

**Effective 3/2/2023**

**Effective until 5/1/2024**

**17-27a-408 Moderate income housing report -- Contents -- Prioritization for funds or projects -- Ineligibility for funds after noncompliance -- Civil actions.**

(1) As used in this section:

- (a) "Division" means the Housing and Community Development Division within the Department of Workforce Services.
- (b) "Implementation plan" means the implementation plan adopted as part of the moderate income housing element of a specified county's general plan as provided in Subsection 17-27a-403(2)(e).
- (c) "Initial report" means the one-time moderate income housing report described in Subsection (2).
- (d) "Moderate income housing strategy" means a strategy described in Subsection 17-27a-403(2)(b)(ii).
- (e) "Report" means an initial report or a subsequent report.
- (f) "Specified county" means a county of the first, second, or third class, which has a population of more than 5,000 in the county's unincorporated areas.
- (g) "Subsequent progress report" means the annual moderate income housing report described in Subsection (3).

(2)

(a) The legislative body of a specified county shall annually submit an initial report to the division.

(b)

(i) This Subsection (2)(b) applies to a county that is not a specified county as of January 1, 2023.

(ii) As of January 1, if a county described in Subsection (2)(b)(i) changes from one class to another or grows in population to qualify as a specified county, the county shall submit an initial plan to the division on or before August 1 of the first calendar year beginning on January 1 in which the county qualifies as a specified county.

(c) The initial report shall:

- (i) identify each moderate income housing strategy selected by the specified county for continued, ongoing, or one-time implementation, using the exact language used to describe the moderate income housing strategy in Subsection 17-27a-403(2)(b)(ii); and
- (ii) include an implementation plan.

(3)

(a) After the division approves a specified county's initial report under this section, the specified county shall, as an administrative act, annually submit to the division a subsequent progress report on or before August 1 of each year after the year in which the specified county is required to submit the initial report.

(b) The subsequent progress report shall include:

- (i) subject to Subsection (3)(c), a description of each action, whether one-time or ongoing, taken by the specified county during the previous 12-month period to implement the moderate income housing strategies identified in the initial report for implementation;
- (ii) a description of each land use regulation or land use decision made by the specified county during the previous 12-month period to implement the moderate income housing strategies, including an explanation of how the land use regulation or land use decision supports the specified county's efforts to implement the moderate income housing strategies;
- (iii) a description of any barriers encountered by the specified county in the previous 12-month period in implementing the moderate income housing strategies;

- (iv) information regarding the number of internal and external or detached accessory dwelling units located within the specified county for which the specified county:
    - (A) issued a building permit to construct; or
    - (B) issued a business license or comparable license or permit to rent;
  - (v) a description of how the market has responded to the selected moderate income housing strategies, including the number of entitled moderate income housing units or other relevant data;
  - (vi) any recommendations on how the state can support the specified county in implementing the moderate income housing strategies.
- (c) For purposes of describing actions taken by a specified county under Subsection (3)(b)(i), the specified county may include an ongoing action taken by the specified county prior to the 12-month reporting period applicable to the subsequent progress report if the specified county:
- (i) has already adopted an ordinance, approved a land use application, made an investment, or approved an agreement or financing that substantially promotes the implementation of a moderate income housing strategy identified in the initial report; and
  - (ii) demonstrates in the subsequent progress report that the action taken under Subsection (3)(c)(i) is relevant to making meaningful progress towards the specified county's implementation plan.
- (d) A specified county's report shall be in a form:
- (i) approved by the division; and
  - (ii) made available by the division on or before May 1 of the year in which the report is required.
- (4) Within 90 days after the day on which the division receives a specified county's report, the division shall:
- (a) post the report on the division's website;
  - (b) send a copy of the report to the Department of Transportation, the Governor's Office of Planning and Budget, the association of governments in which the specified county is located, and, if the unincorporated area of the specified county is located within the boundaries of a metropolitan planning organization, the appropriate metropolitan planning organization; and
  - (c) subject to Subsection (5), review the report to determine compliance with this section.
- (5)
- (a) An initial report does not comply with this section unless the report:
    - (i) includes the information required under Subsection (2)(c);
    - (ii) subject to Subsection (5)(c), demonstrates to the division that the specified county made plans to implement three or more moderate income housing strategies; and
    - (iii) is in a form approved by the division.
  - (b) A subsequent progress report does not comply with this section unless the report:
    - (i) subject to Subsection (5)(c), demonstrates to the division that the specified county made plans to implement three or more moderate income housing strategies;
    - (ii) is in a form approved by the division; and
    - (iii) provides sufficient information for the division to:
      - (A) assess the specified county's progress in implementing the moderate income housing strategies;
      - (B) monitor compliance with the specified county's implementation plan;
      - (C) identify a clear correlation between the specified county's land use decisions and efforts to implement the moderate income housing strategies;
      - (D) identify how the market has responded to the specified county's selected moderate income housing strategies; and

