

**NEW HAMPSHIRE**  
**2011 QUALIFIED ALLOCATION PLAN**  
**FOR THE LOW INCOME HOUSING TAX CREDIT PROGRAM**

**October 28, 2010**

**FINAL**

# 2011 New Hampshire Qualified Allocation Plan

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\* Please confirm that you have the latest data. These items are revised annually by the federal government.

**NEW HAMPSHIRE  
2011 QUALIFIED ALLOCATION PLAN  
LOW INCOME HOUSING TAX CREDIT PROGRAM  
Program Rules  
(HFA:109)**

**HFA:109.01 INTRODUCTION**

The Low Income Housing Tax Credit (“LIHTC” or “tax credit”) Program was created to encourage development of rental housing for low-income households. The LIHTC Program was established under the provisions of the Tax Reform Act of 1986, and made permanent in 1993. By Executive Order of the Governor of New Hampshire, the New Hampshire Housing Finance Authority (the “Authority”) is delegated responsibility for program administration through an approved Qualified Allocation Plan (“QAP” or “Allocation Plan”). The Authority is responsible for allocating the state’s annual credit amount in accordance with the Allocation Plan and Section 42 of the Internal Revenue Code (“IRC 42”).

The 2011 Allocation Plan was presented to the public in an open hearing on October 7th, 2010, approved by the Authority’s Board of Directors on October 28, 2010, and subsequently signed by the Governor of New Hampshire.

The Allocation Plan provides a summary of the LIHTC Program and its major requirements, determines the competitive process for allocating the state’s annual credit ceiling using selection criteria designed to address New Hampshire’s low income housing priorities, specifies the submission requirements for each phase of the application process, and describes requirements relative to long term compliance with the LIHTC Program.

Summary of Important Changes for the 2011 QAP:

- Investment limits of Authority capital subsidy and tax credit equity (combined) per unit are reduced to \$190,000/unit (page 7).
- Existing buildings with minor rehabilitation needs are eligible for credits on equal basis with new construction.
- The scoring preference for nonprofit organizations is reduced. (page 15)
- The scoring preference for Section 8 tenant rent subsidies generated by local Public Housing Authorities is eliminated, unless the rent subsidies are a new allocation to the PHA. (page 15)
- Preservation projects can now be eligible for 9% credits under certain conditions. (page 5)
- Submittal of conceptual applications is now mandatory. (page 6)

Summary of Application Process

The primary application form is the Application Spreadsheet, which can be downloaded from the Authority’s Website ([www.nhhfa.org](http://www.nhhfa.org)). The Application Spreadsheet also includes on Sheet 3 the complete list of application exhibits, and the sheet labeled “Management Questionnaire.” All application materials must be sent electronically to [assetmanagement@nhhfa.org](mailto:assetmanagement@nhhfa.org). Exceptions are blueprint sized comprehensive plans, and application fees. Please do not submit any other paper documents. It is helpful if filenames correspond with the material in the file (e.g env report.pdf, zoning letter.pdf). All materials and application fees must be filed by the application deadline. A text summary of the project’s expected scoring, with a brief description of how the project meets each scoring category, is very helpful. Large files such as environmental reports should be broken into smaller pdf files (approximately 5MB maximum).

- Mandatory submittal by e-mail of conceptual application 90 days prior to formal application deadline.
- Submittal by e-mail of application spreadsheet, other exhibits and application fee by deadline.
- The formal application deadline is: Round 1 - March 4<sup>th</sup>.
- Round 1 decisions will likely be announced May 1<sup>st</sup> on the Authority’s website.

**HFA:109.02 LIHTC PROGRAM SUMMARY**

The following summary provides a brief overview of the LIHTC Program, major program and project requirements, and calculation of the tax credit amount. Specific program rules and regulations are described in IRC 42. To the extent this summary or any other information in the Allocation Plan is inconsistent with IRC 42, the provisions of IRC 42 shall govern. This summary is not intended to present all the rules and regulations of the tax credit program. It is strongly recommended that applicants consult with competent legal and tax counsel.

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### Program Administration

Unless otherwise specified, the Authority's Board of Directors delegates LIHTC Program administration to staff. The responsibilities of the Board's Multi-Family Committee are delineated in Sections HFA:109.06B (Evaluation of Applications), HFA:109.12 (Appeals) and HFA:109.13 (Waiver Authority). The Board reviews and approves all reservations (HFA:109.06B). The Board of Directors and the Governor must formally approve the New Hampshire Qualified Allocation Plan.

### A. Program Overview

The LIHTC Program is part of the Internal Revenue Code and is meant to encourage the new construction and rehabilitation of low income rental housing. The program offers a low income housing investment incentive in the form of a tax credit usable against the investor's federal tax liability for a ten year period.

### C. Project Eligibility Requirements

To qualify as a tax credit project, a project must maintain a minimum set-aside of rent restricted units for tenants in a targeted income group. At a minimum, at least 20% of the units must be rented to very low income households, defined as households with income at or below 50% of the Median Area Income (MAI), or 40% of the units must be rented to low income households, defined as households with incomes not exceeding 60% of the MAI.<sup>1</sup> Median area income limits are adjusted for household size and vary depending on location. Household size is based on 1.5 persons per bedroom.

The maximum rent for set-aside units is based on 30% of either the 50% MAI or 60% MAI. The maximum rent that can be charged to the tenant is gross rent and must include all utility expenses. If utilities are paid by the tenant, the maximum rent must be reduced according to the Authority Utility Allowance Schedule or other approved alternatives.<sup>2</sup>

Other eligible standards require that the project be a residential property available for rent on a continuous basis to members of the general public, and is not intended for transient occupancy. The project must comply with the Fair Housing Act (42 USC §3601 et seq). The 2008 Housing and Economic Recovery Act (HERA) revisions allow tenancy preferences for persons with special needs, and tenants involved in artistic or literary activities.

### D. Calculation of Tax Credit Dollar Amount

The maximum amount of tax credits available to a project is the product of the appropriate tax credit percentage (credit rate) and the qualified basis of the project. Qualified basis is the product of certain eligible costs (eligible basis) and the low income portion of the project (applicable fraction). Certain development costs are not included in the project's eligible basis. Land costs, permanent financing costs, syndication costs and reserves are examples of costs not included in eligible basis.

The maximum credit rate is determined by the Internal Revenue Service (IRS) for the month in which the project is placed in service or, if elected by the developer, the month in which an irrevocable election to lock in the credit rate is made (see HFA:109.06F). The 2008 HERA law established the "9% credit" at the greater of 9% or per the original law (i.e. monthly adjustment by Treasury).<sup>3</sup> The monthly rate setting of the 4% credit is unchanged. The Authority also reserves the right to adjust the tax credit rate below the maximum allowed at its sole discretion. The credit rate conceptually works as follows:

- 4% of the qualified basis for the cost of acquisition of existing buildings (provided that rehabilitation costs equal the greater of an average \$6,000 per unit or 20% of the depreciable basis of the building).
- 4% of the qualified basis for the cost of construction of a new building or rehabilitation of an existing building financed with tax exempt financing.
- 9% of the qualified basis of the cost of construction of a new building or rehabilitation of an existing building financed without tax exempt financing.

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<sup>1</sup> Current MAI, maximum rents and Utility Allowance Schedules can be obtained from the Authority's website ([www.nhhfa.org](http://www.nhhfa.org)) under the Research Library section or from HUD.

