

5122:3-1-01           **Definitions.**

As used throughout this chapter, the following definitions shall apply:

- (A) "A/E" means an architectural or engineering firm whose principal or principals are licensed by the state of Ohio to practice their respective professions in Ohio.
- (B) "Applicant" means any of the following who submit an application to the department for community assistance capital funds:
- (1) A state agency other than the department authorized to provide mental health or addiction service;
  - (2) A board of county commissioners;
  - (3) Any governmental political subdivision of the state of Ohio;
  - (4) A ~~community~~ county board of alcohol, drug addiction, and mental health services (~~ADAMH/CMH~~ADAMHS/CMH/ADAS); or
  - (5) A nonprofit corporation specifically chartered to provide a mental health or substance use service when such a service fulfills a public purpose as provided by division (F) of section 154.20 of the Revised Code, ~~as hereafter may be amended.~~
- (C) "Approved tax credit manager" means a nonprofit corporate applicant that is a general partner or managing member of an approved tax credit owner.
- (D) "Approved tax credit owner" means a limited partnership or limited liability company that is eligible to participate in the nonprofit set-aside described in Section 42(h)(5) of the Internal Revenue Code of 1986, 100 Stat. 2198, 26 U.S.C. 42 and the Ohio housing finance agency's housing tax credit program for the purpose of making use of low-income housing tax credits in support of housing for mental hygiene patients and that is controlled by an approved tax credit manager.
- (E) "Board" has the same meaning as community mental health board (CMH), alcohol and drug addiction services board (ADAS), or board of alcohol, drug addiction and mental health services (~~ADAMH~~ADAMHS) as defined in Chapter 340. of the Revised Code.
- (F) "Capital facilities" means buildings, structures and other improvements, equipment ~~as defined in division (E) of section 16 of Amended Substitute House Bill 834 of the 113th General Assembly or as defined in future legislation~~, and real property and

interests in real property as defined by division (J) of section 154.01 of the Revised Code, ~~as hereafter may be amended.~~

- (G) "Chief" means the business operations manager or designee of the office of capital planning and management, an office established within the department.
- (H) "Community capital assistance projects process guidelines" ("guidelines") means a document published by the ~~office~~ bureau of capital planning and management implementing applicable Revised Code requirements and department administrative processes, and which is distributed with each community capital application approval letter.
- (I) "Community mental health facility" means a building and necessary land used to provide a mental health or substance use treatment or support service or program, ~~or including~~ housing as defined and required by the department.
- (J) "Construction" means the construction of new buildings or renovation of existing buildings as provided by ~~division~~ divisions (J) and (K) of section 154.01 of the Revised Code ~~and division (K) of section 154.01 of the Revised Code, as hereafter may be amended,~~ except that renovation shall not include work that consists primarily of maintenance repairs and replacement due to normal use, wear and tear, or deterioration.
- (K) "Controlling board" means the board established by section 127.12 of the Revised Code, ~~as hereafter may be amended.~~
- (L) "DAS/GSA" means the department of administrative services, general services administration, as established by section 121.02 of the Revised Code, ~~as hereafter may be amended.~~
- (M) "Department" means the Ohio department of mental health and addiction services as established by section 121.02 of the Revised Code, ~~as hereafter may be amended.~~
- (N) "Deputy director" means the deputy director of ~~program and policy development~~ capital and support services for the department.
- (O) "Director" means the chief executive officer or designee of the Ohio department of mental health and addiction services as provided by division (K) of section 121.02 of the Revised Code, ~~as hereafter may be amended.~~
- (P) "Federal funds" means funds provided by any department or agency of the United States government for participation in community mental health or addiction

services facilities project costs.

~~(Q)~~ "Leadership support team" ("LST") means the executive committee (director, assistant director, and deputy directors) of the Ohio department of mental health.

~~(R)~~(Q) "Local funds" means funds provided by the applicant for a community mental health or addiction services facilities project, exclusive of funds that flow through the department funds.