(E) identify any barriers encountered by the specified county in implementing the selected moderate income housing strategies.

(c)

(i) This Subsection (5)(c) applies to a specified county that has created a small public transit district, as defined in Section 17B-2a-802, on or before January 1, 2022.

(ii) In addition to the requirements of Subsections (5)(a) and (b), a report for a specified county described in Subsection (5)(c)(i) does not comply with this section unless the report demonstrates to the division that the specified county:

(A) made plans to implement the moderate income housing strategy described in Subsection 17-27a-403(2)(b)(ii)(Q); and

(B) is in compliance with Subsection 63N-3-603(8).

(6)

(a) A specified county qualifies for priority consideration under this Subsection (6) if the specified county's report:

(i) complies with this section; and

(ii) demonstrates to the division that the specified county made plans to implement five or more moderate income housing strategies.

(b) The Transportation Commission may, in accordance with Subsection 72-1-304(3)(c), give priority consideration to transportation projects located within the unincorporated areas of a specified county described in Subsection (6)(a) until the Department of Transportation receives notice from the division under Subsection (6)(e).

(c) Upon determining that a specified county qualifies for priority consideration under this Subsection (6), the division shall send a notice of prioritization to the legislative body of the specified county and the Department of Transportation.

(d) The notice described in Subsection (6)(c) shall:

(i) name the specified county that qualifies for priority consideration;

(ii) describe the funds or projects for which the specified county qualifies to receive priority consideration; and

(iii) state the basis for the division's determination that the specified county qualifies for priority consideration.

(e) The division shall notify the legislative body of a specified county and the Department of Transportation in writing if the division determines that the specified county no longer qualifies for priority consideration under this Subsection (6).

(7)

(a) If the division, after reviewing a specified county's report, determines that the report does not comply with this section, the division shall send a notice of noncompliance to the legislative body of the specified county.

(b) A specified county that receives a notice of noncompliance may:

(i) cure each deficiency in the report within 90 days after the day on which the notice of noncompliance is sent; or

(ii) request an appeal of the division's determination of noncompliance within 10 days after the day on which the notice of noncompliance is sent.

(c) The notice described in Subsection (7)(a) shall:

(i) describe each deficiency in the report and the actions needed to cure each deficiency;

(ii) state that the specified county has an opportunity to:

(A) submit to the division a corrected report that cures each deficiency in the report within 90 days after the day on which the notice of noncompliance is sent; or

