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**Rules of**  
**Department of Economic**  
**Development**  
**Division 170—Missouri Housing Development**  
**Commission**  
**Chapter 6—Missouri Low Income Housing Tax Credit**

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## Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

### Division 170—Missouri Housing Development Commission

#### Chapter 6—Missouri Low Income Housing Tax Credit

#### 4 CSR 170-6.010 Criteria for Eligibility Statement

(Rescinded January 30, 2011)

*AUTHORITY: Chapter 215 and section 215.030(5), (12), and (19), RSMo Supp. 1990. Emergency rule filed Sept. 25, 1991, effective Oct. 5, 1991, expired Feb. 1, 1992. Original rule filed Oct. 24, 1991, effective March 9, 1992. Rescinded: Filed May 24, 2010, effective Jan. 30, 2011.*

#### 4 CSR 170-6.100 Criteria for Eligibility Statement

*PURPOSE: This rule establishes the criteria upon which the eligibility statements for the Missouri low income housing tax credit will be issued, as mandated in sections 135.352 and 135.800–135.830, RSMo.*

(1) All terms used in this chapter shall bear the meaning described in the state housing act, 4 CSR 170-1.100, and section 135.350, RSMo, as applicable. When used in this chapter, the following terms shall have the following meanings:

(A) Carryover. An agreement provided to developments which are not ready to be placed in service by year-end, but which have incurred or will incur within a period of twelve (12) months, more than ten percent (10%) of the total development cost pursuant to 26 U.S.C.A. 42(h)(1)(E)–(F);

(B) Conditional reservation. A countersigned document generated by the commission staff following approval of a development which will describe the type, amount(s), terms, and requirements applicable to the development in question. This document is subject to the requirements that the commission determines necessary or appropriate to assure that the development will meet the goals of the Qualified Allocation Plan (QAP) in a timely manner;

(C) Cost certification. A certification of actual costs of the development, as prepared by a certified public accountant;

(D) Firm commitment. A written agreement which sets forth the final underwritten terms and requirements of a transaction;

(E) Firm submission. The information and documents which the taxpayer is required to submit to commission staff, as identified in

the conditional reservation;

(F) Housing credit administrator. The entity which is empowered as the federal low income housing tax credit (federal LIHTC) and Missouri low income housing tax credit (MO LIHTC) administrator for the state of Missouri;

(G) Land Use Restriction Agreement (LURA). An agreement which describes the covenants which the applicant is making which will run with the land;

(H) Notice of Funding Availability (NOFA). A document which alerts the public that the commission has funds available for the construction or rehabilitation of affordable housing developments; and

(I) Qualified Allocation Plan (QAP). A plan which sets forth the process the commission will use to administer the federal LIHTC and MO LIHTC in Missouri.

(2) The commission is the state of Missouri's housing credit administrator. This designation gives the commission the responsibility of administering the federal LIHTC and MO LIHTC. The responsibilities of a housing credit administrator are defined in 26 U.S.C.A. 42(m) and in sections 135.350–135.363, RSMo.

(3) The MO LIHTC is awarded by the commission in a competitive manner. The commission shall vote to approve the QAP. The commission shall, prior to taking a final vote to approve the QAP, provide to the general public of the state of Missouri a reasonable amount of time to make comments on the draft QAP. The commission shall solicit written comments as well as comments at QAP specific public hearing. The QAP shall address in one (1) document the administration plan for both the federal LIHTC and the MO LIHTC.

(4) The rules establishing eligibility of a taxpayer to receive federal LIHTC and, therefore, the MO LIHTC, are established by the federal government.

(5) The commission is charged with allowing no more MO LIHTC than necessary to make the proposed development feasible. The amount of MO LIHTC allowed will be calculated at the sole discretion of the commission, but in no case may the amount of MO LIHTC exceed the amount of federal LIHTC awarded to a development.

(6) The commission may elect, in its sole discretion, an amount of MO LIHTC which is less than the amount which may be available to award based on the amount of federal LIHTC available.

(7) The commission shall prepare an initial eligibility statement which specifies the amount of the federal LIHTC and MO LIHTC allocated.

(8) The eligibility statement shall also identify the low income housing tax credit number, building identification number, contact information for the taxpayer, the building address, date of allocation, the year in which the eligibility statement is approved for use, and date the building was placed in service. The eligibility statement shall be signed by an authorized official of the commission.

