

CHAPTER 48
WORKFORCE HOUSING TAX INCENTIVES PROGRAM

261—48.1(15) Authority. The authority for adopting rules establishing a workforce housing tax incentives program is provided in Iowa Code section 15.106A and in 2014 Iowa Acts, House File 2448, section 18.

[ARC 1801C, IAB 12/24/14, effective 1/28/15]

261—48.2(15) Purpose. The purpose of the program is to assist the development of workforce housing in Iowa communities by providing incentives for housing projects that are targeted at middle-income households and that focus on the redevelopment or repurposing of existing structures.

[ARC 1801C, IAB 12/24/14, effective 1/28/15]

261—48.3(15) Definitions. As used in this chapter, unless the context otherwise requires:

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Board*” means the members of the economic development authority appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

“*Brownfield site*” means an abandoned, idled, or underutilized property where expansion or redevelopment is complicated by real or perceived environmental contamination. A brownfield site includes property contiguous with the site on which the property is located. A brownfield site does not include property which has been placed, or is proposed for placement, on the national priorities list established pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq. In order to administer similar programs in a similar manner, the authority will attempt to apply this definition in substantially the same way as similar definitions are applied by the brownfield advisory council established in Iowa Code section 15.294 and may consult members of the council or other staff as necessary.

“*Community*” means a city or county.

“*Costs directly related*” means expenditures that are incurred for construction of a housing project to the extent that they are attributable directly to the improvement of the property or its structures. “Costs directly related” includes expenditures for property acquisition, site preparation work, surveying, construction materials, construction labor, architectural services, engineering services, building permits, building inspection fees, and interest accrued on a construction loan during the time period allowed for project completion under an agreement entered into pursuant to the program. “Costs directly related” does not include expenditures for furnishings, appliances, accounting services, legal services, loan origination and other financing costs, syndication fees and related costs, developer fees, or the costs associated with selling or renting the dwelling units whether incurred before or after completion of the housing project.

“*Grayfield site*” means a property meeting all of the following requirements:

(1) The property has been developed and has infrastructure in place but the property’s current use is outdated or prevents a better or more efficient use of the property. Such property includes vacant, blighted, obsolete, or otherwise underutilized property.

(2) The property’s improvements and infrastructure are at least 25 years old and one or more of the following conditions exists:

1. Thirty percent or more of a building located on the property that is available for occupancy has been vacant or unoccupied for a period of 12 months or more.

2. The assessed value of the improvements on the property has decreased by 25 percent or more.

3. The property is currently being used as a parking lot.

4. The improvements on the property no longer exist.

In administering the program, the authority will attempt to apply this definition in substantially the same manner as similar definitions are applied by the brownfield advisory council established in Iowa Code section 15.294.

“*Greenfield site*” means a site that does not meet the definition of a brownfield site or grayfield site. A project proposed at a site located on previously undeveloped or agricultural land shall be presumed to be a greenfield site.

“*Housing business*” means a business that is a housing developer, housing contractor, or nonprofit organization that completes a housing project in the state.

“*Housing project*” means a project located in this state meeting the requirements of rule 261—48.4(15).

“*Laborshed area*” means the same as defined in 261—Chapter 173.

“*Laborshed wage*” means the same as defined in 261—Chapter 173.

“*Multi-use building*” means a building whose street-level ground story is used for a purpose that is other than residential, and whose upper story or stories are currently used primarily for a residential purpose, or will be used primarily for a residential purpose after completion of the housing project associated with the building.

“*New dwelling units*” means dwelling units that are made available for occupancy in a community as a result of a housing project and that were not available for occupancy as residential housing in the community for a period of at least six months prior to the date on which application is made to the authority under the program. If a dwelling unit has served as residential housing and been occupied during the six months preceding the date on which application is made to the authority under the program, then the dwelling unit shall be presumed not to be a new dwelling unit.

“*Program*” means the workforce housing tax incentives program administered under this chapter.

“*Qualifying new investment*” means costs that are directly related to the acquisition, repair, rehabilitation, or redevelopment of a housing project in this state. For purposes of this rule, “costs directly related to acquisition” includes the costs associated with the purchase of real property or other structures.

(1) “Qualifying new investment” includes costs that are directly related to new construction of dwelling units if the new construction occurs in a distressed workforce housing community.

(2) The amount of costs that may be used to compute “qualifying new investment” shall not exceed the costs used for the first \$150,000 of value for each dwelling unit that is part of a housing project.

