



# **State of Nebraska**

## **Department of Economic Development**

**Report to the Executive Board of the Legislative Council regarding the federal statutory and regulatory compliance of projects and appropriations assigned to the Nebraska Department of Economic Development under LB1014, Section 10**

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## History

Section 9901 of the American Rescue Plan Act (ARPA), Pub. L. No. 117-2 (March 11, 2021), created Section 602 of the Social Security Act, 42 U.S.C. § 802, known as the Coronavirus State Fiscal Recovery Fund (CSFRF). The CSFRF was designed by Congress to support state government response to and recovery from the COVID-19 public health emergency. The CSFRF allocated just over \$1.04 Billion to the State of Nebraska to support these efforts.

During the 2022 legislative session, the Nebraska Legislature passed and on April 13, 2022, Governor Pete Ricketts signed into law, Nebraska Legislative Bill 1014 (LB1014). The resulting law appropriated a portion of the funds allocated to Nebraska from the CSFRF. Through LB1014, the Nebraska Department of Economic Development (DED) was appropriated \$201 Million to fund the development and implementation of nine (9) programs as indicated below. Section 10 of LB1014 requires “[e]ach such agency, board, or commission shall provide a report to the Executive Board of the Legislative Council within ninety days after the effective date of this act that outlines whether the projects or appropriations assigned to the agency, board, or commission by the Legislature comply with the federal act or regulations.” This report is being submitted by DED to satisfy this requirement.

## Applicable Laws, regulations, and guidance

In its efforts to implement Section 602 of the Social Security Act, 42 U.S.C. § 802, Treasury promulgated 31 C.F.R. Part 35. The regulations were first issued as an interim final rule and subsequently issued as a final rule which took effect on April 1, 2022. Treasury has released numerous guidance documents related to both the interim final rule and the final rule. The most up-to-date information on the CSFRF can be found on Treasury’s website at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>. This page includes links to, among other things, the Final Rule, Overview of the Final Rule, Final Rule FAQs, compliance documentation and more. These statutes, regulations, and guidance documents available as of June 23, 2022, were relied upon to develop this report.

Under the relevant federal statutes, regulations, and Treasury guidance, the State may use CSFRF funds for the following eligible uses:

- CSFRF Eligible Use 1. Replace lost public sector revenue, using this funding to provide government services up to the amount of revenue loss due to the pandemic;
- CSFRF Eligible Use 2. Support the COVID-19 public health and economic response by addressing COVID-19 and its impact on public health as well as addressing economic harms to households, small businesses, nonprofits, impacted industries, and the public sector;
- CSFRF Eligible Use 3. Provide premium pay for eligible workers performing essential work, offering additional support to those who have and will bear the greatest health risks because of their service in critical sectors; and/or
- CSFRF Eligible Use 4. Invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, to support vital wastewater and stormwater infrastructure, and to expand affordable access to broadband internet.

Eligible projects can also be developed outside of these categories by using the “Framework for Eligible Uses Beyond Those Enumerated” (Framework) indicated and explained in the Supplementary Information promulgated with the Final Rule. Nebraska, under this Framework, has broad flexibility to identify and respond to other pandemic impacts and serve other populations that experience pandemic impacts, beyond the enumerated uses and presumed eligible populations. To create an eligible project the state must; 1.) Identify COVID-19 public health or economic impact and 2.) design a response that addresses or responds to the impact. The responses can include a program, service, or capital expenditure. The response must be related and reasonably proportional to the harm and be reasonably designed to benefit impacted individual or class.

Sections throughout this report will refer back to these eligible use categories and the Framework.

The following report is divided according to LB1014 sections related to the appropriations and programs assigned to DED. Each section restates the language from LB1014, gives an executive summary for each funded program, and then details if the appropriations or programs comply with CSFRF statutes and regulations. The executive summary gives a high-level overview of the program with a short program explanation, the funding given to the program, and a one sentence answer as to the compliance with CSFRF. Every effort was made by DED to create programs that comply with CSFRF.

## LB1014, Section 42

(1) There is included in the appropriation to this program for FY2021-22 \$21,500,000 Federal Funds for state aid, which shall only be used for such purpose. There is included in the appropriation to this program for FY2022-23 \$18,000,000 Federal Funds for state aid, which shall only be used for such purpose.

### **[Rural Workforce Housing Land Development Program]**

(2)(a) There is included in the amount shown as aid for this program for FY2021-22 \$6,000,000 Federal Funds for grants to prepare land parcels pursuant to the Rural Workforce Housing Investment Act. There is included in the amount shown as aid for this program for FY2022-23 \$4,000,000 Federal Funds for grants to prepare land parcels pursuant to the Rural Workforce Housing Investment Act.