~~(S)~~(R) "Priorities" means the types of housing and service programs approved by the director for community mental health or addiction services capital construction projects in which the department proposes to participate during the forthcoming and subsequent biennia.

~~(T)~~(S) "Project" means the construction or purchase and renovation of facilities, including equipment, for a community mental health or addiction treatment or support service or program ~~or programs~~ as proposed and set forth in an application for state construction assistance.

~~(U)~~(T) "Project costs" means total costs of capital facilities as defined in division (K) of section 154.01 of the Revised Code, ~~as hereafter may be amended~~, and includes, without limitation thereto, purchase or acquisition costs for land and/or buildings, construction or renovation costs, architect fees, fixtures and equipment, and other miscellaneous costs related to a project.

~~(V)~~(U) "Renovation" means work done to a building to restore it to an acceptable condition and to make it functional for the purpose(s) set forth in an application, including architectural and structural changes and the modernization of mechanical and electrical systems. Renovation does not include work that consists primarily of maintenance repairs and replacement due to normal use, wear and tear, or deterioration.

~~(W)~~(V) "Service program" means a program providing community mental health services or community addiction services pursuant to Chapter 340. of the Revised Code, ~~as hereafter may be amended~~, and rules relating to such programs promulgated under section ~~5119.61~~ 5119.36 of the Revised Code by the department.

~~(X)~~(W) "State funds" means funds appropriated by the general assembly and approved by the governor for each biennium to the department for community mental health or addiction services facilities, which funds may be generated through sale of bonds or otherwise.

~~(Y)~~(X) "Variance" means written permission granted by the department to an ~~agency~~

applicant to meet a modified requirement of a rule of the Administrative Code.

~~(Z)~~(Y) "Waiver" means written permission granted by the department to an ~~agency~~  
applicant to be exempted from a rule or specific provision of a rule of the  
Administrative Code.

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5122:3-1-02

**Responsibility of the department.**

(A) Department Priorities

- (1) The director, in consultation with the chief, shall determine priorities for community mental health and addiction service programs and facility requirements for the succeeding biennium on the basis of program and service needs in the community. Individual project priorities may be considered by the director.
- (2) The department priorities may be reviewed and evaluated by the director and periodically revised or amended.

(B) Approval and Funding Authority

- (1) The department, by and through the director, is the final authority, subject to the action of the controlling board, where applicable, for the approval of applications for and distribution of state funds for community capital facilities pursuant to Chapter 154. of the Revised Code and sections 5119.42 to 5119.421 of the Revised Code, and this chapter. The director is the final authority in determining program priority, service program and facility design suitability, project funding availability, and the cost effectiveness requirements of a project.
- (2) The distribution of federal funds allocated to the state for construction assistance for community mental health and addiction service facilities shall be made by the department in accordance with federal and state requirements. The department shall be responsible for the expenditure of and accounting for such funds and the preservation of necessary records thereof.

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5122:3-1-03**Submission of community capital plan and development of application.**

Each board shall submit to the department a community capital plan for its service district in accordance with instructions and a schedule for submission announced by the director. The community capital plan shall propose projects for construction assistance according to the board's needs and priorities. The community capital plan may include projects specific to the board's service district and projects jointly proposed by two or more boards for their service districts. The community capital plan functions as a pre-application for community construction assistance funds.

The director, in consultation with the chief, shall identify projects proposed through the community plans or otherwise identified by the director that meet the priorities established pursuant to paragraph (A) of rule 5122:3-1-02 of the Administrative Code. The chief, or designee, shall work with the identified project lead to develop the application for community capital assistance funds.

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5122:3-1-05

**Requirements for project approval.**

Each application for state funds shall contain documentation demonstrating compliance or assurances of compliance with all applicable requirements of this rule. State funding participation in a project shall be disapproved for failure to provide necessary assurances or documentation. State funding participation already approved for a project may be withdrawn for failure to comply with the applicable assurances or requirements stated in this rule.

