

TAX CREDIT REPLACEMENT (TCR) FUNDS

**ASSET MANAGEMENT AND
COMPLIANCE MONITORING MANUAL**



Strength, Dignity, Quality of Life

MISSOURI HOUSING

DEVELOPMENT COMMISSION

REVISED: June 2013

1. INTRODUCTION

1.1 THE MISSOURI HOUSING DEVELOPMENT COMMISSION

The Missouri Housing Development Commission (“MHDC”) is charged with performing asset management functions on projects developed using tax credit replacement (“TCR”) funds authorized by Section 1602 of the American Recovery and Reinvestment Tax Act of 2009 (“Section 1602”) to ensure compliance with Section 42 (“Section 42”) of the Internal Revenue Code (“Code”) and the long-term viability of such projects (American Recovery and Reinvestment Tax Act of 2009, Pub. L. No. 111-5, 123 Stat. 306 (2009)). MHDC is authorized to retain an agent or other private contractor to perform asset management duties on TCR-funded projects (Section 1602).

1.2 LOW-INCOME HOUSING TAX CREDIT (LIHTC) RULES

Developments utilizing TCR funds are required to comply with all requirements of Section 42. This includes, but is not limited to, reporting requirements, qualifying tenants and choosing the appropriate income limits for the development. Owners/Managers should reference the LIHTC Compliance Manual which can be found at www.mhdc.com for guidance on requirements not contained in this Manual.

2. COMPLIANCE PERIOD

2.1 GENERALLY

Developments utilizing TCR funds are subject to a 30-year compliance period (“Compliance Period”). To enforce the TCR requirements throughout the Compliance Period, a restrictive covenant (Land Use Restriction Agreement (“LURA”) and/or Regulatory Agreement) will be filed with the Recorder of Deeds in the county in which the development is located.

2.2 WAIVER OF OPT OUT

Projects developed utilizing TCR funds are prohibited from participating in the opt out process set forth in the Code. However, MHDC may consider requests to restructure a TCR loan after the completion of the first 15 years of the Compliance Period. The determination as to whether to allow a restructuring of a TCR loan is at the sole discretion of MHDC and will be made on a case-by-case basis.

3. RESERVE & ESCROW ACCOUNTS

3.1 GENERALLY

MHDC is required to ensure the long-term viability of projects developed using TCR funds (Section 1602). MHDC is authorized to collect a reasonable fee from TCR fund recipients to cover expenses associated with the performance of its asset management duties (Section 1602).

3.2 TCR RESERVE

- a. To ensure the long-term viability of TCR-funded projects, owner shall deposit annually with MHDC an amount equal to 25% of Surplus Cash (as such term is defined in the Regulatory Agreement) ("TCR Reserve"). Said deposits will be held by MHDC in an interest-bearing account, subject to disbursement at the direction of MHDC. MHDC will authorize disbursements from the TCR Reserve, as necessary, to address any needs of the project that may threaten its long-term viability as an affordable housing development. The TCR Reserve is further subject to the provisions of the Escrow Agreement entered into by owner at the closing of the TCR loan.

- b. MHDC Compliance Accounting Department will annually review the property's available Surplus Cash (as such term is defined in the Regulatory Agreement), and will determine the amount needed to be deposited by the property. Compliance Accounting will submit a letter to the property requesting payment.

- c. MHDC Compliance Accounting Department will follow up with the property until payment is received and upon receipt will provide a deposit memo and surplus cash check to MHDC's Loan Servicing Department for deposit into the property's established TCR Reserve Account. Failure to submit payment will result in MHDC placing the property in noncompliance status. Noncompliance status is a term used by MHDC when a project fails to submit any information as prescribed under the Regulatory Agreement or respond to any MHDC inquiry within the allotted time frame. Lack of response to MHDC's request is a direct violation of the Regulatory Agreement. MHDC will not process any future requests (replacement reserve withdrawal, rent increases, surplus cash, etc.) from a project until the noncompliance issue is resolved.

3.3 ASSET MANAGEMENT FEE ESCROW

- a. To cover the expenses associated with the performance of MHDC's asset management duties, at the time of conversion of the TCR loan to permanent status, owner is required to deposit \$45,000, in cash, with MHDC ("Asset Management Fee"). Said deposit will be held by MHDC in an interest-bearing account, subject to disbursement by MHDC for the sole purpose of paying MHDC's annual asset management fee. For the first 15 years of the TCR loan, \$3,000 shall be disbursed to MHDC annually from the Asset Management Fee Escrow. The first \$3,000 disbursement to MHDC shall be made at the time of the \$45,000 deposit (conversion). The Asset Management Fee is further subject to the provisions of the Escrow Agreement entered into by owner at the closing of the TCR loan.

- b. Every January, the MHDC Compliance Accounting Department will provide an Asset Management Fee withdrawal memo to MHDC's Loan Servicing Department to release the \$3,000 amount from the property's escrow account into MHDC's revenue account.