(b) For purposes of this subsection, preparing land parcels shall include:

(i) Laying of drinking water transmission lines;

(ii) Rehabilitation, renovation, maintenance, or costs to secure vacant or abandoned properties in disproportionately impacted communities;

(iii) Costs associated with acquiring and securing legal title of vacant or abandoned properties in disproportionately impacted communities and other costs to position the property for current or future use for the Rural Workforce Housing Investment Act;

(iv) Removal and remediation of environmental contaminants or hazards from vacant or abandoned properties in disproportionately impacted communities, when conducted in compliance with applicable environmental laws or regulations;

(v) Demolition or deconstruction of vacant or abandoned buildings in disproportionately impacted communities; and

(vi) Costs associated with inspection fees and other administrative costs incurred to ensure compliance with applicable environmental laws and regulations for demolition or other remediation activities in disproportionately impacted communities.

### **[LIHTC Pandemic Relief Program]**

(3) There is included in the amount shown as aid for this program for FY2021-22 \$10,500,000 Federal Funds to contract with the Nebraska Investment Finance Authority, as described in the Nebraska Investment Finance Authority Act, for development of affordable housing units eligible for federal four and nine percent low-income housing tax credit programs. There is included in the amount shown as aid for this program for FY2022-23 \$10,000,000 Federal Funds to contract with the Nebraska Investment Finance Authority, as described in the Nebraska Investment Finance Authority Act, for development of affordable housing units eligible for federal four and nine percent low-income housing tax credit programs.

### **[Pandemic Relief Housing Program]**

(4)(a) There is included in the amount shown as aid for this program for FY2021-22 \$4,000,000 Federal Funds for grants to nonprofit organizations that develop affordable housing, including housing for refugees and other such immigrants. There is included in the amount shown as aid for this program for

FY2022-23 \$4,000,000 Federal Funds for grants to nonprofit organizations that develop affordable housing, including housing for refugees and other such immigrants.

(b) The Department of Economic Development shall create a program in accordance with the federal American Rescue Plan Act of 2021, 42 U.S.C. 802, for the purpose of awarding grants to nonprofit organizations that develop affordable housing, including housing for refugees and other such immigrants.

Housing developed under this program shall be for households with an income at or below 185% of the most recent poverty guidelines published by the United States Department of Health and Human Services and shall include housing located in disproportionately impacted geographies or directed towards disproportionately impacted populations or households, including, but not limited to, those in a qualified census tract, as defined in 26 U.S.C. 42(d)(5) (B)(ii)(I), as such section existed on January 1, 2022.

(c) It is the intent of the Legislature that at least one-half of the funds distributed pursuant to this subsection (4) be awarded as grants to organizations located in counties with a population of fewer than 100,000 residents as determined by the most recent federal decennial census.

**[Refugee Job Training and Placement Program]**

(5) There is included in the amount shown as aid for this program for FY2021-22 \$1,000,000 Federal Funds for job training and placement grants to nonprofit organizations for employment and employability services for refugees.

(6) Expenditures from the appropriation to this program shall not be restricted to state aid if operating and administrative expenditures are necessary to administer the funding appropriated pursuant to this section. In such instances, an agency, board, or commission shall be reimbursed through the Federal Fund appropriation to the Military Department, Agency No. 31, Program No. 191, as identified in section 34 of this act.

Rural Workforce Housing Land Development Program

**EXECUTIVE SUMMARY**

**Description**

As an add-on to the Rural Workforce Housing Program this program provides grants to prepare land parcels in disproportionately impacted communities.

**Funding**

2021-22: \$6,000,000 | 2022-2023: \$4,000,000

**Is this program compliant with the State Fiscal Recovery Funds (CSFRF) law and regulations?**

Yes. This program is designed as a response to the negative economic impact of the pandemic on the workforce of a designated class of disproportionately impacted communities. The allowed expenditures under this section appear to be enumerated uses that Treasury has indicated in its guidance are presumed eligible uses for disproportionately impacted communities or are otherwise enumerated as eligible spending on water projects.

The Rural Workforce Housing Land Development Program is designed to use CSFRF funds as a response to the pandemic's economic harms as detailed above under CSFRF Eligible Use 2. When responding to the economic harms caused to disproportionately impacted household and communities, CSFRF funds may be spent on "improvements to vacant and abandoned properties, including rehabilitation or maintenance, renovation, removal and remediation of environmental contaminants, demolition or deconstruction, greening/vacant lot cleanup & conversion to affordable housing,," as indicated in Treasury's guidance document *Coronavirus State & Local Fiscal Recovery Funds: Overview of the Final Rule* ("Treasury Overview") on page 20. To create an eligible program to serve these impacted communities DED first had to conduct research to designate the class of disproportionately impacted rural communities to be served by this program.

Through its research DED designated as a class of "disproportionately impacted" rural Nebraska counties those counties that experienced disproportionate outcomes from the pandemic when compared to other rural Nebraska counties. It was determined that the COVID-19 Public Health Emergency exacerbated labor force development issues in certain rural Nebraska communities. The disproportionately impacted communities were identified at the county level as those counties having a decrease in labor force, or workforce, over the last decade which decrease was exacerbated by the COVID-19 pandemic; median household incomes below the state median; and a higher per capita share of housing cost-burdened households. This class by definition excludes counties with a population greater than 100,000 people (Douglas, Lancaster, and Sarpy counties). To be included in the disproportionately impacted class, a county had to meet at least three of the four criteria:

1. Labor force decreased from 2010 to 2019.
2. Labor force growth from 2019 to 2020 was depressed, due to the COVID-19 pandemic.

