



Rules of
Department of Economic
Development
Division 170—Missouri Housing Development
Commission
Chapter 8—Debarment and Suspension Policy

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Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 170—Missouri Housing Development Commission

Chapter 8—Debarment and Suspension Policy

4 CSR 170-8.010 Definitions

PURPOSE: This rule defines terms used in 4 CSR 170-8.

(1) When used in this chapter, the following terms shall have the following meaning:

(A) Adequate evidence. Information sufficient to support the reasonable belief that a particular act or omission has occurred;

(B) Affiliate. Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other or a third person has control or has the power to control both. The ways used to determine control include, but are not limited to: a) interlocking management or ownership; b) identity of interest among family members; c) shared facilities and equipment; d) common use of employees; or e) a business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person;

(C) Civil judgment. The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801-12);

(D) Commission. A governmental instrumentality of the state and a body corporate and politic created by Chapter 215, RSMo, and supplemented in Appendix B-1 to the Missouri Omnibus Reorganization Act of 1974;

(E) Commissioners. The appointed and ex officio members of the commission or their lawfully authorized designees;

(F) Commission subcommittee. A subgroup of the commission consisting of at least three (3) persons selected by the commission at the annual meeting of the commission (as defined in the Missouri Housing Development Commission (MHDC) bylaws) to which, among other responsibilities, is charged with carrying out the duties assigned to it under 4 CSR 170-8.140;

(G) Competent and substantial evidence. Evidence that is reliable and probative and which a reasonable mind could accept as adequate to support a conclusion (i.e., evidence upon which the suspending official or debar-

ring official could reasonably base its decision);

(H) Conviction. A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of *nolo contendere*;

(I) Counsel. An attorney or other legal advisor;

(J) Covered transaction. Any activity supported in part or in whole with funds and/or resources administered, granted, or disbursed by MHDC, including but not limited to grants, developments, or contracts for work paid for through funds and/or resources;

(K) Debarment. An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is “debarred”;

(L) Debarring official. A commission subcommittee which is authorized to impose debarment following review of evidence and/or a hearing;

(M) Disqualification. Refers to a prohibition of a person from participation in one (1) or more programs or covered transactions for inability to meet some rule or basic requirement for participation outside of the terms of a suspension or debarment;

(N) Excluded Parties List System (EPLS). List of parties debarred or otherwise excluded from receiving federal contracts maintained by the General Services Administration pursuant to 48 CFR 9.404;

(O) Excluded person. Refers to a person prohibited from participation in one (1) or more programs or covered transactions with the commission by virtue of being suspended or debarred under this chapter;

(P) Exclusion or excluded. Refers to a prohibition of a person from participation in one (1) or more programs or covered transactions with the commission by virtue of being suspended or debarred under this chapter;

(Q) Executive director. The person selected by the commissioners to serve as the chief executive of the MHDC;

(R) Funds. All monetary assistance granted and/or loaned by MHDC in relation to covered transactions, including but not limited to HOME funds, Missouri Housing Trust Funds, Affordable Housing Assistance Program, tax credit, and MHDC fund balance;

(S) General counsel. Chief lawyer of the MHDC;

(T) Grantee/subgrantee. A person or persons receiving funds in the form of a grant through an MHDC covered transaction, or a person subordinate to them who receives those grant funds from the grantee as part of an MHDC covered transaction;

(U) Identity of interest. An identity of interest relationship exists if any officer, corporate director, board member, or authorized agent of any participant—

1. Is also an officer, corporate director, board member, or authorized agent of any other participant or subparticipant;

2. Has a financial interest in any other participant or subparticipant;

3. Is a business partner of an officer, corporate director, board member, or authorized agent of any other participant or subparticipant;

4. Has a family relationship through blood, marriage, or adoption with an officer, corporate director, board member, or authorized agent of any participant or subparticipant; or

5. Advanced any funds or items of value to the sponsor/borrower participant;

(V) Indictment. Formal written accusation of a crime made by a grand jury and presented to a court of competent jurisdiction for prosecution against the accused person;

(W) Member of the immediate family. Refers to any spouse, child, parent, or sibling of any person;

(X) MHDC. Missouri Housing Development Commission;

(Y) Ownership interest. An ownership interest shall be deemed to exist if a person, or member of the immediate family of a person, owns or controls, either directly or indirectly, more than twenty percent (20%) of the profits or assets of a firm, association, or partnership or more than twenty percent (20%) of the stock in a corporation for profit;

(Z) Participant. Any person who submits a proposal for or enters into a covered transaction, including all principals, agents, or representatives of a participant;