<sup>2</sup> See IRS Revenue Ruling 89-6 for a detailed explanation.

<sup>3</sup> The 9% credit fixed rate change reverts in 2014.

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While the 130% bump is no longer restricted by law to the federal DDA/QCT districts defined by HUD, the Authority will restrict the 130% bump to projects located in the official DDA/QCT districts, or to projects which comply with the green components of the Authority's construction standards.

The calculation of tax credits as described in this section of the QAP represents the maximum amount of tax credits available to a project. The Authority is mandated by the federal statute to limit every project's tax credit allocation to the amount necessary for the financial feasibility of the project and its long term viability as affordable housing. The Authority's allocation to a project may be further reduced by the policies and procedures set forth in this QAP (e.g. cost standards in HFA:109.05K).

The Authority does not represent at any time that a particular project is feasible, or that there is no risk to the applicant who is undertaking the project. Please refer to IRC 42 or consult a tax specialist for more detail on the extensive requirements and restrictions associated with use of the tax credits.

### **HFA:109.03 STATUTORY ALLOCATION REQUIREMENTS**

The state is awarded a limited amount of tax credits per year, based on a per capita formula, referred to as the annual tax credit ceiling. The annual tax credit ceiling for the state of New Hampshire is approximately \$2,800,000.<sup>4</sup> Additional tax credits may be available from prior years if unused tax credits are carried forward, or if previously allocated tax credits are returned or rescinded. If the state uses all of the annual tax credits and tax credits from prior years by the end of the calendar year, the state qualifies to apply for tax credits from the National Pool. Tax credits from the annual tax credit ceiling, credits returned or carried forward from a previous year, and tax credits awarded from the National Pool comprise the total amount of tax credit available for the year.

#### Allocation Plan Requirements

Each state Allocation Plan must meet certain minimal requirements. The selection criteria must include:

- project location
- housing needs characteristics
- project characteristics, including whether the project involves the use of existing housing as part of a community revitalization plan
- projects intended for eventual tenant ownership
- tenant populations with special housing needs
- sponsor characteristics
- tenant populations of individuals with children
- public housing waiting lists
- energy efficiency
- historic character

States must give preference among selected projects to:

- those serving the lowest income tenants,
- those serving qualified tenants for the longest period
- projects located in Qualified Census Tracts, the development of which contributes to a concerted community revitalization plan

The Authority has addressed most of the Statutory selection criteria and preferences in the scoring criteria (HFA:109.07C), with the exception of projects intended for eventual tenant ownership, on which the Authority expresses no preference or emphasis.

States may include such other criteria as they deem appropriate, and except for the specified preference items, there are no requirements as to the relative weight of the various factors. Additional LIHTC responsibilities of the Authority include:

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<sup>4</sup> This figure is adjusted annually for inflation, in accordance with the Consumer Price Index.

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- Assurance that the amount of tax credits allocated does not exceed the amount “necessary for the financial feasibility of the project and its viability as a qualified low income housing project throughout the credit period.”<sup>5</sup>
- Evaluation of all projects for consistency with the Allocation Plan and for credit need, including projects using tax exempt bond financing.
- Execution of an agreement for “an extended low income housing commitment” for every project. This agreement must be recorded as a restrictive covenant binding on all successor owners, and must allow low income individuals the right to enforce the commitment in state court.<sup>6</sup>
- Monitoring of compliance with the provisions of Section 42 and notifying the Internal Revenue Service of any noncompliance.

### HFA:109.04 APPLICATION PROCESS AND DEADLINES

The Authority’s schedule for annual tax credit applications is as follows:

<u>ROUND</u>	<u>APPLICATION DEADLINE CREDIT ALLOCATED</u>
1	Up to 100% of the available allocation (including senior set-aside) Deadline: March 4, 2011

The Authority may consider making a reservation of tax credits for an application received after the round 1 deadline provided there are tax credits available and there are no otherwise eligible and/or appropriately sized projects remaining from that round. The Authority may at its discretion elect to reserve less tax credits than are otherwise available in any given application round. See also HFA:109.06B.

### HFA:109.05 PROGRAM POLICIES AND FEES

#### A. Non-Profit Set-Aside

The Authority shall set-aside 10% of the state’s annual tax credit allocation for qualified non-profit organizations that:

- meet tax exempt requirements of IRC 501(c)(3) or (c)(4);
- own a controlling interest in a project and materially participate in the development and management of the project throughout the compliance period;
- have exempt purposes including the fostering of low income housing.

Wholly owned affiliates of a non-profit are eligible. In order to qualify for the non-profit set-aside, the organization must provide sufficient documentation to verify its status as a qualified non-profit organization in accordance with the requirements of IRC 42 (h)(5)(c). See also HFA:109.06 B regarding allocation of the nonprofit set-aside.

#### B. Supplemental Set-Aside

The Authority shall set-aside \$120,000 of the state’s annual tax credit allocation for projects returning for supplemental credits after having received a carryover allocation in an earlier year. Allocations made under this set-aside can be up to \$30,000 for any one project and shall be made outside of the competitive process and funding rounds. Requests for more than this amount shall be handled through the competitive rounds and process. Supplemental allocations must meet the General Threshold Criteria (HFA:109.07B). Requests under this set-aside will be granted at the sole discretion of the Authority staff only for projects which meet one or more of the following criteria:

- have incurred or face substantial unforeseen cost increases;
- subject to an unanticipated reduction in equity yield on the sale of the tax credits;<sup>7</sup>
- would reduce their level of other Authority capital subsidy funding;
- would improve their financial feasibility but still be consistent with the Authority’s underwriting and/or subsidy layering review process.

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<sup>5</sup> IRC 42.

<sup>6</sup> See also HFA:109.05P – Extended Use Agreement and HFA:109.11 – Land Use Restriction Agreement.

<sup>7</sup> “Reduced equity yield” means a lower price paid by syndicators/investors per tax credit dollar allocated.

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Any amounts of the supplemental set-aside pool remaining after March 1<sup>st</sup> will be included in the round 1 pool. However, if tax credits are still available after the reservations are approved, Authority staff can make additional supplemental reservations under the same program guidelines.

### C. Senior Set-Aside

\$450,000 of the annual tax credit allocation shall be set-aside exclusively for senior projects. For the purposes of the set-aside, senior projects are defined as having all units designated 62 and over age restricted. Senior projects shall be scored and ranked separately and up to \$450,000 in senior project reservations may be recommended to the Board. The Authority may reserve/allocate up to 5% more than that which is set-aside for senior projects at any time of the year if necessary to fully and adequately fund an application.

For any credit amounts remaining after Round 1, senior project applicants will be evaluated in competition with all other applicants and will have no special set-aside.

D. Preservation Projects are not eligible to apply for 9% LIHTC except for projects that are to be demolished and/or reconstructed while retaining or extending the project based rent subsidy contracts. Preservation projects are those that have been funded with federal project based rent subsidies that are currently subject to recorded regulatory documents limiting unit rents and/or tenant incomes. Preservation projects are eligible to apply separately for tax exempt bond financing and 4% LIHTC.

