

**ADOPTED REGULATION OF THE
ADMINISTRATOR OF THE HOUSING DIVISION OF
THE DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R192-08

Effective December 17, 2008

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

AUTHORITY: §§1-12 and 19, NRS 319.140 and section 3 of chapter 348, Statutes of Nevada 2007, at page 1657; §§13-18, NRS 319.140 and 319.210.

A REGULATION relating to affordable housing; providing for the awarding of grants by the Housing Division of the Department of Business and Industry to qualified nonprofit organizations to establish an employer-assisted housing program; authorizing a recipient of such a grant to make loans to eligible borrowers to provide assistance in the purchase of affordable housing; revising provisions governing programs administered by the Division relating to mortgage loans; and providing other matters properly relating thereto.

Section 1. Chapter 319 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 12, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 8, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Eligible borrower” means a person who:*

- 1. Is a member of a participating employee group;*
- 2. Is a member of an eligible family as defined in NRS 319.060;*
- 3. Has a household income that does not exceed 170 percent of the median income for the area in which the home is located, unless the Division approves a higher limit; and*

4. Completes a homebuyer education class approved by the Division that is in accordance with the homebuyer education topics, guidelines and protocols of the United States Department of Housing and Urban Development.

Sec. 4. “Employer-assisted housing program” means a program to provide down-payment and closing-cost assistance to employees who are members of a participating employee group and are employed by a participating employer in securing affordable housing in this State.

Sec. 5. “Grant” means a grant of money awarded by the Division pursuant to sections 2 to 12, inclusive, of this regulation to a qualified organization to establish an employer-assisted housing program.

Sec. 6. “Participating employee group” means a recognized group of employees of a participating employer, including, without limitation, a group of employees who are the beneficiaries under a Taft-Hartley Trust formed pursuant to 29 U.S.C. § 186(c)(5) which qualifies as an employee welfare benefit plan and which represents multiple employers.

Sec. 7. “Participating employer” means an employer that has agreed to participate in an employer-assisted housing program.

Sec. 8. “Qualified organization” means an organization which:

- 1. Is a nonprofit organization that is exempt from taxation pursuant to 26 U.S.C. § 501(c)(3);*
- 2. Is in good standing with the Office of the Secretary of State;*
- 3. Has the specifically designated purpose of promoting affordable or subsidized single-family housing located within this State;*

4. Has demonstrated the ability for a period of not less than 5 consecutive years to process and service loans either directly or in conjunction with a loan servicer approved by the Division; and

5. Has a financial net worth of not less than \$1,000,000.

Sec. 9. 1. *The Division may award grants of money to qualified organizations to establish employer-assisted housing programs.*

2. If a qualified organization that receives a grant fails to maintain a net worth of \$1,000,000, excluding the value of the grant, the organization shall immediately return to the Division any remaining amount of the grant that has not been committed for expenditure.

3. Before a qualified organization that receives a grant may contract or award a subgrant for services of more than \$2,000 to be paid from the proceeds of the grant, the contract or subgrant must be approved by the Administrator.

4. A qualified organization that receives a grant is subject to audit by the Division with respect to the grant at any reasonable time to ensure its compliance with all applicable laws and regulations of this State.

Sec. 10. 1. *A qualified organization that receives a grant may make a secured loan of not more than \$20,000 from the proceeds of the grant to an eligible borrower for down-payment and closing-cost assistance in the purchase of affordable housing.*

2. A qualified organization that makes such a loan shall:

(a) Verify the eligibility of the borrower;

(b) Ensure timely and accurate disbursement of the loan money to the borrower;

(c) Administer the loan for as long as the loan has principal outstanding;

- (d) Annually verify, through a current policy of homeowners' insurance or property tax bill, that the borrower uses the home as his primary residence;*
- (e) Confirm that the borrower is a member of a participating employee group;*
- (f) Not lend to a borrower for a home which is outside this State or which is not located in a county in this State in which his employer has an established place of business;*
- (g) Provide documentation that informs the borrower of the possibility of federal tax liability if any portion of the principal of the loan is forgiven; and*
- (h) Verify that the borrower has completed a homebuyer education class approved by the Division before funding the loan.*

3. A loan made by a qualified organization pursuant to this section must not be funded unless:

- (a) The participating employer by whom the borrower is employed contributes matching money equal to the amount of the loan; and*
- (b) The borrower contributes at least 1 percent of the total purchase price of the home toward the purchase of the home.*

4. All terms of the loan, including, without limitation, terms of repayment, interest rates, fees and underwriting criteria, must be specified in a memorandum of understanding approved by the qualified organization and an authorized representative of the participating employee group of which the borrower is a member.

5. A loan may have an interest rate of zero percent.

6. A loan becomes due and payable:

- (a) Upon the sale, transfer or refinancing of the home;*
- (b) Upon the death of the borrower and the settlement of his estate;*

(c) If the borrower operates a business from the home; or

(d) If the borrower ceases to reside in the home as his primary residence.

