

EXECUTIVE DEPARTMENT
DELAWARE ECONOMIC DEVELOPMENT AUTHORITY
Statutory Authority: 29 Delaware Code, Section 5053(k), (29 **Del.C.** §5053(k))
1 DE Admin. Code 478

FINAL

ORDER

478 Neighborhood Assistance Act Tax Credit Program Regulation

The Delaware Economic Development Office (DEDO) conducted public hearings in Kent, New Castle and Sussex counties as part of the Governor's Executive Order 36 designed to re-assess the need for the agency's regulations. Based on the public hearings and internal agency review of its regulations, DEDO proposes that Title 1, Section 478 (Neighborhood Assistance Act Tax Credit Program), 6 **DE Reg.** 1368 (4/1/03), should be deleted from the administrative code because the programs do not exist or the authorizing statute has been repealed. The Delaware Economic Development Authority (the "Authority") and DEDO are authorized to prescribe such regulations as may be necessary to carry out the purposes of the act creating the Authority, 29 **Del.C.** Ch. 50 (the "Act"). The purpose of this action is to foster governmental efficiency by eliminating unnecessary regulation and bureaucracy. Having provided due public notice, the Authority adopts the attached repeal of the Regulation as published in the November 1, 2016 edition of the Delaware *Register of Regulations* for the reasons that follow.

SUMMARY OF THE EVIDENCE

1. After internal review of its regulations DEDO has proposed the elimination of Title 1, Section 478 (Neighborhood Assistance Act Tax Credit Program), 6 **DE Reg.** 1368 (4/1/03), in that the underlying programs or statutory authorization no longer exist.
2. In furtherance of the purpose of the Governor's Executive Order 36 to streamline the operation of government and eliminate burdensome regulation, the Neighborhood Assistance Act Tax Credit Program regulation should be deleted from the administrative code because the program no longer exists. Maintaining the regulation in the code could create confusion for potential grant applicants.
3. The Authority issued and duly noticed the repeal of the Regulation in accordance with the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.
4. The proposed repeal of the Regulation was published in the *Register of Regulations* on November 1, 2016. For a period of thirty (30) days following publication, the public had the opportunity to offer written comment.
5. No written comments were received by the Authority during the public comment period.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The public was given notice and an opportunity to provide the Authority with comments in writing on the proposed Regulation.
2. There were no public comments provided to the Authority during the public comment period.
3. The elimination of Title 1, Section 478 (Neighborhood Assistance Act Tax Credit Program), 6 **DE Reg.** 1368 (4/1/03), is necessary because the program no longer is operative and continuing the reference in the administrative code could create confusion for potential applicants and the public. The repeal of this Regulation is consistent with the purpose of the Governor's Executive Order 36 to eliminate unnecessary regulation.
4. This repeal of this Regulation is authorized by 29 **Del.C.** §5005(11), 5053(k) and the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101.

DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Authority finds that the repeal of the Regulation shall be adopted as final in the form as proposed. The exact text of the repeal of the regulation as appeared in the Delaware *Register of Regulations* is attached to this order. These changes will become effective ten days following publication of this order in the Delaware *Register of Regulations* in February 2017.

IT IS SO ORDERED this 5th day of January 2017 by the Delaware Economic Development Authority.

Bernice Whaley,

CHAIRPERSON,
DELAWARE ECONOMIC DEVELOPMENT AUTHORITY

478 Neighborhood Assistance Act Tax Credit Program Regulation

1.0 Introduction

This regulation is promulgated under the authority granted by 30 ~~Del.C.~~ §2004 to the Secretary of DHSS, the Director of DEDO, and the TAB to make regulations for the approval or disapproval of Applications from Business Firms for the NAA Credit. The Act, administered by DHSS, DEDO & TAB, is the Neighborhood Assistance Act, 30 ~~Del.C.~~ §§2001 – 2007. The Act is designed to encourage both Contributions by Business Firms to Neighborhood Organizations, Community Development Corporations and Community-Based Development Organizations performing Community Service and offering Neighborhood Assistance and the direct operation by Business Firms of Programs for the provision of Job Training, Education, Community Services, Crime Prevention Housing and Economic Development to benefit individuals living in Impoverished Areas.