### E. Allocation Credit Exchange

The Authority will permit exchanges of tax credits to be granted at the discretion of staff under the following conditions (all four factors must apply):

- the Authority has the appropriate amount of unreserved credit available;
- the project sponsor provides evidence of an inability to meet the placed-in-service, 10% expenditure or other funding deadline for the subject building(s);
- the situation results from either unanticipated litigation, municipal approval delays or other unforeseeable circumstances beyond the sponsor's control;
- the project continues to be financially feasible and meets the QAP threshold and eligibility requirements in effect at the time the tax credits were originally rewarded.

Once staff determines that the conditions above have been met and the sponsor surrenders the previously allocated credits, staff has the authority to re-issue a reservation letter for credits in the same amount without further Board action. The new credit reservation amount cannot exceed the exchanged credit amount.

### F. Application and Compliance Monitoring Fee

The LIHTC application fee is 7% of the final allocation amount for all applicants paid in accordance with the schedule below. There is also a compliance monitoring fee of \$600 per LIHTC unit, which must be paid prior to issuance of the IRS Form 8609. Applications will not be processed without the required fees.

- Application for Reservation: 1% of the annual tax credit request due with submission of Application.
- Application for Final Allocation: balance of the 7% fee, due with the request for Final Allocation – IRS Form 8609 (plus the compliance monitoring fee).

The initial application fees may be refunded, less \$500, if a project is withdrawn or otherwise fails to secure a reservation for the round in which an application is submitted. No fees are refundable after a reservation has been approved. Refunds must be requested in writing within 90 days of notification from the Authority.

### G. Authority Review of Design, Bidding and Construction Standards

All projects receiving LIHTC allocations (including tax exempt bond projects with “out-of-cap” allocations) must comply with the Authority's Design and Construction Standards (HFA 111), which can be obtained at [www.nhhfa.org](http://www.nhhfa.org) under the Business Partners/Multi-Family Development section.

In addition to meeting standard national and state building code requirements, projects must meet the federal Uniform Physical Condition Standards (UPCS at CFR 5 et al.), federal Fair Housing Act and Section 504 Accessibility requirements.

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Sponsors are generally free to use any reasonable method for selection of contractors. If other Authority funds are used, the contractor selection must be consistent with HFA 111. Authority approval of the tax credit reservation and allocation is contingent upon the project meeting the per-unit cost standards (HFA 109:05K) and contractor overhead and profit limitation (HFA 109:05M). Alternate proposals may be required should the Authority consider the construction manager, general contractor or any subcontractor costs excessive.

### H. Conceptual Level Project Submittal

The Authority will now mandate submittal of a conceptual level pre-application. Projects which do not submit by the conceptual deadline (90 days prior to the formal LIHTC application round) will be ineligible for application during the regular round.<sup>8</sup> The pre-application includes:

- Sources and uses development budget, preferably on the Authority spreadsheet application form
- Conceptual site design and zoning compliance issues
- Building layout and floor plans, including square footage of units
- Unit counts
- Proposed management
- Tenant service package (if any)
- Ownership structure
- Development team
- Provision of utilities
- Project timetable (including permits and zoning)
- External issues (e.g., environmental)

Conceptual applications will primarily be evaluated under HFA:109.07B, General Threshold Criteria. It is the goal of the Authority to provide a multi-disciplinary review of the project approximately 30 days prior to formal application and to provide the sponsor with a set of written issues and comments.

### I. Maximum Tax Credit Restrictions

The maximum amount of tax credits that any single project (unphased) may receive is \$800,000 of the annual allocation.<sup>9</sup> This limit will apply even over multiple years.<sup>10</sup>

The maximum amount of “in-cap” tax credits that any one applicant (as one of the general partners or as a development agent for a for-profit entity) can secure in any single calendar year for all projects is \$800,000 of the annual state allocation.

### J. Maximum Number of Applications and Projects

The Authority will not accept a new application if an applicant (including any general partner) has:

- two or more New Hampshire LIHTC projects that have not yet been completed (i.e., IRS Form 8609’s issued), including “out-of-cap” tax exempt bond financed projects; or
- two approved project reservations in the same calendar year as the proposed new application.

Exceptions are allowed if it is a supplemental application for a previously approved project or if it is an application for Phase Two (or subsequent) of a previously approved project.

### K. Per Unit Cost Standards/Housing Investment Limits

Project applications will be carefully evaluated for cost reasonableness. The applicant shall submit professionally prepared cost estimates with the initial application and proposals or bids with the Progress Phase Requirements or earlier upon request by the Authority. Project applications which indicate unreasonably high total development costs or have unreasonably high specific line item costs may be rejected at the application stage at the sole discretion

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<sup>8</sup> Submission of a formal application in a prior round or a prior year (for essentially the same project) negates the requirement for a conceptual application.

<sup>9</sup> “Out-of-cap” tax exempt bond financed project allocations for both projects and applicants are not limited and such projects are not included toward these limits.

<sup>10</sup> This does not relate to later phases of phased projects, even if the ownership entity is the same for multiple phases. The limit will apply if less than 20% more units are added in a later year.

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of the Authority. This is considered an important threshold issue (HFA 109.07B). The Authority will specifically reject any application in which the total development cost per (residential) unit exceeds \$240,000 per unit.

The Authority will review costs in relation to comparable recent projects in New Hampshire and New England and in relation to the HUD 221(d)(3) limits, which are published annually in January.

The per unit “investment limit” for all projects of combined Authority capital subsidy funds and equity raised through the LIHTC is \$190,000 per unit.

The Capital Subsidy program limits are as follows:

- The lesser of \$50,000 per unit or \$1.5 million total for 9% family projects, the lesser of \$45,000 per unit or \$1,000,000 for 9% senior project.
- A maximum of \$60,000 per unit for 4% tax exempt bond financed projects with no maximum overall dollar limit except as per the Authority’s program plan (i.e., annual funding budget).

If a supplemental or additional credit allocation is made to a project in 2011 or a subsequent year, staff has the authority to use the most recent investment limits in evaluating and allocating tax credits and other Authority resources to the project.

### L. CDBG Funded Projects

Projects which are proposing to include CDBG monies as a source of funds must have previously been awarded CDBG funds, or must make application in the spring 2011 funding round. This will be a condition that must be met before a carryover allocation will be approved.

### M. Contractor Overhead and Profit

The following limits on general contractor overhead, profit and general requirements shall apply to all projects:

- Profit: 6% of construction costs
- Overhead: 2% of construction costs
- General Requirements: 6% of construction costs

The construction contract must specify the costs for these line items (e.g. in the schedule of values). For purposes of calculating these limits, construction costs shall exclude contractor overhead, profit and general requirements. In cases where there is an advertised public or selective contractor bid and the Authority monitors the bidding process, these limits shall be considered to have been implicitly met. The Authority staff reserves the right to exceed these limits at its sole discretion based on market conditions and/or project variables.

### N. Developer Fee

The maximum developer fee allowed is generally calculated in accordance with the Authority’s Developer Fee Schedule (Appendix A). The developer fee is not guaranteed or automatic budgetary figure and must be approved by the Authority within the context of each project. The fee will be strictly limited, with any violations of the developer certification of development cost forwarded to the IRS using IRS Form 8823. For purposes of calculating the maximum developer fee allowed, the Authority does not distinguish between the developer fee and fees for consultants doing those tasks typically done by a developer, regardless of whether the applicant is a for-profit or non-profit entity. “Consultant fees” for professional services such as architectural, engineering, appraisal fees or other highly specialized services are not counted as Developer Fee.

