

Adopt Bea 600 to read as follows:

CHAPTER Bea 600 INVESTNH PROGRAM

Statutory Authority: RSA – 12-O:69-70

PART Bea 601 PURPOSE AND APPLICABILITY

Bea 601.01 Purpose. The purpose of this chapter is to implement the InvestNH Program and Fund established pursuant to RSA 12- O:69 -70.

Bea 601.02 Applicability. The rules of this chapter shall apply to any municipality or housing developer who applies for a grant or loan in the InvestNH Program that is supported by the InvestNH Fund established by 12-O:69.

PART Bea 602 DEFINITIONS

Bea 602.01 “Accessory Dwelling Unit” means “accessory dwelling unit” as defined in RSA 674:71, namely, is a residential living unit that is within or attached to a single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies. An Accessory Dwelling Unit can also be detached from the principal dwelling unit as long as it complies with the requirements of RSA 674:73.

Bea 602.02 “Affordable Rent” means housing costs (rent + utilities) at or below the maximum affordable gross rent (approximately 30% of 80% of Area Median Income) for the area as determined by the U.S. Department of Housing and Urban Development (HUD) Metropolitan or Non-Metropolitan Fair Market Rent Area to which the municipality belongs, as is established and updated annually by HUD.

Bea 602.03 “Area Median Income (AMI)” means the median income of the greater region, either the U.S. Department of Housing and Urban Development (“HUD”) Metropolitan or Non-Metropolitan Fair Market Rent Area to which the municipality belongs, as is established and updated annually by HUD.

Bea 602.04 “Building” means a structure which, when built, has a ceiling supported by walls or columns, and any appurtenances thereto.

Bea 602.05 “Building Permit” means a document issued by the state or by a local municipality, other than a zoning permit or land use permit, granting permission to a building owner or builder to construct or renovate a building, building component or structure within the state.

Bea 602.06 “Certificate of Occupancy” means a document issued by a local municipality or the state, upon the satisfactory completion of required inspections, granting permission to occupy the building for its intended use.

Bea 602.07 “Deed restricted” means housing which has a deed rider and is subject to a long-term affordability covenant with a provision for municipal or third-party monitoring which ensures the affordability of the units for a prescribed amount of time and ensures that the occupants of the housing income qualify to live in the housing units.

Bea 602.08 “Department” means the Department of Business and Economic Affairs (BEA).

Bea 602.09 “Dilapidated” means a building that is no longer not fit for habitation or use and cannot reasonably be restored to a habitable or useable state.

Bea 602.10 “Fire suppression system” means a system which is used to extinguish, control, or in some cases, entirely prevent fires from spreading or occurring and includes, but are not limited to fire sprinkler heads, water piping networks, standpipes, and smoke alarms.

Bea 602.11 “Grant applicant” means the municipality or developer applying for an InvestNH grant or loan.

Bea 602.12 “Grantee” means a municipality or developer that has been awarded a InvestNH grant or loan.

Bea 602.13 “Incentive” means a monetary form of assistance, support, offset, or the like that motivates or encourages a specific behavior, such as the development of a workforce housing project.

Bea 602.14 “Local Governing Body” means as defined in RSA 672:6, namely, “in addition to any other appropriate title: I. Board of selectmen in a town; II. City council or board of aldermen in a city; III. Village district commissioners in a village district; or IV. County commissioners in a county in which there are located unincorporated towns or unorganized places.”

Bea 602.15 “Loan Applicant” means a municipality or housing developer that is applying for InvestNH Program funding via a loan.

Bea 602.16 “Lot” means “lot” as defined in RSA 674:24, namely, “a parcel of land at least sufficient in size to meet the minimum requirements for use, coverage and area and to provide required yards and other open spaces.”

Bea 602.17 “Mortgage subsidy” means a monetary form of assistance, support, offset, or the like that reduces the cost of an individual or entity’s mortgage or mortgage related expenses.

Bea 602.18 “Multi-family Housing” means “multi-family housing” as defined in RSA 674:58(II), namely, “a building or structure containing 5 or more dwelling units, each designed for occupancy by an individual household.”

Bea 602.19 “Other types of housing necessary for the economic development of the state” means any type of housing that is suitable for year-round occupancy and is intended for non-transient occupancy. Other types of housing necessary for the economic development of the state can include, but are not limited to rental housing, housing that is intended for sale, accessory dwelling units, age-friendly housing, cottage courts, starter homes, duplexes, triplexes, quadplexes, and multi-family housing. Other types of housing also include the conversion of existing structures to residential use which result in new housing units, residential lots approved in a conventional or open space subdivision, the conversion of existing structures into condominium form of ownership, and conversion of seasonal housing units into units which are intended for year-round use.

