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**IDAPA 28
TITLE 03
CHAPTER 01**

28.03.01 – RULES OF THE IDAHO OPPORTUNITY FUND

000. LEGAL AUTHORITY.

These rules are promulgated under the legal authority of Section 67-4733, Idaho Code. (3-20-14)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 28.03.01, “Rules of the Idaho Opportunity Fund.” (3-20-14)

02. Scope. These rules implement House Bill H100, enacted by the First Regular Session of the Sixty-second Legislature and signed into law on March 21, 2013. These rules amend Chapter 47, Title 67, Idaho Code, by the addition of new sections 67-4732 through 67-4736, Idaho Code. The three (3) new sections provide a short title and legislative intent, provide rulemaking authority to the Director of the Department of Commerce create the Opportunity Fund in the State Treasury, provide for the makeup and use of the fund, provide that agreements are required for disbursement of funds and provide for annual reporting by the Director of the Department of Commerce. (3-20-14)

002. WRITTEN INTERPRETATIONS.

The Department has no written interpretations of these rules. (3-20-14)

003. ADMINISTRATIVE APPEALS.

The award of grants under the Opportunity Fund are made at the discretion of the Director of the Department of Commerce. In light of the discretionary nature of awarding these grants, there is no administrative appeal under these rules. (3-20-14)

004. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.

The mailing address of the Department for information regarding the Opportunity Fund Act is: 700 West State Street, PO Box 83720, Boise, ID 83702-0093; the telephone number is (208) 334-2470; and the facsimile number is (208) 334-2631. Documents may be filed at the state office during regular business hours of 8am to 5pm, Monday through Friday, excluding holidays. (3-20-14)

005. PUBLIC RECORDS ACT COMPLIANCE.

All rules contained in this chapter are subject to and in compliance with the Idaho Public Records Act (Title 74, Chapter 1, Idaho Code). (3-20-14)

006. -- 009. (RESERVED)

013. DEFINITIONS.

01. Company Performance Agreement. An agreement between a local government and a Grantee Business, in addition to any requirements in rules adopted by the Department. (3-20-14)

02. Department. Idaho Department of Commerce. (3-20-14)

03. Grantee Business. A non-governmental company or organization that receives funding through a Company Performance Agreement. (3-20-14)

04. Local Government Grant Agreement. An agreement between the Department and one (1) or more local governments. (3-20-14)

05. Public Cost. Any cost incurred by the state of Idaho or local government of the state of Idaho for the purpose of promoting economic development to retain, expand, or attract quality jobs in industries deemed vital to the health of the local and statewide economy. Public costs do not include impact fees or easements. (3-20-14)

014. GRANT AWARDS.

01. Funding. The Director of the Department may, in his sole discretion, award Opportunity Fund grants to local government for public costs incurred with the purpose to retain, expand or attract jobs which shall include: (3-20-14)

a. Construction of or improvements to new or existing water, sewer, gas or electric utility systems for new or existing buildings to be used for industrial or commercial operations; (3-20-14)

b. Flood zone or environmental hazard mitigation; or (3-20-14)

c. Construction, upgrade or renovation of other infrastructure related items including, but not limited to, railroads, broadband, parking lots, roads or other public costs that are directly related to specific job creation or expansion projects. (3-20-14)

02. Local Match. The local government must provide allowable local match. Allowable match includes those costs which are allowable within the Opportunity Fund and must be provided by the local government as cash, in-kind services, fee waivers (such as development impact fees), donation of assets, the provision of infrastructure or a combination thereof. The match must represent a material commitment from the local government that is commensurate with the local government's financial condition. The Director of the Department has the authority to approve other forms of local match or waive the local match requirements. (3-20-14)