### O. Authority Evaluation and Underwriting Standards

Project applications will be evaluated using the Authority’s Underwriting Standards for Multi-Family Finance and all applications must meet the minimum standards for debt coverage ratio, income and expense trending, operating and replacement reserves, etc. A copy of these standards can be viewed at the Authority’s website [www.nhhfa.org](http://www.nhhfa.org) under the Multi-Family Development section. Applications not meeting the underwriting standards may be rejected at the sole discretion of the Authority.

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### P. Professional Reports: Appraisal, Phase I, Market Study

Professional studies, if required by the Authority must be completed by the Progress Phase or the Allocation process (see HFA:109.08A). Certain incentive points are given in the competitive scoring process if various reports are completed at the time of initial application (see HFA:109.07C7). Consultants for appraisals and market studies are generally chosen through a selective bid to pre-qualified contractors. The Authority will request payment for third party services from the Applicant prior to the bid being awarded.

1. **Appraisal:** Acquisition costs which exceed the appraised value are generally not acceptable except for extenuating circumstances, which must be stated in writing as part of the application process. The appraiser must be licensed as a New Hampshire Certified General Appraiser.
2. **Phase I Environmental Report:** A satisfactory Phase 1 Environmental Report is a requirement for the allocation of tax credits. The report must meet ASTM Standard E 1527-00 or E 1527-05 for Environmental Site Assessments. Older buildings planned for renovation should have asbestos and lead testing completed, and buildings planned for demolition should have suspect materials tested for asbestos. Issues raised by the Phase 1 Environmental Report should be resolved to the extent possible (e.g. further testing of suspect materials). Phase I Environmental Reports can be contracted directly by the sponsor in all cases. Projects also applying for Authority capital subsidy funding will likely need to comply with HUD environmental protocols, including historic and archeological reviews, so please check with Authority staff early in the process.
3. **Market Study:** A market study of the proposed project must be commissioned by the Authority and paid for by the developer before a final allocation will be made. Exceptions may be allowed in situations where relevant market studies were recently completed for the same market area and same developer. Market studies may not be required for acquisition of occupied projects using tax exempt bond financing (i.e. 4% “out-of-cap” credit). See the Authority’s requirements on the website ([www.nhhfa.org](http://www.nhhfa.org)).

### Q. Extended Use Agreement

IRC Section 42 (Section 42(h)(6)(D)) provides a requirement for an Extended Use period of at least 15 years beyond the initial 15 year compliance period. Section 42 (h)(6)(E)(II) provides an exception:

...if the housing credit agency is unable to present during such period a qualified contract for the acquisition of the low income portion of the building by any person who will continue to operate such portion as a qualified low income building. Subclause (II) shall not apply to the extent more stringent requirements are provided in the agreement or in State law. (Emphasis added).

The Authority has more stringent requirements:

1. All Owners (or successors and assigns in interest pursuant to Paragraph 3 below) of the property shall be bound to the LIHTC rent and income limits to be set forth in the Land Use Restriction Agreement (LURA) for 99 years beginning on the date which begins the compliance period, as defined in the LURA. The LIHTC income and rent restrictions set forth in the LURA will not be allowed to terminate at the end of the 15<sup>th</sup> year for any reason. Owners wishing to be relieved of the LURA’s income and rent restrictions must follow the process described in Paragraph 2 below.

Prior to issuance of IRS Form 8609 Low Income Housing Credit Allocation Certification by the Authority, all Owners (except ownership entities ultimately controlled by a qualified non-profit or local housing Authority) must sign a Right of First Refusal (ROFR – for example see appendix).<sup>11</sup> The ROFR shall provide that if the Owner wishes to be relieved of the LURA’s income and rent restrictions after the 30 year compliance period, the Owner must use the following procedure:

- a. The Owner may make a bona fide offer to sell the property to a qualified non-profit entity (QNP), government agency or tenant co-op or resident management corporation (i.e. “eligible entity”) for a price equal to the minimum set forth as per formula at IRC Section 42(i)(7)(B). If the eligible

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<sup>11</sup> For example, when general partner is for-profit affiliate of a qualified non-profit corporation, no ROFR is needed. The ROFR can be with the Authority.

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entity purchases the property pursuant to the offer, the original LURA shall be terminated and no rent or income limitations shall apply. However, the goal is to maintain long-term low income residency and affordability to the extent possible.

- b. If the eligible entity (or its successors and assigns) declines the opportunity to purchase property or otherwise declines to exercise its right under ROFR, then the Owner shall offer to sell the property to the Authority (or its designee) for the same price at which it offered to sell the Property to the eligible entity. If the Authority purchases the property pursuant to the offer, either for its own purposes or on behalf of another eligible entity, the Authority may discharge the original LURA, renegotiate a new LURA to maintain low income residency and affordability or use the derived resources to produce an appropriate affordable housing benefit.
- c. If the Authority declines to accept the offer to purchase the property or otherwise declines to exercise its rights under the ROFR either for its own purposes or on behalf of another eligible entity, the LURA shall be discharged and the Owner is free to sell and/or convert the property to market rents or other uses, after adequate notice to existing tenants and compliance with existing law (including the 3 year tenant protection period cited at Section 42 (h)(6)(e)(ii)).

The Owner may sell or transfer the Project during the low income compliance period with the prior written consent of the Authority.<sup>12</sup> The Authority shall be under no obligation to approve any sale or transfer, except for ownership transfers using the Right of First Refusal process with a qualified non-profit entity as described above.

The Authority's interest in reviewing the proposed buyer and the terms of any proposed sale of a tax credit property (including non-LIHTC units) is in maintaining and not jeopardizing the affordability, condition of housing and quality of management of the low income units during the compliance period. The Authority must be satisfied in all respects that the proposed new owner can effectively manage and operate the project (including projected financial viability) as quality affordable housing for the remainder of the low income compliance period.

### R. Tenant Selection – Fair Housing

Any project financed in whole or in part with tax credits or Authority funds shall not provide any preference for resident selection from a specific town or community. As per tax credit law (IRC Section 42), tax credit units must be available to the general public and marketing and rent-up must comply with federal Fair Housing Law. Project design and construction must comply with the Fair Housing Act, and the architect must certify compliance as a condition of the final allocation.

### S. Tenant Anti-Displacement and Relocation Policy

Permanent displacement of tenants is strongly discouraged. The Authority reserves the right to reject any applications that fail to minimize permanent displacement of tenants. Any proposed temporary or permanent relocation of tenants should generally meet standards equivalent to the federal Uniform Relocation Act (URA).<sup>13</sup>

### T. Reference

IRS Federal Revenue Procedure 98-9 established a process for the Authority to check the LIHTC related background of tax credit applicants. Data available to the Authority from the IRS includes a review of the Business Master File, revenue agent reports and other sources of account data. The Authority needs to sign a Memorandum of Understanding with the Internal Revenue Service in order to begin implementing this policy, and has not yet done so at this time. Applicants may be required to submit IRS Form 8821 with their tax credit applications, including separate forms for all general partners.<sup>14</sup>

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<sup>12</sup> Any sale or transfer of the Project by foreclosure or by transfer of title by deed in lieu of foreclosure is exempt from Authority review as per Section 42.

<sup>13</sup> LIHTC projects are not covered by the federal URA unless other qualified federal funding is involved in the project such as CDBG, HOME or project based Section 8 vouchers.