This was estimated by predicting the 2020 labor force, based on the average change over the last decade. If the actual 2020 labor force was less than the predicted labor force, DED considered the county's labor force to be negatively impacted.

3. More housing cost-burdened households per capita than the Nebraska measure.

"Housing cost-burdened" is defined as renter and owner households that spend 30 percent or more of their household income on housing.

4. The 2020 household median income was less than Nebraska's median income.

Based on this research it was determined that 41 counties met the definition of disproportionately impacted communities. This program will be limited to projects within those communities. The projects awarded will prepare land parcels as defined under LB1014.

As designed, DED believes the program's use of the CSFRF funds is compliant with CSFRF statutes and regulations.

## LIHTC Pandemic Relief Program

### **EXECUTIVE SUMMARY**

#### **Description**

The fund shall be used to provide for the development of affordable housing units eligible for the federal four (4) and nine (9) percent Low Income Housing Tax Credit program.

#### **Funding**

FY2021-22 \$10,500,000 & FY2022-23 \$10,000,000

#### **Is this program compliant with the State Fiscal Recovery Funds (CSFRF) law and regulations?**

Yes, programs and services to support long term housing needs are enumerated eligible uses under CSFRF to respond to the impact of the pandemic on households and communities. Loans are an acceptable means of disseminating funds.

The LIHTC Pandemic Relief Program is designed to use CSFRF funds as a response to the pandemic's economic harms as detailed above under CSFRF Eligible Use 2. One of the many enumerated ways to respond to the economic impact of the pandemic is to create or expand programs and services which support long-term housing security including the development of affordable housing and permanent supportive housing. See Treasury Overview page 17-18. According to the Treasury Overview, when providing affordable housing programs, households that would otherwise qualify for the National Housing Trust Fund and Home Investment Partnerships Program are presumed to have been impacted by the COVID-19 public health emergency.

This program will provide a subaward to the Nebraska Investment Finance Authority (NIFA) to create a Low-Income Housing Tax Credit Gap Financing Program to support NIFA's existing LIHTC program. The program was proposed by NIFA as a response to the negative economic impacts of the COVID-19 public health emergency. The households which benefit from the existing LIHTC program would otherwise qualify for the National Housing Trust Fund and Home Investment Partnerships Program and thereby are presumed impacted households. As designed, this response is enumerated as an eligible use (programs to support long-term housing security including development of affordable housing) for presumed impacted households (low-income).

DED believes the use of the CSFRF funds to support the further development of affordable housing is compliant with CSFRF statutes and regulations.

## Pandemic Relief Housing Program

### **EXECUTIVE SUMMARY**

#### **Description**

The program provides grants to nonprofits that that develop affordable housing, including housing for refugees and/or other such immigrants.

#### **Funding**

FY2021-22 \$4,000,000 & FY2022-23 \$4,000,000

#### **Is this program compliant with the State Fiscal Recovery Funds (CSFRF) law and regulations?**

Yes, programs and services to support long term housing needs are enumerated eligible uses under CSFRF to respond to the impact of the pandemic on households and communities.

The Pandemic Relief Housing Program is designed to use CSFRF funds as a response to the pandemic's economic harms as detailed above under CSFRF Eligible Use 2. One of the many enumerated ways to respond to the economic impact of the pandemic is to create programs or services to support long-term housing security including development of affordable housing and permanent supportive housing. Section 42 explicitly states that these funds should be used for "refugees and other such immigrants." "Refugees and other such immigrants" are not an enumerated class of "disproportionately impacted" individuals and thus DED had to undergo research to show that this group of households were impacted by the pandemic.

"Disproportionately impacted" persons are those that experienced disproportionate public health or economic outcomes from the pandemic. DED determines that the households of refugees and other such legal immigrants were disproportionately impacted by the COVID-19 public health emergency. From 2015 to 2020, an average of 800 refugees have immigrated to Nebraska annually. Nebraska's refugees experienced a more significant, negative economic impact during the COVID-19 pandemic than the native-born population. DED analyzed the change in the labor force participation rate and employment from 2019 to 2020. The available data is for the foreign-born population, which includes legally-admitted immigrants, refugees, temporary residents such as students and temporary workers, and undocumented immigrants. No data considers only refugees. Based on anecdotal evidence, the trends for the entire population hold true for the refugee population and are likely more negative. DED considered gender, age, educational attainment and the presence of children in the household.

The labor force participation rate describes the percent of the civilian, noninstitutionalized population, 16 years and older who are employed. It indicates both people who are working and those who are actively looking for work. In general, the refugee population has higher labor force participation rates than the native born population, except for women. However, from 2019 to 2020, both the native and foreign-born populations experienced a drop in the labor force participation rate. The refugee population experienced a larger decrease overall (1.6% vs 1.3%). This decrease was more severe for women (-1.7%), for people with less than a high school diploma (-1.5%), for high school graduates (-3.6%), and for those with children under 18 (-1.5%)<sup>3</sup>.