(9) The commission will issue an eligibility statement for each qualified Missouri project. The taxpayer shall provide the commission with all required information necessary to generate the eligibility statement.

(10) The lifecycle of a MO LIHTC is represented as follows:

(A) Commission staff generates a draft QAP, from time-to-time, which is approved by the commission to post for public comment;

(B) The QAP is posted for public comment;

(C) Commission staff holds public hearings;

(D) The commission considers public comments and adopts a final QAP;

(E) The commission approves a NOFA, which identifies the amount of federal and MO LIHTC available;

(F) Applications are received by individuals and entities seeking to participate under the NOFA;

(G) The commission staff seeks out input from the applicable Missouri state representative, Missouri state senator, and the chief executive of the municipality in which the development resides;

(H) The commission staff conducts public hearings to solicit public comment on proposed applications;

(I) Commission staff, under the supervision of the director of rental production, receives and analyzes the applications and makes recommendations to the commission;

(J) The commission votes to approve the development(s);

(K) The commission staff sends the applicants who were approved by the commission a conditional reservation and, if applicable, a carryover;

(L) The applicant provides commission staff with the firm submission requirement documents and demonstrations of development progress;

(M) Commission staff will prepare a firm



commitment following review and approval of firm submission items, making adjustments where necessary;

(N) Commission staff prepares and facilitates the recording of the LURA. The LURA will be recorded at the time the applicant closes into their partnership and prior to any debt instruments;

(O) Commission staff will agree to the draft of the partnership agreement or operating agreement prior to execution by the parties thereto;

(P) Construction shall not commence on the development prior to the execution of the partnership agreement or operating agreement;

(Q) Commission staff monitors construction of the development;

(R) Commission staff requires a cost certification which reflects the amount of credit which is allocated to the transaction for the first year, following construction completion and prior to issuing an initial eligibility statement; and

(S) Commission staff will issue an eligibility statement each year of the period for which the taxpayer will receive MO LIHTC.

(11) If there is any recapture of the federal LIHTC, there is an equal recapture of the MO LIHTC. The taxpayer is required to provide commission staff with correspondence received regarding federal LIHTC recapture, including, but not limited to, a final notice of any recaptured federal LIHTC. Furthermore, the taxpayer shall also provide commission staff with an annual report which identifies the amount of federal LIHTC the taxpayer determines they were not entitled to claim during the preceding tax year. This information shall be provided in a form the commission staff shall prescribe from time-to-time.

(12) The director of the Missouri Department of Revenue or the director of the commission may require the filing of additional documentation necessary to determine the accuracy of a tax preference claimed.

*AUTHORITY: sections 135.359 and 215.030(5), (12), and (19), RSMo 2000.\* Original rule filed May 24, 2010, effective Jan. 30, 2011.*

*\*Original authority: 135.359, RSMo 1990, amended 1991, 1993, 1994, 1995 and 215.030, RSMo 1969, amended 1974, 1982, 1985, 1989, 1993, 1995, 1998.*

**4 CSR 170-6.200 Additional Missouri Low Income Housing Tax Credit Requirements**

*PURPOSE: The purpose of this rule is to pro-*

*vide information to taxpayers subject to the Tax Credit Reporting Act of 2004 and to address the applicability of relocation to a Missouri low income housing tax credits (MO LIHTC) development.*

(1) In addition to the requirements identified in section 135.802(6), RSMo, a taxpayer receiving Missouri low income housing tax credits (MO LIHTC) shall provide to the Missouri Housing Development Commission (commission) evidence of the relocation requirements, as set forth in section 523.205, RSMo.

(2) The taxpayer shall provide the commission with a determination of projected labor costs under section 135.802(6), RSMo, by using the actual labor costs or by way of a construction cost estimator similar to the RS Means Contractors Pricing Guide.

(3) All reporting under section 135.805(1), RSMo, is due on the last day of the annual reporting period, which is deemed to end on June 30 of each year. All developments must provide three (3) full years of reports under this section. The report shall be filed in the form, manner, and within the timing requirements required by statute.

*AUTHORITY: sections 135.359 and 215.030(5), (12), and (19), RSMo 2000.\* Original rule filed May 24, 2010, effective Jan. 30, 2011.*

*\*Original authority: 135.359, RSMo 1990, amended 1991, 1993, 1994, 1995 and 215.030, RSMo 1969, amended 1974, 1982, 1985, 1989, 1993, 1995, 1998.*