<sup>14</sup> IRS documents can be secured on the internet at [www.irs.gov](http://www.irs.gov).

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Developers new to New Hampshire or the Authority may be required to provide reference authorization so that references can be checked with lenders and housing officials in other states.

### U. Floodplain Development

The Authority will not fund projects proposed in the 100 year floodplain, except situations where a portion of a site not containing the housing is in the floodplain that will remain either undisturbed or as recreation, or existing buildings where all residential access and living/mechanical areas will be above the 100 year flood elevation.

### **HFA:109.06 APPLICATION PROCESSING – SELECTION AND RESERVATION**

There are three phases of application processing – the Reservation Phase, Progress Phase and the Allocation Phase. All applications shall be submitted entirely electronically on the application form provided by the Authority.<sup>15</sup> All applications must be submitted by the appropriate deadline (See HFA:109.04). Applicants are encouraged to submit applications early and/or discuss preliminary proposals with LIHTC Program staff in order to facilitate the development and tax credit process. Incomplete applications will be rejected without further processing, though minor variances may be waived at discretion of the Authority. The Authority reserves the right to seek clarification of applications for purposes of establishing scoring.

#### A. Supplemental Allocations and Credit Exchanges

Applications for supplemental credits (after having received a carryover allocation in a previous year) and credit exchanges may be made at any time and will be evaluated outside of the competitive scoring process. Reservations of supplemental credits and credit exchanges meeting the requirements of HFA:109.05E can be approved by Authority staff without further Board or Multi-Family Committee approval. See section HFA:109.05B for further information.

#### B. Evaluation of Applications; Post Application Round Reservation Process

All applications are checked against the General Threshold Criteria (HFA:109.07) and checklist (Appendix C). Contacts may be made with local municipal officials, cited funding sources, management companies, equity investors, etc. Projects may be rejected at any time during the allocation process at the sole discretion of the Authority for failure to meet General Threshold Criteria. Upon satisfactory completion of the Application Threshold Requirements, the project will be scored and ranked in accordance with the Scoring Criteria described in HFA:109.07C of the Allocation Plan. Projects shall be recommended for a Reservation of tax credits based on the competitive scoring results.

The nonprofit set-aside shall generally be allocated through the QAP scoring system. However since the state's entire allocation authority is predicated on meeting the 10% nonprofit allocation, one or more nonprofit projects may be selected (based on their relative scoring) over higher scoring applicants until the 10% allocation requirement is met. Note that public housing authorities do not qualify for the 10% set aside.

In a situation where only partial credits are available for the next highest scoring project, the Authority will retain the right to bypass that project and either give credits to other projects lower in the scoring ranking which can more reasonably use the remaining credit amount or use the credits in a future round.

If a partial allocation is offered, the Authority must be convinced that a project can be appropriately phased or down-scaled, that the project's feasibility is not conditioned upon receipt of future additional Reservation and that the project can retain its Scoring Criteria ranking. The Applicant must demonstrate the ability to meet these criteria within 21 days of notification by the Authority. If the project fails to show it can work with the credits available, the Authority may proceed to reserve credits for lower scoring projects or use the credits in a future round.

The Reservation (or rejection) of tax credits shall be made by the Authority's Board of Directors (except for supplemental credits and credit exchanges as described above). Applicants not receiving a Tax Credit Reservation will be considered rejected for that application round, but can be considered later in the year if additional resources become available. These Applicants may be placed on a waiting list until the end of the calendar year in which the application was received. Applicants on the waiting list are considered in the priority order established by their score. The Authority may require the Applicant to submit amendments to the application.

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<sup>15</sup> The application can be secured from the Authority's website [www.nhhfa.org](http://www.nhhfa.org) under the Multi-Family section. Applications must be emailed to [assetmanagement@nhhfa.org](mailto:assetmanagement@nhhfa.org)

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The Authority may consider making a reservation of tax credits for an application received after the Round deadline provided there are tax credits available and there are no otherwise eligible and/or appropriately sized projects remaining from that round.

The Authority may at its discretion elect to reserve less tax credits than are otherwise available in any given application round.

### C. Conversion to Out-of-Cap Project

In the interest of making the most efficient use of New Hampshire's housing related resources, the Authority reserves the right to remove a project from the competitive process, regardless of potential score and convert the project to an "out-of-cap" bond financed project. This would be premised on project feasibility under a tax exempt bond financed scenario (construction and/or permanent), as determined by the Authority. However, once removed from the application round, the Authority cannot guarantee successful bond financing for the project.

### D. Tiebreakers

In the case of a scoring tie between two or more projects where only a subset can be awarded a credit reservation, the tiebreakers shall be:

1. If a family project is tied with a senior project, the family project is favored.
2. The project with the highest percentage of tax credit eligible units, compared to total units.
3. If a new construction project is tied with a rehab project, the new construction project is favored. A combination project is considered new construction.
4. If still tied, the most efficient use of tax credits (i.e. lowest amount of tax credits per rent restricted unit).

### E. Determination of Credit Amount

The Authority performs a comprehensive financial analysis of the proposed project at three separate stages: the Reservation Phase, Application for Carryover Allocation and Application for Final Allocation. As per federal law, the project will receive no more than the tax credit amount required for the project's feasibility, assuming the project qualifies for at least that much credit.

To determine the tax credit dollar amount, the project application will be analyzed using the Authority's underwriting criteria (see HFA:109.05O). The development and operating budgets will be reviewed for reasonableness and line items may be adjusted up or down by the Authority based on this review. Projects will be underwritten based on an equity investment rate that corresponds to prevailing syndication market rates. Projects will generally be underwritten assuming the maximum debt based on a debt coverage ratio (annual net operating income before debt service, divided by annual debt service) of no greater than 1.2, with prevailing loan terms for commercial properties. A higher debt coverage ratio may be used in cases of small or special use projects where there is a higher than normal risk.

### F. Irrevocable Election

After a Reservation is made the Sponsor may irrevocably elect to lock in the applicable percentage, using the Authority's Binding Agreement and Irrevocable Election document to be executed in the month in which the applicable percentage is elected.<sup>16</sup> Requests for an irrevocable election must be made at least 14 days prior to this deadline. This option is available to the Sponsor up until the date the Carryover Allocation Agreement is signed. After that time the rate is set at the date the project is placed in service. For tax exempt bond financed projects using "out-of-cap" tax credits, the Irrevocable Election must be made in the month the bonds are issued; otherwise the project must wait until the placed in service date.

## **HFA:109.07 SELECTION PROCESS AND CRITERIA**

### A. Overview

In order to meet the state of New Hampshire's housing needs and priorities as well as make the most efficient use of the tax credits available to the state, this project selection system was created to encourage projects that address

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<sup>16</sup> The 2008 HERA law fixes the "9%" tax credit note (the "applicable percentage") at exactly 9% through 2013.

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specific objectives. These objectives are largely based on conclusions contained in the **2011-2015** Consolidated Plan for the State of New Hampshire.

Applications for Reservation meeting the general program requirements, Application Threshold Requirements listed in Appendix C and which score competitively will be recommended to the Authority's Board of Directors for a reservation of credits. Applications should be complete and the required supporting documentation included. Inconsistencies in the application or missing supporting documentation may reduce the project's score or cause it to be rejected. The Authority is not required to notify the applicant of inconsistencies or missing information.