- (A) Estate in real property: the applicant must assure that it, or the approved tax credit owner for which it is the approved tax credit manager, has or will have fee simple title to, and that applicant or the approved tax credit owner for which it is the approved tax credit manager will, prior to the state funding of any project costs, be in lawful possession of the property on which the project is to be located, including necessary easements and/or rights of way.
- (B) The applicant shall secure and submit to the chief an appropriate resolution from the applicable board(s) stating approval of the project by the board(s) and its or their intent to support and monitor the program(s).
- (C) The applicant must assure that:
- (1) Sufficient funds will be available to meet its share of project costs from project initiation through project completion.
  - (2) Sufficient funds and/or income from sources made known to the department will be available as of the proposed opening date to operate the facility in accordance with the approved program(s).
  - ~~(3) Within six months from the date of project approval notification, applicant will commence purchase and renovation projects (i.e., site purchase), and within twelve months from the date of project approval notification, applicant will commence new construction projects (i.e., award construction contracts). The department may waive these deadlines for individual projects.~~
  - ~~(4)~~(3) Applicant will execute the project in compliance with the guidelines.
  - ~~(5) If applicable, competent and adequate A/E observation at the construction site shall be provided and maintained to ensure that the owner is kept informed of the progress of the work as well as defects and deficiencies in the work of the contractors.~~
  - ~~(6)~~(4) The department, ~~DAS/GSA~~, and other state or federal agencies, or their agents or designees, as appropriate, shall have access to the project at any

time while under construction and before final acceptance.

~~(7) Construction progress reports and such other information as requested shall be submitted to the chief or a designee.~~

~~(8)(5) Adequate~~ Applicant will maintain adequate and separate accounting and fiscal records and accounts for all funds provided from any source to pay the cost of an individual project ~~shall be maintained~~, and ~~permit~~ departmental audit of such records and accounts ~~shall be permitted~~ at any reasonable time.

~~(9)(6)~~ All buildings and their contents shall be kept ~~appropriate~~ appropriately insured against loss by fire and acts of God for such amounts which will assure sufficient funds to restore or replace the buildings and contents. Such insurance shall include the department as an additional insured to the extent of state participation and shall provide that the department, through the chief, be promptly notified by the insurer of any delinquency in insurance premium payments or cancellation of the policy.

~~(10) A copy of the final working drawings and specifications with appropriate approval certifications as required shall be retained by the applicant as a permanent project construction record.~~

(D) The applicant agrees to use and maintain the project for a period of years designated herein for the purposes stated in the application unless otherwise agreed to in writing by the department ("project period"). If the project is not so used for the entire project period, ~~or for another period agreed to in writing by the department,~~ the applicant: shall pay to the department at a minimum, an amount equal to the total of any state funds reimbursed to the applicant pursuant to approval of the project as stated in the application times a fraction where the numerator is the number of months that the project has operated as approved and the denominator is the total number of months in the project period; or, shall permit the department to operate or transfer the operation of the project, including the assignment of any contracts or other interests, to another approved organization for the balance of the project period. Such agreements shall be documented on such security instruments, contracts, and other legal instruments as deemed necessary by the department to secure state funds reimbursed by the department to the applicant for approved project costs. ~~For projects approved on or before June 30, 2010, the project period shall be forty years. For projects approved on or after July 1, 2010, the~~ The project period shall be thirty years.

(E) Nonprofit corporation; articles of incorporation

(1) A nonprofit corporation applicant, including an approved tax credit manager must meet the requirements set forth below.