(AA) Person. Any individual, corporation, partnership, association, unit of government, or legal entity, however organized;

(BB) Primary participant. Any person who submits a proposal for or enters into a covered transaction, including an agent or representative of a participant who has directly and immediately contracted with MHDC in a covered transaction;

(CC) Principal. Any person who is a) an officer, corporate director, owner, partner, principal investigator, or other person within a participant with management or supervisory responsibilities related to a covered transaction; or b) a consultant or other person, whether or not employed by the participant or paid with MHDC funds, who: 1) is in a position to handle MHDC funds; 2) is in a position to influence or control the use of those



funds; or 3) occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform a covered transaction;

(DD) Program. Any activity which utilizes any funds and/or resources administered or controlled by the commission;

(EE) Recipient/subrecipient. A person or persons receiving funds and/or resources in any form through an MHDC covered transaction or a person subordinate to them who receives those funds from the primary recipient as part of an MHDC covered transaction;

(FF) Resources. All non-monetary benefits or assistance awarded or administered by MHDC in relation to covered transactions, including, but not limited to, federal and state tax credits;

(GG) Standards of conduct. The commission approved policy which identifies the way in which commissioners, commission staff, and persons must act in connection with all dealings relating to the work of the commission;

(HH) State. State of Missouri;

(II) Subparticipant. Any person who enters into a covered transaction, including an agent or representative of a subparticipant, who is or has directly and immediately contracted with a primary participant in a covered transaction;

(JJ) Suspending official. A commission subcommittee authorized to impose suspension pending review of evidence and/or a hearing;

(KK) Suspension. An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal and debarment, or other proceedings as may ensue; and

(LL) Workforce eligibility policy. Refers to the then-existing policy of the MHDC which addresses worker eligibility. If no such policy exists, no action shall be taken under this section relating to such a policy.

AUTHORITY: section 215.030(5), (12), and (19), RSMo 2000. Original rule filed Feb. II, 2010, effective Aug. 30, 2010.*

**Original authority: 215.030, RSMo 1969, amended 1974, 1982, 1985, 1989, 1993, 1995, 1998.*

4 CSR 170-8.020 Parties to Which These Regulations Apply

PURPOSE: This rule establishes criteria for those parties subject to suspension and

debarment procedures with the Missouri Housing Development Commission.

(1) Given a cause that justifies exclusion under these regulations, the Missouri Housing Development Commission (MHDC) may exclude any person who has been, is, or may reasonably be expected to be a participant or a principal in any covered transaction. Exclusion may include any affiliate of the participant that is specifically named and given notice of the proposed exclusion and an opportunity to respond.

(2) For the purposes of determining the scope of the exclusion, conduct may be imputed as follows:

(A) Conduct Imputed to Participants. Conduct meeting any of the criteria in 4 CSR 170-8.060 on the part of any officer, corporate director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence;

(B) Conduct Imputed to Individuals Associated with Participant. Conduct meeting any of the criteria in 4 CSR 170-8.060 on the part of a participant may be imputed to any officer, corporate director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct; or

(C) Conduct of One (1) Participant Imputed to Other Participants in a Joint Venture. Conduct meeting any of the criteria in 4 CSR 170-8.060 on the part of one (1) participant in a joint application, or in similar arrangement, may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, granted pursuant to a joint application, or similar arrangement with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

AUTHORITY: section 215.030(5), (12), and (19), RSMo 2000. Original rule filed Feb. II, 2010, effective Aug. 30, 2010.*

**Original authority: 215.030, RSMo 1969, amended 1974, 1982, 1985, 1989, 1993, 1995, 1998.*

4 CSR 170-8.030 Verification

PURPOSE: This rule establishes the list of excluded persons maintained by the Missouri Housing Development Commission and recommendations to verify parties through additional sources.

(1) The Missouri Housing Development Commission (MHDC) shall prepare, and make available upon request, a list of persons having been debarred or suspended in accordance with the procedures herein, including the effective date and term of such debarment or suspension. Such list will be current as of the revision date noted on the list.

(2) Participants or potential participants may also—

(A) Check the Excluded Parties List System maintained by the federal government;

(B) Collect a certification from persons they wish to do business with; and/or

(C) Add a clause to their own agreements with that person when involved in a covered transaction.

AUTHORITY: section 215.030(5), (12), and (19), RSMo 2000. Original rule filed Feb. II, 2010, effective Aug. 30, 2010.*

**Original authority: 215.030, RSMo 1969, amended 1974, 1982, 1985, 1989, 1993, 1995, 1998.*

4 CSR 170-8.040 Business with Excluded Parties

PURPOSE: This rule establishes the requirements for doing business with an excluded person in a Missouri Housing Development Commission covered transaction.

