Chapter 122:22-1 General Provisions

122:22-1-01 Definitions.

(A) "Allocation agreement" means a written agreement between the director and a state allocatee specifying the terms and conditions associated with the receipt of the credit allocation pursuant to sections 5725.33, 5729.16, and 5733.58 of the Revised Code and rules 122:22-1-01 to 122:22-1-08 of the Administrative Code.

(B) "Allocation date" means the effective date of an allocation agreement.

(C) "Applicant" means a qualified CDE that applies to the director to receive a credit allocation from the new market tax credit program.

(D) "Application period" means each time period established by the director during which qualified CDE's may apply for a credit allocation.

(E) "Authorized representative" of an entity means an officer or other individual who has the actual authority to sign for, and make representations on behalf of, the entity.

(F) "CDE" means community development entity.

(G) "Control" means (1) ownership, control or power to vote more than fifty percent of the outstanding shares of any class of voting securities of an entity, directly or indirectly or acting through one or more persons; (2) control in any manner over the election of a majority of the directors, trustees, managers, or general partners (or individuals exercising similar functions) of any other entity; or (3) power to exercise, directly or indirectly, a controlling influence as determined by the director over the management policies or investment decisions of another entity.

(H) "Credit Allocation" means the amount of new market tax credit authority allocated by the director to a state allocatee pursuant to an allocation agreement.

(I) "Credit Allowance Period" means the seven-year period during which a taxpayer may claim new market tax credits for qualified equity investments made in a qualified CDE.

(J) "Director" means the director of the department of development of the state of Ohio.

(K) "Fiscal year" means the fiscal year of the state of Ohio.

(L) "Issuer," as that term is used in section 5725.33 of the Revised Code, means a state allocatee.

(M) "NMTC claimant" means an entity that may claim a new market tax credit as provided in section 5725.33, 5729.16, or 5733.58 of the Revised Code.

(N) "Principal user" means the entity which occupies for the conduct of its business more than fifty percent of the rentable square footage in a building subject to a lease or other rental agreement for a term not less than the credit allowance period.

(O) "Principally owned" means ownership, directly or by a person that controls the principal user, of at least eighty per cent of the outstanding shares or other equity interest and the power to exercise, directly or indirectly, a controlling influence over the management policies of the special purpose entity.

(P) "Program guidelines" means the guidelines for the Ohio new markets tax credit program issued by the director.

(Q) "Qualified community development entity" has the meaning given that term in division (A)(5) of section 5725.33 of the Revised Code.

(R) "State allocatee" means a qualified CDE that is selected by the director to receive a credit allocation and enters into an allocation agreement. "State allocatee" includes any subsidiary applicant that is a signatory to the allocation agreement.

(S) "Subsidiary" means with respect to a CDE any legal entity that is owned or controlled, directly or indirectly, by the CDE.

(T) "Superintendent" means the superintendent of the department of insurance of the state of Ohio.

(U) "Tax commissioner" means the commissioner of the department of taxation of the state of Ohio.

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122:22-1-02 Allocation of new markets tax credit authority.

(A) To comply with the limitation set forth in division (C) of section 5725.33 of the Revised Code, the aggregate amount of credit allocations made by the director to all state allocatees each fiscal year shall not exceed ten million dollars.

(B) The director shall make credit allocations to qualified CDE's through a competitive process. The director shall establish and announce by public notice application periods during which qualified CDE's may submit applications for credit allocations. Qualified CDE's may request credit allocations by completing an application in the form published by the director for the relevant application period. Applications must be signed by an authorized representative of the applicant and submitted so as to be received by the director not later than the closing time for the application period as announced by the director. Applications will be evaluated based on scoring criteria published by the director in the program guidelines in advance of the relevant application period. The director may review applications for completeness and request that applicants provide information to complete any identified omissions. Except for responses to specific requests for information as part of the completeness review, an applicant may not amend its application. If the application period has not closed, an applicant may withdraw its application and submit a new application. The director shall set forth in the program guidelines the schedule of events for each application period.

(C) Each award of a credit allocation by the director to a qualified CDE will be made subject to the execution and delivery of an allocation agreement in form and substance acceptable to the director. If an applicant selected to receive a credit allocation fails to execute and deliver an allocation agreement within thirty days after receipt of the allocation agreement from the director, the award will be deemed to have been rejected by the applicant. If an applicant declines an award of a credit allocation for any reason or is deemed to have rejected the award as described in the preceding

sentence, the director may award the credit allocation to another applicant.

