise Residential Buildings, published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tullie Circle, N.E., Atlanta, GA 30329, shall receive 20 points.

(2) Energy efficiency (0-20 points). The extent to which the project has taken energy efficiency planning principles into consideration.

1. In the case of new construction, whether the project is designed to meet the current state building energy code. The application for the project must include a letter from the engineer or architect to IFA certifying whether the proposed construction meets the current state building energy code. Additionally, the application should address whether the proposed project is designed to meet energy star standards.

If the project is of such a nature that the current state building energy code does not apply to it, the letter shall so state.

2. In the case of rehabilitation of existing structures, an energy audit conducted by a certified energy rater should be provided on each building prior to the preparation of the final work rehabilitation order to determine the feasibility of meeting the requirements of the current state building energy code and energy star standards prior to the start of the rehabilitation. If it is determined to be feasible to meet the current state building energy code standards and energy star standards, appropriate specifications will be written into the work order. If it is not feasible to meet the requirements of the current state building energy code and energy star standards (or either of them), the application will provide information indicating what effective and cost-effective energy improvements will be included as a part of the rehabilitation project.

*d. Benefits for disaster prevention (0-40 points).* The likely benefits for disaster prevention of the proposed project shall be evaluated. Rating factors for this criterion include, but are not limited to, whether the proposed project is designed to prevent, reduce (in number or in scope), mitigate, or ameliorate future disasters or the losses therefrom.

In order to be eligible for funding, proposals must score at least 20 points on this criterion.

*e. The project's readiness to proceed (0-40 points).* The readiness of the project to proceed shall be evaluated. Wherever applicable, rating factors for this criterion include, but are not limited to, the following:

(1) Whether all engineering and architectural work required for construction to begin has been completed;

(2) Whether all financing for the project (other than competitive grant funds awarded under this chapter) has been committed and is available;

(3) Whether all real property interests (including easements and temporary construction easements) necessary for the construction of the project have been acquired;

(4) Whether all necessary governmental approvals, at the federal, state, and local levels (including, but not limited to, zoning variances, building permits, approval from the Army Corps of Engineers, etc.), have been obtained;

(5) Whether the project has demonstrated a reasonable likelihood of incurring at least 10 percent of the project's total projected development cost within three months of execution of the grant award agreement.

*f. General scoring criteria.*

(1) In instances where a given criterion is not applicable to a proposed project due to the nature of the project, the review committee members may adjust scoring so that the project is not disadvantaged as a result of the inapplicable criterion. For example, if an earthen levee is proposed as a means of flood control, it should not lose points relative to other proposed projects because it does not comply with the current state building energy code (which does not apply to earthen levees).

(2) Any proposed project that is identified in an Iowa great places agreement, pursuant to Iowa Code section 303.3C, shall have an additional two points added to its cumulative point total.

[**ARC 8890B**, IAB 6/30/10, effective 6/10/10]

**265—38.5(16) General grant conditions.** As a condition of receipt of Iowa jobs II funds, recipients shall agree, at a minimum, to all of the following:

**38.5(1)** *Documentation of jobs created or retained.* Following the receipt of grant funds pursuant to this chapter and for two years following the completion of the project, each recipient shall report to the authority quarterly the actual number of jobs created as a result of the project along with other information relating to the quality of such jobs, including hours and wages, as requested by the authority.

**38.5(2)** *Recipient obligations.* In the event a recipient fails to comply with the requirements of this program or the recipient's grant agreement, the board may cancel the recipient's grant and require the return of any grant funds previously disbursed pursuant to this program. Recipients shall agree to hold harmless and to indemnify the Iowa jobs board, the authority, the state of Iowa, and their officers,

employees and agents from any claims, costs or liabilities arising out of the development or operation of the project.