- (B) submit to the division a request for an appeal of the division's determination of noncompliance within 10 days after the day on which the notice of noncompliance is sent; and
- (iii) state that failure to take action under Subsection (7)(c)(ii) will result in the specified county's ineligibility for funds and fees owed under Subsection (9).
- (d) For purposes of curing the deficiencies in a report under this Subsection (7), if the action needed to cure the deficiency as described by the division requires the specified county to make a legislative change, the specified county may cure the deficiency by making that legislative change within the 90-day cure period.
- (e)
  - (i) If a specified county submits to the division a corrected report in accordance with Subsection (7)(b)(i), and the division determines that the corrected report does not comply with this section, the division shall send a second notice of noncompliance to the legislative body of the specified county.
  - (ii) A specified county that receives a second notice of noncompliance may request an appeal of the division's determination of noncompliance within 10 days after the day on which the second notice of noncompliance is sent.
  - (iii) The notice described in Subsection (7)(e)(i) shall:
    - (A) state that the specified county has an opportunity to submit to the division a request for an appeal of the division's determination of noncompliance within 10 days after the day on which the second notice of noncompliance is sent; and
    - (B) state that failure to take action under Subsection (7)(e)(iii)(A) will result in the specified county's ineligibility for funds under Subsection (9).
- (8)
  - (a) A specified county that receives a notice of noncompliance under Subsection (7)(a) or (7)(e)(i) may request an appeal of the division's determination of noncompliance within 10 days after the day on which the notice of noncompliance is sent.
  - (b) Within 90 days after the day on which the division receives a request for an appeal, an appeal board consisting of the following three members shall review and issue a written decision on the appeal:
    - (i) one individual appointed by the Utah Association of Counties;
    - (ii) one individual appointed by the Utah Homebuilders Association; and
    - (iii) one individual appointed by the presiding member of the association of governments, established pursuant to an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, of which the specified county is a member.
  - (c) The written decision of the appeal board shall either uphold or reverse the division's determination of noncompliance.
  - (d) The appeal board's written decision on the appeal is final.
- (9)
  - (a) A specified county is ineligible for funds and owes a fee under this Subsection (9) if:
    - (i) the specified county fails to submit a report to the division;
    - (ii) after submitting a report to the division, the division determines that the report does not comply with this section and the specified county fails to:
      - (A) cure each deficiency in the report within 90 days after the day on which the notice of noncompliance is sent; or
      - (B) request an appeal of the division's determination of noncompliance within 10 days after the day on which the notice of noncompliance is sent;

- (iii) after submitting to the division a corrected report to cure the deficiencies in a previously-submitted report, the division determines that the corrected report does not comply with this section and the specified county fails to request an appeal of the division's determination of noncompliance within 10 days after the day on which the second notice of noncompliance is sent; or
  - (iv) after submitting a request for an appeal under Subsection (8), the appeal board issues a written decision upholding the division's determination of noncompliance.
- (b) The following apply to a specified county described in Subsection (9)(a) until the division provides notice under Subsection (9)(e):
  - (i) the executive director of the Department of Transportation may not program funds from the Transportation Investment Fund of 2005, including the Transit Transportation Investment Fund, to projects located within the unincorporated areas of the specified county in accordance with Subsection 72-2-124(6);
  - (ii) beginning with the report submitted in 2024, the specified county shall pay a fee to the Olene Walker Housing Loan Fund in the amount of \$250 per day that the specified county:
    - (A) fails to submit the report to the division in accordance with this section, beginning the day after the day on which the report was due; or
    - (B) fails to cure the deficiencies in the report, beginning the day after the day by which the cure was required to occur as described in the notice of noncompliance under Subsection (7); and
  - (iii) beginning with the report submitted in 2025, the specified county shall pay a fee to the Olene Walker Housing Loan Fund in the amount of \$500 per day that the specified county, for a consecutive year:
    - (A) fails to submit the report to the division in accordance with this section, beginning the day after the day on which the report was due; or
    - (B) fails to cure the deficiencies in the report, beginning the day after the day by which the cure was required to occur as described in the notice of noncompliance under Subsection (7).
- (c) Upon determining that a specified county is ineligible for funds under this Subsection (9), and is required to pay a fee under Subsection (9)(b), if applicable, the division shall send a notice of ineligibility to the legislative body of the specified county, the Department of Transportation, the State Tax Commission, and the Governor's Office of Planning and Budget.
- (d) The notice described in Subsection (9)(c) shall:
  - (i) name the specified county that is ineligible for funds;
  - (ii) describe the funds for which the specified county is ineligible to receive;
  - (iii) describe the fee the specified county is required to pay under Subsection (9)(b), if applicable;
  - (iv) state the basis for the division's determination that the specified county is ineligible for funds.
- (e) The division shall notify the legislative body of a specified county and the Department of Transportation in writing if the division determines that the provisions of this Subsection (9) no longer apply to the specified county.
- (f) The division may not determine that a specified county that is required to pay a fee under Subsection (9)(b) is in compliance with the reporting requirements of this section until the specified county pays all outstanding fees required under Subsection (9)(b) to the Olene Walker Housing Loan Fund, created under Title 35A, Chapter 8, Part 5, Olene Walker Housing Loan Fund.

(10) In a civil action seeking enforcement or claiming a violation of this section or of Subsection 17-27a-404(5)(c), a plaintiff may not recover damages but may be awarded only injunctive or other equitable relief.