(1) A non-excluded person may not enter into a covered transaction with an excluded person unless the Missouri Housing Development Commission (MHDC) grants an exception.

(2) If a person is excluded while involved in an existing covered transaction, the non-excluded person may complete the covered transaction already in existence with that person, but the covered transaction agreements with the excluded person may not be renewed or extended unless the MHDC grants an exception.

(3) If a non-excluded person knowingly does business with an excluded person without first receiving an exception from MHDC, MHDC may disallow costs, annul or terminate the covered transaction, issue a stop work order, debar or suspend the person, or take other remedies as appropriate.



(4) When entering into a covered transaction with a participant, the primary participant must require that participant to—

(A) Comply with the requirements of these regulations and all other regulations to which the subparticipant's participation in a covered transaction are subject to as well as all applicable state and federal laws and commission policies; and

(B) Pass the requirements to comply with these regulations to each person with whom the subparticipant enters into a contract at the next lower level in furtherance of work performed on a covered transaction.

(5) An excluded person must, immediately upon written notice of their exclusion from MHDC, notify all parties in writing with whom they are currently participating in a covered transaction of MHDC's decision to exclude them from such covered transactions. Failure to do so may result in permanent debarment from future covered transactions.

AUTHORITY: section 215.030(5), (12), and (19), RSMo 2000. Original rule filed Feb. 11, 2010, effective Aug. 30, 2010.*

**Original authority: 215.030, RSMo 1969, amended 1974, 1982, 1985, 1989, 1993, 1995, 1998.*

4 CSR 170-8.050 Disclosure of Information to MHDC or Other Appropriate Officials (Voluntary vs. Involuntary)

PURPOSE: This rule establishes the requirements for disclosing information relevant to the issues of suspension and debarment.

(1) Before entering into a covered transaction as a primary participant, all persons must disclose whether they, or any of their principals for that covered transaction—

(A) Are presently included in the Excluded Parties List System (EPLS);

(B) Are presently excluded or disqualified from participation in any similar transactions with any public housing authority, whether in the state of Missouri or any other state;

(C) Have been convicted within the preceding three (3) years of any of the offenses listed in 4 CSR 170-8.060 or had a civil judgment rendered against them for one (1) of these offenses within the same time period;

(D) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses listed in 4 CSR 170-8.060; and

(E) Have had one (1) or more public transactions (federal, state, or local) terminated within the preceding three (3) years for cause

or default.

(2) Voluntary disclosure of unfavorable information by a primary participant about themselves or a principal, or by a subparticipant about themselves or a principal, will not necessarily result in exclusion from covered transactions. The Missouri Housing Development Commission (MHDC) will consider the information, along with any accompanying explanations, when making determinations as to whether to enter into a covered transaction with the primary participant.

(3) Failure to disclose unfavorable information known, or that should reasonably have been known, to the primary participant or their principal at the time of entering into the covered transaction may result in MHDC—

(A) Terminating the covered transaction for material failure to comply with the terms and conditions of the covered transaction; or

(B) Pursuing any other available remedies, including suspension and debarment.

(4) Information required to be disclosed in accordance with these regulations that becomes known to the primary participant, subparticipant, or their principals during a covered transaction to which they are party must be disclosed immediately.

(5) A change in circumstances which results in any of the primary participants, subparticipants, or their principals meeting any of the criteria in 4 CSR 170-8.060 during a covered transaction to which they are party must be disclosed immediately.

AUTHORITY: section 215.030(5), (12), and (19), RSMo 2000. Original rule filed Feb. 11, 2010, effective Aug. 30, 2010.*

**Original authority: 215.030, RSMo 1969, amended 1974, 1982, 1985, 1989, 1993, 1995, 1998.*

4 CSR 170-8.060 Causes for Debarment of a Person(s)

PURPOSE: This rule establishes the grounds upon which a person may be debarred from participating in covered transactions with the Missouri Housing Development Commission.