- (2) The articles of incorporation must contain the following provisions in addition to those otherwise required by law:
- (a) A specific statement of purpose that the corporation will provide a mental health or addiction service which will serve a public purpose;
  - (b) A provision that upon dissolution of the corporation, if such dissolution occurs within the ~~forty~~thirty-year ~~use agreement~~ project period, the department or its successor shall be a party to any judicial proceeding or dissolution agreement and that the department or its successor may be a distributee under such order or agreement to the extent of its participation and to the extent provided by law or the participation agreement which originally set forth disbursal of funds to the corporation;
  - ~~(c) A nondiscrimination provision stating that services will neither be rendered nor denied on the basis of race, color, religion, national origin, disability, veteran status, sexual orientation, or, unless programmatically justifiable, sex; and~~
  - ~~(d) A provision stating that the corporation will not discriminate or otherwise decide any matter regarding employment on the basis of race, color, national origin, religion, disability, veteran status, sexual orientation, or sex.~~
- (3) The code of regulations or bylaws, as applicable, shall contain the following provisions in addition to those specifically provided by law:
- (a) A provision limiting the number of terms and length of term of office for trustees/directors and officers and prohibiting an employee or officer of the corporation from being a trustee/director except that in a general hospital or other facility where the mental health or addiction service program is not the major function of the facility, an employee of the corporation may be a trustee/director but shall abstain from any vote of the board of trustees/directors directly affecting the service program;
  - (b) A provision stating that the board of trustees/directors shall include representatives of the geographic community to be served;
  - (c) A provision that no persons related by consanguinity or marriage (to a degree of first cousin) shall constitute a majority of the board of trustees/directors; and

- (d) A provision to require the abstention of a trustee/director in a vote on a matter affecting persons employed or to be employed by the corporation and related to the trustee by consanguinity or marriage.
  - (e) A nondiscrimination provision stating that services will neither be rendered nor denied on the basis of race, color, religion, national origin, religion, disability, genetic information, military status, sexual orientation, or, unless programmatically justifiable, age or sex; and
  - (f) A provision stating that the corporation will not discriminate or otherwise decide any matter regarding employment on the basis of race, color, national origin, religion, disability, genetic information, military status, sexual orientation, age, or gender.
- (F) If applicant is an approved tax credit manager, required additional submissions include:
- (1) Appropriate documentation of the limited partnership (partnership agreement) or limited liability company (articles of incorporation; operating agreement) and the role that the approved tax credit manager plays in the development and operation of the project.
  - (2) The documentation must contain the following provisions:
    - (a) A provision that upon dissolution of the limited partnership or limited liability company, if such dissolution occurs within the ~~forty~~<sup>thirty</sup>-year ~~use agreement~~<sup>project</sup> period and another entity satisfactory to the department has not assumed the obligations under the mortgage to the department, the partnership agreement or operating agreement will provide that all proceeds on dissolution be used to pay creditors of the limited partnership or limited liability company, including any payment of amounts from the sale of the project to pay the obligations secured by any mortgage to the department, prior to distribution to any member or partner thereof.
    - (b) A provision that, if the approved tax credit manager should default in any term of the partnership or operating agreement, upon notice to the applicant and the department, the applicant and the department shall have a sixty-day period to cure such default. Additionally, at the option of the department, and in the case where the department determines that the applicant has failed to provide the services as set forth in the application, unless otherwise agreed to in writing by the department, the department may cause the management and operation of the facility to

be assigned to a party eligible to be an applicant or to the department, provided such assignment is agreeable to the approved tax credit owner, which agreement shall not be unreasonably withheld. Any such successor manager or operator of the facility shall assume all of applicant's obligations under the contract and note and shall comply with all federal or state obligations and restrictions applicable to the facility.

- (3) Appropriate documentation that the limited partnership or limited liability company is eligible to participate in the Ohio housing finance agency's housing tax credit program.

