

DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY

STATE HOUSING DEVELOPMENT AUTHORITY

GENERAL RULES

Filed with the secretary of state on March 21, 2023

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the state housing development authority by sections 15a, 22, and 58b of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1415a, 125.1422, and 125.1458b)

R 125.101, R 125.102, R 125.103, R 125.105, R 125.109, R 125.111, R 125.113, R 125.115, R 125.119, R 125.121, R 125.122, R 125.123, R 125.131, R 125.132, R 125.133, R 125.134, R 125.141, R 125.142, R 125.143, R 125.144, R 125.145, R 125.146, R 125.151, R 125.152, R 125.153, R 125.154, R 125.161, R 125.171, R 125.172, R 125.173, R 125.181, R 125.182, R 125.190, R 125.191, R 125.192, R 125.193, R 125.194, R 125.195, R 125.196, R 125.197, R 125.198, R 125.199, R 125.201, R 125.202, R 125.203, R 125.204, R 125.211, R 125.212, R 125.213, R 125.214, R 125.215, R 125.216, R 125.217, R 125.218, R 125.219, R 125.220, R 125.221, R 125.222, R 125.223, and R 125.224 of the Michigan Administrative Code are amended, and R 125.104 is added, as follows:

PART 1. GENERAL PROVISIONS

R 125.101 Definitions; A, C.

Rule 101. As used in these rules:

(a) "Act" means the state housing development authority act of 1966, 1966 PA 346, MCL 125.1401 to 125.1499c.

(b) "Adjusted annual income" means gross income less \$750.00 for each member of the household living in the same dwelling unit.

(c) "Adjusted household income" means the gross annual income from all sources and before taxes or withholding of all members of a household living in a dwelling unit or housing unit after deducting all of the following:

(i) Unusual or temporary income of any member of the household.

(ii) Six hundred and fifty dollars for each member of the household.

(iii) Earnings of a member of a household who is under 18 years of age or who is a person with disabilities.

(iv) Fifty percent of the income of a second adult wage earner jointly occupying the dwelling or housing unit whose individual income is less than that of the wage earner with the highest income.

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(v) The lesser of \$1,000.00 or 10% of the gross annual income.

(d) "Applicant" means a corporation, partnership, joint venture, trust, individual, public body or agency, or other entity applying to receive authority money or services under the act.

(e) "Application" means a request for authority assistance under the act made on forms furnished by the authority.

(f) "Authority" means the Michigan state housing development authority created by the act.

(g) "Authorized officer" means any person designated as an authorized officer of the authority or any other person to whom a power or duty has been specifically delegated by the signatory resolution adopted by the authority.

(h) "Central city" means any 1 of the following:

(i) An area delineated in a Metropolitan Statistical Area by the United States Office of Management and Budget.

(ii) An area that is delineated in a Metropolitan Division by the United States Office of Management and Budget.

(iii) An area that is delineated in a Combined Statistical Area by the United States Office of Management and Budget.

#### R 125.102 Definitions; D to G.

Rule 102. As used in these rules:

(a) "Development fund grant" means a grant that is authorized by the authority, and is to be made to an applicant authorized by the act to receive a grant from the housing development fund created by the act.

(b) "Development fund loan" means a loan that is authorized by the authority, and is to be made from the housing development fund created by the act.

(c) "Dwelling unit" means living accommodations within a housing project that are intended for occupancy by a single household.

(d) "Executive director" means the executive director or an individual acting within this capacity employed by the authority who is the chief administrative officer of the authority.

(e) "Existing housing unit" means a housing unit that has been occupied before the issuance of a commitment by the authority.

(f) "Family" means 2 or more individuals living together not contrary to law.

(g) "Feasible housing project" means a proposed housing project that the authority has determined can reasonably be expected to be successfully constructed on the proposed site within cost limitations acceptable to the authority and can reasonably be expected to be operated in a fiscally sound manner, within authority parameters.

(h) "Gross income," for determining eligibility, means all income derived from whatever source, as follows:

(i) In computing gross income, all the income of the members of the household, other than minors, living in the same dwelling unit and contributing to the expenses of the household is to be considered. Gross income must be computed without deduction for the following:

(A) Funds paid into a tax shelter retirement account.

(B) Losses attributable to a farming syndicate as described in section 464 of the internal revenue code, 26 USC 464.

(C) Losses attributable to any type of corporation or partnership engaged in exploring for or exploiting oil and gas resources.

(D) Losses attributable to any type of corporation or partnership engaged in equipment leasing.

(E) Losses attributable to any type of corporation or partnership engaged in holding, producing, or distributing motion picture films or video tapes.

(F) Child support payments made by an applicant for the benefit of the applicant's child or children.

(G) Alimony, separate maintenance, or similar periodic payments that an applicant is required to make to a spouse or former spouse.

(ii) Gross income includes all of the following:

(A) The gross amount, before any payroll deductions, of wages; salaries; all overtime earnings in excess of \$4,000.00 per annum; commissions; fees; tips; bonuses; gambling winnings; and prizes won, except for Michigan lottery winnings and prizes.

(B) The net income from the operation of a business or profession or from the rental of real or personal property. For this purpose, if the operation results in a loss, the loss may not be used to offset income generated from other sources. For this purpose, any shareholder that owns 10% or more of any outstanding class of stock in a corporation is deemed to have received income in its proportionate share of net earnings not otherwise distributed in salaries or dividends.

(C) All dividends and interest, including otherwise tax-exempt interest.

(D) The full amount of periodic payments received from social security, housing assistance payments, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts.

(E) Payments in place of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay.

(F) The full amount of public assistance payments.

(G) Periodic and determinable allowances, such as alimony and separate maintenance payments received, housing allowances received, and regular contributions or gifts received from individuals who do not reside in the dwelling, if such sums are received on a recurrent basis and if such sums may be reasonably expected to continue.

(H) The distributive share of partnership income.

(I) All capital gains.

(J) Child support payments received by an applicant for the benefit of the applicant's child or children.

(iii) Gross income does not include any of the following:

(A) Casual, sporadic, or irregular gifts.

(B) Amounts that are specifically for, or in reimbursement of, the cost of medical expenses.

(C) Lump sum additions to household assets, such as inheritances; insurance payments, including payments under health and accident insurance; worker's compensation; and settlements for personal or property losses.

(D) Amounts of educational scholarships paid directly to the student or to the educational institution, and veterans administration schooling benefits.

(E) Foster childcare payments.

(F) The value of coupon allotments for the purchase of food pursuant to the food and nutrition act of 2008, 7 USC 2011 to 2036d, which is in excess of the amount actually charged the eligible household.

(G) Overtime earnings of \$4,000.00 or less per annum.

#### R 125.103 Definitions; H to S.

Rule 103. As used in these rules:

(a) "Household" means an individual or family residing or intending to reside in a single-dwelling unit.

(b) "Local community" means any of the following entities which presents evidence that it is acting in a manner consistent with the objectives of the act with respect to the provision of housing or community development:

(i) A public body or agency.

(ii) A quasi-governmental body approved by the authority and established by state or federal law, the governing board of which is elected by the residents of a definite geographical area.

(iii) A park or playground association established pursuant to the provisions of 1911 PA 161 MCL 455.301 to 455.313.

(iv) A nonprofit corporation, limited dividend housing corporation, or limited dividend housing association.

(c) "Low-income persons and families" means, for purposes of section 15a of the act, MCL 125.1415a, any of the following:

(i) Any person or family whose household income, at the time of initial occupancy of a unit in the housing project, does not exceed 80% of area median income, adjusted for family size, as published by the United States Department of Housing and Urban Development.

(ii) Any person or family whose household income does not exceed the limits established pursuant to an ordinance enacted by the municipality in which the housing project is located, on the basis of conditions existing in that municipality such as affordable housing needs, variations in construction costs, and fair market rents.

(iii) For purposes of section 15a of the act, MCL 125.1415a, only, provided that at least 30% of the units in the housing project are income- and rent-restricted to 80% or less of area median income, the household income of all persons and families occupying units in the housing that are not income- and rent-restricted to 80% or less of area median income will be imputed to be 80% of area median income, adjusted for family size, as published by the United States Department of Housing and Urban Development.

(iv) Except as provided in paragraph (ii) of this subdivision, this definition of low-income persons and families applies to all housing projects that are now or become eligible for the exemption under section 15a of the act, MCL 125.1415a.

(d) "Minor" means a member of a household, other than the household head or spouse, who is under 18 years of age or who is under 19.5 years of age and a full-time high school or high-school alternative program student.

(e) "Mortgage loan" means a loan that is authorized by resolution of the authority or by a mortgage loan commitment issued on behalf of the authority and is made to an applicant for a housing project or a housing unit from the proceeds of sale of the authority's bonds or notes and any other available funds for the purpose of providing

construction financing or long-term financing, or both, the repayment of which is secured, or is to be secured, as provided in the act.

(f) "Permanent general improvements" means alterations, repairs, and improvements on or in connection with an existing residential structure that substantially protect or improve the basic livability or energy efficiency of the residential structure to be improved. Permanent general improvements do not include materials, fixtures, or landscaping of a type or quality exceeding that customarily used in the locality for residential structures of the same general type as the structure to be improved.

(g) "Person or persons with disabilities" means a person who has a disability that is a physical or mental impairment that substantially limits 1 or more major life activities, has a record of such impairment, or meets the definition of having a disability under any federal, state, or local program for the disabled.

(h) "Person or persons with special needs" means a person with physical disabilities, mental illness, substance abuse, or an addiction, or who is homeless, and who may need supportive services to succeed.

(i) "Property improvement loan" means a loan that is authorized by the authority for home improvements that protect or improve the basic livability of a single-family or manufactured home.

(j) "Residential structure" means real property that is improved by a structure, and the structure is used primarily for residential purposes on a year-round basis. Residential structure does not include a mobile home or a trailer.

(k) "Sponsor" means an individual, group, or organization that stimulates or promotes an applicant, and continues to be interested in the activities of the applicant with respect to a housing project.

#### R 125.104 Rules of Construction.

Rule 104. (1) Terms not defined in these rules have the same meanings as those terms that are defined in the act.

(2) Where terms are defined in both these rules and the act the definitions are intended to be read in conjunction with each other.

(3) To the extent a term defined in the act conflicts with the same term as defined in these rules, the definition in the act controls.

#### R 125.105 Income limitations.

Rule 105. (1) For a household to be considered eligible for initial occupancy in a housing project or housing unit financed by the authority, that household's income shall not exceed the following household income limitations:

(a) Unless otherwise permitted by the act, for housing, other than single family housing units, that has been financed by the proceeds of authority bonds that have been delivered before June 9, 1977, the effective date of certain emergency rules that temporarily effectuated the provisions of subdivisions (b) and (c) of this subrule, a household shall not have an adjusted household income of more than \$12,000.00 plus \$500.00 for each member of the household in addition to the head of the household and his or her spouse; provided, however, that the authority, by resolution, may determine, with respect to a particular housing project, that 20% of the dwelling units in that project shall be available for occupancy by households having adjusted household incomes of not more than 125%

of that established in this subrule. The resolution must include determinations by the authority that the project could not be marketed successfully without the higher income limit and that the project complies with either of the following:

(i) It is located in a city, other than a central city, with a per capita personal income less than the per capita personal income for this state.

(ii) It is located elsewhere and the number of units for households with incomes eligible for public housing or a program equivalent is at least equal to the number of units for households with incomes between the 100% and 125% limits. The \$12,000.00 amount established in this subrule is automatically increased in accordance with the following formula:  $(\$12,000.00) + (\$12,000.00 \times .07 \times n)$  where  $n$  is the number of complete years elapsed since January 1, 1973.