This regulation sets forth the definition of certain terms used in the Act and describes (i) the eligibility requirements for Business Firms desiring to participate in the program, (ii) the processes used by the Council to provide guidance and recommendations to the Director of DEDO and the TAB on business firms that should receive a tax credit, (iii) how to apply for the tax credit, (iv) how the Council will assist DEDO, DHSS and the TAB.

6 DE Reg. 1368 (4/1/03)

2.0 Definitions.

For purposes of this regulation, initially capitalized terms not otherwise defined in this section 2.0 shall have the meanings set forth in the Act.

For purposes of this regulation, initially capitalized terms not defined by the Act shall have the following definitions:

"Act" means the Neighborhood Assistance Act, 30 ~~Del.C.~~ §§2001 – 2007, as amended from time to time.

"Administrator" means the DHSS, DEDO and the TAB, with the guidance of the Council. For purposes of the approval process over Applications, DEDO shall have primary responsibility for administration of the Act.

"Applicant" means a Business Firm that makes an application for approval of an Investment or a Program in accordance with this regulation.

"Application" means an application made by an Applicant on the form prescribed by the Administrator setting forth pertinent information pertaining to (i) the Applicant, (ii) the Investment proposed, including, as appropriate, the qualification of the recipient of a Contribution as a Neighborhood Organization, a Community Development Corporation or Community-Based Development Organization, (iii) the purposes for which such Neighborhood Organization, a Community Development Corporation or Community-Based Development Organization will expend or use a Contribution, (iv) a description of a Program, (v) the amount of cash or in-kind support that will be used in the Program and detailed information concerning the underlying factual basis and valuation methodology that the Applicant used to value goods and services proposed to be furnished in connection with a Program, (vi) the Impoverished Area or Low Income People involved, and (vii) such other information or types of information as the Administrator deems necessary. The Administrator may require submission of additional materials to substantiate information elicited by an Application.

"Contribution" means a contribution of money or of goods and services, valued at their Fair Market Value, to (i) a Neighborhood Organization for use by such organization in providing Community Services or in offering Neighborhood Assistance, or (ii) a Community Development Corporation or Community-Based Development Organization for use by such organization in the planning and implementation of Economic Development projects.

"Council" means the Neighborhood Assistance Act Advisory Council established by 30 ~~Del.C.~~ §2004.

"DEDO" means the Delaware Economic Development Office.

"DHSS" means the Department of Health and Social Services.

"Emergency Assistance" means the provision of payments or services for families in order to eliminate or alleviate an emergency condition. An "emergency condition" is defined the loss of the family shelter or the loss of energy supply to the family shelter.

"Fair Market Value" means, with respect to an item of goods or services, the price in a market in which the item of such goods or services is most commonly sold to the public at which such item would change hands

between an unrelated willing buyer and an unrelated willing seller, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of relevant facts.