4. OCCUPANCY REQUIREMENTS

4.1 SECTION 1602 PERCENTAGE

Each qualified building in a development with TCR funds will have determined for it a percentage, which is the quotient whose numerator is the amount of TCR funds in the project and whose denominator is the amount of the development's TCR eligible basis ("Section 1602 Percentage"). The initial Section 1602 percentage for each development is set forth in the Regulatory Agreement. If the final calculation of TCR eligible basis results in a greater Section 1602 Percentage than that set forth in the Regulatory Agreement, the final Section 1602 Percentage and its application to each building may be adjusted at the time of cost certification. Provided, however, in no event can the Section 1602 Percentage exceed 85% and in no event can the Section 1602 Percentage set forth in the Regulatory Agreement be reduced.

4.2 BUILDING TCR APPLICABLE FRACTION

In addition to the Section 1602 Percentage, each qualified building in a development with TCR funds will also have determined for it a building TCR applicable fraction ("Building TCR Applicable Fraction"). The Building TCR Applicable Fraction is the greater of the Section 1602 Percentage or the minimum set-aside elected for the building under §42(g)(1) of the Code. To remain a qualified low-income building, the qualified occupancy of each building must be greater than or equal to the Building TCR Applicable Fraction for that building.

4.3 THIRD-PARTY VERIFICATION

Owner must engage a qualified compliance professional, unrelated to both owner and the management agent, to verify qualified occupancy at initial tenant move-in. Qualified occupancy refers to the first household to occupy 100% of the units required to meet the TCR occupancy requirements.

5. ON-SITE PHYSICAL INSPECTIONS AND TENANT FILE REVIEWS

5.1 ON-SITE PHYSICAL INSPECTIONS AND TENANT FILE REVIEWS

MHDC will monitor TCR-funded developments by performing on-site physical inspections and tenant file reviews **annually**. The guidelines MHDC will follow when performing such inspections/reviews on TCR developments are identical to those inspection/review guidelines set forth in the LIHTC Compliance Manual, as posted on MHDC's web-site (www.mhdc.com).

6. REPORTING

6.1 8609's

MHDC will issue owner an 8609 for the TCR development ("TCR 8609"). The TCR 8609 will be issued separately from any 8609 issued in connection with tax credits associated with the project. Within 30 days after MHDC issues the TCR 8609, owner must return the completed TCR 8609 to: MHDC, Asset Management Dept., 6425 Lindell, Suite 300, St. Louis, MO 63108.

6.2 OCCUPANCY DATA

MHDC requires all properties to submit monthly occupancy reports through MHDC's Asset Management Report System (AMRS). The website address is <https://amrs.mhdc.com>. Properties will have until the 15th day of each month to submit the previous month's occupancy statistics (e.g., December occupancy reports should be received no later than January 15, 2010). Failure to submit occupancy information will result in MHDC placing the property in noncompliance status. The guidelines MHDC will follow when performing occupancy reviews on TCR developments are identical to the guidelines set forth in the Compliance Accounting Desk

Guide.

6.3 BUDGETS

MHDC requires all properties to submit annual budget information through AMRS. MHDC requires all budgets to include the following information: "Statement of Profit/Loss" from the previous year audit; "Current Fiscal Year Expenses to Date"; and "Budget for the Next Fiscal Year". Significant variances are flagged by the AMRS system and require the property to provide appropriate explanation. All explanations are analyzed by MHDC's Compliance Accounting Department for reasonableness. Properties have until November 15th of each year to submit their budget. Failure to submit financial information will result in MHDC placing the property in noncompliance status. The guidelines MHDC will follow when performing budget reviews on TCR developments are identical to the guidelines set forth in the Compliance Accounting Desk Guide.

6.4 FINANCIAL STATEMENTS

a. MONTHLY

MHDC requires all properties to submit monthly financial statement information through AMRS. Information will be analyzed by MHDC's Compliance Accounting Department on a quarterly basis. Variance analysis will be performed to isolate monthly/quarterly discrepancies from the property's approved budget. Properties will have until the 25th day of each month to submit the previous month's financial information.

b. ANNUALLY

At year-end, MHDC will require audited financial statements to be submitted through AMRS. Properties will have until March 31st of each year to submit such audited financial statements. The guidelines MHDC will follow when performing annual financial statement reviews on TCR developments are identical to the guidelines set forth in the Compliance Accounting Desk Guide. Failure to submit financial statement information will result in MHDC placing the property in noncompliance status.

6.5 OTHER REPORTING REQUIREMENTS

In addition to the reporting requirements set forth above, owners must also comply with all reporting requirements set forth in the LIHTC Compliance Manual which can be found at www.mhdc.com. This reporting includes, but is not limited to, the reporting required in the Event-Specific Reporting and Annual Reporting sections of the LIHTC Compliance Manual.