(3) “Qualifying new investment” does not include the following:

1. The portion of the total cost of a housing project that is financed by federal, state, or local government tax credits, grants, forgivable loans, or other forms of financial assistance that do not require repayment, excluding the tax incentives provided under this program.

2. If a housing project includes the rehabilitation, repair, or redevelopment of an existing multi-use building, the portion of the total acquisition costs of the multi-use building, including a proportionate share of the total acquisition costs of the land upon which the multi-use building is situated, that are attributable to the street-level ground story that is used for a purpose that is other than residential.

3. Any costs, including acquisition costs, incurred before the housing project is approved by the authority.

“*Rehabilitation, repair, or redevelopment*” means construction or development activities associated with a housing project that are undertaken for the purpose of reusing or repurposing existing buildings or structures as new dwelling units. Rehabilitation, repair, or redevelopment does not include new construction of dwelling units at a greenfield site. Rehabilitation, repair, or redevelopment includes new structures at a qualified grayfield site.

[ARC 1801C, IAB 12/24/14, effective 1/28/15]

261—48.4(15) Housing project requirements.

48.4(1) Minimum requirements. To receive workforce housing tax incentives pursuant to the program, a proposed housing project shall meet all of the following requirements:

a. The project includes at least one of the following:

(1) Four or more single-family dwelling units.

(2) One or more multiple dwelling unit buildings each containing three or more individual dwelling units.

- (3) Two or more dwelling units located in the upper story of an existing multi-use building.
- b.* The project consists of any of the following:
 - (1) Rehabilitation, repair, or redevelopment at a brownfield site or grayfield site that results in new dwelling units.
 - (2) The rehabilitation, repair, or redevelopment of dilapidated dwelling units.
 - (3) The rehabilitation, repair, or redevelopment of dwelling units located in the upper story of an existing multi-use building.
 - (4) The new construction, rehabilitation, repair, or redevelopment of dwelling units in a distressed workforce housing community. The authority will determine whether a community is considered a distressed workforce housing community pursuant to subrule 48.4(2).
- c.* (1) Except as provided in subparagraph (2) below, the average dwelling unit cost does not exceed \$200,000 per dwelling unit. For purposes of this rule, the average dwelling unit cost equals the costs directly related to the housing project divided by the total number of dwelling units in the housing project.
 - (2) The average dwelling unit cost does not exceed \$250,000 per dwelling unit if the project involves the rehabilitation, repair, redevelopment, or preservation of eligible property, as that term is defined in Iowa Code section 404A.1(2).
- d.* The dwelling units, when completed and made available for occupancy, meet the U.S. Department of Housing and Urban Development's housing quality standards and all applicable local safety standards.

48.4(2) Distressed workforce housing community designations.

a. The determination as to whether a community is considered a distressed workforce housing community is within the discretion of the authority. The authority will consider applications from communities for designation as a distressed workforce housing community for purposes of this subrule. A community must apply for and receive such a designation before the authority will approve any housing project application seeking to establish eligibility under subparagraph 48.4(1)"*b*"(4). A designation as a distressed workforce housing community will last one year, but communities may reapply each year. The authority will make a determination on the distressed workforce housing status of a community after considering all of the following factors:

- (1) Whether or not the community has a severe housing shortage relative to demand, low vacancy rates, or rising housing costs combined with low unemployment as described in paragraph 48.4(2)"*b*."
- (2) The relative merits of all applications for designation as a distressed workforce housing community. The relative merits will be assessed according to the process and criteria described in paragraph 48.4(2)"*b*."
- (3) The demand for projects applying under this subrule compared to the demand for projects applying as rehabilitation, repair, or redevelopment projects.

b. In considering the factors described in paragraph 48.4(2)"*a*," the authority will attempt to quantify the extent of housing distress in a community by evaluating and scoring each application from 1 to 100 according to the following criteria:

- (1) The results of a housing needs assessment submitted to the authority and the extent to which the assessment indicates a distressed housing market in the community: 10 points.

The housing needs assessment shall be prepared by a third party and shall have been prepared no more than three years prior to the date on which a housing project application is submitted to the authority. Such an assessment shall address whether or not the community has a severe housing shortage relative to demand, low vacancy rates, or rising housing costs combined with low unemployment.

- (2) The annual number of building permits issued in the community for the most recent three-year period and the extent to which a low volume of permits indicates that the local housing market is in need of additional incentives to increase development: 10 points.

For purposes of this criterion, the authority will consider a low annual permit volume to be either 100 permits or less or a number of issued permits that is 1 percent or less of the community's currently available housing stock.

