STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
401 S. CARSON STREET
CARSON CITY, NEVADA 89701-4747
Fax No.: (775) 684-6600

RICK COMBS, *Director*
(775) 684-6800

LEGISLATIVE COMMISSION (775) 684-6800
MARILYN K. KIRKPATRICK, *Assemblywoman, Chairman*
Rick Combs, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-6821
DEBBIE SMITH, *Senator, Chairman*
Mark Krmpotic, *Fiscal Analyst*
Cindy Jones, *Fiscal Analyst*

BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830
PAUL V. TOWNSEND, *Legislative Auditor* (775) 684-6815
DONALD O. WILLIAMS, *Research Director* (775) 684-6825

July 25, 2014

OFFICE OF THE ATTORNEY GENERAL
CARSON CITY, NEVADA

JUL 30 2014

BUREAU OF GOVERNMENT AFFAIRS
GNR/BL/APPELLATE

Colleen Platt
Deputy Attorney General
Office of the Attorney General
100 N. Carson Street
Carson City, Nevada 89701

Re: LCB File No. R114-14

Dear Ms. Platt:

A proposed regulation of the Administrator of the Housing Division of the Department of Business and Industry has been examined pursuant to NRS 233B.063 and is returned in revised form.

We invite you to discuss with us any questions which you may have concerning this review. Please make reference to our file number in all further correspondence relating to this regulation.

Very truly yours,

Daniel Peinado
Deputy Legislative Counsel

Brenda J. Erdoes
Legislative Counsel

DP/slj
Enclosure

PROPOSED REGULATION OF

THE ADMINISTRATOR OF THE HOUSING DIVISION OF

THE DEPARTMENT OF BUSINESS AND INDUSTRY

LCB File No. R114-14

July 25, 2014

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §§1-15, NRS 319.140.

A REGULATION relating to affordable housing; revising provisions setting forth the conditions governing certain financing of projects by the Housing Division of the Department of Business and Industry; revising provisions which specify the types of projects which the Division will finance; revising provisions relating to the Division's allocation of volume cap to projects; revising provisions relating to the provision by the Division of volume cap to certain projects; revising provisions setting forth the conditions which must be met before the Division will submit a project to the State Board of Finance for approval; revising provisions specifying certain documents which a sponsor of a project must submit to the Division to receive financing; reducing the minimum loan amount for projects which may be financed with the proceeds of certain bonds issued by the Division; revising provisions which establish the maximum terms for amortization and maturity of certain financing; eliminating the requirement of certain provisions in bond and loan documents for a project; revising provisions which place limits on the conversion of a project to nonrecourse financing; revising provisions relating to the minimum allowable projected ratio for debts service coverage of a project; revising provisions relating to the maximum allowable loan to value percentage of a project; revising provisions relating to certain payments to the developer of a project; repealing certain provisions; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the Housing Division of the Department of Business and Industry operates programs intended to increase the amount of decent, safe and sanitary housing in this State that is available to persons and families of low and moderate income. (Chapter 319 of NRS)

Existing law authorizes the Division to make loans to encourage the investment of private capital and stimulate the financing of housing through the use of public financing to provide mortgage loans and to make loans to and purchase mortgage loans from mortgage lenders. (NRS 319.020)

Section 2 of this regulation revises provisions setting forth the conditions governing certain financing of projects by the Division.

Section 3 of this regulation revises provisions which specify the types of projects which the Division will finance.

Existing regulations establish priorities for the Division's allocation of volume cap to projects. (NAC 319.711) **Section 4** of this regulation revises these provisions to provide that the Division may allocate volume cap to finance a project submitted by a local government when the local government does not have sufficient volume cap to contribute to the project.

Section 5 of this regulation revises provisions establishing prerequisites for a project to receive volume cap from the Division to provide that the Division may provide volume cap to a project to which one or more local governments have not provided a minimum of 50 percent of the total volume cap if the Division has sufficient volume cap to provide to that project.

Section 6 of this regulation revises provisions setting forth the conditions which must be met before the Division will submit a project to the State Board of Finance for approval.

Section 7 of this regulation revises provisions specifying certain documents which a sponsor of a project must submit to the Division to receive financing.

Existing regulations provide that the Division may issue a combination of taxable and tax-exempt bonds for a project and the proceeds of the bonds must be used to construct or finance certain projects with loan amounts from $5,000,000 to $30,000,000. (NAC 319.713) **Section 8** of this regulation reduces the minimum loan amount to $100,000.