(b) Unless otherwise permitted by the act, for housing, other than single-family housing units, that has been financed before May 1, 1984, and that has not been financed by proceeds of authority bonds that have been delivered before June 9, 1977, a household shall not have a gross income of more than \$28,000.00, which is the estimated median family income in this state, provided, however, in the case of shared housing, a gross income limit of \$15,000.00 is applied separately to each household assigned separate sleeping and bathroom facilities, notwithstanding the sharing of other living space.

(c) For all single-family housing units, a household shall not have a gross income in excess of that permitted in the act.

(d) Notwithstanding the provisions of subdivisions (a), (b), and (c) of this subrule, but subject to the act, a household may have a gross income up to that established pursuant to the following formula:  $1.5 \times a \times 1.07^n$ , where  $a$  is the median family income for the county in which the proposed housing is to be located, as identified in the publication entitled "1969 and Estimated 1977 Decile Distributions of Family Income by SMSA's and Non-Metropolitan Counties," prepared by the United States Department of Housing and Urban Development, Office of Economic Affairs, Economic and Market Analysis Division, June 1, 1977, and where  $n$  is the number of complete years elapsed since June 1, 1977, if the authority, by resolution, makes all of the following determinations:

(i) The economic integration encouraged by the higher income limits promotes the financial and social stability of housing financed or to be financed by the authority.

(ii) Private enterprise has failed to provide a substantial supply of adequate, safe, and sanitary dwellings in the area of the housing proposed for occupancy by households that qualify for assistance pursuant to this subdivision within the financial means of, and suitable for, such households.

(iii) The housing is located in an area in a central city that meets the criterion set forth in subparagraph (ii) of this subdivision.

(e) Notwithstanding the provisions of subdivisions (a), (b), and (d) of this subrule, a household may have a gross income up to the income limits set forth in sections 44(1)(a)(iv), 44(1)(a)(v), and 44(1)(b), MCL 125.1444, if the authority, by resolution, determines that the higher income limits promote the authority's ability to preserve the low-income occupancy of the housing project.

(f) For housing, other than single-family housing units, that has been financed on or after May 1, 1984, a household shall not have a gross income in excess of that permitted in the act.

(2) If a household income limitation is a requirement for an assumption of a mortgage on a single-family housing unit, then the household income limitation for a household to be considered eligible to assume a mortgage on a single-family housing unit must be the highest household income limitation ever established in subrule (1)(c) of this rule.

(3) If federal subsidy payments are made on behalf of occupants of authority-financed dwelling units or housing units, then the income limitations established in this rule are superseded by federal laws and regulations applicable with respect to those applicants.

(4) If the program providing the funds for a loan or grant is subject to laws, regulations, rules, or other requirements that have particular income or other programmatic restrictions, or if the entity providing the funds for a loan or grant has particular income or other programmatic restrictions, then the authority may elect to apply some or all of these restrictions, instead of those that would otherwise be applicable pursuant to this rule.

(5) Subrule (1) of this rule does not apply to households applying for a property improvement loan pursuant to part 8 of these rules.

(6) The income limitation contained in subrules (1) and (2) of this rule is subject to state and federal laws which may establish income limitations as a prerequisite to obtaining tax-exempt status of authority notes and bonds.

#### R 125.109 Acceptance of aid and guarantees.

Rule 109. (1) Pursuant to sections 22(c) and 22(k) of the act, MCL 125.1422, the authority, by resolution, may accept gifts, grants, loans or other aid, including guarantees, from the federal government or any public or private source, agree and comply with any condition attached thereto, and authorize and direct the execution on behalf of the authority or any agreement that it considers necessary or appropriate to implement any such gifts, grants, loans, guarantees, or other aid.

(2) Without limitation on the provisions of subrule (1) of this rule, the authority by resolution may accept any guarantee or commitment to guarantee its bonds or notes issued for the purpose of financing real property acquisition and land development pursuant to community development programs, accept any grant with respect to bonds or notes guaranteed and accept any public service grants for providing essential public services, including educational, health and safety services, and authorize and direct the execution on behalf of the authority of any agreement that it considers necessary or appropriate with respect thereto.

#### R 125.111 Hearings.

Rule 111. (1) To inform itself and the public the authority may hold public hearings anywhere in the state and may limit the scope of the hearings.

(2) An individual, firm, corporation, partnership, or public body or agency, aggrieved by a decision of the authority or the executive director, may request in writing that the authority hold a hearing in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(3) Except for hearing and appeal procedures provided by statute or rule, a request for a hearing under subrule (2) of this rule must be received by the authority's director of legal affairs within 60 days after the issuance of the decision.

R 125.113 Waiver.

Rule 113. The executive director may, in his or her discretion, waive a requirement in these rules that is not specifically required by statute upon notification by an applicant that the enforcement of the rule will negate the applicant's opportunity to obtain a loan or other assistance from the authority and when the failure to meet the requirement was caused by the provision of inaccurate information by a financial institution participating in one of the authority programs.

R 125.115 Bylaws.

Rule 115. The bylaws of the authority shall be adopted and amended by resolution and are public records. The bylaws must include the time and place of regular meetings, the manner of calling special meetings, and the internal procedures as the authority requires.

R 125.119 Rescission.

Rule 119. R 125.1 to R 125.73 are rescinded. This rescission shall not defeat or impair any right accrued, or affect any penalty incurred, under such rules, and applications pending with the authority may be amended to conform with these rules.

## PART 2. APPLICATIONS AND APPLICANT ELIGIBILITY

R 125.121 Applications.

Rule 121. (1) The authority staff may provide staff services to assist an applicant in complying with the requirements of the act and these rules. The executive director may establish a preapplication procedure.

(2) Forms to be employed for applications may be prepared by the authority staff, shall be approved by the executive director, and must specify the information to be included and the supporting materials to be submitted with the application.

R 125.122 Eligible applicants.

Rule 122. (1) A development fund loan, mortgage loan, or part of a development fund loan or mortgage loan, must not be made or disbursed to an applicant until the applicant is an eligible applicant.

(2) An eligible applicant is an applicant authorized by the act to receive a development fund loan or a mortgage loan. To become an eligible applicant, an applicant shall obtain the authority's approval of its organizational documents, where applicable, as provided in the act.

R 125.123 Approval of organizational documents.

Rule 123. (1) Proposed articles of incorporation and proposed amendments to existing articles of incorporation of a nonprofit housing corporation, consumer housing cooperative, or limited dividend housing corporation, and the proposed partnership agreement, joint venture agreement, trust agreement, or other document then existing of a limited dividend housing association must be submitted in duplicate originals to the executive director or director of legal affairs, together with a request for the authority's approval of the documents.



(2) The authority staff shall review the organizational documents to determine the compliance with the requirements of the act and these rules, and, if it is determined that the organizational documents comply, the executive director or other authority staff authorized by resolution of the authority shall issue, on behalf of the authority, a certificate of approval with respect to the organizational documents, on a form approved by the executive director or director of legal affairs.

### PART 3. DEVELOPMENT FUND LOANS AND FEASIBLE PROJECTS

#### R 125.131 Applications.

Rule 131. (1) An application for a determination that a proposed housing project is a feasible housing project must include information, and where required by the authority staff, supporting materials and evidence with respect to all of the following:

(a) The status of the applicant as an eligible applicant, or that reasonable steps have been taken to become an eligible applicant.

(b) The site of the proposed housing project, including location, dimensions, ownership, present zoning, present use and occupancy and relocation requirements as to present occupants, present on-site improvements such as streets, utilities, and structures, status of off-site utilities and streets, present property taxes and assessments, utility charges, and liens or other charges on the land, and all physical characteristics of the site that may affect construction.

(c) The status and characteristics of the proposed housing project, including number and size of dwelling units; type of occupancy, including ownership, rental, or cooperative; rehabilitation or new construction; range of proposed rents; occupancy charges or sale prices; building type; federally-aided mortgage or otherwise; and social, recreational, commercial, and communal facilities proposed to serve and improve the residential area in which the proposed housing is located or to be located.

(d) A schedule of the proposed uses of any requested development fund loan and the amounts proposed to be allocated to each use.

(e) Other matters as to the proposed housing project, the applicant, and other parties involved in the housing project as the authority staff and the executive director may require.

(2) An application for a development fund loan must include information, and where required by the authority staff, supporting materials and evidence with respect to all of the following:

(a) The status of the applicant as an eligible applicant, or that reasonable steps have been taken to become an eligible applicant.

(b) The site of the proposed housing project.

(c) The status and characteristics of the proposed housing project and social, recreational, commercial, and communal facilities proposed to serve and improve the residential area in which the proposed housing is located or to be located.

(d) A schedule of the proposed uses of the requested development fund loan and the amounts proposed to be allocated to each such use.

(e) Other matters as to the proposed housing project, the applicant, and other parties involved in the housing project as the authority staff and the executive director may require.

R 125.132 Processing and evaluation of applications.

Rule 132. (1) An application for a development fund loan or a determination that a proposed housing project is a feasible housing project, or both, must be processed by the authority staff on the basis of processing and underwriting procedures and guidelines developed by the authority staff under direction of the executive director on behalf of the authority.

(2) An applicant may be required to furnish to the authority staff supplementary information and to amend the application to cause the proposed housing project to be consistent with the authority's processing and under-writing procedures and guidelines.

(3) Upon completion of the processing, all applications for a determination that a proposed housing project is feasible and all applications for development fund loans in the principal amount of \$250,000 or more must be presented to the authority for approval, along with the authority staff analysis of the application and the executive director's recommendation with respect to the application, subject to terms, conditions, and requirements deemed necessary by the authority, in accordance with R 125.133.

(4) If the principal amount of the development fund loan is less than \$250,000.00, the executive director shall review the authority staff analysis and determine whether all of the following requirements are met:

(a) The applicant is an applicant authorized by the act to receive a development fund loan.

(b) The applicant shall use the loan funds in planning for or implementing any activities permitted in the act.

(c) The applicant is reasonably expected to be able to successfully implement the proposal.

(d) The authority reasonably anticipates that the applicant will receive an authority-aided or a federally-aided mortgage loan, to be obtained to provide financing for the proposed housing project.

(e) The development fund loan can reasonably be anticipated to be repaid from the proceeds of the authority-aided or a federally-aided mortgage loan. If the requirements in this subrule are met, the executive director may issue, on behalf of the authority, a commitment for a development fund loan to the applicant. The development fund loan commitment must contain terms, conditions, and requirements as deemed necessary by the executive director.

R 125.133 Determinations of feasibility and authorization of loans.

Rule 133. (1) The authority shall review the analysis and recommendation for applications for a determination that a proposed housing project is feasible and applications for development fund loans in the principal amount of \$250,000 or more, and, if it determines that the application meets the requirements of the act and these rules and is consistent with the authority's processing and under-writing procedures and guidelines, by resolution, the authority may determine that the proposed housing project is a feasible housing project or authorize a development fund loan to the applicant, or both.

(2) For applications for a determination that a proposed housing project is feasible, the resolution must include all of the following determinations by the authority:

(a) The proposed housing project will provide housing for persons of low- and moderate-income or will serve and improve the residential area in which authority financed housing is located or is planned to be located thereby enhancing the viability of such housing.

(b) The applicant is reasonably expected to be able to achieve successful completion of the proposed housing project.

(c) The proposed housing project will meet a social need in the area where it will be located.

(d) A mortgage loan, or a mortgage loan not made by the authority that is a federally-aided mortgage, can reasonably be anticipated to be obtained to provide financing for the proposed housing project.

(e) The proposed housing project is a feasible housing project.

(3) For applications for development fund loans in the principal amount of \$250,000 or more, the resolution must include the following determinations by the authority:

(a) The applicant is an applicant authorized by the act to receive a development fund loan.

(b) The applicant shall use the loan funds in planning for or implementing any activities permitted in the act.

(c) The applicant is reasonably expected to be able to successfully implement the proposal.

(d) The authority reasonably anticipates that the applicant will receive an authority-aided or a federally-aided mortgage loan, to be obtained to provide financing for the proposed housing project.