**38.5(3)** *Grant acknowledgment.* Each project shall recognize in a prominent location and manner the fact that the project was made possible, in part, through a grant from the Iowa jobs program. During the construction period the recognition (including a display of the Iowa jobs logo) may be located on temporary signage. The completed project shall feature a permanent acknowledgment, such as a plaque or a similar commemoration. Other benefactors of the project may be similarly acknowledged as well.

**38.5(4)** *Use of Iowa jobs Web site.* All positions that need to be filled for a project shall be posted on Iowa workforce development's Iowa jobs Web site: www.iowajobs.org/.
[**ARC 8890B**, IAB 6/30/10, effective 6/10/10]

**265—38.6(16) Calculation of jobs created.** For purposes of this chapter, new employment positions created and filled (or to be created and filled) as a result of the project and existing positions that would not have been continued were it not for Iowa jobs funding shall be counted when estimating the number of jobs to be created during the application process and when counting the number of actual jobs created in post-grant reporting. Both permanent and temporary positions filled by the grantee, a contractor, or a subcontractor (or sub-subcontractor, etc.), including construction work, shall be counted. To be counted, a position must be compensated. Indirect jobs and induced jobs shall not be counted.
[**ARC 8890B**, IAB 6/30/10, effective 6/10/10]

**265—38.7(16) Grant awards.** The Iowa jobs board may fund a component of a proposed project if the entire project does not qualify for funding. The board shall review awards made to ensure geographic diversity. In order to promote geographic diversity, the board may defer grant decisions on applications from areas which have received previous grant awards to allow applications from other parts of the state to be considered. In the event that a competitive grant recipient, prior to execution of an Iowa jobs II grant agreement, is awarded a federal grant for its project, in whole or in part, which federal grant, or the possibility thereof, was not disclosed as part of the recipient's application, the board may withdraw all or part of the Iowa jobs II program grant.
[**ARC 8890B**, IAB 6/30/10, effective 6/10/10]

**265—38.8(16) Administration of awards.**

**38.8(1)** A grant agreement shall be executed between successful applicants and the Iowa jobs board. These rules and applicable state laws and regulations shall be part of the contract. The board reserves the right to negotiate wage rates as well as other terms and conditions of the contract.

**38.8(2)** Grant agreement.

*a.* Following the board's determination that a competitive grant application should be approved, authority staff shall propose a draft grant agreement to the recipient. Within 30 days of either transmission of the proposed grant agreement to the recipient or transmission of notice of how the proposed grant agreement may be accessed by the recipient via the Internet, the recipient shall notify the authority as to whether the recipient will execute the proposed agreement or whether the recipient would prefer to negotiate a different agreement. If the recipient elects to execute the proposed agreement, or if the recipient fails to make a timely election, the authority shall prepare and transmit to the recipient on behalf of the board a final contract for execution.

*b.* If the recipient elects to negotiate a different agreement, the recipient shall, at the time it makes such election, notify the authority of the requested changes to the proposed grant agreement. The authority shall consider the requested changes and may make such revisions to the proposed agreement as the authority determines to be prudent and in the best interests of the Iowa jobs II program and the state of Iowa under the circumstances.

*c.* Once the authority and the recipient have reached an agreement, the authority shall prepare and transmit to the recipient on behalf of the board a final contract, subject to approval by the board.

*d.* If the authority and the recipient are unable to reach an agreement, the authority shall, with the board's approval, draft and transmit to the recipient on behalf of the board a final contract consisting of the Iowa jobs board's best and final offer.

**38.8(3)** The recipient must execute and return the contract to the Iowa jobs board within 45 days of transmittal of the final contract from the Iowa jobs board. Failure to do so may be cause for the Iowa jobs board to terminate the award.

**38.8(4)** Certain projects may require that permits or clearances be obtained from other state, local, or federal agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

**38.8(5)** Awards may be conditioned upon commitment of other sources of funds necessary to complete the project.

**38.8(6)** Any substantive change to a contract shall be considered an amendment. Substantive changes include time extensions, budget revisions, and significant alterations that change the scope, location, objectives or scale of an approved project. Amendments must be requested in writing by the recipient and are not considered effective until approved by the Iowa jobs board and confirmed in writing by IFA staff following the procedure specified in the contract between the recipient and the Iowa jobs board.