(1) In the public interest, the commission may debar a person for any of the following causes:

(A) Conviction or Civil Judgment for—

1. Acts of fraud or a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or sub-

contract thereunder, or in the performance of such contracts or subcontracts; or

2. Acts of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty; or

3. Violation of any federal or state antitrust statute, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; or

4. Violation of the federal Anti-Kick-back Acts, 18 U.S.C. section 874 and 40 U.S.C. section 3145; or

5. Violation of any of the laws governing the conduct of elections of the federal government or of the state of Missouri or its political subdivisions; or

6. Violation of any Missouri laws prohibiting discrimination, including, but not limited to, acts of discrimination prohibited under section 213.040, RSMo, et seq., and section 215.110, RSMo, et seq.; or

7. Violation of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor; or

8. Violations of any laws governing the conduct of occupations or professions or regulated industries; or

9. Any other offense, or violation of any other law(s), which may indicate a lack of responsibility, business integrity, or business honesty that seriously and directly affects the present responsibility of a person;

(B) Violation of the terms of a covered transaction so serious as to affect the integrity of a program administered by the commission such as—

1. A willful failure to perform in accordance with the terms of one (1) or more covered transactions, or within the contractual time limits for one (1) or more covered transactions;

2. A history of failure to perform or of unsatisfactory performance of one (1) or more covered transactions, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person to be debarred; or

3. A willful violation of a statutory or regulatory provision or requirement applicable to a covered transaction;

(C) Any violation of the Workforce Eligibility Policy;

(D) Failure to pay a single substantial debt or a number of outstanding debts (including disallowed costs and overpayment, but not



including sums owed the federal government under the *Internal Revenue Code*) owed to any federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(E) Debarment by any instrumentality, department, or agency of the state of Missouri or of any other state;

(F) Debarment by the Department of Housing and Urban Development, Federal Housing Administration, or any other instrumentality, agency, or department of the United States government;

(G) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person in connection with a covered transaction;

(H) Any violation of the Missouri Housing Development Commission (MHDC) Standards of Conduct;

(I) Improper communication in violation of the Contact with the Commission and Employees Policy;

(J) Violation of a material provision of any settlement of a debarment or suspension action; and

(K) Any other cause affecting the responsibility of a person that is of such a serious and compelling nature as may be determined by the commission to warrant debarment, even if such conduct has not been or may not be prosecuted as a violation of any law or contract.

(2) Any act by an individual of any of the grounds for debarment stipulated under subsection (1)(A) may be imputed to an affiliate of a person where such conduct was accomplished within the course of the affiliate's official duty or was effected by the individual with the knowledge or approval of such person.

AUTHORITY: section 215.030(5), (12), and (19), RSMo 2000. Original rule filed Feb. 11, 2010, effective Aug. 30, 2010.*

**Original authority: 215.030, RSMo 1969, amended 1974, 1982, 1985, 1989, 1993, 1995, 1998.*

4 CSR 170-8.070 Conditions Affecting the Debarment of a Person(s)

PURPOSE: This rule sets forth the conditions and level of proof required to debar a person.

(1) The following conditions shall apply concerning debarment:

(A) Debarment shall be made only upon approval of the members of the commission

upon their own action or upon recommendation by the executive director of the commission, except as otherwise provided by law;

(B) The existence of any of the causes set forth in 4 CSR 170-8.060 shall not necessarily require that a person be debarred. In each instance, unless otherwise required by law, the decision to debar shall be made within the discretion of the commission, upon the recommendation of its members or upon recommendation by the executive director, taking into account the seriousness of the acts or omissions and any mitigating factors which the commission may consider and shall be rendered in the best interests of the state of Missouri;

(C) All mitigating factors shall be considered in determining the seriousness of the offense, failure, or inadequacy of performance in deciding whether debarment is warranted;

(D) The existence of a cause set forth in subsection 4 CSR 170-8.060(1)(A), as well as in subsection 4 CSR 170-8.060(1)(D) where the debt is contested, shall be established upon the rendering of a final judgment or conviction, including a guilty plea or a plea of *nolo contendere* by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon request of the debarred person unless other cause for debarment exists;

(E) The existence of a cause set forth in paragraphs 4 CSR 170-8.060(1)(B)1.-3. or subsection 4 CSR 170-8.060(1)(H) or (1)(K) shall be established by competent and substantial evidence; and

(F) Debarment for any cause set forth in subsections 4 CSR 170-8.060(1)(E)-(1)(F) shall be proper, provided that one (1) of the causes set forth in subsection 4 CSR 170-8.060(1)(A), (1)(B), or (1)(K) was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

AUTHORITY: section 215.030(5), (12), and (19), RSMo 2000. Original rule filed Feb. 11, 2010, effective Aug. 30, 2010.*

**Original authority: 215.030, RSMo 1969, amended 1974, 1982, 1985, 1989, 1993, 1995, 1998.*

4 CSR 170-8.080 Period of Debarment

PURPOSE: This rule establishes guidelines for establishing the period of time for which

debarment may be imposed, as well as the grounds upon which the period of debarment may be either extended, reduced, or terminated early.