(e) The development fund loan can reasonably be anticipated to be repaid from the proceeds of the authority-aided or a federally-aided mortgage loan.

(4) The resolution may include conditions that the authority considers appropriate with respect to an application for a mortgage loan as to the feasible housing project or the use, disbursement, and repayment of the development fund loan.

#### R 125.134 Priorities for allocation of development fund money.

Rule 134. Priorities for allocation of money in the housing development fund available for development fund loans may be established and revised by the authority. Priorities are based on criteria established by the authority as best effectuating the purposes of the act including, without limitation, a determination by the authority of an area's need for housing for individuals of low- and moderate-income as compared to the authority's determination of the overall housing needs of the state.

### PART 4. MORTGAGE LOANS

#### R 125.141 Multifamily mortgage loan applications.

Rule 141. An application for a mortgage loan must include information, and where required by the authority staff, supporting materials, and evidence, with respect to all of the following:

(a) The status of the applicant as an eligible applicant.

(b) The site of the proposed housing project, including location, dimensions, ownership, present zoning, present use and occupancy, and relocation requirements as to present

occupants; present on-site improvements, such as streets, utilities, and structures; status of off-site utilities and streets; present property taxes and assessments; utility charges; liens or other charges on the land; and all physical characteristics of the site that may affect construction.

(c) The status and characteristics of the proposed housing project, including number and size of dwelling units; type of occupancy, including ownership, rental, or cooperative; rehabilitation or new construction; building type; federally-aided mortgage or otherwise; and social, recreational, commercial, and communal facilities proposed to serve and improve the residential area in which the proposed housing is or is to be located.

(d) Identity and qualifications of the design architect, supervisory architect, applicant's attorney, housing consultant, general contractor, marketing or sales agent, and management agent.

(e) Architectural drawings and specifications, site plan, schedule of construction costs, reports of soil tests or engineering studies performed, and evidence of approval of the architectural drawings, specifications, and site plan by governmental bodies having jurisdiction.

(f) Proposed marketing plan reports of market surveys or analyses, schedule of proposed rents, occupancy charges or sale prices, proposed operating budget, proposed management plan, proposed relocation plan and cost analysis, schedule of the proposed uses of the requested mortgage loan and the amounts to be allocated to each such use including the applicant's equity investment, where applicable, and a proposed construction schedule.

(g) The applicant's compliance with, and the fulfillment of, the terms and conditions of any prior determination by the authority that the proposed housing project is a feasible housing project.

(h) The applicant's proposed plans for compliance with the nondiscrimination provisions of section 46 of the act, MCL 125.1446, and the proposed affirmative action plans for minority group employment in construction of the proposed housing project.

(i) Other matters as to the proposed housing project, the applicant, and other parties involved in the housing project as the authority staff and the executive director may require.

#### R 125.142 Processing and evaluation of applications.

Rule 142. (1) An application for a mortgage loan must be processed by the authority staff on the basis of the authority's processing and underwriting procedures and guidelines. The authority staff shall undertake land appraisals, market surveys and analyses, reviews of the architectural design, site plan, and construction costs, materials and methods, and other matters as may be determined to be appropriate to ensure that the proposed housing project is consistent with the authority's processing and underwriting procedures and guidelines.

(2) An applicant may be required to furnish the authority staff with supplementary information and to amend the application to cause the proposed housing project to be consistent with the authority's processing and underwriting procedures and guidelines.

(3) Except as provided for in R 125.143(3), upon completion of the processing and approval of the application by the executive director, the authority staff's analysis of the

application and the executive director's recommendation shall be presented to the authority.

#### R 125.143 Authorization of mortgage loans.

Rule 143. (1) The authority shall review each analysis and recommendation and, if it determines that the application meets the requirements of the act and these rules and is consistent with the authority's processing and underwriting procedures and guidelines, by resolution, it may authorize a mortgage loan to the applicant. The resolution may authorize the executive director to issue a separate authority mortgage loan commitment to the applicant with respect to the proposed housing project.

(2) The resolution must include all of the following authority determinations:

(a) The applicant is an eligible applicant.

(b) The proposed housing project will provide housing for persons of low- and moderate-income or will serve and improve the residential area in which authority-financed housing is located or is planned to be located, thereby enhancing the viability of the housing. In the case of a loan being made pursuant to section 44a(2) of the act, MCL 125.1444a, the loan may be made without regard to the income of the owner or occupants if the housing project is located in an area of chronic economic distress as that term is defined in section 11 of the act, MCL 125.1411, or if the housing project constitutes moderate cost residential rental property located elsewhere in the state.

(c) The applicant is reasonably expected to be able to achieve successful completion of the proposed housing project.

(d) The proposed housing project will meet a social need in the area in which it is to be located.

(e) The proposed housing project may reasonably be expected to be marketed successfully.

(f) All elements of the proposed housing project, including, without limitation, the ownership, design, construction, occupancy, management, and operation thereof, have been established in a manner consistent with the authority's processing and underwriting procedures and guidelines, except as to any such elements as are the subject of conditions as to the authorization of the mortgage loan as provided in R 125.144.

(g) In light of the estimated project cost of the proposed housing project, the amount of the mortgage loan authorized by a resolution is consistent with the requirements of the act as to the maximum limitation on the ratio of mortgage loan amount to estimated project cost.

(3) If the principal amount of the mortgage loan is less than \$250,000.00, the executive director shall review the authority staff's analysis and, if the executive director determines that the applicant is an eligible applicant, that the application meets the requirements of the act and these rules, and that the application is consistent with the authority's processing and underwriting procedures and guidelines as to the proposed housing project, the executive director may issue, on behalf of the authority and pursuant to resolution of the authority, the authority's mortgage loan commitment to the applicant with respect to the proposed housing project. The mortgage loan commitment must contain terms, conditions, and requirements as deemed necessary by the executive director.

R 125.144 Conditions and special determinations in authorizations.

Rule 144. A resolution of the authority authorizing a mortgage loan or a mortgage loan commitment of the authority, the issuance of which is authorized by the resolution, must include conditions that the authority considers appropriate with respect to the commencement of construction of the proposed housing project, the marketing and occupancy of the housing project and the use, disbursement, and repayment of the mortgage loan authorized. A resolution or mortgage loan commitment may include a financial analysis of the subject housing project, which must establish the initial schedule of rents or occupancy charges, the approved budget for operation of the housing project, and the schedule of uses of the proceeds of the mortgage loan. A resolution authorizing a mortgage loan to an applicant that is a limited dividend housing corporation or limited dividend housing association must include a determination of the maximum reasonable and proper rate of return on the investment of the applicant in the proposed housing project, which determination must be made upon a consideration of the then existing conditions in the housing industry and financial markets and rates of return then prescribed by other governmental agencies and applicable federal programs.

R 125.145 Priorities for allocation of monies for mortgage loans.

Rule 145. Priorities for allocation of authority money available for mortgage loans may be established and revised by the authority. Priorities are based on criteria established by the authority as best effectuating the purposes of the act, including, without limitation, a determination by the authority of an area's need for housing for individuals with low- and moderate-income as compared to the authority's determination of the overall housing needs of the state.

R 125.146 Single Family mortgage loans.

Rule 146. (1) An application by an individual for a mortgage loan for long-term financing of a housing unit to be purchased by the individual must include information, and where required by the authority staff, supporting materials and evidence with respect to all of the following:

(a) The eligibility of the applicant.

(b) The eligibility of the housing unit proposed to be purchased.

(2) An application for a mortgage loan, submitted pursuant to subrule (1) of this rule, must be processed and may be approved by an authorized officer.

(3) The authorized homeownership staff shall review each analysis and, if he or she determines that the applicant is an eligible applicant, that the application meets the requirements of the act and these rules, and that the application is consistent with the authority's processing and underwriting procedures and guidelines as to the housing unit to be purchased, then the authorized officer may issue, on behalf of the authority and pursuant to resolution of the authority, the authority's mortgage loan commitment to the originating lender with respect to the housing unit proposed to be purchased. The mortgage loan commitment must contain terms, conditions, and requirements as deemed necessary by an authorized officer, including, without limitation, conditions establishing that the purchase price of the subject housing unit, the method of making payments after the purchase of the housing unit, the security afforded, the interest rate, and fees and charges, if any, to be paid by the eligible applicant must at all times be sufficient to

permit the authority to make the payments on its bonds and notes plus any administrative or other costs to the authority in connection with the transaction.

(4) The authority, by resolution, may authorize the execution, on behalf of the authority, of agreements with corporations, partnerships, individuals, financial institutions, or other entities qualified to do business within this state. The agreements may provide that the authority shall make mortgage loans to eligible applicants for the long-term financing of housing units to be purchased by eligible applicants, and that the housing units must be constructed by or with the assistance of an entity that is a party to the agreement.

(5) An individual shall not receive a mortgage loan for long-term financing a housing unit to be purchased that is not intended for owner occupancy.

(6) Where an individual is a qualifying applicant, only the qualifying applicant will be required to sign the mortgage note and any other loan documents determined by an authorized officer to be necessary, and only the qualifying applicant will be subject to credit qualification. If married, both the qualifying applicant and the applicant's spouse must be identified in the deed or other conveyance document, and both must execute the mortgage securing the property, to the extent required by state law and title industry practice. The income of all other non-qualified-applicant adult individuals who are to reside in the home will be considered for determining eligibility of the household for program qualification and loan terms. Those non-qualified-applicant individuals will be required to attest to their incomes, and those incomes will be included in determining the household gross income; non-qualified-applicant individuals will not be required to sign mortgage loan documents.

(7) An individual shall not receive a mortgage loan for the long-term financing of a housing unit unless the individual meets credit requirements as established by the authority.

(8) For purposes of this rule, housing unit or units may include owner-occupied new housing units, existing housing units to be substantially rehabilitated, condominiums, or mobile homes.

## PART 5. DEVELOPMENT FUND GRANTS

### R 125.151 Applications.

Rule 151. An application for a development fund grant must include information and, where required by the authority staff, supporting materials and evidence with respect to all of the following:

(a) That the applicant is an applicant authorized by the act to receive a development fund grant.

(b) The proposed housing or community development activities for which assistance in planning or implementation is being requested.

(c) The total cost of the planned activities, the net costs to the applicant, and a schedule of the proposed uses of the requested development fund grant and the amounts proposed to be allocated to each use.

(d) Other matters with respect to the proposal, the applicant, and other parties involved as the authority staff and the executive director require.

### R 125.152 Processing and evaluation of applications.

Rule 152. (1) An application for a development fund grant must be processed by the authority staff on the basis of the authority's evaluation factors.

(2) An applicant may be required to furnish to the authority staff supplementary information and to amend the application to cause the planned activities to be fully consistent with the authority's evaluation factors.

(3) Upon completion of the processing, all applications for development fund grants in the amount of \$250,000 or more must be presented to the authority for approval, along with the authority staff analysis of the application and the executive director's recommendation with respect to the application subject to such terms, conditions, and requirements deemed necessary by the authority.

(4) If the amount of the development fund grant is less than \$250,000.00, the executive director shall review the authority staff analysis and determine whether all of the following requirements are met:

(a) The applicant is authorized by the act to receive a development fund grant.

(b) The applicant will use the grant funds in planning for or implementing any activities permitted in the act.

(c) The applicant is reasonably expected to be able to successfully implement the proposal.

(d) The application satisfies the evaluation factors and criteria adopted by the authority. If the requirements of this subrule are met, the executive director may issue, on behalf of the authority, a commitment for a development fund grant to the applicant. The development fund grant commitment must contain terms, conditions, and requirements as deemed necessary by the executive director. The authority may require repayment of these grants.

R 125.153 Authorization of development fund grants in the amount of \$250,000 or more.

Rule 153. (1) For applications for development fund grants in the amount of \$250,000 or more, the authority shall review each analysis and recommendation presented and, if it determines that the application meets the requirements of the act and these rules and is consistent with the authority's evaluation factors, by resolution, it may authorize a development fund grant to the applicant in an amount not to exceed the net costs to the applicant of the planned activities.