Bea 602.20 “Overlay district” means a geographic zoning district layered over another existing zoning district or districts, or a defined area within a municipality or territory that lacks zoning, that implements new, additional, or revised regulations.

Bea 602.21 “Property” means, unless otherwise indicated, real property.

Bea 602.22 “Real property” means land, including land improvements, structures, and appurtenances thereto, but excludes moveable machinery and equipment. “Improvements” to real property include anything that makes the property, or any component thereof, more usable and valuable.

Bea 602.23 “Redevelopment costs” mean the costs of land or site acquisition, demolition, abatement, remediation, excavation, and construction of infrastructure.

Bea 602.24 “Regional revolving loan fund (RLF)” means a source of money from which loans are made in an ongoing manner for the purposes defined within this program, within a defined region of the state of New Hampshire, and with at least the same standards and limitations outlined within the InvestNH Program.

Bea 602.25 “Rental subsidy” means a monetary form of assistance, support, offset, or the like that reduces the cost of an individual or entity’s rent related expenses.

Bea 602.26 " Residential unit " means “residential unit” as defined in RSA 483-B:4, XIX, namely “a structure, or portion thereof, providing complete and independent living facilities, including permanent facilities for living, sleeping, eating, cooking, and sanitation which are used in common by one or more persons.” And it includes “dwelling unit” and “housing unit.”

Bea 602.27 “Residential use” means lands, buildings or structures or portions thereof used, or designed or intended for use as a home or residence of one or more individuals, and shall include a single detached dwelling, a semi- detached dwelling, a multiple-unit dwelling, an apartment dwelling, and the residential portion of a mixed-use building or structure.

Bea 602.28 “Site acquisition” means the process of identifying, analyzing, and purchasing real property, including securing any requisite zoning approvals or permitting related to that site.

Bea 602.29 “Site development” means the process and steps necessary to prepare a site for construction, such as drainage, pavement, lighting, earthwork, and other physical infrastructure needed on the site.

Bea 602.30 “Tax reduction” means a monetary form of assistance, support, offset, or the like that reduces the cost of an individual or entity’s tax related expenses, or the use of resources to enact a broad-based reduction in tax rate.

Bea 602.31 “Unit” means a single-family residence, or a single-family residence within in a multi-family housing development, which includes a private kitchen and private bathroom. A “new” unit is a unit that increases the total net number of units.

Bea 602.32 “Vacant” means a property that is empty of all personal property generally required for habitation and which has been unoccupied for 90 days.

Bea 602.33 “Workforce housing” means “workforce housing” as defined in RSA 674:58, namely housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. ‘Workforce housing’ also means rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20% of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing.”

PART Bea 603 PROGRAM ROLES

Bea 603.01 Department Roles. The InvestNH Program shall be administered by the New Hampshire Department of Business and Economic Affairs (BEA), such as utilizing staff in authorized positions, contingent upon availability of funding and with the support of a third-party vendor if the Department deems is necessary to ensure the effective administration of the program and available funding for administrative purposes will allow.

PART Bea 604 INVESTNH PROGRAM ELIGIBILITY, OPERATION, AND OVERSIGHT

Bea 604.01 InvestNH Principles. The purpose of the InvestNH Program is to make grants and loans to municipalities and to housing developers for the purpose of improving the ability to accelerate the approval of affordable workforce housing as defined in RSA 674:58, IV, and other types of housing determined by the department to be important for the economic development of the state. Per the definition of workforce housing, this includes housing for sale or for rent.

Grants and loans may be made by the Department to municipalities and to housing developers in which at least twenty (20) percent of the housing units to be developed will be affordable for a period of at least ten (10) years. Such units shall be affordable to and intended for occupancy by households with incomes up to eighty (80) percent of the area median income (AMI), as established by the U.S. Department of Housing and Urban Development.

Bea 604.02 Eligibility for InvestNH Program Grants and Loans.

(a) Municipalities within the State of New Hampshire are eligible to apply for available InvestNH Program grants and loans, subject to available funding, program guidance, and application requirements.

(b) For profit and non-profit housing developers are eligible to apply for available InvestNH Program grants and loans, subject to available funding, program guidance, and application requirements.

(c) Participation in the InvestNH Program is voluntary. Each eligible municipality and developer has the option, in its sole discretion, to apply to the Department to receive available funding.