Section 9 of this regulation revises provisions which establish the maximum terms for amortization and maturity of certain financing.

Section 10 of this regulation eliminates provisions requiring that all bond and loan documents for a project must provide for yield maintenance on trustee fees for at least the first 15 years.

Section 11 of this regulation revises provisions which place limits on the conversion of a project to nonrecourse financing.

Section 12 of this regulation revises the minimum projected ratio for debt service coverage on certain housing projects for which the Division issues bonds or a mortgage loan.

Section 14 of this regulation revises provisions concerning certain payments to the developer of a project.

Section 1. NAC 319.670 is hereby amended to read as follows:

319.670 "Project" means a housing facility for residential use which consists of two or more dwelling units for occupancy by eligible tenants on a rental basis. The term includes property to be leased, purchased or developed for sites for multifamily housing and upon which the Division takes a security interest and records a regulatory agreement, whether the Division issues bonds ~~[.]~~ ***or*** a mortgage loan ~~[or a letter of credit]~~ for the lease, purchase or development of the multifamily housing.

Sec. 2. NAC 319.690 is hereby amended to read as follows:

319.690 1. If appropriate, the Division shall issue bonds ~~[or a letter of credit,]~~ or make a mortgage loan for:

(a) The interim financing of the development, construction or rehabilitation of a project;

(b) The permanent financing of a project; or

(c) Both interim and permanent financing of a project.

2. ~~[A]~~ ***To receive financing from the Division for a project through a*** bond issuance or mortgage loan pursuant to subsection 1 ~~[must be:~~

~~(a) Fully or partially insured or guaranteed with a credit facility from a governmental agency other than the Division or by a private source of mortgage insurance, bond insurance, guarantee or other credit instrument that is acceptable to the Division; and~~

~~(b) Secured by a deed of trust on a project in this State.]~~ ***, the sponsor must submit to the Division the documents described in paragraphs (a), (b) and (c) of subsection 3 of NAC 319.7125, as applicable.***

3. As a condition precedent to the initial closing of a bond issuance or mortgage loan pursuant to this section, the sponsor must execute any documents which the Administrator deems necessary or appropriate to regulate the acquisition, development, construction or rehabilitation of the proposed project and the operations of the sponsor, in order to protect the interest of the Division and to fulfill the Division's duties.

4. A mortgage loan may only be assigned, transferred, conveyed or pledged by a sponsor or direct lending institution subject to terms and conditions which are approved in writing by the Division before the assignment, transfer, conveyance or pledge. Upon the execution of an agreement for the assumption of the mortgage loan, the sponsor shall pay to the Division a fee of up to 1 percent of the unpaid principal balance of the mortgage loan.

5. The obligation of the Division to finance a project is subject to the ~~[issuance of a letter of credit from the Division or]~~ ***Division's*** sale of bonds or other obligations of the Division in an amount sufficient to permit financing.

6. Upon the ~~[issuance of]~~ ***approval of a project by the State Board of Finance, the Division will submit to the sponsor*** a letter of conditional commitment and inducement ~~[and the acceptance by the sponsor of]~~ ***which includes*** the terms and conditions of the ***financing of the project. The*** letter ~~[.]~~ ***must include, without limitation, an estimate of*** the ***Division's costs for reviewing and issuing the bonds or mortgage loan. The*** sponsor shall submit to the Division, within 10 days after the letter is issued, a ~~[fee]~~ ***nonrefundable deposit*** which is in an amount

~~[equal to the]~~ ***determined by the Division to cover the*** Division's ~~[cost for issuing bonds, a mortgage loan or letter of credit and which is in accordance with the Internal Revenue Code of 1986, as amended.]~~ ***costs.***

7. ~~[If the sponsor notifies the Division in writing that it does not wish to proceed with the financing, the Division shall retain a portion of the fee to cover the costs incurred. The Division shall return the remainder of the fee to the sponsor within 10 days after the date the Division conclusively determines the total costs incurred.]~~ ***Upon the issuance of bonds or a mortgage loan, the sponsor shall remit to the Division any remaining balance of the Division's costs for issuing the bonds or mortgage loan.***

Sec. 3. NAC 319.710 is hereby amended to read as follows:

319.710 The Division shall finance those projects which:

1. Receive approval from a local government that governs the area which includes the project and, if the project includes private activity bonds, receive a transfer from such local government an amount of volume cap deemed necessary by the Division;