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5122:3-1-06

**Department approval of project.**

- (A) ~~A designee of the deputy director, together with the chief, shall lead a team comprised of department staff and shall complete the application with the applicant and the board for the service area where the proposed project is planned. For projects identified by the director as meeting priorities established pursuant to paragraph (A) of rule 5122:3-1-02 of the Administrative Code, the chief, or designee, shall work with the identified project lead to develop the application for community capital assistance funds.~~ The application shall include project and service or program descriptions, project cost estimates, an operations budget, funding participation, applicant assurances, the documentation required by rule 5122:3-1-05 of the Administrative Code, and any other documentation in support of the application deemed necessary by the department. Upon completion of the application, the deputy director's designee, the board director and the applicant shall all sign the application. The deputy director's designee shall recommend projects to the deputy director. The deputy director may require additional information before submitting the application recommendations to the director for final approval action.
- (B) The director shall make the final determination as to approval or disapproval of the application or of such parts of the application as are deemed appropriate. The director may require certain parts of the application to be modified or amended and resubmitted. The director may consult with any agency, board, commission, or other organization in regard to all or any part of the application. The director may grant a waiver or variance from the application requirements set forth herein where, in the director's sole discretion, imposition of the requirement would exclude an application that otherwise meets the department's priorities.
- (C) ~~Upon the director's approval of a project application, the chief shall inform the applicant in writing of the approval, indicating the maximum amount of the state funding approved subject to favorable fund release action by the controlling board. Any action by the applicant which incurs project costs prior to receipt of the director's letter of approval and notification of the controlling board's approval shall be at the applicant's own financial risk. A copy of the approval notice shall be provided to the deputy director for further project action as provided under these rules and a copy shall be sent to the board(s). After an application has been approved by the director, the chief shall send an application approval letter to the applicant stating the amount of state participation in the project and requesting submission of site information, as outlined in the guidelines, prior to project implementation.~~
- (D) ~~The chief shall submit an appropriate request to the controlling board for approval and fund release for an approved project as soon as possible after an approved site has been selected, appraised in accordance with the requirements of DAS/GSA, and appropriate information relative to the site has been provided to satisfy requirements of the controlling board.~~

~~(E)~~(D) The director may at any time after approval of a project, for reasons deemed appropriate, withdraw approval for state participation in a project. In such case, the director shall notify the project applicant in writing as to the specific reasons for the planned withdrawal of approved state funding and, prior to such withdrawal, allow the applicant thirty days to respond in writing to the specific reasons stated. Based on the applicant's response to the director's notice, the director may take action he or she deems appropriate. In the event such action involves withdrawal of state funding participation therein, the department may reimburse the applicant at the approved percentage rate of state participation for applicant funds properly expended prior to such withdrawal. Appeals from above action may be made pursuant to rule 5122:3-1-16 of the Administrative Code.

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5122:3-1-07

**Selection of architect or engineer (A/E).**

Projects involving state funds for renovation or construction in any portion of the project require compliance of the entire project with sections 153.65 to 153.99 of the Revised Code and the guidelines.

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5122:3-1-09

**Standards of construction; design criteria.**

(A) Standards of construction. Any project, when completed and ready for occupancy or operation, shall meet all standards and requirements of applicable federal, state and local statutes and ordinances, state and local building and fire codes, and standards and requirements to make the project eligible for funds for operations and client care and treatment. ~~Projects utilizing federal funds shall meet all applicable federal statutes or regulations.~~

~~(B)~~ Design criteria

~~(1) Facilities shall be designed to be economical to construct, operate, and maintain.~~

~~(2) The architectural and engineering design of the facility shall provide sufficient heat, light, and ventilation and be in compliance with applicable energy conservation provisions of rule 4101:1-13-01 of the Administrative Code, as may hereafter be amended~~

~~(3) The facility shall be designed to minimize life cycle costs based on appropriate life cycle cost evaluations as required in division (D) of section 123.011 of the Revised Code, as may hereafter be amended~~

~~(C)~~ (B) Programmatic requirements. The project shall be designed and constructed to meet all program and licensure requirements of the department, if applicable, and comply with the program as indicated in the application unless a modification has been approved by the department.

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5122:3-1-10

**Project cost confirmation.**

Prior to approval of the bid documents as described in the guidelines, the applicant shall provide to the chief the estimated project budget in accordance with the guidelines.

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5122:3-1-11

**State participation in project cost.**

- (A) State participation. The director shall determine the amount of department funding participation in the project.
- (B) Property owned. The chief, as a part of a construction or purchase and renovation project, may consider and include the value of property owned by an applicant or the approved tax credit owner for which it is the approved tax credit manager as part or all of the applicant's share of approved project costs in an amount that does not exceed the applicant's share of approved project costs.
- (1) The property and/or buildings thereon must be approved by the chief and the deputy director as to programmatic and size suitability and economic feasibility.
  - (2) The property value to be used for the applicant's share of approved project costs shall be based on a recent appraisal value or other indicator of value approved by the chief (~~i.e.~~e.g. tax evaluation).
  - (3) Property owned by an applicant or the approved tax credit owner for which it is the approved tax credit manager may be valued and utilized for the applicant's share of approved project costs on a one-time basis only and for only one project on any one parcel of property.