[**ARC 8890B**, IAB 6/30/10, effective 6/10/10]

These rules are intended to implement Iowa Code section 16.5(1)*"r"* and 2010 Iowa Acts, Senate File 2389, sections 84 to 88.

[Filed Emergency ARC 8890B, IAB 6/30/10, effective 6/10/10]

# CHAPTER 39
# HOME PARTNERSHIP PROGRAM

**265—39.1(16) Purpose.** The primary purpose of the HOME partnership program is to expand or retain the supply of decent and affordable housing for low- and moderate-income Iowans.
[**ARC 8963B**, IAB 7/28/10, effective 7/8/10]

**265—39.2(16) Definitions.** When used in this chapter, unless the context otherwise requires:

*"Activity"* means one or more specific housing activities, projects or programs assisted through the HOME partnership program.

*"Administrative plan"* means a document that a HOME recipient establishes that describes the operation of a funded activity in compliance with all state and federal requirements.

*"CHDO"* means a community housing development organization, which is a nonprofit organization registered with the Iowa secretary of state and certified as such by IDED or IFA, pursuant to 24 CFR 92.2 (April 1, 1997).

*"Consolidated plan"* means the state's housing and community development planning document and the annual action plan update approved by HUD.

*"Development subsidies"* means financial assistance provided to developers of newly constructed, single-family housing to address the added costs of constructing housing. In such cases, the total cost of development is likely to exceed the sales price or the appraised fair market value of the housing. Additional costs might include labor, materials and equipment; professional design and construction oversight costs; and required third-party energy efficiency verification and certification costs.

*"Displaced homemaker"* means an individual who (1) is an adult; (2) has not worked full-time/full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and (3) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

*"First-time home buyer"* means an individual or an individual and the individual's spouse who have not owned a home during the three-year period before the purchase of a home with HOME assistance, except that an individual who is a displaced homemaker or single parent may not be excluded from consideration as a first-time home buyer on the basis that the individual, while a homemaker, owned a home with the individual's spouse or resided in a home owned by a spouse; and an individual may not be excluded from consideration on the basis that the individual owns or owned, as a principal residence during the three-year period before purchase of a home with HOME assistance, a dwelling unit whose structure is (1) not permanently affixed to a permanent foundation in accordance with local or other applicable regulations or (2) not in compliance with state, local or model building codes and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

*"Gut rehabilitation"* means an activity or project that involves the total removal and replacement of all interior (nonstructural) systems, equipment, components or features of a multifamily structure, whereby the existing structure will be reduced down to the basic structure or exterior building shell (e.g., the foundation system; exterior walls; roofs; and interior structural components such as columns, beams, floors and structural bearing walls). "Gut rehabilitation" may also include structural or nonstructural modifications to the exterior of the structure.

*"HOME"* means the HOME Investment Partnership Program, authorized by the Cranston-Gonzalez National Affordable Housing Act of 1990.

*"HUD"* means the U.S. Department of Housing and Urban Development.

*"IDED"* means the Iowa department of economic development.

*"IFA"* means the Iowa finance authority.

*"Iowa green communities criteria"* means a set of rating factors, some optional and some mandatory, prepared by IDED and intended to promote public health, energy efficiency, water conservation, operational savings and sustainable building practices.

*"Lead hazard reduction or abatement carrying costs"* means the additional costs incurred by lead professionals to ensure that target housing is lead-safe at the completion of rehabilitation. "Lead hazard

reduction or abatement carrying costs" includes, but is not limited to, required notifications and reports, lead hazard or abatement evaluations, revisions to project specifications to achieve lead safety, lead hazard reduction or abatement oversight, and clearance testing and final assessment.