(2) The resolution of the authority must include all of the following determinations by the authority:

(a) The applicant is authorized by the act to receive a development fund grant.

(b) The applicant will use grant funds in planning for or implementing any activities permitted in the act.

(c) The applicant is reasonably expected to be able to successfully implement the proposal.

(d) The application satisfies the evaluation factors and criteria adopted by the authority.

(3) The resolution may include conditions which the authority considers appropriate with respect to the use and disbursement of the development fund grant. The authority may require repayment of these grants.

R 125.154 Priorities for allocation of development fund monies.



Rule 154. Priorities for allocation of monies in the housing development fund available for development fund grants may be established and revised by the authority. Priorities are based on criteria established by the authority as best effectuating the purposes of the act.

## PART 6. AUTHORITY LOAN DOCUMENTS

R 125.161 Authority loan documents.

Rule 161. (1) Forms of documents to be used with respect to development fund loans, mortgage loans, and the issuance and sale of authority notes and bonds must be prepared, and may be revised and amended, by the authority staff under direction of the executive director on behalf of the authority, subject to legal requirements.

(2) The appropriate forms of the documents must be employed with respect to all matters relating to development fund loans and mortgage loans.

## PART 7. LAND ACQUISITION AND DEVELOPMENT

R 125.171 Land acquisition and development proposals.

Rule 171. (1) The authority staff may develop proposals for the use of money in the land acquisition and development fund created by the act. A proposal may be for the following:

(a) The acquisition by grant, purchase, or otherwise of real property, which for purposes of this part is defined as any interest, including a fee and leasehold interest, in land or improvements to land, or a portion thereof, by the authority under any of the following circumstances:

(i) The real property may be suitable for a future housing development or housing project.

(ii) The real property is located in a residential area where the authority has financed or has planned to finance housing, and the proposed use of the real property improves the quality of the residential area by eliminating blight or provides needed public or commercial facilities.

(iii) The real property is so situated that the present or future use of the real property, if not acquired by the authority, adversely affects the value or marketability of the authority-financed housing project.

(b) Any of the following types of improvements to real property purchased or otherwise acquired for the purposes of the fund:

(i) Improvements that are necessary to place the real property in a safe, sanitary, and decent condition, including demolition, excavation, and landscaping.

(ii) Improvements to real property that is to be dedicated for the public use and enjoyment, including the installation of recreational facilities, benches, shelters, lighting, and walkways.

(iii) Improvements that are necessary to ensure the planned development of the real property, including the installation of roads, sidewalks, sewers, and utilities.

(c) The payment of any of the following costs on real property purchased or being purchased with money from this fund or acquired by gift, grant, or exchange for the purposes of this fund:

(i) The costs of property taxes, insurance premiums, interest, maintenance expenses, and other carrying charges on real property. Notwithstanding the provisions of section 42 of the act, MCL 125.1442, during the period when real property is owned or is being purchased by the authority or its agent, the authority shall pay all property taxes levied against the real property unless a taxing jurisdiction exempts the real property from property taxes. The assessed valuation of the real property while it is owned or being purchased by the authority or its agent may not be increased by any taxing jurisdiction, except to reflect the state equalization valuation process.

(ii) The costs of planning the development of the real property, including, but not limited to, the costs of economic feasibility studies, land use studies, site development planning, architectural and engineering design, market analysis and all related analyses, studies, and planning services.

(iii) The costs incurred in the transfer of real property, including brokerage and appraisal fees, recording expenses, and the costs of surveys and title insurance.

(d) The costs of improvements to real property permitted by section 24b(2) of the act, MCL 125.1424b.

(2) A proposal must contain information as to the description and fair market value of any real property or interest therein proposed to be acquired and the proposed method of acquisition thereof, the nature and cost of any improvements proposed to be undertaken or carrying charges or transfer expenses proposed to be paid, the nature and cost of any planning of the development of real property proposed to be undertaken. A proposal, upon completion, and the executive director's recommendation with respect thereto shall be presented to the authority.

#### R 125.172 Approval and implementation of proposals.

Rule 172. (1) The authority shall review a proposal and recommendation and, if it determines that the proposal meets the requirements of the act and these rules, by resolution, it may approve the proposal and authorize and direct the implementation of the proposal and the use of appropriate money of the authority in connection with the implementation.

(2) The resolution may provide that any real property or interest therein to be acquired by the authority may be acquired in the authority's name or through and in the name of a duly authorized agent of the authority. If any such real property or interest therein is to be purchased on land contract, option, or other form of deferred payment agreement, or subject to mortgages or other encumbrances, the authority, by the resolution, shall reserve money in the land acquisition and development fund or authorization to issue notes and bonds, the aggregate amount of which equals the unpaid principal balance of the land contract, option, mortgage, or other encumbrance or deferred payment agreement plus any anticipated carrying charges, including without limitation, insurance premiums, interest, maintenance expenses, and property taxes. In the event that the acquisition is to be accomplished through a duly authorized agent of the authority, the authority shall require the agent to protect the authority's interest in the property and to convey the property interest to the authority upon the authority's request, and the records of the

authority shall reflect the existence of, and the authority's rights in, the real property or interest therein.

R 125.173 Sale or exchange of property of authority.

Rule 173. (1) The authority, by resolution, may authorize and direct the sale, assignment, transfer, conveyance, lease, mortgage, or other disposal or encumbrance of real or personal property or any interest therein, or part thereof, with respect to which money from the land acquisition and development fund have been expended to any individual, firm, partnership or corporation, county, municipality, authority, or federal or state agency at a price and on the terms and conditions that meet the requirements of the act and are considered appropriate by the authority.

(2) The authority, by resolution, may authorize and direct the exchange of real property with respect to which money from the land acquisition and development fund have been expended, if the authority determines that the real property proposed for acquisition meets the requirements of R 125.171(1)(a).

## PART 8. PROPERTY IMPROVEMENT LOANS

R 125.181 Eligible applicants.

Rule 181. An applicant for a property improvement loan shall satisfy all of the following requirements:

(a) An applicant shall be an individual fee owner of the residential structure to be improved or an individual member-shareholder in a nonprofit cooperative housing corporation who has a proprietary interest in a residential structure. The residential structure may be subject to a mortgage or other lien securing a debt.

(b) An applicant shall meet credit requirements as established by the authority.

(c) The residential structure to be improved must not be in violation of applicable zoning ordinances or other applicable land use guidelines.

(d) The residential structure may not contain more than 24 dwelling units.

(e) The applicant shall use property improvement loan proceeds to finance only new improvements upon, or in connection with, existing structures and shall not use the property loan proceeds to refinance an existing mortgage or debt, or to complete an unfinished residential structure.

(f) All improvements must be reasonably capable of being completed, except for causes beyond the applicant's reasonable control, within 6 months of the date of the first disbursement of funds pursuant to the property improvement loan. The authority may extend this period for good cause shown.

R 125.182 Eligible improvements.

Rule 182. (1) Improvements made with property improvement loan proceeds must satisfy the following requirements:

(a) Improvements may be made in order to comply with applicable state, county, and municipal health, housing, building, fire prevention and housing maintenance codes, or other public standards applicable to housing.

(b) Improvements may also be made that protect or improve the basic livability or utility of a residential structure and make the residential structure safe, sanitary, or adequate. However, to be an eligible improvement, it must be a permanent general improvement.

(c) An improvement must be made in compliance with all applicable health, fire prevention, building, housing, and housing maintenance codes, and other public standards applicable to housing. However, no application for a property improvement loan for a dwelling unit occupied by the owner may be denied solely because the improvements will not bring the dwelling unit into full compliance with all applicable codes and standards.

(d) Property improvement loans proceeds may not be used for the payment, wholly or in part, of an assessment for public improvements. However, proceeds may be used for improvements that will bring an individual sewage disposal system, including septic systems, located on the residential real property improved by a residential structure into compliance with local, state, and federal environmental and sanitary standards.

(e) The authority may require that all contracts covering all or any portion of an improvement contain an authority-approved warranty on workmanship and materials.

(2) All rehabilitation contracts must be between the homeowner and the contractor. The authority shall not negotiate or enter into rehabilitation contracts.

#### PART 9. MICHIGAN HOUSING AND COMMUNITY DEVELOPMENT FUND; MICHIGAN HOUSING AND COMMUNITY DEVELOPMENT PROGRAM

R 125.190 Program purpose and applicability.

Rule 190. The authority shall use the Michigan housing and community development fund created in section 58a of the act, MCL 125.1458a, to provide loans, grants, or other comparable forms of assistance to eligible applicants to finance, acquire, rehabilitate, and develop decent, safe, and sanitary housing and projects located in a downtown area or adjacent neighborhood in this state. The use of the Michigan housing and community development fund is limited to activities outlined in sections 58b and 58c of the act, MCL 125.1458b and 125.1458c, as follows:

(a) Developing and coordinating public and private resources to meet the housing needs of low-income, very low-income, and extremely low-income households in this state, particularly innovative strategies leveraging public and private resources to meet these needs.

(b) Developing housing for the homeless, including both transitional housing and permanent housing.

(c) Developing rental housing.

(d) Providing funding to eligible applicants with respect to housing or homeownership for individuals and families of low-income, very low-income, and extremely low-income households and projects located in a downtown area or adjacent neighborhood in this state, including funding for all of the following:

(i) Acquisition of land and buildings.

(ii) Rehabilitation.

(iii) New construction.

(iv) Development costs and predevelopment costs.

- (v) Preservation of existing housing.
- (vi) Community development projects, including, but not limited to, infrastructure improvements, economic development projects, blight elimination, or community facilities.
- (vii) Insurance.
- (viii) Operating and replacement reserves.
- (ix) Down payment assistance.
- (x) Security deposit assistance.
- (xi) Foreclosure prevention and assistance.
- (xii) Individual development accounts established under the individual or family development account program act, 2006 PA 513, MCL 206.901 to 206.911.
- (xiii) Activities related to ending homelessness.
- (xiv) Assistance to nonprofit organizations, municipalities, and land bank fast track authorities organized under the land bank fast track act, 2003 PA 258, MCL 124.751 to 124.774.
- (xv) Predatory lending prevention or relief.

#### R 125.191 Definitions.

Rule 191. Definitions provided for in part 1 of the authority's rules, R 125.101 to R 125.103, apply to the provisions of this part, unless superseded in this rule as follows:

- (a) "Allocation plan" means the plan referred to in and required by section 58b of the act, MCL 125.1458b(3).
- (b) "Annual report" means the annual report required under section 58b of the act, MCL 125.1458b.
- (c) "Applicant" means a person who has submitted an application, proposal, or other documentation related to a request for an award of housing and community development fund money meeting the requirements contained in the applicable NOFA or RFP related to the applicable application year.
- (d) "Biennial plan" means the allocation plan as defined in subrule (a) of this rule.
- (e) "Chief Executive Officer" or "CEO" means the senior manager or person acting within this capacity responsible for overseeing the activities of the entire company or organization. The CEO usually holds a position on the board of directors of the company or organization and may also hold the title of president.
- (f) "Chief Financial Officer" or "CFO" means the company's or organization's top managerial and financial accountant and the individual in charge of the company's or organization's financial matters or the person acting within this capacity.
- (g) "Community development" means a process involving the conception, planning, and implementation of projects or activities that create improvements in, or reduce the extent of declines in, the living standards of people in a particular community.
- (h) "Controlling interest" means the holding by 1 person or group of persons of a majority of the stock or other indicia of ownership of a business entity, giving the holder or holders a means of exercising control over the actions of the entity.
- (i) "Development costs" means the sum total of all costs incurred by eligible applicants for the purpose of developing and coordinating public and private resources to meet the housing needs of low-income, very low-income, and extremely low-income households

or to finance projects, as that term is defined in section 58 of the act, MCL 125.1458, located in a downtown or adjacent neighborhood in this state.