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5122:3-1-12

**Project cost adjustments.**

(A) If the chief, at any time during project development, determines through cost analyses that the estimated project cost is greater than the estimate submitted in the application and necessitates additional applicant funding, the applicant shall be so advised and requested to assure the availability of such additional funding. In the event such additional funding is not available, the applicant or the approved tax credit owner for which it is the approved tax credit manager shall be required to revise the design and/or the service program to reduce the total estimated project cost to correspond with total project resources available. Program and project revisions shall be reviewed and approved by the deputy director and the chief pursuant to rule 5122:3-1-06 of the Administrative Code.

**(B) Bid stage**

(1) If state or federal funding is being used for any portion of construction costs, the applicant must comply with all applicable state and federal laws, rules and regulations relating to construction and bidding of state or federally-funded projects. If project must be modified or re-bid, applicant must consult with chief regarding the proposed modifications and re-bidding.

(2) If, on receipt of bids, it is determined that the total cost of the project is less than the approved estimated cost, the funding reflected for the approved state participation may be proportionately adjusted.

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5122:3-1-13                    **Real property.**

The department may participate in the cost or value of real property to be used for mental health or addiction service facilities. Such property may include land only or land with existing buildings thereon which is to be purchased by an applicant or the approved tax credit owner for which it is the approved tax credit manager.

(A) Site evaluation. Applicant shall provide to the chief an evaluation of the proposed project site in accordance with the factors set forth in the guidelines including, but not limited to, cost adaptability for renovation, programmatic suitability, economic suitability, environmental suitability, and ability or potential to meet applicable zoning, building and fire codes, licensure, and departmental or other governmental requirements. The chief shall evaluate and approve or disapprove all project sites proposed.

(B) Property value determination shall be in accordance with the guidelines

(1) The value of real property proposed for a project shall be based on a recent appraisal or appraisals made by a qualified appraiser according to ~~DAS/GSA~~ guidelines. The appraised value shall be based on the fair market value of the property as determined by the appraisal and approved by the chief ~~and submitted to DAS/GSA~~. The appraisal fee shall be considered as an element of project cost eligible for state participation.

(2) Demolition costs may be included in determining the cost of property for a project.

(3) Department participation in real property shall be based on the purchase price or approved appraised value, ~~as indicated in paragraph (B) of rule 5122:3-1-11 of the Administrative Code~~.

(C) Existing buildings

In addition to all other provisions of this rule, the chief shall evaluate participation in the cost of projects involving the renovation of existing buildings as follows:

(1) Estimate the cost of renovation and additions necessary to meet approved program requirements;

(2) Estimate the life expectancy of the existing building(s) after proposed renovation;

(3) Compare the cost of renovation of and additions to the existing building(s) with the cost of new construction to fulfill the same program requirements; and

- (4) Evaluate program suitability of the existing building(s) in comparison with that of construction designed specifically for the programs stated in the application.

(D) Mortgaged property

- (1) The department may participate in a project involving property owned by an applicant or the approved tax credit owner for which it is the approved tax credit manager, but which is subject to prior mortgage(s) held by a private financial institution or other lender approved by the chief, provided that the amount of state participation in the project will be adequately secured by a subordinate mortgage on the property and by mortgages, leases, liens, assignments, or pledges in or of such other property or contracts as the department shall require to provide adequate assurance of preferred creditor status for the state in order that its investment be protected. Such prior mortgage(s) may provide part or all of the local funds required for applicant's share of approved project costs.
- (2) The department may participate in such a project according to the following terms:
  - (a) The applicant or the approved tax credit owner for which it is the approved tax credit manager shall give the department a security interest, lien, or mortgage in the project property junior only to the approved prior mortgage(s).
  - ~~(b) All proposals for future loans on the project property by the applicant or the approved tax credit owner for which it is the approved tax credit manager shall be submitted to and approved by the department.~~
  - ~~(c) The state shall be assigned an interest in after-acquired fixtures and equipment for the project property.~~
  - ~~(d)~~(b) Approval by the department is required prior to the sale of the project property and/or equipment thereon.
  - ~~(e)~~(c) Terms of the mortgage(s) or contract(s) between the applicant or the approved tax credit owner for which it is the approved tax credit manager and lender shall provide that in the event of default on the part of the mortgagor (applicant or approved tax credit owner) and prior to foreclosure by the mortgagee:

- (i) The department shall have an opportunity to absolutely cure any default on behalf of the applicant or the approved tax credit owner for which it is the approved tax credit manager; and
  - (ii) If the applicant has not repaid, or caused to be repaid, the sum set forth in paragraph (D) of rule 5122:3-1-05 of the Administrative Code, the department may assume the applicant's obligation or the obligation of the approved tax credit owner for which it is the approved tax credit manager under the mortgage and may assume operation of the facility or may transfer or assign the mortgage interest and the operation of the program in the facility upon approval by the mortgagee, which approval shall not be unreasonably withheld, to an eligible applicant to provide a similar service program in the facility in accordance with all applicable federal and state restrictions for the remainder of the mortgage term.
- (3) Paragraphs (D)(2)(a) ~~and~~ (D)(2)(~~db~~) of this rule shall be in effect for the period of the contract between the applicant and the department. Paragraph (D)(2)(~~ec~~) of this rule shall be in effect until the prior mortgage(s) has/have been cancelled.

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5122:3-1-14      **State funds reimbursement.**

## (A) State participation in real property.

Prior to any reimbursement of state funds to the applicant, a contract, note and mortgage prepared by the chief shall be executed and accepted by the department. The contract shall specify the dollar amount of state funds approved for site participation. Such contract shall include necessary safeguards and guarantees by the applicant regarding the participation by the state in value of property in accordance with rule 5122:3-1-13 of the Administrative Code.

- (1) In projects which involve the construction of a new facility on a site consisting of land only and/or projects which involve substantial renovation, as determined by the chief, the state participation share shall not be reimbursed to the applicant until project construction contracts have been awarded, except that in such projects which involve substantial levels of state participation, the director may approve reimbursement of the state share of the approved site value on receipt by the chief of appropriate evidence of ownership of the site by the applicant or the approved tax credit owner for which it is the approved tax credit manager.
- (2) In projects which involve the purchase and renovation of an existing facility approved by the state, the state participation share of the approved site value may be reimbursed to the applicant on receipt by the chief of appropriate evidence of ownership of the site by the applicant or the approved tax credit owner for which it is the approved tax credit manager.

## (B) State participation in construction costs.

- (1) After bids for construction contracts have been reviewed and approved and contracts awarded for a project, the chief shall prepare a participation letter, a portion of which stipulates the dollar amount of state funds for project construction and equipment.
- (2) Reimbursement requests for construction may be submitted in accordance with the guidelines.

## (C) The applicant shall keep records of all receipts and expenditures for a project in a separate account which shall be available for inspection or audit by the chief. The applicant shall submit approved invoices and copies of canceled checks issued in payment thereof to the chief. The chief, after appropriate review of required documentation received and determination of the percentage level of project completion, shall take necessary action to effect reimbursement of approved expenditures to the applicant.

(D) The state reimbursement funds may be released upon receipt of the complete back-up documentation as noted in paragraph (C) of this rule, until ninety per cent of the state's share has been reimbursed. The remaining ten per cent shall be held as retainage until the project is one hundred per cent complete and the proper close-out documentation has been submitted to and approved by the chief. Such documentation includes, but is not limited to, the following:

- (1) Letter from applicant stating project is complete and requesting release of ten per cent retainage;
- (2) List of all actual, final total project costs, notarized and separated into the major categories of site, construction/renovation, equipment, A/E fees, and miscellaneous expenses;
- (3) Copy of certificate of occupancy; and
- (4) Waiver of lien affidavit and prevailing wage affidavit, where applicable, from each prime contractor.