*"LIHTC"* means low-income housing tax credits and federal tax incentives created through the Tax Reform Act of 1986 and allocated through IFA for affordable rental housing development.

*"Local financial support"* means financial investment by the recipient through the use of the recipient's own discretionary funds that are a permanent financial contribution or commitment applied to and related to the objectives of the housing activity or project assisted through the HOME partnership program and that are used during the same time frame as the requested housing activity or project.

*"Local support"* means involvement, endorsement and investment by citizens, organizations and the governing body of the local government in which the housing project is located that promote the objectives of the housing activity or projects assisted through the HOME partnership program.

*"Net proceeds"* means the amount determined by calculating the difference between the resale price and the amount of the outstanding principal loan balance owed plus any seller's reasonable and customary closing costs associated with the resale.

*"New construction rental units"* means the on-site construction or erection of a building, or buildings, for the purpose of providing rental housing units. New construction rental units include conventional, on-site, stick-built construction and on-site erection or fabrication of manufactured housing units or components of units. New construction rental units also include the addition of any rental units outside the existing walls (the building envelope) of an existing building, or buildings, that are part of a rental rehabilitation, renovation or conversion project.

*"Program income"* means funds generated by a recipient or subrecipient from the use of HOME funds.

*"Reasonable and customary closing costs"* means:

1. Seller's reasonable and customary closing costs incurred include, but are not limited to: abstract updating, title search fees, deed preparation fees, bringing current the seller's county taxes, and real estate commission fees. Ineligible costs include, but are not limited to: lender discount points, allowances, inspection fees, and buyer closing costs.

2. Buyer's reasonable and customary closing costs incurred include, but are not limited to: lender origination fees, credit report fees, fees for the title evidence or title opinion, fees for recording and filing of legal documents, attorneys' fees, appraisal fees, and required inspection fees. Ineligible costs under this definition include, but are not limited to: prepayment of taxes, prepayment of insurance, and lender discount points.

*"Recaptured funds"* means HOME funds which are recouped by the recipient when the housing unit assisted by the HOME partnership program home ownership funds does not continue to be the principal residence of the assisted home buyer for the full affordability period required by federal statute.

*"Recipient"* means the entity under contract with IFA to receive HOME funds and undertake the funded housing activity.

*"Repayment"* means HOME funds which the recipient must repay to IFA because the funds were invested in a project or activity that is terminated before completion or were invested in a project or activity which failed to comply with federal requirements.

*"Single-family unit"* means one dwelling unit designated or constructed to serve only one household or family as the primary residence. Single-family units include a detached single unit, condominium unit, cooperative unit, or combined manufactured housing unit and lot.

*"Single parent"* means an individual who (1) is unmarried or is legally separated from a spouse and (2) is pregnant or has one or more minor children for whom the individual has custody or joint custody.

*"Technical services"* means all services that are necessary to carry out individual, scattered site activities including but not limited to: (1) conducting initial inspections, (2) work write-up or project specification development, (3) cost estimate preparation, (4) construction supervision associated with activities that do not require an architect or engineer, (5) lead hazard reduction or lead abatement need determination and oversight, (6) lead hazard reduction or abatement carrying costs, (7) temporary relocation coordination, (8) financing costs such as security agreement preparation and recording or

filing fees, (9) processing of individual applications for assistance, (10) income eligibility determination and verification, (11) value determination (new construction) or after rehabilitation value determination (existing structures), and (12) project-specific environmental clearance processes.

*"Technical services provision"* means the cost to provide other individual housing project-related services such as: (1) financing costs (security agreement preparation, recording and filing fees), (2) processing individual applications for assistance, (3) income eligibility determination and verification, (4) after rehabilitation value determination, and (5) project-specific environmental clearance.