(d) Eligible municipalities may apply either on their own behalf or on behalf of an eligible private housing developer. In such circumstances, the municipality or housing developer must either hold title to the property that is the subject of the program application or have a contract in place that will result in the acquisition of title to the property within 12 months, and if the municipality does not or will not hold title to the property, there must be an enforceable commitment that guarantees the property will be used for the purpose stated in the InvestNH funding application.

(e) Award recipients may not be debarred or suspended from programs and activities involving federal financial and non-financial assistance or benefits.

(f) Award recipients must be in good standing, where applicable, with the New Hampshire Department of Revenue and New Hampshire Secretary of State.

(g) All award recipients must affirm their awareness and understanding of all tax implications and any applicable state or federal requirements.

(h) All award recipients will be subject to a risk assessment and must comply with monitoring processes as required based on that assessment.

Bea 604.03 Eligible and Ineligible Uses of Funds Received Through InvestNH Program Grants and Loans.

(a) As it pertains to housing developments for either single or multi-family homes for sale or for rent, the following costs are eligible under this program:

- (1) Redevelopment costs for affordable housing development.
- (2) Site development.
- (3) Site acquisition.

(4) Code required improvements, such as fire suppression systems.

(5) Costs related to development of affordable housing focused overlay districts.

(6) Regional revolving loan funds (RLF).

(b) The Department may enable additional eligible hard costs related to housing developments, criteria and guidelines for which will be published by the Department in advance of relevant application rounds.

(c) Funds may not be used for costs related to incentives, tax reductions, or rental or mortgage subsidies.

Bea 604.04 Application for InvestNH Program Grants and Loans.

(a) The InvestNH Program application shall include information the Department determines is necessary for a comprehensive review of an applying eligible entity. Such information shall include, at a minimum, the following general information:

(1) Municipality or housing developer name.

(2) Municipal or housing developer contact information.

(3) Municipality or housing developer UEI or TIN

(4) Type of municipality (city, town, village district, or county in which there are located unincorporated places) or housing developer (for-profit or non-profit).

(5) Name of County in which project is located.

(6) Population based on the most recent census conducted by the U.S. Census Bureau.

(7) Amount of funding requested, intended use of funds, and reason for need/request.

(8) Project name.

(9) Project address.

(10) Additional project or property related data, such as when it was purchased or will be, when it was last occupied or will be, overall project plan, design, timeline, total and per unit costs, and description, project or property condition, available infrastructure, applicable zoning requirements, relevant environmental considerations, etc.

(11) Description of municipal oversight plan for housing developer (If applicable).

(12) The municipality or housing developer's written procurement procedures (if applicable).

(13) The municipality or housing developer's written standards of conduct regarding conflicts of interest and the selection, award, and administration of contracts (if applicable).

(14) Information on any other funding sources being utilized on the project or property.

(15) Number of new housing units, type, and rent/cost that are expected to result from the project or investment.

(16) Enforcement mechanism for the project or property's affordability commitment/requirements and period of affordability/restriction.

(17) Whether the project or property fits into a local or regional plan (e.g., the municipal master plan, the regional Comprehensive Economic Development Strategy (CEDS)). If so, name of the plan, relevant section, and page number to be provided.

(18) Supporting documentation for the application, ranging from actual and estimated costs, relevant permits, proof of ownership/purchase & sale contract, project/property plans, condition, affordability/deed restriction, financing commitments, etc.

(19) Other information as deemed appropriate by the Department.

(b) The detailed application, including any revisions or updates to it, shall be published in advance of each application round.

Bea 604.05 Application Scoring and Funding Determinations.

(a) The Department shall utilize a scoring matrix on a scale of 0-100, with a minimum score required for an application to be considered for funding, to facilitate the competitive granting of funding to eligible applicants. The matrix and any related guidance, including whether an award cap will be administered based on availability of funding, shall be published prior to each program application round.

(1) The scoring matrix shall:

- a. Take into account how the use of awarded funds will be utilized to increase the availability of workforce and other housing in the municipality and region relative to other applicants.
- b. Consider the housing need in the municipality or region relative to other applicants.
- c. Prioritize issuing awards statewide and avoid a concentration of investments.
- d. Ensure funding is accessible to smaller municipalities.
- e. Prioritize projects utilizing existing municipal infrastructure including but not limited to wastewater collection, water lines, sidewalks, and proximity to community green spaces.
- f. Incentivize projects repurposing existing structures and/or infill in community centers and downtowns.
- g. Ensure funding is provided to financially sound projects.
- h. Focus on supporting developing workforce housing and housing affordable for households at one hundred fifty (150) percent of AMI or less, while ensuring at least twenty (20) percent of the units in a given project are affordable for households at eighty (80) percent of AMI or less.