(3) The homeowner vacancy rate in the community and the extent to which the rate indicates that additional incentives are needed to increase the available housing stock: 10 points.

For purposes of this criterion, the authority will consider a vacancy rate of 1 percent to be low and a vacancy rate of 2 percent to be a typically acceptable rate on a national basis.

(4) The annual volume of homeowner unit sales in the community for the most recent three-year period and the extent to which a low volume indicates a shortage of available housing: 10 points.

For purposes of this criterion, the authority will consider information indicating that the volume of sales in a community is materially lower than the volume of sales in substantially similar communities elsewhere in the state or nation.

(5) The annual average length of time it takes to sell homeowner units in the community for the most recent three-year period and the extent to which the average length of time indicates high demand for housing in the community: 10 points.

For purposes of this criterion, the authority will consider an average time of 90 days or less to indicate a high demand for available housing.

(6) The annual average rental vacancy rate in the community and the extent to which a low vacancy rate indicates high demand for housing in the community: 10 points.

For purposes of this criterion, the authority will consider a rental vacancy rate of 5 percent or less to be a low vacancy rate.

(7) The annual average length of time it takes to lease rental units in the community for the most recent three-year period and the extent to which the average length of time indicates high demand for rental housing in the community: 10 points.

For purposes of this criterion, the authority will consider an average time of 30 days or less to indicate a high demand for available housing.

(8) The average housing costs in the community and the extent to which those costs are considered affordable: 10 points.

For purposes of this criterion, the authority will only consider data from an industry standard housing affordability index.

(9) The average unemployment rate for the community and the extent to which a low unemployment rate contributes to increased demand for housing in the community: 10 points.

For purposes of this criterion, the authority will consider unemployment data from both the community and the applicable laborshed area.

(10) The laborshed wage applicable to the community and the extent to which low relative wages negatively impact the affordability of housing in the community: 10 points.

For purposes of this criterion, the authority will use laborshed wages as calculated by the Iowa department of workforce development for purposes of the high quality jobs program.

48.4(3) *Minimum score required for distressed community designations.* To be designated as a distressed workforce housing community under subrule 48.4(2), a community must receive a score of 70 points or more.

[ARC 1801C, IAB 12/24/14, effective 1/28/15]

261—48.5(15) Housing project application and agreement.

48.5(1) Application.

a. A housing business seeking workforce housing tax incentives provided in rule 261—48.6(15) shall make application to the authority in the manner prescribed in this rule. The authority will accept applications on a continuous basis and will review applications in the order received. The authority will acknowledge receipt of the application and notify the applicant within 30 days as to whether the project will be registered pursuant to this rule.

b. The application required in paragraph 48.5(1) “*a*” shall include all of the following:

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

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

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

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

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

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

48.5(2) Registration.

a. Upon review of the application, the authority may register the housing project under the program. If the authority registers the housing project, the authority shall make a preliminary determination as to the amount of tax incentives for which the housing project qualifies.

b. After registering the housing project, the authority shall notify the housing business of successful registration under the program. The notification shall include the amount of tax incentives under rule 261—48.6(15) for which the housing business has received preliminary approval and a statement that the amount is a preliminary determination only. The amount of tax credits included on a tax credit certificate issued pursuant to this chapter, or a claim for refund of sales and use taxes, shall be contingent upon completion of the requirements in subrule 48.5(3).

48.5(3) Agreement and fees.

a. Upon successful registration of the housing project, the housing business shall enter into an agreement with the authority for the successful completion of all requirements of the program.

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

c. A housing business shall complete its housing project within three years from the date the housing project is registered by the authority.

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

e. Upon review of the examination and verification of the amount of the qualifying new investment, the authority may issue a tax credit certificate to the housing business stating the amount of workforce housing investment tax credits under rule 261—48.6(15) that the eligible housing business may claim.

48.5(4) Maximum incentives amount.

a. The maximum aggregate amount of tax incentives that may be awarded under rule 261—48.6(15) to a housing business for a housing project shall not exceed \$1 million.

b. If a housing business qualifies for a higher amount of tax incentives under rule 261—48.6(15) than is allowed by the limitation imposed in paragraph 48.5(4) "a," the authority and the housing business may negotiate an apportionment of the reduction in tax incentives between the sales tax refund provided in subrule 48.6(2) and the workforce housing investment tax credits provided in subrule 48.6(3) provided the total aggregate amount of tax incentives after the apportioned reduction does not exceed the amount in paragraph 48.5(4) "a."

c. The authority shall issue tax incentives under the program on a first-come, first-served basis until the maximum amount of tax incentives allocated pursuant to Iowa Code section 15.119(2) is reached. The authority shall maintain a list of registered housing projects under the program so that if the maximum aggregate amount of tax incentives is reached in a given fiscal year, registered housing projects that were completed but for which tax incentives were not issued shall be placed on a wait list

in the order the registered housing projects were registered and shall be given priority for receiving tax incentives in succeeding fiscal years.