[**ARC 8963B**, IAB 7/28/10, effective 7/8/10]

**265—39.3(16) Eligible applicants.** Reserved.

**265—39.4(16) Eligible activities and forms of assistance.**

**39.4(1)** Eligible activities include transitional housing, tenant-based rental assistance, rental housing rehabilitation (including conversion and preservation), rental housing new construction, home ownership assistance (including development subsidies), owner-occupied housing rehabilitation, and other housing-related activities as may be deemed appropriate by IFA. Assisted housing may be single-family housing or multifamily housing and may be designed for occupancy by homeowners or tenants.

*a.* Assisted units shall be affordable.

(1) For rental activities, all assisted units shall rent at the lesser of the area fair market rents or a rent that does not exceed 30 percent of 65 percent of the area median family income and, for projects with five or more units, 20 percent of the assisted units shall rent at the lesser of the fair market rent or a rent that does not exceed 30 percent of 50 percent of the area median family income. Assisted units shall remain affordable for a specified period: 20 years for newly constructed units; 15 years for rehabilitated units receiving over $40,000 per unit in assistance; 10 years for rehabilitated units receiving $15,000 to $40,000 per unit in assistance; and 5 years for projects receiving less than $15,000 per unit.

(2) For tenant-based rental assistance, gross rents shall not exceed the jurisdiction's applicable rent standard and shall be reasonable, based on rents charged for comparable, unassisted rental units.

(3) For home ownership assistance, the initial purchase price for newly constructed units or the after rehabilitation value for rehabilitated units shall not exceed 95 percent of the median purchase price as established by HUD mortgage limits for the same type of single-family housing in the area. Assisted units shall remain affordable through recapture or resale provisions for a specified period: 5 years for projects receiving less than $15,000 in assistance per unit; 10 years for projects receiving $15,000 to $40,000 in assistance per unit; and 15 years for projects receiving over $40,000 in assistance per unit.

(4) For owner-occupied housing rehabilitation, the after rehabilitation value of the rehabilitated unit shall not exceed 95 percent of the median purchase price as established by HUD mortgage limits for the same type of single-family housing in the area.

*b.* Assisted households shall meet income limits established by federal program requirements.

(1) For rental activities, all assisted units shall be rented to households with incomes at or below 80 percent of the area's median family income; at initial occupancy, 90 percent of the units shall be rented to households with incomes at or below 60 percent of the area's median family income and, for projects with five or more units, 20 percent of the units shall be rented initially to households with incomes at or below 50 percent of the area's median family income.

(2) For tenant-based rental assistance, only households with incomes at or below 80 percent of the area median family income shall be assisted; 90 percent of the households served shall have incomes at or below 60 percent of the area's median family income.

(3) For home ownership assistance and owner-occupied rehabilitation, only households with incomes at or below 80 percent of the area median family income shall be assisted.

*c.* Property standards. All newly constructed housing (single-family and multifamily housing) shall be constructed in accordance with any locally adopted and enforced building codes, standards and ordinances. In the absence of locally adopted and enforced building codes, the requirements of the state building code shall apply.

(1) All rental housing involving rehabilitation shall be rehabilitated in accordance with any locally adopted and enforced building or housing codes, standards and ordinances. In the absence of locally adopted and enforced building or housing codes, the requirements of the state building code shall apply.

(2) All single-family housing involving rehabilitation shall be rehabilitated in accordance with any locally adopted building or housing codes, standards and ordinances. In the absence of locally adopted and enforced building or housing codes, the requirements of the most current version of Iowa's Minimum Housing Rehabilitation Standards shall apply (all communities with populations of 15,000 or less).

*d.* Iowa green communities criteria. All newly constructed housing (single-family and multifamily housing) and all multifamily rental activities involving gut rehabilitation shall meet the mandatory requirements of the Iowa green communities criteria. All other multifamily rental activities involving rehabilitation (that is, not gut rehabilitation) shall meet the applicable mandatory requirements of the Iowa green communities criteria regarding rehabilitation.