7. NONCOMPLIANCE

7.1 OCCUPANCY DEFAULT

A. GENERALLY

If at any time during the Compliance Period the applicable percentage of a building falls below the greater of **(i)** the Section 1602 Percentage, or **(ii)** the minimum set-aside elected for the building pursuant to §42(g)(1) of the Code, an occupancy default occurs ("Occupancy Default"). However, if the applicable fraction as set forth in the Land Use Restriction Agreement ("LURA") and/or Regulatory Agreement, as applicable, is lower than the Section 1602 Percentage, an Occupancy Default will occur any time during the Compliance Period the applicable fraction of the building falls below the greater of **(a)** the applicable fraction set forth in the LURA, or **(b)** the minimum set-aside elected for the building pursuant to §42(g)(1) of the Code. By the 15th of

each month, Owners of TCR developments must report occupancy data to MHDC on-line via AMRS. Owners are also required to report household characteristic data via COL.

B. OCCUPANCY DEFAULT NOTICE

MHDC shall notify owner of the occurrence of any Occupancy Default ("Occupancy Default Notice"). Upon receipt by Owner of the Occupancy Default Notice, Owner must submit to MHDC a corrective action plan describing how and when the issues detailed in the Occupancy Default Notice will be corrected ("Corrective Action Plan"). The Corrective Action Plan must be updated and submitted to MHDC by the 10th of each month until all issues identified in the Occupancy Default Notice are cured. Owner must cure the Occupancy Default within the time specified by MHDC in the Occupancy Default Notice.

C. TCR RECAPTURE AMOUNT/DEBARMENT

During the initial 15 years of the building's Compliance Period, Owner's failure to cure the Occupancy Default within the time period prescribed in the Occupancy Default Notice may result in the recapture of the full amount of the building's TCR amount, minus 6.67% (1/15th) for each full year of the initial 15 years of the building's Compliance Period in which an Occupancy Default has not occurred ("TCR Recapture Amount"). The TCR Recapture Amount is a debt owed to the United States, payable to the General Fund of the Treasury and enforceable by all available means against any assets of the Owner. If MHDC determines such is in the best interest of the development, MHDC may, but is not obligated to, allow Owner to pay the TCR Recapture Amount pursuant to a repayment plan. However, the United States Treasury must approve any such proposed repayment plan. The United States Treasury has charged MHDC with calculating and collecting the TCR Recapture Amount.

If owner fails to (i) cure the Occupancy Default within the time period prescribed in the Occupancy Default Notice, and/or (ii) submit the TCR Recapture Amount to MHDC by the date specified by MHDC, MHDC may, in addition to all other remedies available by law, declare a default under the TCR loan documents. In addition, owner and its principals may be barred from future participation in MHDC programs for a period of two (2) years (in accordance with the MHDC suspension and debarment policy).

D. OCCUPANCY DEFAULT: YEARS 16-30 OF COMPLIANCE PERIOD

If an Occupancy Default occurs during years 16-30 of the Compliance Period, MHDC may, in addition to all other remedies available by law, declare a default under the TCR loan documents.

7.2 REPORTING REQUIREMENT NONCOMPLIANCE

Owner shall have thirty (30) days after notification from MHDC to submit any missing, incorrect and/or incomplete report(s), information or documentation to MHDC.

7.3 FRAUD

Any indication of fraud, waste, abuse, or potentially criminal activity pertaining to TCR funds ("TCR Fraud") will immediately be reported by MHDC to the Treasury and the Treasury inspector general. Should it be determined by MHDC that owner has engaged in TCR fraud, owner and its principals will be barred from future participation in MHDC programs for a period of two (2) years (in accordance with the MHDC suspension and debarment policy).

7.4 8823's

While IRS Form 8823 will not be filed with the Treasury to report owner's noncompliance, MHDC will use a form similar to Form 8823 to internally document noncompliance. Upon an event of noncompliance and MHDC's internal documentation of such, a copy of the completed form will be sent to Owner.

7.5 EXTENDED USE PERIOD

In addition to all other requirements set forth herein, during years 16-30 of the Compliance Period, Owner must comply with all rules and regulations governing the LIHTC Extended Use Period as set forth by Section 42 and MHDC. Guidance on such requirements can be found in the LIHTC Compliance Manual posted on MHDC's website (www.mhdc.com).

8. MISCELLANEOUS REQUIREMENTS

8.1 MHDC RIGHT OF FIRST REFUSAL

At any time during the term of the TCR Regulatory Agreement, before owner may sell the development to a third-party, owner shall first offer the development to MHDC. The offer to MHDC must be on the same terms and conditions as offered and conditionally agreed to by the third-party buyer (the only condition to the third-party buyer's contract shall be MHDC refusing to exercise its right of first refusal). If MHDC does not accept the offer within ninety (90) days, owner shall be free to accept the third-party offer.

If MHDC does not exercise its right of first refusal and owner does not close the transaction with the third-party buyer within ninety (90) calendar days, owner's right to sell the development to such third-party shall expire and MHDC's right of first refusal is again applicable.

MHDC may freely assign its right of first refusal rights as outlined above.