As implied by the labor force participation rates, the refugee population experienced significant job loss from the COVID-19 pandemic – twice that of the native born population (-9.8% vs -5.4%). COVID-19 was especially difficult for women (-11.1%), for those with less than a high school diploma (-17.0%), and for high school graduates (-13.0%). Every refugee group we considered across gender, age, educational attainment and children in the household lost more jobs during the pandemic than the native born population. Foreign-born job losses were anywhere from 1.3% to 5.5% greater than the native born population across those demographic groups. Parallel to the job loss, the foreign born population had higher unemployment rates overall (9.2% vs 7.8%), across gender, age, educational attainment, and children in the household. Unemployment rates were 1.1% to 2.8% higher than the native born population.

In addition to the negative economic impacts from job loss, the foreign born population earns lower wages than the native born population. The overall wage in 2020 was 13% lower than the native born population. While the gap narrowed slightly from 2019 to 2020, it is still significant. Furthermore, the wage gap is widest for refugees who have less than a Bachelor's degree. Nationally, the foreign born populations had median weekly earnings of \$885 (\$46,020 per year) in 2020. Nebraska's 2020 average weekly wage was 19.5% below the nation's (Bureau of Labor Statistics, exported June 8, 2022). Therefore, we can assume that refugees living in Nebraska earn about \$712 per week. On average, foreign born households who entered 2010 or later, have 1.54 workers and 3.66 people per household (U.S. Census Bureau, 2020). This implies that the average household income (\$56,996) meets the 300% FPG moderate income (\$79,500) guidelines established by Treasury for Nebraska.

Once it was determined that these households were disproportionately impacted, DED utilized the Framework described above to (1) identify exacerbated housing insecurity as a COVID -19 economic impact to this group of households and (2) designed this program as a response that addresses or responds to the impact. This program will provide grants to develop affordable housing including housing for households at or below 185% of the most recent poverty guidelines, refugee households and other legal immigrant households. Treasury Overview indicates on page 18 the “[p]rograms or services to support long-term housing security: including development of affordable housing and permanent supportive housing” is an enumerated eligible use for these three disproportionately impacted household groups.

By using relevant data and research DED has shown this class of persons was disproportionately impacted and thereby gives the evidence needed under CSFRF to compliantly administer this program. As designed, DED believes the program's use of the CSFRF funds is compliant with CSFRF statutes and regulations.

## Refugee Job Training and Placement Program

### **EXECUTIVE SUMMARY**

#### **Description**

The program provides grants to nonprofits that provide employment and employability services for refugees as a response to the negative economic impacts of the COVID-19 public health emergency.

#### **Funding**

FY2021-22 \$1,000,000

#### **Is this program compliant with the State Fiscal Recovery Funds (CSFRF) law and regulations?**

Yes, assistance to individuals who want and are available for work, including job training, are enumerated eligible uses under CSFRF to respond to the impact of the pandemic on households and communities.

The Pandemic Relief Housing Program is designed to use CSFRF funds as a response to the pandemic's economic harms as detailed above under CSFRF Eligible Use 2. One of the enumerated ways to respond to the economic impact of the pandemic is to aid individuals who want and are available for work, including job training. See Treasury Overview, page 18. Section 42 explicitly states that these funds should be used for "refugees." "Refugees" are not an enumerated class of "disproportionately impacted" individuals and thus DED had to undergo research to show that this group of households were impacted by the pandemic.

"Disproportionately impacted" households are those that experienced disproportionate public health or economic outcomes from the pandemic. DED determined that the households of refugees and other such legal immigrants were disproportionately impacted by the COVID-19 public health emergency. From 2015 to 2020, an average of 800 refugees have immigrated to Nebraska annually. Nebraska's refugees experienced a more significant, negative economic impact during the COVID-19 pandemic than the native-born population. DED analyzed the change in the labor force participation rate and employment from 2019 to 2020. The available data is for the foreign-born population, which includes legally admitted immigrants, refugees, temporary residents such as students and temporary workers, and undocumented immigrants. No data considers only refugees. Based on anecdotal evidence, the trends for the entire population hold true for the refugee population and are likely more negative. DED considered gender, age, educational attainment and the presence of children in the household.

The labor force participation rate describes the percent of the civilian, noninstitutionalized population, 16 years and older who are employed. It indicates both people who are working and those who are actively looking for work. In general, the refugee population has higher labor force participation rates than the native born population, except for women. However, from 2019 to 2020, both the native and foreign-born populations experienced a drop in the labor force participation rate. The refugee population experienced a larger decrease overall (1.6% vs 1.3%). This decrease was more severe for women (-1.7%), for people with less than a high school diploma (-1.5%), for high school graduates (-3.6%), and for those with children under 18 (-1.5%)<sup>3</sup>.