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5122:3-1-15

**Civil rights; affirmative action.****(A) Civil rights**

(1) The construction of facilities using state funds shall comply with Title VI of the Civil Rights Act of 1964, Public Law 88-352, 42 USC 2000 et seq., Chapter 4112. of the Revised Code, ~~as may hereafter be amended~~, and all applicable executive orders.

(2) Pursuant to division ~~(DB)~~ of section ~~5119.61~~5119.25 of the Revised Code, ~~as may hereafter be amended~~, and division ~~(A)~~ of section 4112.02 of the Revised Code, ~~as may hereafter be amended~~, the director, upon investigation and notice, shall withhold payment of state funds to an applicant denying available service on the basis of race, color, religion, creed, sex, national origin, age, military status, disability, ancestry, or the inability to pay.

(B) Affirmative action. The department, in the approval of any bids submitted under these rules, shall deem non-responsive and shall not consider bids which do not affirmatively demonstrate preparation to comply with sections 153.59 and 153.591 of the Revised Code and Chapter 4112. of the Revised Code, ~~as may hereafter be amended~~, including all sections related thereto, and which do not include such commitments, assurances, and affirmative action program data, when required, as specified in the governor's executive order on equal employment opportunity dated January 27, 1972, and pursuant to the final order establishing state equal employment opportunity bid conditions dated November 30, 1973, ~~both as hereafter amended or superseded~~.

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5122:3-1-16

**Appeals.**

Approvals, disapprovals, or other decisions made under these rules may be appealed by an applicant as follows:

- (A) The aggrieved party may request in writing that an informal meeting be held with the deputy director, the chief, a representative of the board, and the applicant to discuss and attempt to resolve the particular problem through negotiation and settlement. Such request shall include a written summary of the controversy. The chief shall schedule said meeting and shall give all parties reasonable notice thereof in writing. At the conclusion of such meeting, a report documenting the problem, the efforts made at the meeting to resolve the problem, and any resolution reached shall be submitted by the chief to the director for his/her consideration and approval. If the director requires additional data or documentation from the aggrieved party relative to the issue(s) or problem(s) in question in order to adequately evaluate the resolution reached, such data or documentation shall promptly be provided by said party.
- (B) In the event informal meetings requested do not result in resolution of the controversy, or if no informal meetings are desired by the aggrieved party, said party may request by certified mail that a formal hearing be convened pursuant to section 119.06 of the Revised Code, ~~as hereafter may be amended~~, with the director or a designee presiding, to hear the controversy and make a formal decision thereon. Appeals from such formal hearing shall be made as provided by section 119.12 of the Revised Code, ~~as may hereafter be amended~~.

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5122:3-1-17

**Waivers and variances.**

(A) The director may grant a waiver or variance from any provision of Chapter 5122:3-1 of the Administrative Code, or portion thereof; ~~requiring~~

(1) Requiring applicant to give or maintain for the benefit of the department prior or subordinate mortgage(s) in project property sufficient to secure the amount of state funds reimbursed by the department for approved project costs. Such waiver or variance may be granted for a period of time determined by the director and may be subject to any condition(s) imposed by the director. However, requests for waivers and variances that, in the director's sole discretion, are determined to impose a risk for adversely affecting the security of the state funds will not be granted.

(2) Requiring the participation of the board in the application process or board resolution to support and monitor the project program.

(B) An applicant shall submit a written request to the department for a waiver or variance. The written request shall state clearly the rationale and need for the requested waiver or variance, and shall provide a comprehensive explanation of how other project underwriting and oversight factors help assure the project's compliance and protect the security of the state funds. Within thirty days of receipt of the written request, the department shall:

(1) Request any additional information or rationale from applicant;

(2) Provide a specific response to the request; or

(3) Provide an estimate to the agency of the timeframe in which the department will be able to provide a specific response to the request.

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