7. A loan must be secured, but may be subordinated to the rights of not more than two other lenders to allow the borrower to take advantage of other forms of down-payment assistance so long as the total of all forms of secured debt is not more than 99 percent of the verified sale price of the home.

8. If a qualified organization imposes administrative fees on borrowers to whom it makes loans, the total amount of such fees imposed on all borrowers must not exceed 10 percent of the amount of the grant received by the qualified organization.

Sec. 11. *1. The length of a borrower's employment is not a condition of eligibility for a loan.*

2. Two or more employees may not apply for multiple loans pursuant to section 10 of this regulation on the same property.

Sec. 12. *In accordance with the provisions of section 3 of chapter 348, Statutes of Nevada 2007, at page 1657, a qualified organization that receives a grant pursuant to sections 2 to 12, inclusive, of this regulation may, on or before June 30, 2009, commit the proceeds of the grant for expenditure, but shall not commit any remaining proceeds of the grant for expenditure after June 30, 2009. The qualified organization shall, on or before September 1, 2009, transfer to the Division any remaining proceeds of the grant that have not been committed for expenditure on or before June 30, 2009, for reversion to the State General Fund.*

Sec. 13. NAC 319.300 is hereby amended to read as follows:

319.300 As used in NAC 319.300 to 319.489, inclusive, unless the context otherwise requires, the words and terms defined in NAC ~~[319.310]~~ **319.320** to 319.425, inclusive, have the meanings ascribed to them in those sections.

Sec. 14. NAC 319.330 is hereby amended to read as follows:

319.330 “Eligible borrower” means a person who:

1. Desires to obtain financing for the acquisition cost of a qualified residence; ~~[and]~~
2. ~~[Meets the criteria set forth in NAC 319.466.]~~ *Qualifies as an eligible family pursuant to NRS 319.060; and*
3. *Has a household income that does not exceed 170 percent of the median income for the area in which the home is located, unless bond counsel selected by the Division approves a higher limit for a particular program.*

Sec. 15. NAC 319.365 is hereby amended to read as follows:

319.365 “Household income” ~~is~~:

- ~~—1. Means]~~ *means* the income of the mortgagor and of any other person who will be living in the qualified residence and who is at least 18 years of age . ~~is; and~~
- ~~—2. Must be determined in accordance with the provisions of 42 U.S.C. § 1437f and the regulations adopted pursuant thereto concerning determination of income.]~~

Sec. 16. NAC 319.425 is hereby amended to read as follows:

319.425 “Qualified residence” means a residence that:

1. Is a single-family residence; *and*
2. Meets the criteria for a principal residence set forth in 26 C.F.R. § 6a.103A-2(d)(3) . ~~is~~
and

~~—3.— Has an acquisition cost that does not exceed the maximum purchase price for a single-family residence.]~~

Sec. 17. NAC 319.466 is hereby amended to read as follows:

319.466 ~~[1.]~~ An eligible borrower must:

~~[(a) Have a household income of not more than the maximum income for eligible borrowers for a family the size of the borrower's family.~~

~~—(b)]~~ **1.** Meet the criteria for underwriting applied by the Federal Housing Administration, the Department of Veterans Affairs, *the Rural Development Administration of the United States Department of Agriculture* or the private mortgage insurance company, as appropriate, depending on which entity insures or guarantees the mortgage loan.

~~[(e)]~~ **2.** Have assets, including, without limitation, savings accounts, stocks, bonds and equity in real property, that do not exceed 50 percent of the acquisition cost of the qualified residence, unless the borrower is disabled or elderly and the Division determines that such assets are the primary source of income for the borrower.

~~[(d) Except as otherwise provided in this paragraph, have no ownership interest in a residence that was the principal residence of the borrower, other than a manufactured home that is not permanently affixed to real property, at any time within the 3 years immediately preceding the date on which the mortgage loan is originated. The provisions of this paragraph do not apply to a person applying to finance the purchase of a targeted area residence.~~

~~—(e) Have not previously obtained a mortgage loan pursuant to a program.~~

~~—2.— As used in this section:~~

~~—(a) “Principal residence” means a residence that meets the criteria for a principal residence set forth in 26 C.F.R. § 6a.103A-2(d)(3).~~

~~—(b) “Targeted area residence” has the meaning ascribed to it in 26 U.S.C. § 143(j) and 26 C.F.R. § 6a.103A-2(b)(3).]~~

Sec. 18. NAC 319.310, 319.375 and 319.385 are hereby repealed.

Sec. 19. 1. This regulation becomes effective on December 17, 2008.