As implied by the labor force participation rates, the refugee population experienced significant job loss from the COVID-19 pandemic – twice that of the native born population (-9.8% vs -5.4%). COVID-19 was especially difficult for women (-11.1%), for those with less than a high school diploma (-17.0%), and for high school graduates (-13.0%). Every refugee group we considered across gender, age, educational attainment and children in the household lost more jobs during the pandemic than the native born population. Foreign-born job losses were anywhere from 1.3% to 5.5% greater than the native born population across those demographic groups. Parallel to the job loss, the foreign born population had higher unemployment rates overall (9.2% vs 7.8%), across gender, age, educational attainment, and children in the household. Unemployment rates were 1.1% to 2.8% higher than the native born population.

In addition to the negative economic impacts from job loss, the foreign born population earns lower wages than the native born population. The overall wage in 2020 was 13% lower than the native born population. While the gap narrowed slightly from 2019 to 2020, it is still significant. Furthermore, the wage gap is widest for refugees who have less than a Bachelor's degree. Nationally, the foreign born populations had median weekly earnings of \$885 (\$46,020 per year) in 2020. Nebraska's 2020 average weekly wage was 19.5% below the nation's (Bureau of Labor Statistics, exported June 8, 2022). Therefore, we can assume that refugees living in Nebraska earn about \$712 per week. On average, foreign born households who entered 2010 or later, have 1.54 workers and 3.66 people per household (U.S. Census Bureau, 2020). This implies that the average household income (\$56,996) meets the 300% FPG moderate income (\$79,500) guidelines established by Treasury for Nebraska.

The Nebraska Refugee Job Training and Placement Program is intended to help bridge the disparities in employment and income between the refugee and native born population. These disparities widened during the COVID-19 pandemic. While the data applies to a wider population (foreign born) than refugees, academic studies support the conclusions we have drawn. A study that compares refugees and immigrants from Iraq who live in Michigan found that refugees were twice as likely to be unemployed. Furthermore, refugees experienced more barriers in finding a job equivalent to what they held in their home country or a job that matched their academic or professional experience. The majority (69.2%) of Nebraska's refugees have come from Burma, Bhutan, and Iraq (Refugee Processing Center, 2015-2020), making these findings relevant to Nebraska. The study, combined with economic trends, indicates that a program focusing on job placement, increasing earnings, and decreasing underemployment is especially relevant to refugees in Nebraska to help mitigate the COVID-19 pandemic.

Providing job training and placement grants to nonprofits to provide employment and employability services to refugees fall under the enumerated eligible use "[a]ssistance to individuals who want and are available for work, including job training. . ." indicated on page 18 of the Treasury Overview. By using relevant data and research DED has shown this class of persons was disproportionately impacted and thereby gives the evidence needed under CSFRF to legally administer this program. As designed, DED believes the program's use of the CSFRF funds is compliant with CSFRF statutes and regulations.

## LB1014, SECTION 43

There is included in the appropriation to this program for FY2021-22 \$500,000 Federal Funds for state aid, which shall only be used for such purpose.

There is included in the amount shown as aid for this program for FY2021-22 \$500,000 Federal Funds for the purpose of awarding major sponsorship grants for international competitions to be hosted in Nebraska that are recognized by an international governing body.

Expenditures from the appropriation to this program shall not be restricted to state aid if operating and administrative expenditures are necessary to administer the funding appropriated pursuant to this section. In such instances, an agency, board, or commission shall be reimbursed through the Federal Fund appropriation to the Military Department, Agency No. 31, Program No. 191, as identified in section 34 of this act.

### International Event Sponsorship Fund

#### **EXECUTIVE SUMMARY**

##### **Description**

This law requires the Department to provide grants for the purpose of awarding major sponsorship grants for international competitions to be hosted in Nebraska.

##### **Funding**

FY2022-23 \$500,000

##### **Is this program compliant with the State Fiscal Recovery Funds (CSFRF) law and regulations?**

Yes, grants to support businesses in the travel, tourism, and hospitality industry are eligible expenditures under CSFRF. These grants must be used to support local Nebraska businesses.

The International Event Sponsorship Fund is designed to use CSFRF funds as a response to the pandemic's economic harms as detailed above under CSFRF Eligible Use 2. Nebraska may use CSFRF funding to provide aid to industries impacted by the COVID-19 pandemic under CSFRF Eligible Use 2. The travel, tourism, and hospitality sectors were designated as impacted industries by Treasury's Final Rule and detailed in the Treasury Overview on page 24-25. Under this eligible use, the industry must be designated as an impacted industry and the program must provide eligible aid to the impacted industry. Providing eligible aid is limited to those businesses that were operating prior to the pandemic and affected by required closures and other efforts to contain the pandemic. Businesses in the tourism, travel, and hospitality sector were decimated by the lack of business during the pandemic and have been slow to reopen since the most recent wave of health concerns, this grant seeks to mitigate harm done during the pandemic by promoting and supporting the businesses in the industry by bringing an international competition to Nebraska in 2023.