(j) "Formula" means the standard procedure for distributing the Michigan housing and community development program funds throughout the state based on the number of persons experiencing poverty, economic, and housing distress as specified in section 58b of the act, MCL 125.1458b.

(k) "For-profit corporation" means an entity that exists primarily to generate more income than it spends.

(l) "Homelessness" means lacking a fixed, regular, and adequate nighttime residence with priority given to those living in any of the following:

(i) A publicly or privately operated shelter or transitional facility designed to provide temporary living accommodations.

(ii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for humans.

(iii) An institution that provides temporary residence for individuals intended to be institutionalized.

(m) "Housing development" means single-family homes, rental developments, elderly developments, affordable assisted living developments, supportive housing developments, and any work or undertaking financed in whole or in part under this part for the primary purpose of acquiring, constructing, or rehabilitating housing for low, very low, or extremely low-income households in need of housing. An undertaking may include any buildings, land, equipment, facilities, or other real or personal property that is necessary, convenient, or desirable in connection with a development, including but not limited to streets, sewers, utilities, parks, site preparation, landscaping, and other non-housing facilities determined to be necessary, convenient, or desirable.

(n) "HUD" means the United States Department of Housing and Urban Development, the federal department responsible for the major housing programs in the United States.

(o) "Lookback" means the process of reviewing an intended proposed distribution of Michigan housing and community development program funds in a program year to ensure compliance with the earmark requirements provided in the act and these rules.

(p) "Michigan housing and community development fund" means the fund created in section 58a of the act, MCL 125.1458a.

(q) "Michigan housing and community development program fund advisory committee" means the advisory committee created in section 58e of the act, MCL 125.1458e.

(r) "Michigan housing and community development program" means the program created in section 58b of the act, MCL 125.1458b.

(s) "NOFA" means a notice of funding availability issued pursuant to this rule and the applicable statutory law governing the program.

(t) "Not-for-profit corporation" means a public or private corporation that meets all of the following:

(i) Is organized under state or local laws.

(ii) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual.

(iii) Has a current tax exemption ruling from the Internal Revenue Service (IRS) under section 501(c)(3), a charitable, nonprofit corporation, or section 501(c)(4), a community

or civic organization, of the internal revenue code, 26 USC 501(c)(3) or 26 USC 501(c)(4), as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the application and must continue to be effective throughout the length of any contract or grant agreements; or classification as a subordinate of a central organization non-profit under the internal revenue code, as evidenced by a current group exemption letter, dated 1986 or later from the IRS, that includes the applicant. The group exemption letter must specifically identify and list the applicant.

(iv) A private nonprofit organization's pending application for section 501(c)(3) or section 501(c)(4) of the internal revenue code, 26 USC 501(c)(3) or 26 USC 501(c)(4), status does not comply with the tax status requirement.

(u) "Predevelopment costs" means reimbursable costs, related to a specific eligible housing, downtown, or adjacent neighborhood project, that meet all of the following:

(i) Predevelopment project costs that are determined to be customary and reasonable by the authority, including, but not limited to, consulting fees, architectural fees, engineering fees, and costs related to the engagement of a development team, costs related to establishing site control, and costs related to title clearance.

(ii) Pre-construction project costs that are determined to be customary and reasonable by the authority, including, but not limited to, the costs of obtaining architectural plans and specifications, zoning approvals, engineering studies, and legal fees.

(iii) Predevelopment costs do not include general operational or administrative costs.

(v) "Program funds" means the money in the Michigan housing and community development fund.

(w) "Recipient" means an eligible applicant receiving funds or other assistance under the program. Recipient includes a subrecipient and any requirement applying to a recipient applies to a subrecipient.

(x) "Rental housing project" means a housing development consisting of 1 or more dwelling units that will be rented to individuals or families meeting applicable occupancy and income requirements related to the nature of the housing unit or development.

(y) "Request for proposals" or "RFP" means an announcement of a willingness to consider proposals requesting the awarding of program funds for a particular use or uses related to the fund or program.

(z) "State" means the state of Michigan and any state level component units thereof.

#### R 125.192 Program funds eligible uses.

Rule 192. (1) Michigan housing and community development program funds may be used for the following activities:

(a) Acquisition activities. Acquisition in whole or in part by the recipient, by purchase, long-term lease, donation, or otherwise, of real property, including air rights, water rights, rights-of-way, easements, and other interests therein, for any purpose authorized by the program.

(b) Rehabilitation, clearance, and remediation activities. Rehabilitation activities include clearance, demolition, and removal of buildings and improvements, movement of structures to other sites, and remediation of known or suspected environmental contamination for a current or proposed housing development or project located in a

downtown area or adjacent neighborhood. Demolition of HUD-assisted or HUD-owned housing units may be undertaken only with the prior approval of HUD.

(c) New construction of housing activities or projects located in a downtown area or adjacent neighborhood. Construction of a housing development or projects located in a downtown area or adjacent neighborhood, including housing assisted under federal or state law, through the incurrence of development costs and predevelopment costs.

(d) Activities incurring development costs and predevelopment costs.

(e) Preservation of existing housing or activities related to the preservation of existing housing.

(f) Activities related to community development projects, infrastructure improvements, economic development projects, blight elimination, and community facilities. Activities under this category include acquisition, construction, reconstruction, rehabilitation or installation of community facilities, and infrastructure improvements or other incurrence of development costs or predevelopment costs carried out by the recipient. In undertaking such activities, design features and improvements that promote energy efficiency may be included. Such activities may also include the execution of architectural design features and similar treatments intended to enhance the aesthetic quality of facilities and improvements receiving assistance. Such community facilities include, but are not limited to, shelters for the homeless; shelters for victims of spousal and dating violence; halfway houses for children temporarily separated from their parents or guardians, drug offenders or parolees; group homes for persons with disabilities; and temporary housing for disaster victims.

(g) Activities incurring insurance costs related to any purpose authorized by the Michigan housing and community development program.

(h) Activities involving operating, replacement, and other reserves related to any purpose authorized by the Michigan housing and community development program.

(i) Activities providing down payment and other direct homeownership assistance to low, very low, or extremely low-income households.

(j) Activities providing security deposit assistance to low, very low, or extremely low-income households.

(k) Activities providing foreclosure prevention or foreclosure assistance to low, very low, or extremely low-income households.

(l) Activities related to individual development accounts established under the individual or family development account program act, 2006 PA 513, MCL 206.901 to 206.911.

(m) Activities related to ending homelessness.

(n) The provision of assistance either through the recipient directly or through public and private organizations, agencies, and other subrecipients, including nonprofit and for-profit subrecipients, to facilitate economic development projects or activities that support housing development that does the following:

(i) Provides financial support for the establishment, stabilization, and expansion of business enterprises.

(ii) Provides technical assistance, advice, and business support services to owners of business enterprises and persons developing business enterprises.



(iii) Provides general support, including, but not limited to, peer support programs, counseling, childcare, transportation, and other similar services, to owners of business enterprises and persons developing business enterprises.

(iv) Assistance under this subrule may also include training, technical assistance, or other support services to increase the capacity of the recipient or subrecipient to carry out the activities under this subrule.

(o) Assistance activities provided to public or nonprofit entities, including municipalities and land bank fast track authorities organized under the land bank fast track act, 2003 PA 258, MCL 124.751 to 124.774, to increase the capacity of such entities to carry out program eligible housing development, neighborhood revitalization, or economic development activities.

(p) Predatory lending prevention or relief.

(q) Any other housing and community development fund or program activities authorized under the authority's act.

(2) Ineligible applicants include the following:

(a) An applicant, recipient, or an entity in which the applicant or recipient has or had a controlling interest, either failed to submit or is now delinquent in providing an explanation, evidence of corrective action or a payment of disallowed costs or fees as a result of a program funding monitoring review.

(b) An applicant, recipient, or an entity in which the applicant or recipient has or had a controlling interest, is currently delinquent on any loan payments or any fees due and payable to the authority.

(c) An applicant, recipient, or an entity in which the applicant or recipient has or had a controlling interest, has been or is barred, debarred, suspended, or terminated from procurement in a state or federal program or listed in the list of parties excluded from federal procurement or non-procurement programs or has otherwise been debarred by HUD or the authority.

(d) Any individual acting as an owner, member, principal, officer, manager, or key employee of the applicant, recipient, or an entity in which the applicant or recipient has or had a controlling interest, has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within 15 years preceding the application deadline.

(e) An applicant, recipient, or an entity in which the applicant or recipient has or had a controlling interest, at the time of application submission is subject to any of the following:

(i) Enforcement or disciplinary action under state or federal securities law or by the National Association of Securities Dealers (NASD).

(ii) A federal tax lien.

(iii) An enforcement proceeding with any governmental entity.

(f) An applicant, recipient, or an entity in which the applicant or recipient has or had a controlling interest has open or unresolved, or both, audit issues with HUD or the authority related to this program or other programs administered by HUD or the authority.

(g) A submitted application is incomplete; lacks required supporting documentation; or is so unclear or disjointed that, in the discretion of the authority, it cannot reasonably be

reviewed to determine whether it meets program criteria. If an application is determined to be ineligible pursuant to this rule, the application will be terminated. To the extent that the authority staff was able to complete a limited application review, specific reasons for the authority's determination of ineligibility must be included in the termination letter to the applicant.

(h) An applicant, recipient, or an entity in which the applicant or recipient has or had a controlling interest, has an ownership interest, or exercises control of 1 or more rental housing properties in this state is subject to a regulatory agreement or tax credit regulatory agreement with the authority and is in material noncompliance with the regulatory agreement or tax credit regulatory agreement.

(i) Any application that includes financial participation by a person who, during the 5-year period preceding the date of the bid or award, has been convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of any disaster occurring after January 1, 2000, or was assessed a federal civil or administrative penalty in relation to such a contract.

(j) Applications for proposals which cause or result in the permanent displacement of low-income, very low-income, or extremely low-income households. Low-income, very low-income, or extremely low-income households that may be temporarily displaced by the rehabilitation of affordable housing may be eligible for compensation of moving and relocation expenses. If a recipient violates the dislocation provisions of this subrule, that recipient shall repay program money and the landlord or developer must pay the affected parties' costs and all moving expenses.

#### R 125.193 Application procedures and requirements.

Rule 193. (1) Applications received by the authority in response to a Michigan housing and community development program NOFA or RFP must be handled in the following manner:

(a) The authority shall accept applications on an ongoing basis during the application acceptance period as specified in the NOFA or RFP.

(b) Applications submitted and accepted by the authority will be reviewed in the following manner:

(i) Authority staff shall review all applications for eligibility, threshold, and selection criteria and ensure that all application requirements have been met.

(ii) Authority staff shall review applications to determine whether they comply with the NOFA or RFP and applicable law.

(iii) Authority staff may issue a notice of any administrative deficiencies related to applications reviewed.

(iv) Authority staff shall conduct a comprehensive review of financial feasibility for development activities proposed in any application deemed acceptable under paragraphs (i) to (iii) of this subdivision.

(v) Authority staff shall create a report setting forth the recommended terms, amount, and any conditions related to the proposed loan, grant, or project.

(2) Upon completion of staff review and any associated resolution of any applicable administrative deficiencies, applications that the review committee reviews, scores, and selects for award shall be recommended to the authority for approval.

(3) If an application contains deficiencies that in the determination of the authority staff, require clarification or correction, the authority staff may request clarification or correction of the administrative deficiencies, including threshold, selection criteria documentation, and financial feasibility analysis.

(4) Requests for clarification or correction may be sent to the applicant in the form of a facsimile, e-mail, or be relayed to the applicant via a telephone call and documented in the application file.

(5) An applicant may not change or supplement any part of an application in any manner after submission to the authority, propose to increase the award amount, or revise the unit mix, as to income levels or bedroom-count mixes, or both, except to remedy an administrative deficiency.