(D) In order for a state allocatee to transfer its allocation authority to a subsidiary, the state allocatee must demonstrate, at a minimum, that it exercises and will maintain a controlling influence over the investment decisions of the subsidiary.

(E) On or after the allocation date, the state allocatee may designate qualified equity investments as to which new market tax credits may be claimed with respect to equity investments made on or after that date. A state allocatee may not designate equity investments as qualified equity investments in an amount that would cause aggregate new market tax credit claims in excess of the state allocatee's credit allocation for the period in which the qualified equity investments are made. A state allocatee may not designate any equity investment that it issues as a qualified equity investment if such investment is issued by the state allocatee more than twelve months after the allocation date unless such expiration is extended by the director in writing as provided in the following sentence. The director may extend the period of time during which an investment may be made upon the written request of a state allocatee made at least thirty days, but not more than sixty days, before the scheduled expiration date if the state allocate demonstrates that an investment commitment has been made but will not be closed prior to the scheduled expiration of the credit allocation award.

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122:22-1-03 Qualified active low-income community business.

(A) Within sixty days after closing each qualified low-income community investment made in this state for which a new market tax credit is to be allowed, the state allocatee shall notify the director of such investment and certify to the director that the investment has been made in a qualified active low-income community business as that term is defined in division (A)(4) of section 5725.33(A)(4) of the Revised Code. The notice shall be in a form approved by the director and shall contain the amount paid to the state allocatee for the qualified equity investment at its original issue.

(B) The state allocatee shall include with the certification described in paragraph (A) of this rule supporting documentation evidencing that the qualified active low-income community business does not derive or project to derive fifteen per cent or more of its annual revenue from the rental or sale of real property or that the exception provided in division (A)(4) of section 5725.33 of the Revised Code applies. If the qualified active low-income community business is a special purpose entity as described in division (A)(4) of section 5725.33 of the Revised Code, the supporting documentation must include (1) organizational documents for the business showing that it was formed solely for the purpose of renting, either directly or indirectly, or selling real property back to the principal user; (2) evidence of ownership of the special purpose entity and that the principal user principally owns the special purpose entity; (3) a lease or rental agreement evidencing that the principal owner of the special purpose entity is a principal user of the subject real property; and (4) evidence that the principal user does not derive fifteen per cent or more of its annual revenue from the rental or sale of real property.

(C) For purposes of determining whether a business is a qualified active low-income community business as defined in section 5725.33 of the Revised Code, "annual revenue" will be applied consistently to refer to gross annual revenue of the business.

(D) The state allocatee may request from the director a written determination whether or not, based on the certification and supporting documentation provided by the state allocatee pursuant to this rule, a business is a qualified active low-income community business as that term is defined in division (A)(4) of section 5725.33 of the Revised Code. Such determination shall be final provided that the certification of the state allocatee on which the director relies and the supporting documentation which accompanies the certification is true, correct, and complete.

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122:22-1-04 Notices and reporting.

(A) The state allocatee shall submit an annual report to the director with respect to each allocation agreement to which the state allocatee is a party. The annual report shall include a complete copy of any report submitted by the state allocatee to the community development financial institutions fund (or any successor fund or agency administering the federal new markets tax credit program) for the corresponding reporting period, together with an Ohio annual report supplement. The state allocatee shall submit its annual report no later than one hundred eighty days following the end of the CDE's fiscal year each year beginning the year after the allocation date and continuing through the year following the expiration of the last credit allowance period for any qualified equity investment designated by the state allocatee based on the credit allocation made in the allocation agreement.

(B) The Ohio annual report supplement shall be in the form required by the director. Among other information that may be required by the director, the state allocatee shall report for each qualified equity investment the purchase price for the equity investment, the adjusted purchase price for the equity investment, the first credit allowance date, all NMTC claimants (including name, address, and federal employer identification number for each NMTC claimant) whether or not the NMTC claimant is then a holder of the qualified equity investments, the amount of the adjusted purchase price attributable to each NMTC claimant, the status of each NMTC claimant as the original holder or a transferee of the qualified equity investment, and the effective date of each transfer of the qualified equity investment. The state allocatee shall also show in the Ohio annual report supplement its calculation of the adjusted purchase price, as that term is defined in division (A) of section 5725.33 of the Revised Code.

(C) The state allocatee shall notify the director of any notice of recapture or any potential event of recapture pursuant to section 45D(g) of the Internal Revenue Code and section 1.45 D-1(e)(2) of Title 26 of the Code of Federal Regulations, as such federal laws and regulations exist on the effective date of the enactment of section 5725.33 of the Revised Code, October 16, 2009. Such notice shall be given in writing and submitted to the director promptly, but in any event within thirty days of the recapture event.