DED developed a program to utilize non-profit organizations that work with international governing boards to cover eligible costs to attract and/or manage high-impact events during 2023 in Nebraska. To qualify the Nebraska-based non-profit organizations must be working with a recognized international governing body that governs, manages and/or oversees an international event that will be held in

Nebraska in 2023; and/or the Nebraska-based non-profit must be working to attract an international event that is governed, managed or overseen by an international governing board to Nebraska in 2023. Non-profits will need to provide documentation demonstrating a relationship with an international governing board or documentation demonstrating that there is an opportunity/invitation to attract an event that is managed by an international governing board.

As designed, DED believes the program's use of the CSFRF funds is compliant with CSFRF statutes and regulations.

## LB1014, SECTION 44

There is included in the appropriation to this program for FY2022-23 \$20,000,000 Federal Funds for state aid, which shall only be used for such purpose.

There is included in the amount shown as aid for this program for FY2022-23 \$20,000,000 Federal Funds for wastewater pretreatment and runoff control for meat processing plant site development, which shall only be used for such purpose.

Expenditures from the appropriation to this program shall not be restricted to state aid if operating and administrative expenditures are necessary to administer the funding appropriated pursuant to this section. In such instances, an agency, board, or commission shall be reimbursed through the Federal Fund appropriation to the Military Department, Agency No. 31, Program No. 191, as identified in section 34 of this act.

### Nebraska Meat Processing Wastewater Pretreatment and Runoff Control Program

#### **EXECUTIVE SUMMARY**

##### **Description**

The law creates a program to fund wastewater pretreatment and runoff control for meat processing plant site development.

##### **Funding**

FY2022-23 \$20,000,000

##### **Is this program compliant with the State Fiscal Recovery Funds (CSFRF) law and regulations?**

Yes, DED has written the program to comply with CSFRF requirements by funding local municipalities to upgrade their water treatment facilities. The program would be out of compliance should it fund and pay for water treatment facilities owned and operated by a private business such as a meat processing plant that was not existing at the time of the pandemic.

As currently designed by DED, the Nebraska Meat Processing Wastewater Pretreatment and Runoff Control Program proposes to use CSFRF funds to make investment in water infrastructure as allowed under CSFRF Eligible Use 4. Treasury has clearly indicated that CSFRF funds may be used to make necessary investments in water infrastructure. Treasury recognizes that state governments have a tremendous need to address the consequences of deferred maintenance in drinking water systems and removal, management, and treatment of sewage and stormwater. As such, Treasury has indicated that states may undertake projects eligible under EPA's Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) with CSFRF fund.

In its guidance, Treasury requires that infrastructure projects must be "necessary" as defined in the guidance. This means that the projects must be: 1.) responsive to an identified need to achieve or maintain an adequate minimum level of service, which may include a reasonable projection of increased need, whether due to population growth or otherwise, 2.) a cost-effective means for meeting that need, taking into account available alternatives, and 3.) for investments in infrastructure that supply drinking

water in order to meet projected population growth, projected to be sustainable over its estimated useful life. DWSRF and CWSRF-eligible projects are “generally presumed to be necessary investments” according to Treasury.

CSFRF funds may also be used to fund additional types of projects— such as additional stormwater infrastructure, residential wells, lead remediation, and certain rehabilitations of dams and reservoirs — beyond the CWSRF and DWSRF, if they are found to be “necessary.” The following are examples of these other projects Treasury suggest may be eligible if found necessary:

- culvert repair, resizing, and removal;
- replacement of storm sewers;
- additional types of stormwater infrastructure;
- Infrastructure to improve access to safe drinking water for individual served by residential wells, including testing initiatives, and treatment/remediation strategies that address contamination;
- Dam and reservoir rehabilitation if primary purpose of dam or reservoir is for drinking water supply and project is necessary for provision of drinking water; and
- Lead remediation projects eligible under EPA grant programs authorized by the Water Infrastructure Improvements for the Nation (WIIN) Act, such as lead testing, installation of corrosion control treatment, lead service line replacement, as well as water quality testing, compliance monitoring, and remediation activities, including replacement of internal plumbing and faucets and fixtures in schools and childcare facilities

DED has created a program that could be compliant with both the language in LB1014 and the only potentially compliant CSFRF eligible use by allowing municipalities to apply for the grants for projects that would otherwise be eligible under the CWSRF program and support the development of a meat processing facility. To meet the “necessary” evaluation portion of this expenditure, municipalities will have to show in their application that their projected needs will be met by this project, that it is cost-effective compared to other projects, and that it will meet the projected growth of the population and be sustainable.

As designed, DED believes the program’s use of the CSFRF funds is compliant with CSFRF statutes and regulations.

## LB1014, SECTION 45

There is included in the appropriation to this program for FY2021-22 \$10,000,000 Federal Funds for state aid, which shall only be used for such purpose. There is included in the appropriation to this program for FY2022-23 \$30,000,000 Federal Funds for state aid, which shall only be used for such purpose.

There is included in the amount shown as aid for this program for FY2021-22 \$10,000,000 Federal Funds for capital construction grants to build mental health care and education capacity, which shall only be used for such purpose. There is included in the amount shown as aid for this program for FY2022-23 \$30,000,000 Federal Funds for capital construction grants to build mental health care and education capacity, which shall only be used for such purpose.

