

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 8.111.602 and 8.111.603) PROPOSED AMENDMENT
pertaining to the low income housing)
tax credit program)

TO: All Concerned Persons

1. On April 15, 2015 at 10:00 a.m., the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building at 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Commerce no later than 5:00 p.m. on April 6, 2015, to advise us of the nature of the accommodation that you need. Please contact Paula Loving, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana, 59620-0528; telephone (406) 841-2840; fax (406) 841-2841; TDD (406) 841-2702; or e-mail ploving@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

8.111.602 DEFINITIONS When used in these rules, unless the context clearly requires a different meaning:

(1) remains the same.

(2) "Project" means the low income residential rental building, or buildings, that are the subject of an application for ~~low income~~ housing tax credits.

(3) "QAP" means the board's Montana Housing Tax Credit Program ~~2015~~ 2016 Qualified Allocation Plan," which sets forth the application process and selection criteria used by the board for evaluation and selection of projects to receive awards for allocation of ~~tax~~ housing credits for calendar year ~~2015~~ 2016, copies of which may be obtained by contacting the Board of Housing by mail at P.O. Box 200528, Helena, MT 59620-0528, by telephone at (406) 841-2845 or (406) 841-2838, or at the board's web site www.housing.mt.gov.

(4) "Tax credit" or "housing credit" means the federal low income housing tax credit for owners of qualifying rental housing which meets certain low income occupancy and rent limitation requirements pursuant to 26 U.S.C. 42.

AUTH: 90-6-106, MCA

IMP: 90-6-104, MCA

REASON: The proposed amendments to ARM 8.111.602 are necessary to update the Qualified Allocation Plan (QAP) definition to reference the 2016 Qualified

Allocation Plan for the Montana Housing Credit Program and to revise the name of the credit to "housing credit" as used for purposes of Montana's tax credit program.

Federal low income housing tax credits are allocated by the federal government to the states, according to their population, for allocation to particular buildings. Each state's share of federal low income housing tax credits is allocated to particular buildings under programs administered by the respective states' housing credit agencies. The Montana Board of Housing is Montana's housing credit agency for purposes of administering the tax credit program and allocating tax. In Montana, the program is now known as the Montana Housing Credit Program. Federal law requires that tax credits allocated to the state by the federal government must be allocated by the state pursuant to a "qualified allocation plan" or "QAP."

Prior to publication of this notice, the board conducted several public meetings to consider suggestions and comments regarding the provisions of the 2016 QAP. Thereafter, at its November 17, 2014 meeting, the board considered and approved public notice and distribution of the proposed 2016 QAP. After public notice of the proposed 2016 QAP and of the opportunity for public comment was published and distributed, a public hearing on the proposed 2016 QAP was held on December 16, 2014 and written comments were also received. At its January 9, 2015 meeting, after considering all written and oral comments on the proposed 2016 QAP, staff recommendations, additional public comment and various proposed revisions in response to comments, the board approved the 2016 QAP for submission to and approval by the Montana Governor, as required by the federal tax credit statute, 26 U.S.C. 42. The 2016 QAP has been submitted to the Governor for approval. Adoption of the proposed rule is contingent upon the Governor's approval of the 2016 QAP.

A copy of the 2016 QAP is available at <http://commerce.mt.gov/Portals/90/shared/DOC/docs/Legal/201501162016QAPGovApproved.pdf> or by requesting a copy from: Mary Bair, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana, 59620-0528; telephone (406) 841-2845; fax (406) 841-2841; or e-mail mbair@mt.gov.

8.111.603 HOUSING TAX CREDIT ALLOCATION PROCEDURE

(1) Letters of intent and applications for ~~tax~~ housing credits shall be prepared and submitted in conformance with the criteria and requirements contained in the QAP.

(2) remains the same.

(3) At a board meeting after the ~~application~~ letter of intent submission deadline and before the application submission deadline, board staff will present letters of intent to the board, all according to the provisions of the QAP. The board may ask questions of applicants and discuss proposed projects, but there will be no applicant presentations and the board will not make any award determination at this meeting. Board questions, comments, and discussion are for purposes of assisting applicants in presenting better applications and shall not be binding upon the board in any later award determination or other board process.

(4) Following submission of applications, board staff will evaluate each application for conformance with the threshold and other requirements of the QAP. Applications meeting all minimum threshold requirements and not excluded from further consideration under the QAP will be evaluated for the amount of ~~tax~~ housing credits needed for feasibility and long-term viability and will be further evaluated and scored according to the development evaluation criteria of the QAP. The points awarded to each project pursuant to the evaluation criteria of the QAP are for the purposes specified in (9), and not for purposes of ranking projects for allocation of ~~tax~~ housing credits. Following application evaluation and scoring, board staff may provide recommendations to the board for allocation of ~~tax~~ housing credits to qualifying projects.

(5) remains the same.

(6) Copies of applications and other information submitted to the board in connection with applications are available to other applicants for ~~tax~~ housing credit projects and members of the public to the extent provided and according to the procedures specified in the QAP.

(7) At one or more regularly scheduled board meetings each year, as specified in or otherwise designated according to the QAP, the board will hear public comment and consider award of ~~tax~~ housing credit allocations in accordance with the QAP. The award of ~~tax~~ housing credit allocations is not a contested case and the award meeting is not a contested case hearing under Title 2, chapter 4, part 6, MCA.

(8) remains the same.

(9) The board will select those projects to receive an award of ~~tax~~ housing credits that it determines best meet the most pressing housing needs of low income people within the state of Montana, taking into consideration the selection criteria as defined in the QAP. The awarding of points to projects pursuant to the development evaluation criteria of the QAP is for purposes of determining that the projects meet at least the minimum criteria required for further consideration under the QAP and to assist the board in evaluating and comparing projects. Development evaluation criteria scoring is only one of several considerations taken into account by the board and does not control the selection of projects that will receive an award of ~~tax~~ housing credits. In addition to any other selection criteria specified in the QAP, the board may consider the following factors in selecting projects for an award of ~~tax~~ housing credits to qualifying projects:

(a) the geographical distribution of ~~tax~~ housing credit projects;

(b) through (g) remain the same.

(h) past performance of an applicant in initiating and completing ~~tax~~ housing credit projects;

(i) and (j) remain the same.

AUTH: 90-6-106, MCA

IMP: 90-6-104, MCA

REASON: The proposed amendments to ARM 8.111.603 are necessary to correct a typographical error that occurred in the most recent prior amendment of this rule. In the previous amendment, the board intended to replace the term "pre-application" with the term "letter of intent," but the term "pre-application" was not entirely deleted.

The proposed amendment corrects this error.

In addition, the proposed amendments to ARM 8.111.603 are necessary to revise the name of the credit to "housing credit" as used for purposes of Montana's tax credit program.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Mary Bair, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana, 59620-0528; telephone (406) 841-2845; fax (406) 841-2841; or e-mail mbair@mt.gov, and must be received no later than 5:00 p.m., April 23, 2015.

5. Mary Bair, Department of Commerce, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ G. Martin Tuttle
G. MARTIN TUTTLE
Rule Reviewer

/s/ Douglas Mitchell
DOUGLAS MITCHELL
Deputy Director
Department of Commerce

Certified to the Secretary of State March 16, 2015.