(6) The authority may decline to fund any application if the proposed activities do not, in the authority's sole determination, represent a prudent use of the housing and community development program funds.

(7) The authority is not obligated to proceed with any action pertaining to any applications that are received and may decide it is in the authority's best interest to refrain from pursuing any selection process.

(8) The authority may negotiate individual elements of any application, loan, or grant. Revision of application terms does not guarantee an award of funding.

(9) The authority may conduct a site review. Applicants must receive recommendation for approval from the authority staff and the review committee to be considered for funding by the authority.

#### R 125.194 Evaluation criteria for funding; other program requirements.

Rule 194. (1) Requests for funding scoring the highest on the criteria explained in subrule (2) of this rule are most likely to be awarded funds.

(2) The following criteria will be used in evaluating the responses to any Michigan housing and community development program NOFA or RFP:

(a) To be eligible for funding, an applicant must first demonstrate that it meets each of the following threshold criteria:

(i) The application is consistent with the requirements established in the act, this rule, the NOFA, or the RFP.

(ii) If the application involves either a rental housing project or a home ownership project, the application requests funding for a project that sets aside at least 20% of the rental units or housing units in the project for households earning not more than 60% of the area median income.

(iii) The application includes a letter of support from the highest-ranking elected official for each of the jurisdictions served by the proposed project.

(iv) The application meets the readiness to proceed requirements established in the NOFA or the RFP.

(v) Any outstanding housing and community development fund predevelopment loans for the same proposed development site must be paid in full at the time of loan closing for the current requested funds.

(b) Evaluation factors used to evaluate and score applications, as more fully described in a NOFA or RFP, will include, at a minimum, the following factors:

(i) The extent to which the proposal or project represents the leveraging of program funds.

(ii) The ability of the applicant or recipient, or both, to administer the funding award effectively and deliver results within program timelines.

(iii) The extent to which the proposal or project helps meet the 25% earmark provided in the act for rental housing projects that do not qualify under preferences for special population groups, or other preferences contained in the allocation plan.

(iv) The extent to which the proposal or project helps meet the 30% earmark provided in the act for projects that target extremely low-income households, including developing housing for the homeless, supportive housing, transitional housing, and permanent housing.

(v) The extent to which the proposal helps meet the statutory requirement that a portion of the fund be expended for persons with disabilities and individuals living in eligible distressed areas.

(3) Other Michigan housing and community development program requirements include the following:

(a) All uses of program funds must comply with the applicable income limitations contained in the act, these rules, the annual plan, the applicable NOFA or RFP, and any statements or representations made in any application or other documentation submitted as a part of any application, reporting, or other monitoring related to any award of program funds.

(b) A rental housing project assisted by the fund must set aside at least 20% of the housing units in the project for households earning not more than 60% of the area median income.

(c) A home ownership project assisted by the fund must set aside at least 20% of the housing units in the project for households earning not more than 60% of the area median income.

(d) If the housing funded by the program is rental housing, the owner or manager of the housing must agree in writing not to evict a tenant without just cause, as defined in section 44a of 1933 PA 18 (Ex. Sess.), MCL 125.694a.

(e) All assistance for housing and real property acquired or supported by program funds must include an agreement, restriction, or real covenant related to the recapture of program funds upon sale, conversion, or disposition of the property if the recapture provisions of these rules are triggered.

R 125.195 Biennial plan; allocations; earmarks; carryover.

Rule 195. (1) Pursuant to the act, the authority shall biennially develop, propose, and establish a biennial plan related to the Michigan housing and community development program. The biennial plan must be issued pursuant to the requirements of the act and all of the following:

(a) The authority shall, as a part of the biennial plan, issue an allocation plan related to the disbursement of program funds.

(b) The authority's biennial plan and allocation plan must contain an allocation formula related to the disbursement of program funds.

(c) The following statutory earmark and lookback procedures apply to any biennial plan, allocation plan, and allocation formula:

(i) Not less than 25% of the dollars used for loans or grants made in any program year must be earmarked for rental housing projects that do not qualify under preferences for special population groups, or other preferences contained in the allocation plan.

(ii) Not less than 30% of the dollars used for loans or grants made in any program year must be earmarked for projects that target extremely low-income households and include housing for the homeless, supportive housing, transitional housing, or permanent housing.

(iii) A portion of the fund must be expended for housing for persons with disabilities and individuals living in eligible distressed areas.

(2) After the completion of any application receipt, review, selection, and approval process related to any biennial plan, allocation plan, or allocation formula in any program year, the authority shall look back and review the intended distribution of the program funds for that year and determine whether the earmark requirements in this rule and in the act will be met under the proposed distribution. If the earmark requirements are not met, and eligible applications meeting the earmark requirements have been received, accepted, and have not otherwise been approved for funding, the authority shall revise the proposed distribution to comply with the applicable earmark requirements. The revised plan shall be presented to and approved by the authority.

(3) Uncommitted funds at the end of any program year must be carried over and used under the applicable biennial plan, allocation plan, and allocation formula related to any subsequent program year.

R 125.196 Reporting requirements; program periods; compliance monitoring; review; recapture.

Rule 196. (1) The following provisions regarding reporting apply:

(a) All recipients of program funds shall report back to the authority on a semiannual basis about their use of program funds. The authority shall collect information from recipients to establish that the program funds are being spent correctly and to measure the results or performance of its spending against the objectives of the Michigan housing and community development program.

(b) The authority shall establish as a part of each biennial plan reporting forms that must be submitted by the recipients on a semiannual basis. These reports must include both a performance monitoring form and a financial monitoring form.

(c) The performance monitoring form must be signed by the chief executive officer of the recipient and analyze the management performance of the recipient, specifically including a description of the following items:

(i) What was done with the program funds and whether what was done was consistent with the goals and strategies outlined in the application.

(ii) How well it was done, including a discussion of how success or failure will be measured.

(iii) Who has benefited from the distribution of program funds, including details on results.

(d) The financial monitoring form must be signed by the chief financial officer of the recipient and analyze the financial performance of the recipient. Program funds must be used in an efficient, effective, and appropriate manner, consistent with the Michigan housing and community development program objectives and priorities, including

community needs. Program funds must also be appropriately and properly accounted for with documentation that adequate safeguards have been instituted by the recipient to ensure that there is no misuse of program funds.

(2) The following provisions apply to Michigan housing and community development program periods and extensions:

(a) The initial program period for any loan or grant awarded under the program is 2 years from the date of the award of program funds. All activities related to the use of program funds must be completed within this 2-year time frame. Any program monies outstanding on the date that is 2 years from the date of the award are subject to the recapture provisions of this rule and must be immediately repaid to the authority.

(b) Recipients must maintain compliance with each of its contracts and agreements with the authority.

(c) Recipients must comply with any restrictions that are stated in and enforced through a regulatory agreement or any other legal document associated with any award of program funds. These restrictions may include, but are not limited to, the following:

- (i) Rent restrictions.
- (ii) Record keeping and reporting.
- (iii) Income targeting of tenants.

(d) The authority will monitor compliance with project restrictions and any other covenants by recipient in any Michigan housing and community development program fund agreement. An annual compliance fee of up to \$75.00 per unit may be charged for this review.

(3) The authority executive director shall name a review committee that shall meet to consider, review, score, and recommend for approval program funding awards and award amounts based on applications received in any program funding round. The review committee shall meet to formally review the applications and make recommendations to the authority regarding the total awards to be made in any application year and the amounts and recipients of the proposed awards. Each member of the committee shall complete a scoring sheet detailing the member's evaluation and score of the application on the various evaluation factors or criteria. The committee shall make any program funding award recommendation decisions based on the scoring of these factors or criteria, subject to revision under the applicable earmark requirements. All decisions of the committee shall be made based on the scoring outcomes or by majority vote, or both, as applicable. The authority shall have final authority to approve or disapprove of any program funding award recommendation made by the review committee.

(4) Recapture of program funds must be accomplished as follows:

(a) The authority has the power to recapture or de-obligate program funds and program funding awards in certain circumstances. The power to recapture or de-obligate program funds may apply to entire awards or portions of awards. Recaptured or de-obligated program funds must be re-deposited in the fund and used to make future awards in the current and next applicable program year or program funding round.

(b) The following reasons justify the de-obligation or recapture of program funds:

(i) Inability of the applicant or recipient to execute the program activity and obligate the program funds within the initial program period 2-year timeline.

(ii) Inability of the applicant or recipient to make drawdowns of program funds on a regular and timely basis, such that the authority has grounds to question the overall viability of the project.

(iii) Substantial, significant, and lengthy noncompliance with the act, rules, NOFA, RFP, application, biennial plan, allocation plan, allocation formula, program funding agreement, or any other documentation or requirement related to any award. In making the decision on de-obligation or recapture in this instance, the authority shall consider whether or not the non-compliance is due to factors beyond the applicant's or recipient's control.

(iv) If the total cost of the anticipated program activity is less than the total cost anticipated in the application or other documentation provided by the applicant or recipient, or both, the authority may de-obligate the portion of the award exceeding the actual costs of the program activity.

(v) At the end of the initial program period and any approved extension of that period, the unspent funds remaining in the program account, project account, or any other account related to the program activity must be recaptured and returned to the program fund.

(vi) If the applicant or recipient, or both, voluntarily returns the program funds to the authority and ceases all program activity and reporting upon the return of program funds.

(vii) Any other reason justifying recapture or de-obligation approved by the authority, upon notice to the applicant or recipient, or both, of both the authority's consideration of a recapture or obligation decision and notice that the authority has approved a resolution or motion evidencing its decision to recapture or de-obligate the program funds.

#### R 125.197 Hearings procedures.

Rule 197. Hearing procedures must include citizen participation as follows:

(a) The authority must hold at least 3 public hearings in separate locations throughout the state biennially on the program priorities for the upcoming 2-year period. At the hearings, the authority shall solicit comments from the public, eligible applicants, and administrators and development owners on the Michigan housing and community development fund and program rules, guidelines, and procedures.

(b) The authority must consider the comments received at public hearings. Biennially, the authority must review the performance, administration, and implementation of the Michigan housing and community development fund in light of public comment it receives. The authority shall also review the biennial plan, allocation plan and allocation formula, funding goals, and earmarks relating to allocation and award of the Michigan housing and community development fund monies.

(c) The authority must submit an annual report to the governor and the legislature under section 58b(6) of the act, MCL 125.1458b. The authority shall include the statutorily required information in the annual report, as well as any other information that the authority staff, review committee, or authority board believe would enhance the understanding that the elected officials and citizens of this state have regarding the operation of the Michigan housing and community development program.

(d) After the applicable application deadline related to the NOFA or RFP, applications for the Michigan housing and community development funds are public information subject to release under the freedom of information act (FOIA), 1976 PA 442, MCL

15.231 to 15.246, and the authority shall afford the public an opportunity to comment on proposed housing applications prior to the making of awards.

(e) Before any proposed change to these rules, the authority must conduct a public hearing in accordance with the provisions of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

#### R 125.198 Michigan housing and community development fund advisory committee

Rule 198. Pursuant to section 58e of the act, MCL 125.1458e, the authority shall seek the advice of the Michigan housing and community development fund advisory committee on both of the following:

(a) Recommendations for the biennial allocation plan required under section 58b of the act, MCL 125.1458b.

(b) Fund expenditure review, including whether the expenditures are distributed fairly and equitably, whether the expenditures satisfy the housing needs and priorities in this state, and whether the expenditures satisfy the economic needs and priorities in this state.

#### R 125.199 Records.

Rule 199. Records maintenance requirements for applicants and recipients include the following:

(a) In addition to any regular reporting obligations provided under R 125.193, applicants, recipients, or both are required to maintain records on each of the following issues and shall, upon the written request of the authority, submit information to the authority on any program activity or administration issues, which may include, but are not limited to, the following:

(i) Information as may be necessary to determine whether a project is benefiting low, very low, and extremely low-income households.