Expenditures from the appropriation to this program shall not be restricted to state aid if operating and administrative expenditures are necessary to administer the funding appropriated pursuant to this section. In such instances, an agency, board, or commission shall be reimbursed through the Federal Fund appropriation to the Military Department, Agency No. 31, Program No. 191, as identified in section 34 of this act.

### Building Mental Health Care and Education Capacity Program

#### **EXECUTIVE SUMMARY**

##### **Description**

This program is designed to improve mental health care and education as well as access to mental health and education services. This improved access to services will reduce utilization of hospital emergency rooms and crisis care; decrease police involvement and incarceration; foster a higher quality of life through better education, workforce, and life skills; and increase job retention.

##### **Funding**

FY2021-22 \$10,000,000 & FY2022-23 \$30,000,000

##### **Is this program compliant with the State Fiscal Recovery Funds (CSFRF) law and regulations?**

Yes, expenditures on behavioral health care are enumerated eligible uses under CSFRF and help respond to the Public Health Emergency.

Behavioral health care, including mental health treatment, is an acceptable use of under CSFRF Eligible Use 2 as a response to the negative health impacts of the public health emergency. Treasury guidance suggests a broad use of these funds are permitted when it comes to mental health care responses to the COVID-19 pandemic. The Final Rule states that capital expenditures or investments in property, facilities, or equipment for behavioral health care are eligible and then goes on to indicate that "Examples of capital expenditures related to behavioral health that Treasury recognizes as eligible include behavioral health facilities and equipment (e.g. inpatient or outpatient mental health or substance use treatment facilities, crisis centers, diversion centers), as long as they adhere to the standards detailed in the Capital Expenditures section."

This program has been developed to comply with CSFRF statutes and regulations as it uses CSFRF funds to expand access to mental health treatment and education by investing in behavioral health facilities and equipment. The legislative history contains testimony regarding the need for expanded mental health facilities throughout Nebraska. Many doctors testified citing research on the need for expanded mental health facilities. Regional hospitals testified that the demand for in-patient care far exceeds the demonstrated need. This testimony shows the need for such facilities and services needed to support the broader general public.

Additional reporting requirements will be necessary as these expenditures fall under the “Capital Expenditures” section of CSFRF regulations. DED will work with applicants to meet the reporting requirements, which include: 1.) Description of harm or need to be addressed, 2.) Explanation of why a capital expenditure is appropriate, and 3.) Comparison of the proposed capital expenditure against alternative capital expenditures.

Because of the overwhelming testimony indicating the need for expanded mental health services DED expects little difficulty in meeting these extended reporting requirements. As designed, DED believes the program’s use of the CSFRF funds is compliant with CSFRF statutes and regulations.

## LB1014, SECTION 46

There is included in the appropriation to this program for FY2021-22 \$50,000,000 Federal Funds for state aid, which shall only be used for such purpose. There is included in the appropriation to this program for FY2022-23 \$50,000,000 Federal Funds for state aid, which shall only be used for such purpose.

There is included in the amount shown as aid for this program for FY2021-22 \$50,000,000 Federal Funds for grants to capital projects eligible under the Shovel-Ready Capital Recovery and Investment Act, which shall only be used for such purpose. There is included in the amount show as aid for this program for FY2022-23 \$50,000,000 Federal Funds for grants to capital projects eligible under the Shovel-Ready Capital Recovery and Investment Act, which shall only be used for such purpose.

It is the intent of the Legislature that, in addition to the requirements of the Shovel-Ready Capital Recovery and Investment Act, the Department of Economic Development shall divide total appropriations, including any General Fund appropriations, for grants to capital projects eligible under the act equally by each congressional district and give priority to grant requests less than or equal to \$5,000,000. After eligible grantees with priority status have been awarded grant funds, remaining funds may be awarded on a statewide basis with the department considering each project based on the overall economic impact of the project to the respective community and the overall benefit to the State of Nebraska. It is the intent of the Legislature that the department make reasonable adjustments to dates and deadlines and request additional documentation pursuant to any requirements for use of Federal Funds received pursuant to the federal American Rescue Plan Act of 2021.

Expenditures from the appropriation to this program shall not be restricted to state aid if operating and administrative expenditures are necessary to administer the funding appropriated pursuant to this section. In such instances, an agency, board, or commission shall be reimbursed through the Federal Fund appropriation to the Military Department, Agency No. 31, Program No. 191, as identified in section 34 of this act.

### Shovel Ready Capital Recovery and Investment Act

#### **EXECUTIVE SUMMARY**

##### **Description**

The purpose of the Shovel-Ready Capital Recovery and Investment Act is to partner with the private sector by providing grants to qualified nonprofit organizations to assist such organizations with capital projects that have been delayed due to COVID-19 and that will provide a positive economic impact in the State of Nebraska.