**39.4(2)** Eligible forms of IFA assistance to its recipients include grants, interest-bearing loans, non-interest-bearing loans, interest subsidies, deferred payment loans, forgivable loans or other forms of assistance as may be approved by IFA.

**39.4(3)** For all single-family housing projects or activities assisting homeowners or home buyers, the only form of HOME funds assistance to the end beneficiary is a forgivable loan.

[**ARC 8963B**, IAB 7/28/10, effective 7/8/10]

**265—39.5(16) Application procedure.** Reserved.

**265—39.6(16) Minimum requirements.** A recipient shall meet the following threshold criteria:

**39.6(1)** Any housing activity must be consistent with the purpose and eligibility requirements and the consolidated plan.

**39.6(2)** The recipient shall have the capacity to administer the proposed activity. Documentation of the ability of the recipient to provide technical services and of the availability of certified lead professionals and contractors either trained in safe work practices or certified as abatement contractors may also be required as applicable to the housing activity.

**39.6(3)** and **39.6(4)** Reserved.

**39.6(5)** After all other financial resources have been identified and secured for the proposed activity, a need for the HOME funds must exist.

**39.6(6)** The recipient must certify that the recipient will comply with all applicable state and federal laws and regulations.

**39.6(7)** If the recipient's project is located in a locally designated participating jurisdiction (PJ), the recipient must show evidence of a financial commitment from the local PJ at least equal to 25 percent of the total HOME funds requested. Sources of a local PJ financial commitment could include one or more of the following: HOME, CDBG, TIF, tax abatement, or general funds. This requirement is waived for awards made during federal HOME program year 2010 (October 1, 2009 – September 30, 2010).

**39.6(8)** Home ownership assistance activity must indicate that recipients will require the beneficiaries of their home ownership assistance activity to use a principal mortgage loan product that meets the following criteria:

*a.* With the exception of Habitat for Humanity principal mortgage loan products, the principal mortgage loan must be the only repayable loan in all individual home ownership assistance projects.

*b.* The HOME assistance may be recorded in junior position to the principal mortgage loan, but must be recorded in senior position to any and all other funding in all home ownership assistance projects. Recipients must maintain their assistance security agreements in the above-stated recording position throughout the applicable period of affordability and will not be allowed to subordinate the required recording position to any other forms of assistance, such as home equity loans.

*c.* Any mortgage lending entity's principal mortgage loan products may be used provided they meet all of the following minimum requirements:

(1) Loan interest rates may be no higher than four percentage points above the federal prime interest rate at the time of loan closing;

(2) Loan terms will include an 80 percent or higher loan-to-value ratio;

(3) No less than a 15-year, fully amortized, fixed-rate mortgage may be used; and

(4) No adjustable rate mortgages or balloon payment types of mortgages will be allowed.

*d.* Recipients are encouraged but not required to have the beneficiaries of their home ownership assistance activity utilize a principal mortgage loan product offered by one of the following: Iowa Finance Authority; USDA-Rural Development; Federal Home Loan Bank; HUD (including FHA and VA); Habitat for Humanity; Fannie Mae; or Freddie Mac.

**39.6(9)** Home ownership assistance activity shall be for first-time home buyers only, and the assisted unit must remain as the assisted home buyer's principal residence throughout the required period of affordability.

[**ARC 8963B**, IAB 7/28/10, effective 7/8/10]

**265—39.7(16) Application review criteria.** Reserved.

**265—39.8(16) Allocation of funds.**

**39.8(1)** IFA may retain a portion of the amount up to 10 percent of the state's annual HOME allocation from HUD for administrative costs associated with program implementation and operation.

**39.8(2)** Not less than 15 percent of the state's annual HOME allocation shall be reserved for eligible housing activities developed, sponsored or owned by CHDOs.

**39.8(3)** IFA reserves the right to set aside a portion of the state's annual HOME allocation for rental housing activities jointly funded with HOME and low-income housing tax credits.