### B. General Threshold Criteria

Projects may be rejected at any time during the allocation process (from application up to completion and issuance of the IRS Form 8609) at the sole discretion of the Authority for failure to meet the General Criteria listed below:

- The proposed project's characteristics or location is considered infeasible or inappropriate. Examples could include construction in the 100 year floodplain, projects with severe topographical impediments that would make development abnormally expensive or risky (either from a construction/engineering perspective or from a property management perspective), or those with a location or density that is not appropriate for senior or family residential use.
- Potential market demand is undocumented or inadequately proven, or would, in the opinion of the Authority, negatively affect an existing publicly assisted affordable rental housing property.
- The project's general partner or management agent:
  1. is noncompliant or otherwise in default with this or any other Authority program as determined by the Authority, or
  2. has not started construction within six months from the date of the Carryover Allocation on a current LIHTC project,
  3. has a history of chronic noncompliance in LIHTC or other Authority program,
  4. has failed to meet the objectives of the program or the specific requirements of the LURA for previous projects,
  5. has any significant negative tax credit history with other state tax credit allocating agencies as determined by inter-agency contact or as documented in IRS records (see HFA:109.05T), or
  6. does not have the experience or ability to successfully complete the project.
- Possess and maintain adequate site control as determined by the Authority.
- Proposed development sources are insufficient or proposed development costs are unreasonable for the proposed project.
- Proposed operating budget proposes unreasonably high operating income and/or unreasonably low operating expenses.
- Proposed project appears unlikely to be able to meet the Authority's investment limit or overall per unit development cost limit.
- The Authority concludes that the project will not be able to satisfy the criteria of the Progress Phase Requirements (listed in Appendix D) in a timely manner. For example, serious issues need resolution, such as planning, zoning, permits or land use requirements, environmental issues, financing commitments, problems with statutory requirements, etc.
- Projects must receive a minimum of 60 points (30 points for senior projects) to be eligible to receive a tax credit reservation.

Note that representation made about the project relating to factors that are used in the selection and scoring criteria may not be changed without the approval of the Authority and will be enforced by security documents. Tax credit reservations may be rescinded if the project changes in a way that reduces the initial score at the sole discretion of the Authority (see HFA:109.08A Progress Phase).

A change in the project ownership or the management agent from that represented in the application may subject the project to re-evaluation in accordance with the Allocation Plan. Under no circumstances will changes to the project ownership or management agent be allowed without the express written permission of the Authority.

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### C. Scoring Criteria

Each project will be scored using the criteria listed below. Provide documentation where applicable. Any supportive documentation is subject to verification and the Authority may require additional information as a condition of awarding points. The Authority may reject any documentation deemed to be insufficient, unsupported or inadequate for the particular scoring criteria.

#### 1. **Family Units**

An applicant can score points in any section in this category: a and/or b. Projects cannot have “senior” or other age restricted designation.

- a. Project without senior or over 55 designation. 20 points
- b. Family projects with greater than or equal to 25% of the units having 2 or more bedrooms. 15 points

#### 2. **Income Targeting**

Greater than or equal to 20% of the total number of units reserved for very low income (<=50% MAI). 5 points

#### 3. **Service Enriched Housing**

Applicants can secure funding in only one section in this category. To receive points, services must be actively linked to the project, (not simply provided to the community at-large) and the applicant must submit Appendix L and related documentation. Projects receiving scores in this section must continue to provide the services for the period specified, which will be enforced through the LURA. Projects can score in only one section.

#### Family Projects

- a. Service Coordination – Service Coordination provided on-site to tenants on a regular basis with toll-free telephone availability between on-site visits. Service Coordination must include at a minimum: service needs assessments of all tenants on move-in and annually thereafter, linking tenants to the services/resources they need to remain in independent housing and community building to assist the residents in meeting their social and emotional needs. A commitment of financial support for at least three years is required. 2 points
- b. Supportive Housing Serving Homeless – A minimum of at least one member of each household must be homeless or at imminent risk of homelessness immediately prior to tenancy and be identified as needing services to maintain housing. Types of projects eligible for points in this category include, but are not limited to transitional housing and permanent supportive housing and can include the single room occupancy (SRO) model. Any project scoring in this section must have a design and service package that comprehensively addressed the needs of homeless or at risk clientele. 20 points

#### Senior Projects

- b. Service Coordination – Service Coordination provided on-site to tenants on a regular basis with toll-free telephone availability between on-site visits. Service Coordination must include at a minimum: service needs assessments of all tenants on move-in and annually thereafter, linking tenants to the services/resources they need to remain in independent housing and community building to assist the residents in meeting their social and emotional needs. A commitment of financial support for at least three years is required. 5 points
- c. Service Coordination Plus – Service Coordination as defined in a. above and at least one additional service (i.e. meals, transportation) regularly provided on-site. A minimum commitment of financial support for at least three years is required. A minimum of 20% of the tenants selected for occupancy must be elderly who are identified as needing the services being provided. 10 points

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- d. Congregate Care – Substantial level and range of services are integrated into the housing to support tenant needs. Services must include at a minimum, service coordination (see a. above), one congregate meal a day and weekly homemaking. A minimum of 20% of the tenants selected for occupancy must be elderly who are identified as needing the services being provided. Operational and financial support must be provided by the Owner. 15 points
- e. Congregate Care Plus – Congregate care as described in c. above and a personal care service package that provides for tenants’ intermittent care needs 24-hours a day. The bundled personal care services are encouraged to increase affordability. A minimum of 20% of the tenants selected for occupancy must be elderly who are identified as needing the services being provided. Operational and financial support must be provided by the owner. 20 points
4. Public Housing Waiting List  
Projects where the managing general partner is a Public Housing Authority (or affiliate) that owns and manages public housing or housing with project based Section 8 vouchers. 3 points
5. Location  
Family Projects  
Projects in towns with no other previously approved affordable family housing.<sup>17</sup> 5 points
- Senior Projects
1. Senior project in a city or town that has a previously completed or approved family affordable rental project.<sup>18</sup> 0 points
- or
2. All other senior projects anywhere in the state. -10 points
6. Advanced Projects  
Additional points may be awarded at the discretion of the Authority for advanced progress of the development as per the following schedule:
- |  |          |
|--|----------|
| Site Ownership   | 3 points |
| Phase 1 Environmental Completed                                | 3 points |
| HUD/RD Environmental Checklist Completed (can score both)      | 2 points |
| Submittal of Historic Project Review materials to State        | 3 points |
| State Historic Review completed <sup>19</sup> (can score both) | 5 points |
| Grant/funding commitments (same sources as section 7b)         |          |
| Greater than \$30,000/unit                                     | 5 points |
| \$20,000 to \$29,000/unit                                      | 4 points |
| \$10,000 to \$9,999/unit                                       | 3 points |
| \$5,000 to \$9,999/unit  | 2 points |
| Less than \$5,000/unit   | 0 points |
| Comprehensive Plans <sup>20</sup>                              | 2 points |

<sup>17</sup> Project funded with public financing sources that must have at least 20% of the units affordable to low income households, with no “senior” or “over age 55” designation, and subject to a recorded long term use restriction regarding affordability. Burden is on applicant to provide documentation.

<sup>18</sup> Same as footnote above.

<sup>19</sup> Projects which can demonstrate no need to submit to Historic Review will receive 8 points

<sup>20</sup> “Comprehensive plans” means at least 75% completed, except mechanical and electrical can be postponed.