"Impoverished Area" means any clearly defined, economically distressed urban or rural area in the State of Delaware that has been certified as such by DHSS and approved by the TAB. DHSS shall make its certification of an Impoverished Area based on federal census studies and current indices of social and economic conditions. The following areas are hereby certified by DHSS and approved by the TAB as Impoverished Areas: (i) census tracts described in 30 **Del.C. §2020(1)e.**, as amended, or in any successor statutes thereto, and (ii) areas designated as ranking "4" or "5" in the document prepared by DHSS in July, 1997 entitled "Community Prioritization in Delaware" and in any updated version of such document based on data gathered by the federal government in the 2000 census and on current indices of social and economic conditions. Additionally, DHSS may certify and TAB may approve as an Impoverished Area any area whose boundaries can be described geographically and that meets one or more of the following criteria: (A) the geographic area has a higher than average percentage of households receiving public assistance; (B) the rate of unemployment in the geographic area is higher than average in the State; (C) the geographic area has a higher than average concentration of residents who are Low Income People; (D) the geographic area has a demonstrated need for assistance in economic development, has significant numbers of vacant or substandard properties or infrastructure problems that may create substandard living conditions or cause the area to be economically distressed; and, (E) the population in the geographic area has special needs to be served by the activities of a Neighborhood Organization, Community Development Corporation or Community-Based Development Organization. DHSS may make the foregoing certification and TAB may approve such certification based on a letter application to DHSS with supporting documentation required by DHSS that is made by an Applicant, or by a Neighborhood Organization, Community Development Corporation or Community-Based Development Organization. If the "Community Prioritization in Delaware" document is updated based on data gathered by the federal government in the 2000 census and on current indices of social and economic conditions, areas designated as ranking "4" or "5" in either version of the document shall constitute Impoverished Areas during the fiscal year of the State in which such update is made. Thereafter, only areas designated as ranking "4" or "5" in such updated version of "Community Prioritization in Delaware" shall constitute Impoverished Areas; provided however, that Applicants whose Applications have been approved in accordance with Section 5.0 of this regulation shall not, as a result of such update, be deprived of any NAA Credit, including any carryforward thereof, based on such Application.

"Investment" means (i) the amount of a Contribution or (ii) the amount of money and the Fair Market Value of goods and services proposed to be made or expended within the taxable year of the Applicant on a Program.

"Locally Based" means, with respect to a Community Development Corporation or a Community-Based Development Organization, that such Community Development Corporation or Community-Based Development Organization is organized by residents of and located in one or more of the Impoverished Areas in which they serve.

"Low Income People" or **"Low Income Person"** means individuals or an individual with an annual income that is fifty percent (50%) or below the established median income for the State or for any political subdivision thereof for which median income data is available from the United States census.

"NAA Credit" means the credit described in 30 **Del.C. §2005**, subject to the limitations of 30 **Del.C. §2006** and regulations governing the NAA Credit promulgated by the Delaware Division of Revenue.

"Program" means the direct provision by an Applicant in an Impoverished Area of (i) Neighborhood Assistance, (ii) Job Training for individuals not employed by the Applicant, (iii) Education for individuals not employed by the Applicant, (iv) Community Services, (v) Crime Prevention, (vi) Housing, or (vii) Economic Development.

"Proposal" means the description of the relationship between the Business Firm making an Application and the Neighborhood Organization, Community Development Corporation, or Community-Based Development Organization to which the Business Firm will make a Contribution and a description of how the Neighborhood Organization will provide Community Services or Neighborhood Assistance or of how the Community Development Corporation or Community-Based Development Organization will engage in Economic Development.

"Resident Controlled" means, for purposes of the definition in the Act of the terms "Community Development Corporation" and "Community-Based Development Organization," an organization that otherwise meets the definition of a "Community Development Corporation" or "Community-Based Development Organization" under the Act, the by-laws or other organizational documents of which require that at least fifty-one percent (51%) of the members of the board of directors, or other governing body of such organization, reside or work in the Impoverished Area served by the organization.

"TAB" Means the Tax Appeal Board.

3.0 Program Priorities

- 3.1 Applications received for consideration of an Investment must meet all eligibility requirements under the Act and this regulation, including, but not limited to the purpose of the Program or Proposal with respect the Investment is to be made, the eligibility requirements for the Business Firm making an Application and for the Neighborhood Organization, Community Development Corporation, or Community Based Development Organization that will receive a Contribution.
- 3.2 Applications will be reviewed and ranked on the following factors: (i) financial feasibility of the Program or Proposal, (ii) capacity of the Applicant to carry out a Program or of the Neighborhood Organization, Community Development Corporation, or Community-Based Development Organization that will receive a Contribution to implement the activities described in the Proposal; (iii) specific description of goals to be achieved and the relationship of such goals to the priorities established by the Act; (iv) proposed methods by which the success of the Program or Proposal can be measured; (v) specific description of the impact of the Program or Proposal on an Impoverished Area; and, (vi) other information requested in the Application form prescribed by the Administrator and any supplementary information requested by the Administrator.