**39.8(4)** Reserved.

**39.8(5)** IFA reserves the right to limit the amount of funds that shall be awarded for any single activity type.

**39.8(6)** Awards shall be limited to no more than $500,000 for all single-family activities assisting homeowners or home buyers. Awards shall be limited to no more than $900,000 for all multifamily rental activities.

**39.8(7)** Single-family per unit subsidies.

*a.* The maximum per unit subsidy for all single-family activities involving rehabilitation is $37,500. The $37,500 per unit limit includes all applicable costs including, but not limited to, the hard costs of rehabilitation or the acquisition subsidy or both; home ownership assistance activities; technical services costs, including lead hazard reduction carrying costs; lead hazard reduction costs; and temporary relocation. All rehabilitation hard costs funded with HOME funds are limited to $24,999. All applicable technical services costs, including any lead hazard reduction carrying costs, are limited to $4,500 per unit.

*b.* Assistance for single-family activities providing acquisition assistance for newly constructed housing (mortgage buy-down, downpayment or closing costs assistance or both, or combinations thereof) is limited to $35,000 per unit, inclusive of all costs, including technical services costs.

*c.* Assistance for single-family activities providing development subsidies for newly constructed housing is limited to $20,000 per unit. Development subsidies may be provided in addition to acquisition assistance activities.

**39.8(8)** Multifamily per unit subsidies. The maximum per unit HOME funds subsidy for all multifamily activities is $60,000 per unit including both newly constructed units and the rehabilitation of existing multifamily units, including conversion activities. The $60,000 per unit multifamily limit includes all applicable costs including, but not limited to, hard costs of construction or rehabilitation; architectural design or technical services costs; lead hazard reduction or abatement costs; lead hazard reduction or abatement carrying costs; and temporary relocation.

**39.8(9)** Recipients shall identify general administrative costs in the HOME funds application. IFA reserves the right to negotiate the amount of funds provided for general administration, but in no case shall the amount for general administration exceed 10 percent of a total HOME funds award. Only local government and nonprofit recipients are eligible for general administrative funds.

**39.8(10)** IFA reserves the right to negotiate the amount and terms of a HOME funds award.

**39.8(11)** IFA reserves the right to make award decisions such that the state maintains the required level of local match to HOME funds.
[**ARC 8963B**, IAB 7/28/10, effective 7/8/10]

**265—39.9(16) Administration of awards.** Applicants selected to receive HOME funds awards shall be notified by letter from the IDED director or IFA executive director.

**39.9(1)** *Preaudit survey.* A preaudit survey may be required for all for-profit and nonprofit direct recipients for assistance that exceeds $150,000.

**39.9(2)** *Contract.* A contract shall be executed between the recipient and IFA. These rules, the approved application, the Iowa Housing Fund Management Guide and all applicable federal and state laws and regulations shall be part of the contract.

*a.* The recipient shall execute and return the contract to IFA within 45 days of transmittal of the final contract from IFA. Failure to do so may be cause for IFA to terminate the award.

*b.* Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Contracts may be conditioned upon the timely completion of these requirements.

*c.* Awards shall be conditioned upon commitment of other sources of funds necessary to complete the housing activity.

*d.* Release of funds shall be conditioned upon IFA's receipt of an administrative plan for the funded activity.

*e.* Release of funds shall be conditioned upon IFA's receipt and approval of documentation of environmental clearance.

**39.9(3)** *Local administrative and technical services contracts.*

*a.* Recipients awarded funds for general administration that employ the services of a third-party administrator to perform all or part of the general administrative functions for the recipient shall enter into a contractual agreement for the general administrative functions to be performed.

*b.* Recipients awarded funds for activities requiring technical services (e.g., inspections, work write-ups, cost estimates, construction supervision, lead hazard reduction need determination and oversight, lead hazard reduction carrying costs, and temporary relocation coordination) that employ a third-party entity to perform all or part of the technical services shall enter into a contractual agreement for the technical services to be performed.