(1) Debarment shall be for a reasonable, definitely stated period of time which, as a general rule, shall not exceed five (5) years. If a temporary suspension is imposed under section 4 CSR 170-8.140(2), the time of debarment imposed on the person shall be reduced by the amount of time the person was temporarily suspended.

(2) The debarring official may extend an existing debarment for an additional period at its discretion if the debarring official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the debarment procedures set forth in 4 CSR 170-8.060 shall be followed to extend the debarment.

(3) Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced in the discretion of the debarring official upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief. The debarring official may grant such a request for reasons including, but not limited to:

(A) Newly discovered material evidence;

(B) Reversal of the conviction or civil judgment upon which the debarment was based;

(C) Bona fide change in ownership, management, or control;

(D) Elimination of other causes for which the debarment was imposed; or

(E) Other reasons which the debarring official may deem appropriate.

AUTHORITY: section 215.030(5), (12), and (19), RSMo 2000. Original rule filed Feb. 11, 2010, effective Aug. 30, 2010.*

**Original authority: 215.030, RSMo 1969, amended 1974, 1982, 1985, 1989, 1993, 1995, 1998.*

4 CSR 170-8.090 Scope and Effect of Debarment

PURPOSE: This rule establishes the scope and effect of the debarment of a person.



(1) Debarment of a person under these regulations constitutes a debarment of all its divisions and other organizational elements from all covered transactions and shall effectively exclude the debarred person as either a grantee/recipient or subgrantee/subrecipient from any program. However, the debarring official may, in its discretion, limit the scope and terms of the debarment decision to one (1) or more specifically identified individuals, divisions, or other organizational elements or to specific types of transactions.

(2) A debarment may include all known affiliates of a person provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances and provided that the procedures set forth in 4 CSR 170-8.040 are followed for all such affiliates to be debarred.

(3) The debarring official may grant an exception permitting a debarred person to participate in one (1) or more programs upon a written determination by the debarring official stating the reasons for deviating from the debarment.

(4) At the discretion of the debarring official, an ongoing program or contractual arrangement may be carried out to completion by a debarred person notwithstanding the debarment.

(5) Any person engaged in a covered transaction with the commission shall not renew or extend covered transactions with any person who is debarred or suspended except as allowed under the preceding section.

AUTHORITY: section 215.030(5), (12), and (19), RSMo 2000. Original rule filed Feb. 11, 2010, effective Aug. 30, 2010.*

**Original authority: 215.030, RSMo 1969, amended 1974, 1982, 1985, 1989, 1993, 1995, 1998.*

4 CSR 170-8.100 Causes for Suspension of a Person(s)

PURPOSE: This rule establishes the causes for suspending a person from covered transactions with the Missouri Housing Development Commission.

(1) In the public interest, the Missouri Housing Development Commission (commission) may suspend a person for any cause specified in 4 CSR 170-8.060 or upon reasonable suspicion that such cause exists.

(2) The commission may also suspend a person awaiting verdict or civil judgment in any action as described in 4 CSR 170-8.060 until such verdict or civil judgment is rendered.

AUTHORITY: section 215.030(5), (12), and (19), RSMo 2000. Original rule filed Feb. 11, 2010, effective Aug. 30, 2010.*

**Original authority: 215.030, RSMo 1969, amended 1974, 1982, 1985, 1989, 1993, 1995, 1998.*

4 CSR 170-8.110 Conditions Affecting the Suspension of a Person(s)

PURPOSE: This rule establishes the conditions affecting the suspension of a person from covered transactions with the Missouri Housing Development Commission.

(1) The following conditions shall apply concerning suspension:

(A) Suspension shall be imposed only upon the approval of the executive director, either by his/her own action or upon recommendation by the Missouri Housing Development Commission (commission);

(B) The existence of any cause for suspension shall not require that a suspension be imposed, and any decision to suspend shall be at the discretion of the executive director of the commission, either upon their own action or upon recommendation by the executive director, and such decision shall be rendered in the best interests of the state;

(C) Suspension shall not be based upon unsupported accusation, but must be supported by adequate evidence that cause exists or upon evidence adequate to create a reasonable suspicion that cause exists;

(D) In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, and to inferences which may properly be drawn from the existence or absence of affirmative facts;

(E) Reasonable suspicion of the existence of a cause described in 4 CSR 170-8.060 may be established by the rendering of a final judgment or conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment, or by evidence that such violations of civil or criminal law did in fact occur; and

(F) A suspension or debarment invoked by another agency for any of the causes described in 4 CSR 170-8.060 may be the basis for the imposition of a concurrent suspension by the commission, which suspen-

sion may be imposed when found to be in the best interest of the state.