(ii) The monthly rent or mortgage payment for each dwelling unit in each structure assisted.

(iii) Information as may be necessary to determine whether the applicant or recipient, or both, has carried out housing or community development activities in accordance with the requirements and primary objectives of the Michigan housing and community development fund program and implementing regulations.

(iv) The size and income of the household for each unit occupied by a low, very low, and extremely low-income households.

(v) Data on the extent to which any racial and ethnic group and households have applied for and benefited from any project or activity funded in whole or in part with funds made available under the Michigan housing and community development program. This data must be updated annually by the applicant or recipient.

(vi) A final statement of accounting upon completion of the project.

(vii) Any other information reasonably within the applicant's or recipient's ability to determine and to report to the authority, related to the grant or loan.

(b) Applicants and recipients shall maintain records pertinent to the tenant's files for at least 3 years.

(c) Applicants and recipients shall maintain records pertinent to program grants or loans, or both, including, but not limited to, project costs and certification work papers for at least 5 years.



(d) Applicants and recipients shall maintain records in an accessible location.

## PART 10. IDENTITY OF INTEREST WITH VENDORS TO AUTHORITY-FINANCED DEVELOPMENTS

### R 125.201 Applicability.

Rule 201. The rules contained in this part apply to all transactions that involve the supply of goods and services to authority-financed housing developments between the owners or the management agents of the developments and vendors who supply goods or services to those developments.

### R 125.202 Identity of interest; "member of the family" defined.

Rule 202. (1) Any contractual relationship between either an owner or management agent and a vendor described in subrule (2) of this rule constitutes an identity of interest.

(2) An identity of interest exists if any of the following conditions occurs:

(a) Either the owner or management agent, or any officer, director, stockholder, partner, or joint venturer of either the owner or management agent, has a financial interest in the vendor.

(b) Either the owner or management agent, or any officer, director, stockholder, partner, or joint venturer of either the owner or management agent, is also an officer, director, stockholder, partner, or joint venturer of the vendor.

(c) Either the owner or management agent, or any officer, director, stockholder, partner, or joint venturer of either the owner or management agent, is also the vendor.

(d) A member of the family of either the owner or management agent, or of any officer, director, stockholder, partner, or joint venturer of either the owner or management agent, is the vendor or an officer, director, stockholder, partner, or joint venturer of the vendor or has a financial interest in the vendor. As used in this part, "member of the family" means any individual who is related to the party in question by blood, marriage, or operation of law.

### R 125.203 Requirements for conducting business with identity of interest vendors.

Rule 203. Owners and management agents shall conform to all of the following requirements when conducting business with vendors with whom there is an identity of interest:

(a) Both the owner and management agent shall inform the authority division of asset management of any proposed vendor with whom there is an identity of interest. The notification must be submitted concurrent with submission of the development operating budget, but at least once per year.

(b) The owner and management agent shall submit a certified disclosure for each proposed vendor with whom there is an identity of interest that lists the names of all of the following persons:

(i) All owners and managers of vendors that are sole proprietorships.

(ii) All copartners or general partners of vendors that are copartnerships or limited partnerships.

(iii) All joint venturers of vendors that are joint ventures.

(iv) All directors, officers, and shareholders of vendors that are corporations.

(c) The certified disclosure must list, for each person described in subdivision (b) of this rule the names of the individuals involved with the owner or management agent with whom there is an identity of interest and the extent or degree of the identity of interest. The certified disclosure must also contain other information as the authority requires, such as the following:

(i) Federal tax identification number of all vendors with whom there is identity of interest.

(ii) The location of all offices that contain business records of the vendors with whom there is an identity of interest.

(iii) The names and addresses of the bookkeepers and accountants of the vendors with whom there is an identity of interest.

(d) The certified disclosure must be submitted on forms designated by the authority and be submitted together with the submission described in subdivision (a) of this rule or, if the proposed vendor is not listed on such submission, at the time the owner or management agent requests approval to contract with a proposed vendor with whom there is an identity of interest.

(e) The owner and management agent shall submit, together with its certified disclosure, a copy of the organizational documents for each proposed vendor with whom an identity of interest is shared.

(f) The authority has the right to audit the books of the vendor with whom there is an identity of interest to determine whether amounts paid to identity of interest vendors were reasonable and whether there has been compliance with applicable restrictions on return. The owner, management agent, and proposed vendor shall acknowledge, in the certified disclosure, the authority's right to conduct such an audit.

(g) Both the owner and management agent shall submit, to the authority, a request for approval to use a proposed vendor with whom there is an identity of interest. Neither the owner nor management agent may contract for goods or services from any vendor with whom there is an identity of interest until the proposed vendor and contract amount is approved by the authority. If an owner or management agent enters into a contract for goods or services beyond the goods or services previously approved by the authority, or if the contract price increases beyond the prices previously approved by the authority, then an additional approval must be requested of the authority.

(h) The authority may, upon a request from the owner or management agent and after review of the disclosure required pursuant to the provisions of subdivisions (b) to (f) of this rule, determine that the identity of interest between the owner and agent is insignificant. If such a determination is made, the owner and management agent need not comply with the provisions of subdivision (i) of this rule.

(i) Unless compliance with this subdivision is excused pursuant to the provisions of subdivision (h) of this rule, all requests for approval of proposed vendors must be accompanied by a detailed explanation of the goods or services to be provided by the proposed vendor and not less than 3 bids for such goods and services. The 3 bids must include a bid from the vendor with whom there is an identity of interest.

(j) Requests for approval of a proposed vendor must be submitted concurrent with the submission of the development operating budget and any other time that the owner or management agent wishes to contract with a vendor with whom there is an identity of interest. However, a proposed vendor and contract amount need be approved only 1 time

per operating year per development, unless the vendor supplies goods or services beyond the goods or services previously approved by the authority or the contract price increases beyond the prices previously approved by the authority.

R 125.204 Sanctions; "excessive costs" defined.

Rule 204. (1) If an owner or management agent is found to be in violation of these rules concerning identity of interest, the authority, or the officers or employees to whom it may delegate authority, may impose the following sanctions in addition to any other remedies available through contractual or grant documents, or at law or equity:

(a) On the first occurrence of a violation, either or both of the following sanctions may be imposed:

(i) The owner or management agent may be required to reimburse the development operating account for all excessive costs, as determined by the authority, incurred as a result of the contract with the vendor with whom there is an identity of interest.

(ii) The owner and management agent found to be in violation may be prohibited from using any vendor with whom there is an identity of interest for a period of 1 year.

(b) For each violation after the first, the following sanctions may be imposed, as applicable:

(i) The owner or management agent may be required to reimburse the development operating account for all excessive costs, as determined by the authority, incurred as a result of the contract with the vendor with whom there is an identity of interest.

(ii) If the violation involves a vendor who has an identity of interest with the management agent, then either or both of the following sanctions may be imposed:

(A) The management agent's management agreement may be terminated, and the hiring of a new management agent is required.

(B) The vendor who shares the identity of interest with the management agent may be barred from doing business with other authority-financed developments managed by the same management agent.

(iii) If the violation involves a vendor who has an identity of interest with the owner, then the owner and its management agent may be prohibited from doing business with that particular vendor at the development in question for a period of 5 years.

(2) As used in this rule, the term "excessive costs" means all costs that would not have been incurred by the development if the owner or management agent, or both, had exercised reasonable business judgment and obtained only those goods and services reasonably necessary for operation of the development at competitive prices.

## PART 11. DEBARMENT AND SUSPENSION FROM PARTICIPATION IN AUTHORITY PROGRAMS AND TRANSACTIONS

R 125.211 Applicability; sanctions.

Rule 211. (1) The provisions of this part apply to any program or transaction funded or administered by the authority, including any of the following:

(a) Grants, assistance contracts, loans, subsidies, awards, loan service contracts, allocations, or contracts related to federal tax credits administered by the authority.

(b) Participation or agency contracts for authority programs.

(c) Professional or technical service contracts or subcontracts.

(2) Sanctions imposed pursuant to this part do not preclude a party from the purchase from the authority of housing developments or single-family homes that the authority has acquired through foreclosure or deed in lieu of foreclosure if the acquisition is on a cash basis or made with financing from sources other than the authority.

(3) Sanctions imposed pursuant to this part do not bar any person from receipt of any funds, credit, or benefit to which the person is otherwise entitled under federal or state law and for which the authority the sole program administrator; however, this exception does not enable or authorize participation in the program involving the applicable funds, credit, or benefit beyond the mere receipt of such funds, credit, or benefit. This provision does not prevent sanctions under this part where the authority acts as program administrator and also has the ability to impose additional requirements beyond those requirements of state or federal law as a prerequisite to receipt of the respective funds, credit, or benefit.

(4) Persons are subject to the provisions of this part whether their involvement is as a contractor, participant, or one receiving funds directly or indirectly from a contractor or a participant. Persons are subject to the provisions of this part whether or not the conduct for which a sanction is imposed occurred while they were engaged in an authority program or transaction. Persons are subject to the provisions of this part whether their actions upon which a sanction is based were taken in their own behalf or on behalf of another person.

#### R 125.212 Definitions.

Rule 212. Definitions provided for in part 1 of the authority's rules, R 125.101 to R 125.103, apply to the provisions of this part unless superseded in this rule as follows:

(a) "Adequate evidence" means information that is sufficient to support a reasonable belief that a particular act, omission, or event has occurred.

(b) "Affiliate" means individuals or entities with whom a person shares an identity of interest as defined in part 10 of these rules.

(c) "Contractor" means an individual or entity that does either of the following:

(i) Performs or provides labor or professional or technical services or supplies goods to the authority pursuant to a contract or participation agreement.

(ii) Conducts business with the authority as the agent, representative, or subcontractor of another contractor.

(d) "Conviction" means a judgment of guilt in a criminal case by any court of competent jurisdiction, whether by verdict, guilty plea, or plea of nolo contendere, and whether or not the judgment has been or is on appeal.

(e) "Debarment" means action taken to exclude a person from direct or indirect participation in any authority program or transaction whether as a contractor or participant.

(f) "Notice" means written communication delivered by personal service or sent either by certified mail, return receipt requested, or by commercial courier with verification of delivery.

(g) "Participant" means any person who directly or indirectly takes part in or is involved in an authority program or transaction other than as a contractor. Participant includes a person who receives benefits or income from or through another participant or contractor. A participant includes, but is not necessarily limited to, any of the following:

- (i) Bonding companies.
- (ii) Borrowers.
- (iii) Builders.
- (iv) Mortgagors.
- (v) Management agents.
- (vi) Marketing agents.
- (vii) Owners of housing developments.
- (viii) Recipients of authority subsidies.
- (ix) Grantees.
- (x) Persons employed by, or offering services to, participants, such as any of the following:
  - (A) Architects.
  - (B) Accountants.
  - (C) Attorneys.
  - (D) Consultants.
  - (E) Engineers.
  - (F) Contractors to participants.
  - (G) Subcontractors of contractors to participants.
- (h) "Person" means an individual, partnership, corporation, association, unit of government, or other form of legal entity, whether in good standing or otherwise.
- (i) "Respondent" means the person against whom debarment or suspension is to be imposed.
- (j) "Suspension" means an action that immediately excludes a person from direct or indirect participation in authority programs or transactions, whether as a participant or contractor, for a temporary period pending completion of an investigation or administrative or other legal proceeding.

R 125.213 Debarment; causes.

Rule 213. Debarment may be imposed for any of the following causes:

- (a) Conviction of a criminal offense, including a conviction for an attempted criminal activity, or civil judgment for an offense or actions involving or indicating dishonesty, false pretense, or misrepresentation. Any following offenses may result in debarment:
  - (i) Fraud.
  - (ii) Bribery.
  - (iii) Embezzlement.
  - (iv) Forgery.
  - (v) Falsification of documents or records.
  - (vi) Theft.
  - (vii) Robbery.
  - (viii) Larceny.
  - (ix) Receiving and concealing stolen property.
  - (x) Obtaining goods, money, or services under false pretenses.
  - (xi) Negligent misrepresentation.
  - (xii) Price-fixing.
  - (xiii) Bid-rigging or other violation of federal or state laws involving the submission of bids or proposals.