2. Are financially feasible at the interest rate ~~[to be charged under the Division's program and the rents which have been]~~ ***set forth in the financing documents of the project using:***

(a) The agreed upon ~~[but not at the prevailing market rate of interest with such]~~ ***restricted*** rents for the ***rent-restricted*** units designated as set-aside units; ***and***

(b) Market rents for the units which are not rent-restricted units designated as set-aside units;

3. Will be rented at or below the rents charged for comparable housing which is affordable by tenants of low or moderate income;

4. Meet the needs identified by the Division and local government for increasing the supply or improving the quality of decent, safe and sanitary housing for eligible tenants;

5. Comply with the requirements of NAC 319.600 to 319.790, inclusive; and

6. Meet the underwriting criteria of the Division that is published and updated periodically by the Division.

Sec. 4. NAC 319.711 is hereby amended to read as follows:

319.711 1. Except as otherwise provided in this section, when allocating volume cap, the Division shall give priority to senior projects and special needs projects if the Division determines that there is a need for such projects.

2. A local government may establish a priority for the allocation of volume cap for projects proposed by the local government. If a local government has established a priority for allocation and if the Division has determined that it has sufficient volume cap for projects to supplement volume cap on all projects submitted by a local government, the Division shall apply the priority of the local government to all projects proposed by the local government when allocating volume cap to the projects of the local government. If the Division has determined that it does not have sufficient volume cap to supplement volume cap on all projects submitted by a local government, the Division:

(a) May give priority to senior projects or special needs projects; and

(b) Shall not finance family projects proposed by the local government until the Division has sufficient volume cap to supplement volume cap for those projects.

3. ***The Division may allocate volume cap to finance a project submitted by a local government if the local government does not have:***

(a) Sufficient volume cap; or

(b) Volume cap to contribute to the project and the local government is in support of the project.

4. As used in this section, "family project" means a project for housing that does not discriminate as to family size, age of head of household or dependents, or marital status of the residents.

Sec. 5. NAC 319.7115 is hereby amended to read as follows:

319.7115 1. For a project to receive volume cap from the Division:

(a) The findings of the Administrator relating to the project must be approved by the State Board of Finance pursuant to chapter 319 of NRS; and

(b) The project must have the support of a local government as described in subsection 2.

2. Except as otherwise provided in this subsection ~~[.]~~ ***and subsection 3 of NAC 319.711,*** the Division shall not provide financing to a project unless one or more local governments will provide a minimum of 50 percent of the total volume cap for the project. The Division may ~~[finance]~~ ***:***

(a) Finance a project that has less than 50 percent of the total volume cap from a local government if the project is in a rural community.

(b) If the Division receives from a local government a letter indicating support of a project and the Division has sufficient volume cap to provide to the project, provide volume cap to a project to which one or more local governments have not provided a minimum of 50 percent of the total volume cap.

Sec. 6. NAC 319.712 is hereby amended to read as follows:

319.712 The Division shall not submit a project to the State Board of Finance for approval unless the Division determines that:

1. ~~[The project has binding commitments on either the mortgage or bonds, as required, from a credit enhancer who has a credit rating on his or her outstanding long-term debt of not less than "Aa2" by Moody's Investors Service, Inc., or "AA" by Standard and Poor's Ratings Services, or their successors, if any, and]~~ ***For bonds which will be sold through:***

(a) A private placement, the project has a preliminary commitment for direct purchase of the proposed loan or bonds from a commercial bank or institutional lender that has been approved by the Division; ***or***

(b) A public sale, the Division has received preliminary evidence acceptable to the Division that the bonds will be assigned a rating of not less than A/A3 or an equivalent rating as determined by a nationally recognized statistical rating organization;

2. If tax-credit equity is to be part of the total financing, the project has ~~[binding commitments]~~ ***a preliminary commitment or letter of intent*** from the tax-credit equity investor; and

3. Sources of funding for the proposed project have all been identified and are adequate to fund the project to completion.