AUTHORITY: section 215.030(5), (12), and (19), RSMo 2000. Original rule filed Feb. 11, 2010, effective Aug. 30, 2010.*

**Original authority: 215.030, RSMo 1969, amended 1974, 1982, 1985, 1989, 1993, 1995, 1998.*

4 CSR 170-8.120 Period of Suspension

PURPOSE: This rule establishes the criteria for determining the period of suspension of a person from a covered transaction with the Missouri Housing Development Commission.

(1) Suspension shall be for a temporary period of time pending the completion of an investigation by the Missouri Housing Development Commission (MHDC) into causes for debarment or while awaiting verdict or civil judgment in any action as described in 4 CSR 170-8.060, unless terminated sooner by the suspending official, or as provided in section (2) of this rule.

(2) If legal proceedings originating within MHDC or with a person outside of MHDC or administrative proceedings originating with a person outside of MHDC are not initiated within twelve (12) months, the suspension shall be terminated unless the suspending official determines that there is adequate evidence that cause for debarment exists, in which case the suspending official may extend the suspension for an additional six (6) months. In no event may a suspension under this section extend beyond eighteen (18) months unless proceedings have been initiated within that time period.

(3) If administrative proceedings originating with MHDC are not initiated within six (6) months, the suspension shall be terminated unless the suspending official determines that there is adequate evidence that cause for debarment exists, in which case the suspending official may extend for an additional six (6) months. In no event may a suspension for administrative proceedings originating within MHDC extend beyond twelve (12) months.

(4) The suspending official shall notify the general counsel of any proposed change(s) in the period of suspension at least forty-five (45) days prior to the proposed date of said change(s). The general counsel shall have fifteen (15) days to review the proposed change(s) to insure all proper procedures and policies have been followed. The excluded person shall be notified subsequent to the



general counsel’s review, but in no event shall the excluded person be notified less than thirty (30) days prior to the date that the proposed change is to take effect.

AUTHORITY: section 215.030(5), (12), and (19), RSMo 2000. Original rule filed Feb. II, 2010, effective Aug. 30, 2010.*

**Original authority: 215.030, RSMo 1969, amended 1974, 1982, 1985, 1989, 1993, 1995, 1998.*

4 CSR 170-8.130 Scope of Suspension

PURPOSE: This rule establishes the scope of suspension of a person from a covered transaction with the Missouri Housing Development Commission.

(1) Suspension of a person under these regulations constitutes suspension of all its divisions and other organizational elements from all covered transactions, unless the suspension is limited by its terms to one (1) or more specifically identified individuals, divisions, or other organizational elements or to specific types of transactions.

(2) A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. Such affiliates must be notified of said suspension and given an opportunity to respond in accordance with the procedure for suspension as set out in these regulations.

(3) The offense, failure, or inadequacy of performance of an individual may be imputed to a person’s affiliate where such conduct was accomplished within the course of his official duty or was effectuated by him with the knowledge or approval of such affiliate.

(4) At the discretion of the Missouri Housing Development Commission (commission), an ongoing program or contractual arrangement may be carried out to completion by a suspended person notwithstanding the suspension.

(5) Any person engaged in a covered transaction with the commission shall not renew or extend covered transactions with any person who is suspended except as allowed under the preceding section.

AUTHORITY: section 215.030(5), (12), and (19), RSMo 2000. Original rule filed Feb. II, 2010, effective Aug. 30, 2010.*

**Original authority: 215.030, RSMo 1969, amended 1974, 1982, 1985, 1989, 1993, 1995, 1998.*

4 CSR 170-8.140 Suspension and Debarment Procedures

PURPOSE: This rule establishes the procedures for suspending or debarring a person and the procedures for obtaining reinstatement following the suspension or debarment.

(1) The debarment and suspension process shall be conducted as informally as practicable, consistent with the fundamental principles of fairness, using the procedures outlined as follows:

(A) When the commission subcommittee determines that grounds for suspension or debarment as described in 4 CSR 170-8.060 exist, the executive director shall notify the person by personal delivery or in writing by certified mail, return receipt requested, that suspension or debarment is under consideration. All such notices shall be sent via a traceable form of delivery service, such as Federal Express, UPS, certified mail, etc. Such notice shall provide the following information:

1. What action is being considered (i.e., suspension or debarment);
2. The basis upon which suspension or debarment is being considered;
3. The proposed scope of the suspension or debarment;
4. The proposed time period of the suspension or debarment;
5. Notice of the person’s right to request an informal hearing with the commission subcommittee, which request must be made in writing; and
6. The time period within which the written request for a hearing must be received by the commission subcommittee. The time period provided in the notice shall be thirty (30) calendar days from the date of receipt by the executive director;

