



Ohio Administrative Code

Rule 5122:3-1-05 Requirements for project approval.

Effective: January 3, 2023

Each application for state funds is to contain documentation demonstrating compliance or assurances of compliance with all applicable requirements of this rule. State funding participation in a project will 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 State funding participation already approved for a project may be withdrawn for failure to comply with the applicable assurances or requirements stated in this rule.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) Except as provided in paragraph (B) of this rule, an applicant or the approved tax credit owner for which it is the approved tax credit manager will assure both of the following:

- (1) That it has or will have fee simple title to the property on which the project is to be located;
- (2) That it 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 any necessary easements or rights of way.

(B) Paragraph (A) of this rule does not apply if the property is being leased for at least a thirty-year term or the chief has granted a waiver from the requirement in accordance with rule 5122:3-1-17 of the Administrative Code.

(C) The applicant will secure and submit to the chief an appropriate resolution from the applicable boards stating approval of the project by the boards and their intent to support and monitor the programs.

(D) An applicant will assure all of the following:

- (1) That sufficient funds will be available to meet its share of project costs from project initiation through project completion.
- (2) That sufficient funds 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 programs.

(3) That it will execute the project in compliance with the community capital assistance projects process guidelines.

(4) That the department, 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.

(5) That the 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 and permit departmental audit of such records and accounts at any reasonable time.

(6) That all buildings and their contents are kept 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 will include the department as an additional insured to the extent of state participation and will 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.

(E) The applicant will agree 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, the applicant will do either of the following:

(1) Pay to the department, at a minimum, an amount equal to the total of any state funds reimbursed to the applicant pursuant to the 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 period in the project; or

(2) 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 will 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. The project period will be thirty years.

(F) If the applicant or approved tax credit manager is a nonprofit corporation, all of the following conditions apply:

(1) The nonprofit corporation's articles of incorporation are to 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 that will serve a public purpose;

(b) A provision stating that upon dissolution of the corporation, if such dissolution occurs within the thirty-year project period, the department or its successor is to 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 disbursement of funds to the corporation;

(2) The nonprofit corporation's code of regulations or bylaws, as applicable, is to contain the following provisions in addition to those specifically provided by law, including any applicable executive orders:

(a) A provision limiting the number of terms and length of term of office for trustees or directors and officers and prohibiting an employee or officer of the corporation from being a trustee or 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 or director but will abstain from any vote of the board of trustees or directors directly affecting the service program;

(b) A provision stating that the board of trustees or directors will 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) will constitute a majority of the board of trustees or directors;



(d) A provision to require the abstention of a trustee or 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, 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, religion, national origin, disability, genetic information, military status, sexual orientation, age, or gender.

(G) If an applicant is an approved tax credit manager, the applicant is to also submit the following information:

(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. The documentation is to contain the following provisions:

(a) A provision stating that upon dissolution of the limited partnership or limited liability company (if such dissolution occurs within the thirty-year project 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 stating 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 will 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 is not to be unreasonably withheld. Any such successor manager or operator of the facility will assume all of applicant's obligations under the contract and note and will comply with all federal or state obligations and restrictions applicable to the facility.

(2) 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.