##### **Funding**

FY2021-22 \$50,000,000 and FY2022-23 \$50,000,000

##### **Is this program compliant with the State Fiscal Recovery Funds (CSFRF) law and regulations?**

Yes, assistance to nonprofits that experienced negative economic impacts due to the pandemic can be provided grants to mitigate that economic harm. DED must also assess whether the capital project proposed is related and reasonably proportional to the harm.

The Shovel Ready Capital Recovery and Investment Act is designed to use CSFRF funds as a response to the pandemic's economic harms as indicated above as CSFRF Eligible Use 2. The program will provide grants to mitigate financial hardships experienced by these nonprofits. The state recognizes that nonprofits have faced significant challenges due to the pandemic including declines in revenues and increases in costs incurred to carry out their efforts. Nonprofits eligible for assistance under this program must fall into the specifically designated group of nonprofits that experienced negative economic impacts on the building efforts. This program will provide grants to the qualified nonprofit organizations to mitigate the financial hardships caused by COVID19 and to assist such organizations with projects delayed by COVID-19.

Any response to the negative economic impact using CSFRF funds must be reasonably proportional to the harm it seeks to address. As such, DED required the qualified nonprofits to provide financial statements or other substantiating documentation to demonstrate the organizations' decrease in revenues or increases in costs attributable to the COVID-19 public health emergency. Treasury has indicated that uses which bear no relation or are grossly disproportionate to the type or extent of harm experienced are not eligible uses. The scale of the response provided by this program was scaled to the harm demonstrated by the qualified nonprofit organizations.

As designed and implemented, DED believes the program's use of the CSFRF funds is compliant with CSFRF statutes and regulations.

## LB1014, SECTION 47

There is included in the appropriation to this program for FY2022-23 \$1,000,000 Federal Funds for state aid, which shall only be used for such purpose.

There is included in the amount shown as aid for this program for FY2022-23 \$1,000,000 Federal Funds for distribution to a political subdivision that owns or operates a nuclear power plant in Nebraska. Such political subdivision shall use the funds appropriated in this section to conduct a feasibility study to assess (1) siting options for new advanced nuclear reactors throughout Nebraska and (2) existing electric generation facilities based on key compatibility assets for such advanced nuclear reactors.

Expenditures from the appropriation to this program shall not be restricted to state aid if operating and administrative expenditures are necessary to administer the funding appropriated pursuant to this section. In such instances, an agency, board, or commission shall be reimbursed through the Federal Fund appropriation to the Military Department, Agency No. 31, Program No. 191, as identified in section 34 of this act.

### Nuclear Plant Siting Feasibility Study Program

#### **EXECUTIVE SUMMARY**

##### **Description**

This program would require that a nuclear plant site and feasibility study be conducted to assess (1) siting options for new advanced nuclear reactors throughout Nebraska and (2) existing electric generation facilities based on key compatibility assets for such advanced nuclear reactors. It would provide a grant of \$1,000,000.00 to a political subdivision that owns or operates a nuclear power plant in Nebraska.

##### **Funding**

FY2022-23 \$1,000,000

##### **Is this program compliant with the State Fiscal Recovery Funds (CSFRF) law and regulations?**

As the program is interpreted to mean that the feasibility study will assist in providing part of a pro rata share of capital costs of offsite clean energy facilities that provide power to treatment works, in constitute an eligible under CSFRF Eligible Use 4.

This program as slated to be implemented by DED would be an eligible use of CSFRF funding under CSFRF Eligible Use 4as it would use the funds to invest in water, sewer, and making necessary investments to improve access to clean drinking water, to support vital wastewater and stormwater infrastructure. As legislative history indicates that this appropriation was intended to assist in funding sustainable power generation for water treatment facilities, DED created this program that will allow this expenditure to be compliant with the CSFRF statutes and regulations under CSFRF Eligible Use 4.

In its guidance, Treasury requires that infrastructure projects must be “necessary” as defined in the guidance. This means that the projects must be: 1.) responsive to an identified need to achieve or maintain an adequate minimum level of service, which may include a reasonable projection of increased need, whether due to population growth or otherwise, 2.) a cost-effective means for meeting that need,

taking into account available alternatives, and 3.) for investments in infrastructure that supply drinking water in order to meet projected population growth, projected to be sustainable over its estimated useful life. DWSRF and CWSRF-eligible projects are “generally presumed to be necessary investments” according to Treasury.

Testimony given during the committee hearings suggested that more reliable electrical power was needed to keep water treatment facilities powered regardless of the weather conditions. Because this is a grant to conduct a feasibility study, the study must show the necessity of power generation in association with a water treatment facility. Treasury notes in the Final Rule FAQ question 6.10 that generally, qualified drinking water projects are allowed to expend funds regarding pre-project development costs that are tied to an eligible project, as well as those that are reasonably expected to lead to a project. It is noted that the Drinking Water State Revolving Fund allows for planning and evaluations uses, as well as numerous pre-project development costs, including costs associated with obtaining project authorization, planning and design, and project start-up like training and warranty for equipment. DED has determined that a feasibility study would be an eligible pre-project cost.

As designed and implemented, DED believes the program’s use of the CSFRF funds is compliant with CSFRF statutes and regulations.