(B) If the person fails to respond to the notice within the time provided, the opportunity to exercise the rights provided in this section shall be deemed waived, and the executive director shall make the determination on whether to suspend or debar the person based on all the information germane to the issue and available to him. The person shall then be notified of the final decision in writing by certified mail, return receipt requested;

(C) If the person provides a timely response to the notice and exercises its right to a hearing with the commission subcommittee, the commission subcommittee shall hold a hearing with the person within thirty (30) days of the date the request for a hearing

is received. The deadline for conducting the hearing may be extended for an additional thirty (30) days upon written request of the commission subcommittee or of the person for whom suspension or debarment is being considered, provided that notice of the extension is provided to all parties;

(D) The following guidelines and rules shall apply to a hearing held under this section:

1. The hearing shall not be considered a contested case;

2. The hearing shall be informal and no formal rules of evidence or procedure shall apply;

3. The person may be represented by counsel at the hearing and shall have the right to present evidence or arguments relevant to the grounds upon which the proposed suspension or debarment is based. If the person elects to be represented by counsel, the person shall notify the commission subcommittee of this intent at least five (5) days prior to the scheduled hearing;

4. The commission subcommittee, in reaching a decision, may consider information from any source which is relevant to the proposed suspension or debarment and shall consider all facts and circumstances upon which the proposed suspension or debarment is based, including, but not limited to:

- A. The nature of the acts involved;
- B. The duration of the person’s involvement in the acts;
- C. The extent of the damage caused to the state of Missouri and the commission by the person’s acts;
- D. Whether and to what extent the person subsequently cooperated with the appropriate authorities;
- E. The conditions under which the person cooperated;
- F. The degree to which the person made restitution;
- G. The time when the acts occurred and the conduct of the person since that time; and/or
- H. Where the proposed suspension or debarment is based on a conviction or civil judgment or upon debarment by another local, state, or federal agency, the record of the court or agency rendering the decision;

5. The chairperson of the commission subcommittee may limit the hearing in time and substance in a manner which is reasonable to the present matter;

6. All hearings under this section shall be transcribed; and

7. The person or anyone acting on the behalf of or under the control of the person shall be prohibited from ex parte communication with any member of the Missouri



Housing Development Commission (commission) or the commission subcommittee;

(E) Within thirty (30) days of the date on which the hearing is held, the commission subcommittee shall issue a decision in writing to the person.

1. If the commission subcommittee determines that suspension or debarment is not warranted, the decision shall notify the person that they will not be suspended or debarred for the grounds on which the hearing was held. Further, if the person was suspended pending the outcome of the hearing, the decision shall state that the person's suspension has been rescinded as of the date of the decision.

2. If the commission subcommittee determines that suspension or debarment is warranted, the decision shall notify the person of the following:

A. Whether the person is suspended or debarred;

B. The grounds upon which the suspension or debarment is being based;

C. The scope and duration of the suspension or debarment;

D. Any requirements the person must fulfill in order to be eligible to participate in programs and/or contracts administered by the commission following the termination of the suspension or debarment period;

E. Notice of the person's right to appeal the commission subcommittee's decision to the commission;

F. The time period within which a written appeal must be submitted to and received by the commission subcommittee and the commission. The time period for such appeal provided in the notice shall be thirty (30) days; and

G. Whether or not the person may continue with any covered transaction already in progress;

(F) If the person submits an appeal to the commission, a hearing for the appeal shall be held within sixty (60) days of the date upon which the request for an appeal hearing is received by the commission. The deadline for conducting the hearing may be extended for an additional thirty (30) days upon written request of the commission or of the person filing the appeal, provided that notice of the extension is provided to all parties;

(G) The following guidelines and rules shall apply to an appeal hearing held by the commission:

1. The appeal hearing shall not be considered a contested case;

2. The hearing shall be informal and no formal rules of evidence or procedure shall apply;

3. The person may be represented by counsel at the hearing and shall have the right to present evidence or arguments relevant to the grounds upon which the decision to suspend or debar the person was based. If the person elects to be represented by counsel, the person shall notify the commission of this intent at least five (5) days prior to the scheduled hearing;

4. The chairperson of the commission may limit the hearing in time and substance in a manner which is reasonable to the present matter;

5. The commission, in reaching a decision, may only consider items in the record of the hearing held by the commission subcommittee; however, the commission may consider evidence that was not available at the initial hearing, but only if the person providing the additional evidence can show good cause for why it was not presented at the initial hearing. The commission shall uphold the commission subcommittee's decision(s) unless it determines that the commission subcommittee's decision was not based on competent and substantial evidence;