(xiv) Violation of other federal or state law involving illegally obtaining or attempting to obtain public or private goods, services, or contracts.

(b) Violation of any federal, state, or authority law, rule, or regulation, whether or not in connection with an authority program or transaction, which indicates dishonesty, lack of business integrity, or willful or repeated failure to perform obligations in a responsible manner.

(c) Violation of any federal, state, or authority law, rule, or regulation, whether as a participant or contractor, in connection with either of the following, which indicates a willful or repeated failure to perform obligations in accordance with relevant laws, rules, and regulations:

(i) Application for participation in an authority program or transaction.

(ii) Participation in an authority program or transaction.

(d) Violation of 1 or more contracts or agreements, either public or private and that involves willful or repeated noncompliance with the terms and conditions of the contracts or agreements and indicates a failure or refusal to perform in a responsible manner.

(e) Debarment or equivalent exclusionary action by a public agency or instrumentality involving substantially the same causes as set forth in this rule.

(f) Loss or suspension of a license or the right to do business or practice a profession, the loss or suspension of which indicates dishonesty, a lack of integrity, or a failure or refusal to perform in accordance with the ethical standards of the business or profession in question.

(g) Violation of federal, state, or local civil rights, equal rights, or nondiscrimination laws, ordinances, rules, or regulations.

(h) Violation of provisions in contracts or agreements concerning nondiscrimination or equal opportunity in employment, housing, or lending.

(i) Violation of law, rule, regulation, or provision of contract or agreement involving conflict of interest or an improper shared identity of interest.

(j) Other events, conduct, or causes serious enough to lead to a determination of dishonesty, a lack of business integrity, or willful or repeated failure to perform obligations in a responsible manner.

#### R 125.214 Debarment procedures.

Rule 214. (1) Debarment procedures shall be initiated by an authorized officer. Procedures will commence with the authority sending a notice of debarment to the respondent.

(2) A notice of debarment must be sent to each respondent and contain all of the following information:

(a) That debarment is being proposed.

(b) The acts or omissions that are the grounds upon which debarment is based.

(c) The particular provisions of laws, regulations, rules, and program requirements involved.

(d) The opportunity for the respondent to request and schedule a hearing on the debarment.

(e) The potential effects of debarment.

(3) A respondent who receives a notice of debarment is entitled to a hearing on the issue. The hearing will be conducted in accordance with R 125.111 and the provisions of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, which governs all of the following:

- (a) Choice and scope of authority of hearing officers.
- (b) Rules of conduct and evidence for hearing.
- (c) Decisions of hearing officers.
- (d) Burdens or levels of proof required.
- (e) Rights of administrative and judicial appeal.

(4) If the official who is to make the final decision has not heard the contested case or read the record, the decision, if adverse to the respondent, may not be made until a written proposal for decision has been sent to all parties by the official who has heard the contested case or read the record. Any party who is adversely affected has 10 days from issuance of the proposal for decision to file written exceptions and arguments. If written exceptions or arguments are not submitted within 10 days, there will be no further proceedings before the issuance of a final decision.

(5) The final decision of the authority will be issued within 60 days after the date of the hearing or, if a proposal for decision is required pursuant to the provisions of subrule (4) of this rule, within 60 days of the closing date for submission of written exceptions to the proposal for decision, whichever is later.

#### R 125.215 Debarment; duration.

Rule 215. Debarment shall be for a period of time commensurate with the acts or omissions of the person to be debarred. In general, a person shall not be debarred for more than 3 years. However, where the offense is egregious, a longer period of debarment may be imposed. If a person is suspended pursuant to these rules before debarment, the period of debarment must be reduced by the period of time that the person has been suspended.

#### R 125.216 Debarment; scope and effect.

Rule 216. (1) The decision to debar a person must specify the scope of debarment. A person may be debarred from 1 or more particular authority programs or transactions or from all authority programs and transactions.

(2) The decision to debar a person, unless prohibited by law, may terminate existing contracts or agreements between the debarred persons and other nondebarred participants or contractors. However, the decision to debar may allow the contracts or agreements to remain in effect. A participant or contractor shall not renew or extend a contract or agreement with a debarred person.

(3) A decision to debar a person may also serve to debar any affiliate of the person, if the affiliate is named in the notice to debar and given an opportunity to participate in the debarment hearing. There need not be shown any participation in or knowledge of the improper conduct, by the affiliate, that led to the decision to debar.

#### R 125.217 Debarment; time limitations.

Rule 217. A notice of proposed debarment must be issued within 3 years after the later of either of the following:

- (a) Criminal conviction or civil judgment.
- (b) Completion of administrative proceedings, investigation, or other action.

#### R 125.218 Reinstatement after debarment.

Rule 218. (1) Debarred participants or contractors may not resume participation in authority programs or transactions until expiration of the period of debarment or until a petition for early reinstatement has been submitted and approved by an authorized officer of the authority, whichever occurs first.

(2) Petitions for early reinstatement may only be submitted as follows:

(a) Upon discovery of new evidence that was not previously discoverable or upon the dismissal of criminal charges or a civil or administrative action, the reversal of a criminal conviction or a civil judgment, or the reversal of the debarment or other exclusion imposed by another governmental agency, upon which the authority debarment was based.

(b) Upon a bona fide change in ownership or management of the person debarred.

(c) Upon proof that the causes for debarment have been eliminated.

(3) A petition for early reinstatement may be submitted as follows:

(a) Immediately after the occurrence of events set forth in subrule (2)(a) of this rule.

(b) Not less than 6 months after the issuance of a final decision of debarment if the petition is based upon reasons set forth in subrule (2)(b) and (c) of this rule.

(4) The petition for early reinstatement must be submitted to the official who issued the final decision to debar, or to his or her successor. The petition must be accompanied by written evidence that supports the request. The official who issued the final decision may request a written response to the petition from the authorized officer that initiated the debarment proceedings. There shall not be a hearing upon a petition for early reinstatement unless ordered by the official ruling upon the petition. The official may refer a petition for early reinstatement, together with evidence submitted in connection with or in response to the petition, to a hearing officer for review and written recommendation.

#### R 125.219 Suspension; causes.

Rule 219. Suspension may be imposed, pursuant to the provisions of this rule, if adequate evidence of any of the following exists:

(a) That the person has committed an offense set forth in R 125.213(a). Either of the following events shall, by itself, constitute adequate evidence for purposes of imposing suspension:

(i) Indictment for an offense listed in R 125.213(a).

(ii) Arraignment on the information in circuit court, or an equivalent state court in a state other than Michigan, for an offense listed in R 125.213(a). However, adequate evidence may exist although neither of the events listed in paragraphs (i) and (ii) of this subdivision has occurred.

(b) That cause for debarment under R 125.213 exists.

(c) Suspension by a federal agency or another state agency for any cause specified in R 125.213.

#### R 125.220 Suspension; procedures.



Rule 220. (1) Suspension procedures must be initiated by an authorized officer. Procedures commence with sending a notice of suspension to the respondent.

(2) A notice of suspension must be sent to each respondent and contain all of the following information:

- (a) That suspension has been proposed.
- (b) The acts, events, or omissions upon which suspension is based.
- (c) The particular provisions of law, regulation, rules, or program requirements involved.
- (d) When the suspension becomes effective.
- (e) The opportunity to request and schedule a hearing on the suspension.
- (f) The potential effects of suspension.

(3) A respondent who receives a notice of suspension is entitled to a hearing on the issue. The hearing must be conducted in accordance with the provisions of R 125.11 and the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, which governs all of the following:

- (a) Choice and scope of authority of hearing officers.
- (b) Rules of conduct and evidence for hearing.
- (c) Decisions of hearing officers.
- (d) Burdens or levels of proof required.
- (e) Rights of administrative and judicial appeal.

(4) If the official who is to make the final decision has not heard the contested case or read the record, the decision, if adverse to the respondent, shall not be made until a written proposal for decision has been sent to all parties by the official who heard the contested case or read the record. Any party who is adversely affected has 10 days from the issuance of the proposal for decision to file written exceptions and arguments. If written exceptions or arguments are not submitted within 10 days, there shall be no further proceedings before the issuance of a final decision.

(5) The final decision of the authority must be issued within 60 days after the date of the hearing or, if a proposal for decision is required pursuant to the provisions of subrule (4) of this rule, the closing date for submission of written exceptions to the proposal for decision, whichever is later.

#### R 125.221 Suspension; scope and effect.

Rule 221. (1) A suspension must specify the scope of suspension. A person can be suspended from 1 or more particular authority programs or transactions or from all authority programs and transactions.

(2) The suspension may, unless prohibited by law, suspend the operation of existing contracts or agreements between the suspended persons and other nonsuspended participants or contractors. However, the decision may allow such contracts or agreements to remain in effect. A participant or contractor shall not renew or extend a contract or agreement with a suspended person.

(3) A suspension may also serve to suspend any affiliate of such person, if any such affiliate is named in the notice of suspension and given an opportunity to participate in the hearing. There need not be shown any participation in or knowledge of the improper conduct, by the affiliate, that led to the decision to suspend.

R 125.222 Suspension; duration.

Rule 222. (1) Suspensions are for a temporary period pending the completion of the specified legal proceeding, administrative action, investigation, or other such event.

(2) A suspension becomes effective upon the issuance of the authority's final decision following a hearing on the notice of suspension or immediately upon the issuance of a notice of suspension if there exists cause for suspension pursuant to the provisions of R 125.219 and an authorized office determines that an immediate suspension is necessary to protect the public health, safety, or welfare.

(3) A suspension remains effective, unless overruled by the final decision following a hearing on a notice of suspension, until the expiration of the stated period of suspension or a petition for early reinstatement is granted, whichever occurs first.

(4) In cases based solely upon an alleged or suspected violation of federal or state law, a suspension terminates within 12 months, unless 1 of the following actions has been initiated:

- (a) Criminal prosecution.
- (b) Civil action.
- (c) An administrative hearing or action for the alleged or suspected violation of law.

R 125.223 Suspension decision; time limitation.

Rule 223. A notice of suspension must be issued within 3 years after either of the following:

- (a) Criminal conviction or finding of liability as a result of civil action or administrative action.
- (b) Completion of the investigation or similar process that establishes the basis for the suspension.

R 125.224 Reinstatement after suspension.

Rule 224. (1) Suspended participants or contractors may not resume participation in authority programs or transactions until the expiration of the stated period of suspension or a petition for early reinstatement has been submitted and approved by an authorized officer, whichever occurs first.

(2) Petitions for early reinstatement may only be submitted as follows:

(a) Upon discovery of new evidence that was not previously discoverable, or upon the dismissal of criminal charges or civil or administrative action, the reversal of a criminal conviction or civil judgment, or the reversal of the suspension, debarment, or other exclusion imposed by another government agency, upon which the authority suspension was based.

(b) Upon a bona fide change in ownership or management of the person suspended.

(c) Upon proof that the causes for suspension have been eliminated.

(3) A petition for early reinstatement may be submitted immediately after the occurrence of the events set forth in subrule (2) of this rule.

(4) The petition for early reinstatement must be submitted to the official who issued the final decision of suspension or to his or her successor. The petition must be accompanied by written evidence in support. The official who issued the final suspension decision may request a written response to the petition from the authorized officer that requested initiation of the suspension proceedings. There may not be a hearing upon a petition for

early reinstatement unless ordered by the official ruling upon the petition. The official may refer a petition for early reinstatement, together with evidence submitted in connection or in response to the petition, to a hearing officer for review and written recommendation.