48.5(5) Termination and repayment. The failure by a housing business in completing a housing project to comply with any requirement of this program or any of the terms and obligations of an agreement entered into pursuant to this rule may result in the reduction, termination, or rescission of the approved tax incentives and may subject the housing business to the repayment or recapture of tax incentives claimed under rule 261—48.6(15). The repayment or recapture of tax incentives pursuant to this rule shall be accomplished in the same manner as provided in Iowa Code section 15.330(2).

[ARC 1801C, IAB 12/24/14, effective 1/28/15]

261—48.6(15) Workforce housing tax incentives.

48.6(1) Eligibility. A housing business that has entered into an agreement pursuant to rule 261—48.5(15) is eligible to receive the tax incentives described in subrules 48.6(2) and 48.6(3).

48.6(2) Sales tax refunds. A housing business may claim a refund of the sales and use taxes paid under Iowa Code chapter 423 that are directly related to a housing project. The refund available pursuant to this subrule shall be as provided in Iowa Code section 15.331A to the extent applicable for purposes of this program.

48.6(3) Income tax credits.

a. A housing business may claim a tax credit in an amount not to exceed 10 percent of the qualifying new investment of a housing project.

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

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

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

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

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

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

(4) Tax credit certificates issued under an agreement entered into pursuant to subrule 48.5(3) may be transferred to any person. Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number, and address, the denomination that each replacement tax credit certificate is to carry, and any other information required by the department of revenue. However, tax credit certificate amounts of less than \$1,000 shall not be transferable.

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

(6) A tax credit shall not be claimed by a transferee under this rule until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the

amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329, for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under Iowa Code chapter 422, divisions II, III, and V. Any consideration paid for the transfer of the tax credit shall not be deducted from income under Iowa Code chapter 422, divisions II, III, and V.

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

[ARC 1801C, IAB 12/24/14, effective 1/28/15]

261—48.7(15) Annual program funding allocation, reallocation, and management of excess demand.

48.7(1) Each year the authority will allocate to the program a portion of the maximum aggregate tax credit cap described in Iowa Code section 15.119. For each fiscal year beginning on or after July 1, 2014, the authority will allocate not more than \$20 million for purposes of the program.

48.7(2) If, during a fiscal year, the authority determines that program demand is less than the amount initially allocated, the authority may reallocate unused amounts to other programs under Iowa Code section 15.119.

48.7(3) If, in any fiscal year, the authority determines that demand for the tax incentives is more than the amount allocated to the program pursuant to Iowa Code section 15.119, the authority will keep a waiting list of projects registered pursuant to rule 261—48.5(15) and will only enter into new agreements under the program as additional program funding becomes available. The authority will enter into agreements with registered projects on a first-come, first-served basis as determined by the order in which the projects were registered. A project successfully registered under the program will be considered to have priority as against other subsequently registered projects. However, registration under the program shall not obligate or otherwise bind the authority, or any other agency of the state, to execute a contract or issue tax incentives to an applicant under the program.

[ARC 1801C, IAB 12/24/14, effective 1/28/15; see Delay note at end of chapter]

261—48.8(15) Application submittal and review process.

48.8(1) The authority will develop a standardized application and make the application available to eligible housing businesses and to communities. To apply for assistance under the program, an interested person shall submit an application to the authority. Applications must be submitted online at www.iowagrants.gov. Instructions for application submission may be obtained at www.iowagrants.gov or by contacting the Community Development Division, Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309.

48.8(2) The authority has final decision-making authority on requests for financial assistance for this program. Applications will be reviewed and scored by the staff of the authority. The director or the director's designee will make final funding decisions after considering the recommendations of staff. The director may approve, defer or deny an application.

[ARC 1801C, IAB 12/24/14, effective 1/28/15]

These rules are intended to implement 2014 Iowa Acts, House File 2448.

[Filed ARC 1801C (Notice ARC 1628C, IAB 9/17/14), IAB 12/24/14, effective 1/28/15]¹

¹ January 28, 2015, effective date of 48.7(2) [ARC 1801C] delayed until the adjournment of the 2015 General Assembly by the Administrative Rules Review Committee at its meeting held January 6, 2015.