03. Local Government Grant Agreements. Local Government Grant Agreements will be entered into between the Department and one (1) or more local governments, and shall contain the following provisions: (3-20-14)

a. A commitment on the part of the local government to match, in whole or in part, the funds allocated by the Department; (3-20-14)

b. A provision requiring the local government to recapture any funds to which the local government is entitled under the Company Performance Agreement; (3-20-14)

c. A provision requiring repayment from the local government to the Department for any funds used for unapproved purposes or disbursed prior to compliance with the Company Performance Agreement or achievement of the job creation or other performance targets; (3-20-14)

d. A provision allowing the Department access to records possessed by the local government necessary to ensure compliance with the Company Performance Agreement and with the requirements of the Opportunity Fund; (3-20-14)

e. A provision establishing a schedule for the disbursement of funds from the Opportunity Fund to the local government that reflects the disbursement schedule established in the Company Performance Agreement; and (3-20-14)

f. Any other lawful provision the Department deems necessary to ensure the proper use of state funds. (3-20-14)

04. Company Performance Agreements. Company Performance Agreements will be entered into between one (1) or more local governments and a Grantee Business, and may contain the following provisions: (3-20-14)

a. A commitment to create or retain a specified number of jobs within a specified salary range at a specific location; (3-20-14)

b. A commitment regarding the time period in which the jobs will be created or retained and the minimum time period for which the jobs must be maintained; (3-20-14)

- c.** A commitment to complete the construction related to the agreed upon capital expenditures; (3-20-14)
- d.** A provision that a reasonable percentage of the total amount of the grant be withheld until specified performance targets are met; (3-20-14)
- e.** A provision that a reasonable percentage of the total amount of the grant be withheld until the specified number of jobs are maintained for a specified period of time; (3-20-14)
- f.** A commitment to provide proof satisfactory to the local government and the Department of new jobs created or existing jobs retained and the salary level of those jobs; (3-20-14)
- g.** A provision that funds received under the Company Performance Agreement may be used only for a purpose as authorized by the Opportunity Fund; (3-20-14)
- h.** A provision allowing the Department or the local government to inspect the records of the Grantee Business as required to confirm compliance with the Company Performance Agreement or with the requirements of the Opportunity Fund. The provision shall limit the access of the Department and/or local government to only those records of the Grantee Business that are necessary to ensure compliance; (3-20-14)
- i.** A provision establishing the method for determining compliance with the Company Performance Agreement; (3-20-14)
- j.** A provision establishing a schedule for disbursement of funds under the Company Performance Agreement that allows disbursement of funds only in proportion to the amount of performance completed under the Company Performance Agreement; (3-20-14)
- k.** A provision requiring repayment of grant funds and corresponding terms for repayment, if applicable, in the event a Grantee Business subsequently fails to comply with the terms of the Company Performance Agreement; (3-20-14)
- l.** A provision that any repayments of grant funds required if the performance targets are not achieved may be prorated to reflect a partial attainment of job creation or other performance targets; and (3-20-14)
- m.** Any other lawful provision the Department or the local government finds necessary to ensure the proper use of state or local funds. (3-20-14)
- 05. Disbursements.** Funds will be disbursed from the Opportunity Fund to the local government as defined in the Local Government Grant Agreement and after the local government has demonstrated that the Grantee Business has complied with the terms of the Company Performance Agreement. (3-20-14)
- 06. Award Amounts.** The amount of each grant shall be determined by the Director, in his sole discretion. (3-20-14)
- 016. REPORTING.**
- 01. Quarterly.** The Director of the Department shall report to the Economic Advisory Council quarterly on the grant activity and performance. (3-20-14)
- 02. Annually.** The Director of the Department shall publish an annual report regarding the state of the Opportunity Fund no later than September 30 each year. The report shall contain information on the commitment of funds, disbursement and use of the funds, the number of jobs committed and created, the total capital expenditures resulting from grant funds and the median wage of total jobs created. The annual report will be made available to the Governor, the Joint Finance-Appropriations Committee and the public. (3-20-14)
- 017. -- 999. (RESERVED)**

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