2. Section 12 of this regulation expires by limitation on October 1, 2009.

TEXT OF REPEALED SECTIONS

319.310 “Acquisition cost” defined. (NRS 319.140, 319.210) “Acquisition cost” has the meaning ascribed to it in 26 U.S.C. § 143(k) and 26 C.F.R. § 6a.103A-2(b)(8).

319.375 “Maximum income for eligible borrowers” defined. (NRS 319.140, 319.210) “Maximum income for eligible borrowers” means the maximum household income established by the Division in accordance with the provisions of 26 U.S.C. § 143(f) that an applicant for a mortgage loan may earn to be an eligible borrower in a particular program.

319.385 “Maximum purchase price for a single-family residence” defined. (NRS 319.140, 319.210) “Maximum purchase price for a single-family residence” means the maximum price established by the Division in accordance with the provisions of 26 U.S.C. § 143(e) for which a single-family residence may be purchased to meet the criteria for a qualified residence for a particular program.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R192-08

The Administrator of the Housing Division of the Department of Business and Industry adopted regulations assigned LCB File No. R192-08 which pertain to chapter 319 of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by U.S. mail and e-mail to person who were known to have an interest in the subject of employer assisted housing as well as persons who specifically requested copies of such documentation. These documents were posted at both Housing Division office sites, the Director of Business & Industry offices , mailed to all county libraries in Nevada as well as the following sites:

Legislative Building 401 South Carson Street, Carson City, NV 89710
The Bradley Building 2501 East Sahara Ave, Las Vegas, NV 89104
Nevada Dept. of Cultural Affairs, 100 Stewart Street, Carson City, NV 89701

A workshop on the proposed regulations was held on Friday, September 5th, 2008 a copy of the Notice advertising the workshop is attached herein. The discussion of topics covered in the workshop were incorporated into changes to the proposed draft regulations and forwarded to the Legislative Counsel Bureau and subsequently a Notice of Intent to Act Upon the Regulations was published along with copies of the edited draft regulations.

Subsequently, a hearing on the draft edited regulations was held on September 26th, 2008 where testimony in support of the edited regulations was heard and no contradictory or further suggestions offered. A representative of a Taft-Hartley trust spoke in favor of adoption of the proposed regulations. A copy of a summary of the hearing testimony is available by mail to the Nevada Housing Division or e-mail request to nhd@nvhousing.state.nv.us

2. The number of people who attended the:

[a] Attended the Workshop September 5th, 2008 = 6

[b] Attended the Hearing September 26, 2008 = 7

[c] Provided written comments to regulations post September 5th, 2008 workshop =1

3. A description of how comment was solicited from affected business, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses as they were solicited from the public, via public notices and mailings to known interested parties. A summary of comments may be solicited from the Nevada Housing Division or e-mail request to nhd@nvhousing.state.nv.us

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The proposed regulations should be adopted with the changes incorporating the workshop comments. The permanent regulation were adopted via the September 26th, 2008 hearing with the changes proposed from the workshop of September 5th, 2008.

5. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

- a) Both adverse and beneficial effects; and**
- b) Both immediate and long-term effects.**

a) Both adverse and beneficial effects:

The proposed regulations incorporate the methods for implementing the beneficial effects of providing employer-assisted lending and down payment programs to assist their covered members obtaining permanent home financing. Stabilizing the workforce by helping them obtain permanent home financing helps both the employer as well as the community and provides the recipients a positive economic base. The only adverse effects from such a set of regulations implementing the legislature's goals in AB629 could possibly be any loan losses from the legislatively funded program. However, those are mitigated by the matching provisions from the employers by 50% due to the matching provisions prescribed in the legislation.

b) Both immediate and long-term effects:

The immediate effects will be to stimulate possible homeownership for as many as 900+ qualified employees of the employer groups. The long term effect is a more stabilized work force for the employer groups as well as less financial vulnerability to the employees themselves.

6. The estimated cost to the agency for enforcement of the adopted regulations.

The Nevada Housing Division believes that the long term costs for implementing this time sensitive and short-term funding program to be less than \$50,000 and the Interim Finance Committee of the Legislature has concurred through the passage of a Work Program Request to that end.

- 7. A description of any regulations of other state or government agencies which the proposed regulations overlap or duplicate and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

There are no other state or government agency regulations that the proposed regulations duplicate.

- 8. If the regulation includes provisions that are more stringent than a federal regulations which regulates the same activity, a summary of such provisions.**

There are no federal regulations relevant or governing a similar subject matter as the proposed regulations.

- 9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

There are no new fees associated with these proposed regulations.

- 10. Is the proposed regulation like to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?**

The Administrator and staff have determined that the proposed regulations does not impose either a direct or significant economic burden upon a small business nor does it restrict the formation, operation or expansion of a small business. In making this determination the Administrator determined that only the largest employers in the state, whose employee base is far in excess of the 'small business' definition would be impacted in any way by this regulation. Additionally, only those large business who maintain collective bargaining agreements are affected.