Sec. 7. NAC 319.7125 is hereby amended to read as follows:

319.7125 To receive financing from the Division for a project, the sponsor must:

1. Pay the application fee described in NAC 319.700;

2. Prove to the satisfaction of the Division that the project will comply with the provisions of NAC 319.600 to 319.790, inclusive; and

3. Submit the following documents, as applicable, to the Division:

(a) ~~[A binding letter of commitment from a credit enhancer which is rated AA/Aa or AAA/Aaa and which covers the principal of and interest on the bonds through the earlier of:~~

~~(1) The maturity of the proposed bond issue; or~~

~~(2) A mandatory tender or redemption date;]~~ ***If the source of funding for the project is the sale of bonds through:***

(1) A private placement, a letter stating a final commitment for direct purchase of the proposed loan or bonds from a commercial bank or institutional lender that has been approved by the Division; or

(2) A public sale, a letter from a nationally recognized statistical rating organization, stating a final confirmation that the bonds will be assigned a rating of not less than A/A3 or an equivalent rating as determined by that organization;

(b) If tax-credit equity is to be used as a source of funding for the project, a ~~[binding]~~ letter ~~[of]~~ ***stating a final*** commitment from the tax-credit syndicator ***or tax-credit purchaser*** verifying the amount and timing of money from the sale of tax credits less all associated fees;

(c) A document describing:

(1) The proposed final sources and uses of funds for the project, including, without limitation, net bond proceeds, tax-credit equity, grants and any subordinated debt; and

(2) The proposed draw schedule for use of bond proceeds;

(d) The partnership agreement or articles of incorporation of the sponsor;

(e) The certificate of registration issued by the Secretary of State pursuant to NRS 86.545 or 88.580, as applicable, for the sponsor;

(f) The articles of organization and any resolutions or operating agreements that establish the authority of a person to sign documents associated with the financing of the project;

(g) A written contract to purchase or option to purchase the property on which the project is to be built, or a title report showing ownership of the property on which the project is to be built;

(h) A title report for the site of the project that includes a list of all exceptions and a pro forma American Land Title Association policy to be issued to the lending organization;

(i) A copy of the most recent Phase I Environmental Report, that is less than 12 months old, for the site of the project;

(j) A copy of the most recent geotechnical report, that is less than 12 months old, for the site of the project;

(k) A copy of a certified appraisal of the site of the project that is performed by an appraiser certified pursuant to chapter 645C of NRS or that is approved by the credit enhancer;

(l) A copy of a certified "as-built" survey of the site of the project which is American Land Title Association qualified and which shows the project in its proper place on the site and all exceptions to title;

(m) A copy of any development agreement with the owner of the proposed project;

(n) A copy of any management agreement to be used for the proposed project;

(o) A copy of any general contractor's agreement between the sponsor and the proposed general contractor for the project;

(p) A parcel map of the site of the project that is recorded with the county recorder;

(q) If the site of the project is located on a flood zone as designated by the Federal Emergency Management Agency, a map that shows the bounds of the flood zone, the property on which the project is to be located and the project;

(r) A copy of the zoning restrictions on the site of the project showing that the applicable zoning laws and regulations allow for the development of the project on the site;

(s) An audit or report, completed by a specialist in the efficient use of energy who is approved by the Division, which details the components of the project which are necessary for the efficient use of energy and which must be installed and used in the construction or rehabilitation of the project; and

(t) A physical assessment of the capital needs of any project that is more than 10 years old.

Sec. 8. NAC 319.713 is hereby amended to read as follows:

319.713 1. For a project approved by the Division, the Division may issue a combination of taxable and tax-exempt bonds.

2. Except as otherwise provided in this subsection, the proceeds of bonds issued pursuant to subsection 1 must be used to construct or permanently finance projects in this State with loan amounts on a single project from ~~[$5,000,000]~~ ***$100,000*** to $30,000,000. The Administrator may waive the minimum or maximum loan amounts.

Sec. 9. NAC 319.7155 is hereby amended to read as follows:

319.7155 Except as otherwise provided in this section, ~~[following the construction or rehabilitation period, fixed rate and variable rate loans on a project must be fully amortizing with a maximum term of 30 years. A loan]~~ ***financing which includes bonds with enhancement of credit or direct loans*** insured by the Federal Housing Administration ~~[may]~~ , ***the Federal***

National Mortgage Association or the Federal Home Loan Mortgage Corporation must have ~~[a maximum term of more than 30]~~ ***provisions for the terms of amortization and maturity consistent with the requirements of the applicable program of those agencies. Bonds which are rated by a nationally recognized statistical rating organization and bonds which are directly purchased by a commercial bank or institutional lender may have maximum terms of amortization and maturity of not more than 35*** years ~~[.]~~ ***following the completion of construction.***

Sec. 10. NAC 319.716 is hereby amended to read as follows:

319.716 All bond and loan documents for a project must contain provisions relating to prepayment and must provide for yield maintenance on issuer ~~[and trustee]~~ fees for at least the first 15 years.