4.0 Making Application for NAA Credits

- 4.1 Applications may be submitted at any time directly to: Administrator of the Neighborhood Assistance Act, Delaware Economic Development Office, 99 Kings Highway, Dover Delaware 19901. The Administrator will review the Application for completeness. If the Application is incomplete, the Administrator will return it to the Applicant and shall specify in what regard it is incomplete. The Administrator may also request additional information or other documentation in support of an Application.

5.0 Procedures for Recommendation of Approval or Disapproval of Application

- 5.1 Initial Processing and Distribution of Complete Applications. When the Administrator finds that an Application is complete, it shall submit copies of the Application to DEDO, the members of the TAB and the members of the Council.
- 5.2 Council Review of Application.
 - 5.2.1 The Council shall review Applications transmitted to it by the Administrator in accordance with Section 5.1 hereof at its public meetings held in compliance with 29 Del.C. §10004. In addition to posting its agenda publicly, as required by 29 Del.C. §10004(e), the Council shall mail a written notice of such meetings to all Applicants whose Applications will be reviewed by the Council at such meetings at least seven days in advance of such meetings.
 - 5.2.2 At its meeting, the Council shall review the completed Applications based on eligibility criteria set forth in the Act and this regulation.
 - 5.2.3 The Council shall prepare a written recommendation to the Director of DEDO and the members of the TAB on all Applications reviewed at its meetings. The Council's recommendation shall include a recommendation for the approval or disapproval of an Application and a recommended amount of the Investment to be approved. The Council shall send its written recommendation to the Director of DEDO, the members of the TAB and the Applicant.
- 5.3 Hearing on Application
 - 5.3.1 In General. Hearings on all Applications shall be conducted jointly by (i) the Director of DEDO, or an employee of DEDO designated by the Director of DEDO, and (ii) the members of the TAB to consider Applications based on the criteria for eligibility set forth in the Act and in this regulation and on the recommendation of the Council. If the Director of DEDO and the members of the TAB so agree, the hearing may be conducted by an employee of DEDO designated as a hearing officer by both the Director of DEDO and the members of the TAB.
 - 5.3.2 Scheduling of Hearings. The Director of DEDO and the members of the TAB, or the hearing officer designated by them in accordance with section 5.3.1, shall schedule a hearing on an Application after receiving the written recommendation of the Council described in subsection 5.2.3 hereof and shall notify the Applicant of the hearing in compliance with the provisions of 29 Del.C. §10122. The recommendation of the Council shall become part of the record in the hearing, and the Applicant will be asked to stipulate to the inclusion of such recommendation in the record of the hearing; provided, however, that the Applicant

~~shall have the opportunity to introduce evidence and testimony at the hearing to supplement or contradict the recommendation.~~

- 5.3.3 ~~Conduct of Hearing; Burden of Proof.~~ The hearing shall be conducted on the record in accordance with the procedures for agency case decisions set forth in 29 Del.C. §§10121 – 10129. The burden of proof shall always be on the Applicant.
- 5.3.4 ~~Final Order; Proposed Order.~~ The Director of DEDO and the members of the TAB shall decide whether to approve or disapprove an Application, with or without modification of the Investment or Program, and on the amount of the approved Investment or Program based on the entire record of the case and shall issue a final order in accordance with 29 Del.C. §10128. If a designated hearing officer conducts the hearing, such hearing officer shall comply with the requirements of 29 Del.C. §10126 in preparing a proposed order for the consideration of the Director of DEDO and the members of the TAB, a copy of which shall be such section.

~~6 DE Reg. 1368 (4/1/03)~~

20 DE Reg. 659 (02/01/17) (Final)