*c.* Recipients that employ a third party to perform all or part of the general administration for the recipient and that also employ a third party to perform all or part of the technical services for the recipient shall conduct separate procurement transactions and shall enter into separate contractual agreements for each: one contract for general administration and one contract for technical services. Separate contracts are required even if both functions are performed by the same third-party entity.

**39.9(4)** *Requests for funds.* Recipients shall submit requests for funds in the manner and on forms prescribed by IFA. Individual requests for funds shall be made in whole dollar amounts equal to or greater than $500 per request, except for the final draw of funds.

**39.9(5)** *Record keeping and retention.*

*a.* HOME-funded projects. For HOME-funded projects, 24 CFR 92.508 provides the record retention requirements. All records pertaining to each fiscal year of HOME funds must be retained for the most recent five-year period, except as provided in the following:

(1) For rental housing projects, records may be retained for five years after the project completion date, except that records of individual tenant income verifications, project rents and project inspections must be retained for the most recent five-year period, until five years after the affordability period terminates;

(2) For home ownership housing projects, records may be retained for five years after the project completion date, except for documents imposing recapture/resale restrictions which must be retained for five years after the affordability period terminates;

(3) For tenant-based rental assistance projects, records must be retained for five years after the period of rental assistance terminates;

(4) Written agreements must be retained for five years after the agreement terminates;

(5) For records covering displacements and acquisitions, see 24 CFR 92.508;

(6) For records relating to litigation, see 24 CFR 92.508.

*b.* Representatives of IFA, HUD, the Inspector General, the General Accounting Office and the state auditor's office shall have access to all records belonging to or in use by recipients and subrecipients pertaining to a HOME funds award.

**39.9(6)** *Performance reports and reviews.* Recipients shall submit performance reports to IFA in the manner and on forms prescribed by IFA. Reports shall assess the use of funds and progress of activities. IFA may perform reviews or field inspections necessary to ensure recipient performance.

**39.9(7)** *Amendments to contracts.* Any substantive change to a contract shall be considered an amendment. Changes include time extensions, budget revisions and significant alterations of the funded activities affecting the scope, location, objectives or scale of the approved activity. Amendments shall be requested in writing by the CEO of the recipient and are not considered valid until approved in writing by IFA following the procedure specified in the contract between the recipient and IFA.

**39.9(8)** *Contract closeout.* Upon the contract expiration date or work completion date, as applicable, IFA shall initiate closeout procedures. Recipients shall comply with applicable audit requirements described in the HOME funds application and Iowa Housing Fund Management Guide.

**39.9(9)** *Compliance with federal, state and local laws and regulations.* Recipients shall comply with these rules, with any provisions of the Iowa Code governing activities performed under this program and with applicable federal, state and local regulations.

**39.9(10)** *Remedies for noncompliance.* At any time, IFA may, for cause, find that a recipient is not in compliance with the requirements of this program. At IFA's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to IFA. Reasons for a finding of noncompliance include the recipient's use of funds for activities not described in the contract, the recipient's failure to complete funded activities in a timely manner, the recipient's failure to comply with applicable state or local rules or regulations or the lack of a continuing capacity of the recipient to carry out the approved activities in a timely manner.

**39.9(11)** *Appeals process for findings of noncompliance.* Appeals will be entertained in instances where it is alleged that IFA staff participated in a decision which was unreasonable, arbitrary, or capricious or otherwise beyond the authority delegated to IFA. Appeals should be addressed to the director of the affordable rental production division. Appeals shall be in writing and submitted to IFA within 15 days of receipt of the finding of noncompliance. The appeal shall include reasons why the decision should be reconsidered. IFA's executive director will make the final decision on all appeals.

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These rules are intended to implement Iowa Code sections 16.5(1)*"f"* and 16.5(1)*"m"* and the Cranston-Gonzalez National Affordable Housing Act of 1990.

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