Sec. 11. NAC 319.717 is hereby amended to read as follows:

319.717 ~~[A]~~ ***With the approval of the Division, a*** project may ~~[not]~~ convert to nonrecourse financing ~~[until the project has been at least 90 percent occupied for 90 consecutive days.]~~ ***as determined by the credit enhancer, bond purchaser or applicable lender.***

Sec. 12. NAC 319.718 is hereby amended to read as follows:

319.718 ~~[The]~~ ***Except as otherwise provided in this section, the*** projected ratio for debt service coverage for each project must be a minimum of ~~[1.15:100 on projects for new construction and 125:100 on projects for acquisition and rehabilitation of existing facilities, at:~~

~~1. The completion of the construction phase; and~~

~~2. After a reasonable rent-up period following completion of the project as determined by the]~~ ***1.20:1.00. The*** Division ~~[.]~~ ***may approve a projected ratio for a project which is enhanced***

by the Federal Housing Administration if the ratio is consistent with the criteria established by the applicable program of those agencies.

Sec. 13. NAC 319.719 is hereby amended to read as follows:

319.719 ~~[Each]~~ ***Except as otherwise provided in this section, each*** project ~~[that uses tax-credit equity]~~ must have a loan to value percentage of not more than 85 percent of the appraised value of the project ~~[, taking into account all]~~ ***for*** debt ~~[. For projects not using tax-credit equity,]~~ ***which is secured by a first lien and is issued by*** the ***Division. The*** Division may allow a ~~[95 percent]~~ loan to value percentage ***that exceeds 85 percent of the appraised value of the project*** if the Division ***, in its sole discretion,*** determines that ~~[such]~~ a ***greater loan to value*** percentage is appropriate under the circumstances.

Sec. 14. NAC 319.722 is hereby amended to read as follows:

319.722 1. The ~~[maximum]~~ amount of ~~[pro forma profit and overhead]~~ ***the fee*** for a developer on a project ~~[is]~~ ***, excluding any potential profits that the developer anticipates earning by participating as a general partner in the partnership of borrowers:***

(a) Is limited to a maximum of 15 percent of the ~~[appraised value]~~ ***basis*** of the project ~~[.]~~ ***that is eligible for tax credit; and***

(b) Must be identified in the document described in paragraph (c) of subsection 3 of NAC 319.7125.

2. The ~~[profit]~~ ***fee*** must be paid ***to the developer*** as follows:

(a) ~~[Ten]~~ ***Fifty*** percent paid on the basis of percentage of completion of the improvements;

(b) ~~[Ten]~~ ***Twenty-five*** percent paid on the date the construction loan converts to a permanent loan; and

(c) [~~Eighty~~] ***Twenty-five*** percent paid from cash flows after payment of debt service [~~for senior projects~~] and [~~funded~~] ***deposits required for*** repair and replacement reserves.

[~~2. The maximum interest rate on a deferred note is limited to the amount needed to maintain the present value of the amount of the developer's fee that remains unpaid.~~]

Sec. 15. NAC 319.715, 319.725 and 319.740 are hereby repealed.

TEXT OF REPEALED SECTIONS

319.715 Credit enhancement. (NRS 319.140)

1. Each project must have adequate credit enhancement from a credit enhancer that is long-term rated AA/Aa, including variable rate transactions. The credit enhancement must:

(a) Be in the form of a surety bond, Federal Housing Administration mortgage insurance, mortgage-backed security, credit facility, letter of credit or other credit instrument that is acceptable to the Division; and

(b) Cover the principal of and interest on the bonds through the earlier of:

(1) The maturity of the bonds; or

(2) A mandatory tender or redemption date.

2. If, during the life of the bonds, the sponsor of a project does not renew the credit enhancement, upon the termination of the credit enhancement, the Division shall require a tendering of the bonds.

319.725 Federally insured, guaranteed or subsidized loan required if project sponsored by certain partnerships. (NRS 319.140) If a project is sponsored by a partnership which:

1. Has more than 10 partners; or
2. Is a limited partnership,

➥ the project must be financed by a mortgage loan which is insured, guaranteed or subsidized by the United States or a governmental agency or instrumentality thereof.

319.740 Interest rate. (NRS 319.140) The Administrator will establish the interest rate charged to the sponsor for a loan for a project and, if appropriate as a result of any refinancing of the money with which the loan was made, adjust the interest rate from time to time.