- i. Reward projects utilizing renewable energy, high efficiency ratings, and creative solutions to reduce or stabilize housing costs to renters.
 - j. Reward affordability requirements in excess of 10 years.
 - k. Encourage using funds in ways distinct from other available funding sources to fill gaps missed by those funding sources but meet a need in the housing market.
 - l. Incentivize collaboration among community and regional stakeholders to help ensure funded projects or programs will experience success.
- (2) The Department shall publish prior to an award application round the point allocation within the scoring matrix applicable for a given award round.
- a. A preliminary matrix is demonstrated below, in which 50 points would be the minimum for funding consideration:
 - 1. Use of funds to increase workforce housing and other affordable housing availability: 30 points.
 - 2. Municipal and regional housing needs, collaboration, and project location: 30 points
 - 3. Available infrastructure and infrastructure needs: 25 points.
 - 4. Demonstrated ability and capacity to complete the project: 15 points.

Bea 604.06 Funding Allocation, Distribution of Funds, and Award Terms.

(a) RSA 12 – O:69 establishes the InvestNH Fund as nonlapsing, to which \$10,000,000 has been initially provided for grants and loans through the InvestNH Program. Funds received by eligible entities in this program will be on a reimbursement basis upon submission by the awardee of required expense and supporting documentation. The Department may request additional supporting documentation if the submitted documentation gives rise to questions regarding the allowability of an expense, and the Department may deny reimbursement for unallowed expenses.

(1) Additional contractual terms that outline the manner and frequency of reimbursement, as well as other requirements like reporting, oversight, and compliance, will be contained in the award agreement signed by the State and the awardee, and subsequently authorized through the Governor and Executive Council.

- a. The basis of that agreement will be the State’s G-1 agreement, or other similar form that may be developed or modified by the New Hampshire Department of Justice or the Department of Administrative Services.

(2) The Department shall develop a procedure that accounts for any potential exceptions to the reimbursement policy, such as challenges encountered by smaller municipalities with limited budget or bonding capacity. Any such exception policy and procedure shall be published by the Department prior to relevant program application rounds.

(b) Should loan agreements be entered into as an award vehicle for this program, they will carry a zero (0) percent interest rate and forgivable, unless the financial structure of a given project would be negatively impacted by such terms.

(1) An awardee would be required to repay a loan if the awardee fails to comply with the conditions of the loan agreement, with potential waivers for incidental deviations from agreed upon terms that do not substantially alter the original agreement.

(c) All funds awarded will be subject to affordability requirements memorialized in a deed restriction, which shall include at least:

(1) Twenty (20) percent of the housing units to be developed will be affordable for a period of at least ten (10) years.

(2) Such units will be affordable to and intended for occupancy by households with incomes up to eighty (80) percent of the area median income (AMI), as established by the U.S. Department of Housing and Urban Development.

(d) Relative to affordability requirements attached to rental units, the period for which affordability requirements begin is upon occupancy, not upon completion of the unit. A committed affordable unit may be taken off the market for up to one hundred eighty (180) days out of any eighteen (18) month period without extending the affordability restriction period if the unit is undergoing necessary repairs or upgrades that make occupation impossible or impracticable. If the unit is unavailable for rent for more than one hundred eighty (180) days, the rent restriction tolls, adding one (1) day to the rent restriction period for every day over one hundred eighty (180) days it remains unavailable.

(e) Relative to affordability requirements attached to purchased homes or units, or homes or units for sale, the period for which affordability requirements begin is upon occupancy, not upon completion of the home or unit. A home or unit with affordability requirements attached may be taken off the market for up to one hundred eighty (180) days out of any eighteen (18) month period without extending the affordability restriction period if the unit is undergoing necessary repairs or upgrades that make occupation impossible or impracticable, or it has been listed for sale. If the home or unit is unavailable for more than one hundred eighty (180) days, the affordability restriction tolls, adding one (1) day to the affordability restriction period for every day over one hundred eighty (180) days it remains unavailable.

(f) The Department may develop additional guidance as it pertains to distribution of funds, which shall be published prior to each program application round.

Bea 604.07 Funding Round Priorities. To facilitate the most effective use of InvestNH funding, for each funding round the Department shall set and publish program priorities for that round prior to the application period. Funding priorities shall relate to the eligible uses of funding within the InvestNH Program.