(H) Within thirty (30) days of the date upon which the appeal hearing is held, the commission shall issue a decision in writing to the person. This decision shall be considered the final decision of the commission on the matter. However, the commission's decision shall not be considered final if the commission finds appropriate grounds to remand the issue back to the commission subcommittee for further investigation and fact gathering. If the commission does remand the issue back to the commission subcommittee, the same procedures spelled out in this rule shall apply to all further proceedings with the commission subcommittee and/or commission until a final decision is reached; and

(I) Any appeal of the final determination of the commission under subsections 4 CSR 170-8.140(1)(F)–(H) shall be rightfully appealed only to a court of competent jurisdiction in Jackson County, Missouri.

(2) A person may be temporarily suspended pending the conclusion of all procedures set forth in section (1) of this rule. If a person is to be temporarily suspended, the initial notice described in subsection (1)(A) of this rule shall, in addition to containing the information required under that subsection, include a statement that the person is being temporarily suspended pending a resolution of the issue and shall inform the person that the temporary suspension shall be effective as of the date the notice was mailed or personally delivered.

(3) In order to be granted reinstatement to good standing with the commission, and thereby be allowed to participate in programs and/or contracts administered by the commission, the suspended or debarred person must apply to the commission subcommittee for reinstatement upon completion of the term of suspension or debarment. Such application shall include any and all relevant documentation showing how the person has complied with all terms of the suspension or debarment and how the person has complied with all requirements stipulated in the original decision rendered by the commission subcommittee. The commission subcommittee may request additional information or documentation from the suspended or debarred person as they may deem reasonably necessary in order to render a determination on whether the application for reinstatement should be granted or denied. The executive director shall respond in writing to the person's application for reinstatement within thirty (30) days of the date all requested information is received. However, the commission subcommittee may extend the response period for an additional thirty (30) days when deemed necessary at the commission subcommittee's sole discretion, provided that the commission subcommittee provides written notice to the person submitting the application of the extension. If the commission subcommittee denies the application for reinstatement, the written response shall specify the reasons why the application has been denied and apprise the person of their right to request a hearing with the commission subcommittee. In the event a hearing is so requested, the same procedures set forth in section (1) shall be used to reach a final determination by the commission on the application for reinstatement.

AUTHORITY: section 215.030(5), (12), and (19), RSMo 2000. Original rule filed Feb. 11, 2010, effective Aug. 30, 2010.*

**Original authority: 215.030, RSMo 1969, amended 1974, 1982, 1985, 1989, 1993, 1995, 1998.*

4 CSR 170-8.150 Prohibited Activities of Persons; Reporting Requirements

PURPOSE: This rule establishes prohibitions against certain activities and/or compensation being exchanged between commission members and employees and persons who are or may become a party to a covered transaction with the commission.

(1) In order to ensure that all persons meet a standard of responsibility which assures the



Missouri Housing Development Commission (commission) and the state and its citizens that such persons will both compete and perform honestly in their dealings with the commission and avoid conflicts of interest, all persons shall comply with the commission's Standards of Conduct Policy. To the extent a violation of the commission's Standards of Conduct Policy calls for suspension or debarment procedures as it pertains to any person, the provisions of 4 CSR 170-8.140 shall be modified in the following manner:

(A) All references to the commission subcommittee in subsections 4 CSR 170-8.140 (1)(A)–(1)(E) shall be replaced with commission; and

(B) Any appeal of an initial determination by the commission action under provisions of subsections 4 CSR 170-8.140(1)(A)–(1)(E) shall be appealed to a court of competent jurisdiction in Jackson County, Missouri.

AUTHORITY: section 215.030(5), (12), and (19), RSMo 2000. Original rule filed Feb. 11, 2010, effective Aug. 30, 2010.*

**Original authority: 215.030, RSMo 1969, amended 1974, 1982, 1985, 1989, 1993, 1995, 1998.*

4 CSR 170-8.160 Discretion

PURPOSE: This rule establishes the discretion left to the commission to enter into or not enter into contracts with any person.

(1) Nothing contained herein shall be construed to limit the authority of the Missouri Housing Development Commission (commission) to contract or to refrain from contracting within the discretion allowed by law.

AUTHORITY: section 215.030(5), (12), and (19), RSMo 2000. Original rule filed Feb. 11, 2010, effective Aug. 30, 2010.*

**Original authority: 215.030, RSMo 1969, amended 1974, 1982, 1985, 1989, 1993, 1995, 1998.*