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Prior Phase of Project Approved for LIHTC and Underway<sup>21</sup> 10 points

All necessary local planning and zoning permits in hand including site plan approval as evidenced by a permit status letter from the sponsor's attorney, project engineer or town planning official. 15 points

### 7. Project Grants and Assistance

An applicant can score points in both of the sections in this category: a and/or b.

a. Projects which have a new rental assistance subsidy for at least 66% of the units, for at least 5 years. Public Housing Authority project based Section 8 units are not eligible, unless the rent subsidies are a new allocation to the PHA specifically for the proposed project. This point category is not available to existing projects requiring minimal rehabilitation; or 15 points

b. Projects which have a contribution of a significant amount of CDBG, Neighborhood Housing Services, Rural Development, or other subsidized loans or grants, including the Federal Home Loan Bank Affordable Housing Program (AHP), at a rate below the Applicable Federal Rate (AFR) and/or are non-amortizing. Donated land at a value determined by an Authority commissioned appraisal can score, but must be completed prior to the application deadline. Authority administered funds and developer fee loans are not eligible for this point category.

(one only)

Greater than \$30,000/unit	20 points
\$20,000 to \$29,999/unit	15 points
\$10,000 to \$19,999/unit	10 points
\$5,000 to \$9,999/unit	5 points
Less than \$5,000/unit	0 points

### 8. Smart Growth Component

a. 1. Projects in existing downtown, substantially developed area or neighborhoods, or adaptive reuse of existing buildings. These points are equally available for urban and nonurban sites, provided the site is served by existing public/community water, and/or sewer, and roads; or

2. Projects which are located in formally designated community revitalization areas (e.g. HUD Enterprise Zones, Main Street Programs, historic districts, designated blighted areas or otherwise targeted areas). The minimum size improvement zone for this scoring category is generally a one block area, but cannot have been specifically created for the benefit of the proposed project. The formal designation must come from an official act by a government agency, such as a City Council or Town Board.<sup>22</sup> 10 points

b. Points will be awarded for projects approved for points in part a. which are also in QCT's. 3 points

c. Points will be awarded for projects approved for points in part a. which preserve and renovate existing housing. 1 point

d. Preservation or restoration of an Historic Building. The building must be on or eligible for the State or National Register of Historic Places, or officially designated as a local historic property by Town, State and/or federal agencies, with rehabilitation to be completed so as to be eligible for and use federal historic rehabilitation tax credits. 5 points

e. Site inspected for rare or officially listed threatened or endangered species

<sup>21</sup> Assumes Authority knows of multiple phasing during first phase.

<sup>22</sup> Federal new market tax credit designations are eligible. A zoning change (e.g. workforce housing zone) does not qualify for scoring in this section.

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of plants and animals, with either none found, or significant and meaningful on-site habitat preserved.<sup>23</sup> 3 points

9. Sponsor is a Local Tax-Exempt Organization

New Hampshire non-profit corporation (or a wholly owned subsidiary) that is an eligible HUD recognized "CHDO" is the project sponsor and sole or managing general partner.<sup>24</sup> 3 points

10. Management Experience

To receive points for this category, the proposed management agent must submit a letter of interest and the Management Questionnaire (Sheet with this title in spreadsheet application – also Appendix M of the QAP or Appendix F of the application, same document). Applications are scored based on specific point scoring shown on the Management Questionnaire. The scoring gives preference to management agents based on experience, performance and satisfaction of LIHTC training requirements. 0 to 10 points

11. Developer Experience with the Authority

The developer or any individual that is part of the development team:

- has any outstanding obligations (including compliance fees) on any Authority financed or tax credit project owed to the Authority of more than 30 days in arrears;
- is involved in or has had other tax credit or Authority financed projects which have non-compliance issues;
- the project's developer, management agent or anyone affiliated with the general partner is or has been non-compliant or otherwise in default with this or any other Authority Program (as determined by the Authority), or with another state housing finance agency.
- has been awarded credits in the past that were subsequently returned or otherwise unused (unless for good cause).

Such determination will be made by the Authority in its sole discretion.

0 to -20 points

### HFA:109.08 POST RESERVATION PROCESSING

#### A. Progress Phase

Within 120 days of notification of a Reservation of tax credits or 30 day preceding the Allocation Phase deadline, whichever is sooner, the Applicant must complete all requirements listed in Appendix D, Progress Phase Requirements.

The Authority may require additional information from third parties for this Phase, such as a market study or appraisal.<sup>25</sup> Any third-party reports required by the Authority must generally be contracted by the Authority directly. Contractors for appraisals and market studies are chosen through a selective bid to pre-qualified contractors. The Authority will request payment from the Applicant prior to the bid being awarded. Prompt payment is required and failure to do so may jeopardize successful completion by the deadline for Progress Phase requirements.

Projects that meet the requirements of the Progress Phase will be eligible to apply for an allocation of tax credits. Progress Phase requirement extensions will be granted at the sole discretion of the Authority. Project reconfigurations which result in reductions in project scoring are not permitted without the express written permission of the Authority. The tax credit Reservation may be rescinded at the sole discretion of the Authority for not meeting the Progress Phase Requirements or if the project scoring has been reduced.

Once a project has met the Progress Phase requirements, a LURA will be prepared. The Applicant must provide proof that the signed document has been recorded at the County Registry of Deeds and evidence that the LURA has

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<sup>23</sup> Review of the state's endangered species database does **not** constitute a site inspection.

<sup>24</sup> CHDO is a Community Housing Development Organization.

<sup>25</sup> See also HFA:109.05P Professional Reports: Appraisals, Phase 1, Market Study.

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precedence in the Land Records over any permanent financing or other liens (e.g. via title update) prior to receiving a Carryover or Final Allocation.

### B. Allocation Phase

The Allocation Phase may consist of two parts, depending on when the project is placed in service. Projects not placed in service by the end of the calendar year in which the tax credits were reserved must complete an Application for Carryover Allocation and the requirements listed in Appendix E, Carryover Allocation Requirements by October 31<sup>st</sup> for first round reservations, and December 1<sup>st</sup> for later reservations. Projects that satisfactorily complete the Carryover Allocation Requirements will be eligible to be issued a Carryover Allocation Agreement. Projects that receive a Carryover Allocation must be placed in service by the end of the second calendar year following the year of the Carryover Allocation.

For projects placed in service by the end of the calendar year in which the tax credits were reserved or in which a Carryover Allocation was received in a previous year, the Applicant must complete an Application for Final Allocation with the required documentation listed in Appendix F, Final Allocation Requirements within 90 days of the placed in service date or December 1, whichever is earlier. Projects that satisfactorily complete the Final Allocation Requirements will be eligible to be issued the IRS Form 8609. Any Applicant with a tax credit Reservation that does not submit an Application for Carryover Allocation by the appropriate date may lose its tax credit Reservation at the sole discretion of the Authority.

At the time of application for allocation, the Applicant may make an election to establish the Gross Rent Floor. This election sets the minimum rents for the entire compliance period. Please see Appendix K for further explanation.

### C. Cost Certifications

Cost Certifications are required for both the Carryover Allocation (i.e. the 10% expenditure certification) and for a final allocation. The cost certifications must incorporate a professional CPA audit in accordance with auditing standards generally accepted in the United States of America and meeting the standards of the Internal Revenue Code and Section 42 relating to a LIHTC Cost Certification. The line items used in the certification must correspond with the Authority's application spreadsheet. The certification must include sources as well as uses of funds. The 10% expenditure certification must be filed with the Authority within 60 days after the one year statutory deadline for projects receiving allocations.