(D) The director may also require the state allocatee to report from time to time such information about its qualified low-income community investments as may be necessary or useful for the director to evaluate the new market tax credits program.

(E) Each report and notice required by this rule shall contain a certification signed by an authorized representative of the state allocatee that the information reported is true, correct, and complete.

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122:22-1-05 Monitoring and recapture.

(A) The director will monitor compliance of state allocatees with the terms and conditions of allocation agreements and program guidelines. If subsidiary CDE's are parties to an allocation agreement, the director will monitor compliance on a consolidated basis for the total amount of the credit allocation made pursuant to the allocation agreement.

(B) In the event of any recapture pursuant to section 45D(g) of the Internal Revenue Code and section 1.45 D-1(e)(2) of Title 26 of the Code of Federal Regulations, as such federal laws and regulations exist on the effective date of the enactment of section 5725.33 of the Revised Code, October 16, 2009, all new market tax credits claimed by any taxpayer in respect of each equity investment subject to recapture of federal new market tax credits shall also be subject to recapture by the state of Ohio. Following receipt of notice by the state allocatee of a recapture event of federal new market tax credits, the director shall notify the tax commissioner and the superintendent and request that taxes be assessed against each NMTC claimant subject to the jurisdiction of the tax commissioner and the superintendent, respectively, in the aggregate amount of new market tax credits claimed by each such taxpayer in respect of the affected equity investments and all applicable interest.

(C) In addition to recapture under the circumstances described in paragraph (B) of this rule, new market tax credits shall be subject to recapture if the director determines that more than fifteen per cent of the proceeds of an investment for which the tax credit is claimed were used other than for qualified low-income community business investments. The director shall notify the state allocatee in writing if the director identifies any circumstance indicating potential recapture under this paragraph. The state allocatee shall have thirty days after the date of the director's notice to respond in writing. The director shall issue a preliminary written determination, which shall state the director's findings and conclusion on which the recapture determination is based. The state allocatee shall have the right to request within thirty days after the date of the preliminary determination a hearing with the director to refute any of the director's findings and conclusions. Thereafter, the director shall issue a final written determination. If the director determines that a recapture event has occurred, the director shall notify the tax commissioner and the superintendent and request that taxes be assessed against each NMTC claimant subject to the jurisdiction of the tax commissioner and the superintendent, respectively, in the aggregate amount of new market tax credits claimed by each such taxpayer in respect of the affected equity investments and all applicable interest.

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122:22-1-06 Fees.

(A) Each applicant shall submit with its application for a credit allocation an application fee in an amount established annually by the director in a schedule of new market tax credit program fees. An application will not be considered by the director unless the application fee is paid. Application fees are non-refundable even if an application is withdrawn or incomplete.

(B) Each state allocatee shall pay a servicing fee in an amount established annually by the director in a schedule of new market tax credit program fees. The servicing fee will be payable in full upon execution and delivery of the allocation agreement. No allocation agreement shall be effective unless the servicing fee has been paid.

(C) A request for a determination described in paragraph (D) of rule 122:22-1-03 of the Administrative Code shall be subject to payment of a non-refundable processing fee in an amount established annually by the director in a schedule of new market tax credit program fees. Such a determination will not be issued by the director unless the processing fee is paid.

(D) The director shall establish the schedule of new market tax credit program fees for each fiscal year. The schedule of new market tax credit program fees shall be published by the director on the department of development website.

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122:22-1-07 Delegation of functions.

Except as provided in this rule, each and any of the powers and duties of the director under this chapter, including the making, signing and issuance of allocation agreements and determinations, accepting or refunding of fees, and exercise of recapture, may be performed by the assistant director of development or such other officers and employees of the department of development as may be designated in writing by the director or such assistant director. Any such designation under this chapter shall continue to be effective unless and until it is terminated or superseded in writing, notwithstanding any succession in the office of director or assistant director. Any reference in this chapter to the director includes the assistant director or such other designated officers or employees.

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122:22-1-08 Severability.

If any clause, provision or application of any of the rules in rule 122:22-1-01 to 122:22-1-08 of the Administrative Code is determined to be invalid or unenforceable, such determination shall not affect the remainder of such rule, other application of the rule, or application of other rules of this chapter, which shall be applied as if the invalid or unenforceable portion, application or references to the invalid or unenforceable portion did not exist.

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