Bea 604.08 InvestNH Grant and Loan Award Oversight.

(a) Project and expenditure reporting requirements:

(1) All expenditures of program funds must be reported to BEA at the frequency mandated by the award agreement with the eligible entity, typically monthly until the project is completed.

(2) Expenditures must be supported by related documentation, which will be provided along with invoices and/or reports.

(3) Additional reporting, such as quarterly and annually, may be required to validate ongoing compliance and project progress.

(4) Municipalities must abide by their own structured procurement guidelines and requirements, and any additional requirements outlined in the award agreement. Awardees, municipalities or housing developers, may not enter into contracts with related or affiliated contractors for

materials, labor, or services without demonstrating that the terms of those contracts are fair and competitive.

- (5) As will be outlined in any award agreement, property constructed, improved, or acquired with InvestNH Program funds will be subject to a deed restriction for certain affordability requirements of at least ten (10) years that binds the awardee and any successors, heirs, or assignees to the program affordability requirements and other program conditions during that restricted period. This deed restriction will survive sale, inheritance, bankruptcy, foreclosure, and any other form or means of transferring interest or title.
- a. If compliance with deed restrictions becomes impossible or impracticable, the person(s) or organization holding title to the property must seek disposition instructions from the State and comply with those instructions.
- (6) The Department shall engage in the requisite due diligence to confirm awardees satisfy the mandatory eligibility criteria, including but not limited to a debarment search, risk assessment, and assessment of whether the entity is in good standing with the Secretary of State's Office and the Department of Revenue Administration, where applicable.
- (7) The Department may develop additional guidance as it pertains to oversight and compliance, which shall be published prior to each program application round.

PART Bea 605 ADMINISTRATIVE REVIEW

Bea 605.01 Administrative Review Procedure and Time Limits

- (a) This section shall be applicable to each applicant that has applied for InvestNH funds and either received no funds or fewer funds than requested.
- (b) Applicants may apply for an administrative review of the scoring of its application by filing a written request within fifteen (15) calendar days after an award notice by the Department.
- (c) The request for an administrative review shall be signed by the chief executive officer of the municipality or governing body appointed designee and shall contain the reason for the requested review. The request shall not introduce new information and shall only explain or clarify information contained in the application submitted.
- (d) The Department shall review and respond to the written request within fifteen (15) calendar days after receipt of the request. The Department, based on the information in the request as well as the scoring criteria, shall affirm or modify the prior decision.

PART Bea 606 INVESTNH FUND AND PROGRAM

Bea 601.01 Purpose. There is hereby established in the state treasury the InvestNH fund, for the purpose of funding the program established in RSA 12-O:70. The fund shall be non-lapsing and shall be continually appropriated to the department. Funds may originate with federal or private grants or other funding sources beyond appropriations from general funds.

APPENDIX I

Provision of the Proposed Rule	Specific State or Federal Statutes or Regulations which the Rule is Intended to Implement
Bea 601.01	RSA 12-O:69; RSA 12-O:70
Bea 601.02	RSA 12-O:69

Bea 602.01	RSA 12-O:70; RSA 674:71; RSA 674:73
Bea 602.02-Bea 602.10	RSA 12-O:70
Bea 602.11	RSA 12-O:70; RSA 541-A:29
Bea 602.12-Bea 602.13	RSA 12-O:70
Bea 602.14	RSA 12-O:70; RSA 672:6
Bea 602.15	RSA 12-O:70; RSA 541-A:29
Bea 602.16	RSA 12-O:70; RSA 674:24
Bea 602.17	RSA 12-O:70
Bea 602.18	RSA 12-O:70; RSA 674:58, II
Bea 602.19	RSA 12-O:70
Bea 602.20-Bea 602.25	RSA 12-O:70
Bea 602.26	RSA 12-O:70; RSA 483-B:4, XIX
Bea 602.27-Bea 602.32	RSA 12-O:70
Bea 602.33	RSA 12-O:70; RSA 674:58
Bea 603.01	RSA 12-O:70
Bea 604.01	RSA 12-O:70; RSA 674:58, IV
Bea 604.02-Bea 604.03	RSA 12-O:70
Bea 604.04	RSA 12-O:70; RSA 541-A:29
Bea 604.05	RSA 12-O:70
Bea 604.06	RSA 12-O:69
Bea 604.07	RSA 12-O:70; RSA 541-A:15
Bea 604.08	RSA 12-O:70
Bea 605.01	RSA 12-O:70
Bea 606	RSA 12-O:69