

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.

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) if required.

(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) Application review—tax incentive award.

a. All completed applications shall be reviewed and scored on a competitive basis by the authority pursuant to these rules. Review criteria include but are not limited to project need, project readiness, financial capacity, and project impact.

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

c. After making a tax incentive award, the authority shall notify the housing business of its tax incentive award. The notification shall include the amount of tax incentives under rule 261—48.6(15) for which the housing business has received an award and a statement that the housing business has no right to receive a tax incentive certificate or claim a tax incentive until all requirements of the program, including all requirements imposed by the agreement entered into pursuant to paragraph 48.5(3) “*a*,” are satisfied. The amount of tax credits included on a tax credit certificate issued pursuant to this chapter, or a claim for refund of sales and use taxes, shall be contingent upon completion of the requirements in subrule 48.5(3).

d. An applicant that does not receive a tax incentive award during an application period may make additional applications during subsequent application periods. Such applicant shall be required to submit a new application, which shall be competitively reviewed and scored in the same manner as other applications in that application period.

48.5(3) Agreement and fees.

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

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. Housing project completion deadline.

(1) Except as provided in subparagraph 48.5(3) “*c*”(2), a housing business shall complete its housing project within three years from the date the housing project is registered by the authority.

(2) The authority may for good cause within the discretion of the authority extend a housing project's completion deadline by up to 12 months upon application by the housing business, which application shall be made prior to the expiration of the three-year completion deadline in subparagraph 48.5(3) "c"(1) in the manner and form prescribed by the authority. The authority may approve a second extension of up to 12 months if prior to the expiration of the first 12-month extension the housing business applies and substantiates to the satisfaction of the authority that the second extension is warranted due to extenuating circumstances outside the control of the housing business. An application by a housing business shall be made in the manner and form prescribed by the authority.

d. Upon completion of a housing project, a housing business shall submit all of the following to the authority:

(1) 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 (CPA) authorized to practice in this state. The attestation applicable to this examination is SSAE No. 10 (as amended by SSAE Nos. 11, 12, 14), AT section 101 and AT section 601. The procedures used by the CPA to conduct the examination should allow the CPA to conclude that, in the CPA's professional judgment, the expenditures claimed are eligible pursuant to the agreement; Iowa Code chapter 15, subchapter II, part 17; and all rules adopted pursuant to Iowa Code chapter 15, subchapter II, part 17, in all material respects. Within ten business days of a request by the authority, the housing business shall make available to the authority the documents reviewed by the CPA unless good cause is shown.

(2) A statement of the final amount of qualifying new investment for the housing project.

(3) Any information the authority deems necessary to ensure compliance with the agreement signed by the housing business pursuant to paragraph 48.5(3) "a"; the requirements of Iowa Code chapter 15, subchapter II, part 17; and these rules and rules adopted by the department of revenue pursuant to Iowa Code section 15.356.

e. Upon review of the examination, verification of the amount of the qualifying new investment, and review of any other information submitted pursuant to subparagraph 48.5(3) "d"(3), the authority may notify the housing business of the amount that the housing business may claim as a refund of the sales and use taxes under subrule 48.6(2) and 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. The sum of the amount that the housing business may claim as a refund of the sales and use tax and the amount of the tax credit certificate shall not exceed the amount of the tax incentive award.

f. If, upon review of the examination in paragraph 48.5(3) "d," the authority determines that a housing project has incurred project costs in excess of the amount submitted in the application and identified in the agreement, the authority shall do one of the following for projects that received a refund notice or tax credit certificate on or after July 1, 2021:

(1) If the project costs do not cause the housing project's average dwelling unit cost to exceed the applicable maximum amount authorized in rule 261—48.4(15), the authority may consider the agreement fulfilled and may issue a tax credit certificate.

(2) If the project costs cause the housing project's average dwelling cost to exceed the applicable maximum amount authorized in rule 261—48.4(15) but do not cause the average dwelling unit cost to exceed 150 percent of such applicable amount, the authority shall reduce the tax incentive award and the corresponding amount of tax incentives the eligible project may claim under rule 261—48.6(15) by the same percentage that the housing project's average dwelling cost exceeds the applicable maximum amount under rule 261—48.4(15), and such tax incentive reduction shall be reflected on the tax credit certificate. If the authority issues a certificate pursuant to this subrule, the department of revenue shall accept the certificate notwithstanding that the housing project's average dwelling unit cost exceeds the maximum amount specified in rule 261—48.4(15).

(3) If the project costs cause the housing project's average dwelling unit cost to exceed 150 percent of the applicable maximum amount authorized in rule 261—48.4(15), the authority shall determine the eligible housing business to be in default under the agreement, shall revoke the tax incentive award and

shall not issue a tax credit certificate. The housing business shall not be allowed a refund of sales and use tax under rule 261—48.6(15).

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; **ARC 3581C**, IAB 1/17/18, effective 2/21/18; **ARC 4510C**, IAB 6/19/19, effective 7/24/19; **ARC 5139C**, IAB 8/12/20, effective 9/16/20; **ARC 6086C**, IAB 12/15/21, effective 1/19/22; **ARC 6467C**, IAB 8/24/22, effective 9/28/22]