### **HFA:109.09 PROJECTS FINANCED BY TAX-EXEMPT BONDS**

Projects financed with tax-exempt bonds may apply for "out-of-cap" tax credits apart from the states' annual tax credit ceiling and application/scoring process. In order to qualify, 50% of the eligible project basis must be financed with tax exempt bond proceeds. "Out-of-cap" project applicants must meet two general requirements in order to receive tax credits.

- The project must satisfy the requirements for allocation in accordance with the QAP, including the Threshold Requirements (HFA:109.07B), Construction Standards (HFA:109:05G), Cost and Fee Limits (HFA:109.05K), the Extended Use Agreement (HFA:109.05Q) and LURA (HFA:109.11).
- The issuer of the tax-exempt bonds must make a formal determination that the amount of tax credits allocated is no more than necessary to make the project feasible.

Carryover Allocations are not required for projects financed with tax-exempt bonds. The Authority issues a "Determination Letter" stating the estimated amount of tax credits that the project is eligible for just prior to the bond closing transactions, assuming all other LIHTC Program requirements have been or will be met.

Fees for tax exempt bond funded projects must also pay the one-time compliance monitoring fee of \$600 per LIHTC unit prior to issuance of the IRS Form 8609. Tax exempt bond properties will be monitored for compliance (and pay any annual compliance monitoring fees) in the same manner as all other "in-cap" LIHTC Projects (see HFA:109.16).

### **HFA:109.10 PROJECTS FINANCED BY RURAL DEVELOPMENT (RD)**

Projects financed by Rural Development (RD) formerly the Farmers Home Administration or FmHA through the FmHA 515 Program may have separate cost certification requirements imposed by the RD. Information regarding the project, including cost certifications, is shared in accordance with a signed Memorandum of Understanding between the RD and the Authority.

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### **HFA:109.11 LAND USE RESTRICTION AGREEMENT (LURA)**

Prior to issuance of the Carryover Allocation or at Final Allocation, whichever is earlier, the Owner of the tax credit project must execute and record the LURA. The LURA will be prepared by the Authority. Please contact the Authority if you do not have a prepared document at least 30 days prior to the deadline for Carryover or Final Allocation.

The LURA, at a minimum, will require conditions wherein the Owner and the Project must continually comply with IRC 42 and other applicable sections of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The LURA shall remain in effect for the 99 year compliance period (unless the ROFR procedure is used – see HFA:109.05Q Extended Use Agreement). Please consult IRC 42 or a tax specialist for more information.

The responsibility for complying with the requirements of the LURA, as well as, complying with all other applicable requirements rests solely with the Owner of the Project. Compliance with special election provisions represented in the initial application for tax credits, especially provisions used as Scoring Criteria, will be included in the LURA and will be monitored on an annual basis. Owners who fail to maintain compliance with any provision of the LURA will be reported to the IRS by the Authority using the IRS Form 8823. In addition, the Authority reserves the right to replace the management company for chronic non-compliance as defined in HFA:109.16, including but not limited to an IRS 8823 filed three consecutive years for the Management Agent's direct failure to comply with IRC 42 and/or failure to adhere to the Authority's recommendation for resolution.

### **HFA:109.12 APPEAL PROCESS**

Applicants may appeal the Authority's decision, solely with regard to their application in any area covered by these program rules. Applicants must submit a written request for an appeal within 10 business days of notification that tax credits will not be awarded. Within another 10 business days the appellant must provide a copy of any written materials relevant to the appeal request by the Authority's Multi-Family Committee, which will make a recommendation to the full Board.

### **HFA:109.13 WAIVER AUTHORITY**

The Authority reserves the right to waive each and any of these Program Rules (HFA:109) within the constraints of Section 42 and related federal rules and regulations. Applicants or potential applicants must submit a written request for a waiver. A hearing will be scheduled within 45 days of the initial waiver request by the Authority's Multi-Family Committee. Upon a finding of good cause, these waivers may be granted on a case-by-case basis at the discretion of the Authority's Board of Directors. A waiver of the rules can be initiated by the Board (i.e. not by an applicant). In this case, no hearing is necessary.

### **HFA:109.14 PUBLIC RECORDS**

Applicants should be aware that any information submitted as part of an LIHTC application will likely be considered public information under the New Hampshire Public Records law as soon as a reservation decision has been made by the Authority.

### **HFA:109.15 WARRANT AND LIABILITY**

The Authority is charged with allocating no more tax credits to any given project than are required to make the project economically feasible. This decision is made solely at the discretion of the Authority but does not represent or warrant to any applicant, developer, partner, investor, lender or others that the project is feasible or risk free.

The Authority's review of documents in connection with this QAP is for its own purposes. The Authority makes no representations to the applicant or anyone else as to compliance with the Internal Revenue Code, Treasury Regulations or any other laws or regulations governing the LIHTC Program.

No member, officer or employee of the Authority shall be personally liable concerning any matters arising out of or in relation to the allocation of tax credits or associated compliance monitoring.

### **HFA:109.16 AMENDMENTS TO THE QAP**

The Authority reserves the right to modify the QAP periodically as the Authority shall determine in its discretion, with the advice and consent of the Governor. The Authority may make technical clarifications (e.g. to correct typographic errors, inconsistencies, etc.) or revisions to comply with changes in federal law regarding the LIHTC Program at its sole discretion.

## **2011 New Hampshire Qualified Allocation Plan**

### **HFA: 109.17 COMPLIANCE MONITORING OVERVIEW**

The 1990 Omnibus Reconciliation Act requires tax credit allocating agencies to monitor project compliance with Low Income Housing Tax Credit (LIHTC) regulations.

The Authority may contract with a private vendor to act as its agent in monitoring the tax credit program. The Authority's compliance monitoring responsibilities begin at the time the first building is placed in service.

As the allocating agency of the LIHTC Program, the Authority is required to monitor qualified low income housing projects for noncompliance with the provisions of Section 42 of the Code, and to notify the Internal Revenue Service (IRS) when it becomes aware of any noncompliance. Owners must comply with the following requirements:

#### **A. Recordkeeping and Record Retention**

Under the recordkeeping provision of Reg. § 1, 42-5 (b), the owner must keep records for each building the project for each year in the compliance period.

Under the record retention provision, § 1.42-5 (b)(3), owners are required to keep all records for each building for a minimum of 6 years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period must be retained for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building, bringing the total retention for the first to 21 years.

Under the inspection record retention provision, the owner of a low-income housing project must be required to retain the original health, safety, or building code violation reports or notices that were issued by the State or local government unit for the Agency's inspection.

#### **B. Certification and Review Provisions**

The owner of the tax credit project must certify at least annually to the Authority that for the preceding 12 month period the project met certain requirements. The Authority will review at least 20% of low income tenant files at least once every 3 years. New projects will be reviewed within 2 years following the year the last building in the project is placed in service. The required reports, certifications, and forms can be found at the Authority website. Annual reporting must be submitted throughout the Extended Use Period of the project.

#### **C. Inspection Provision**

At least once every 3 years the Authority will perform an on-site inspection of the project including site, building exteriors, building systems, units, and common areas. At least 20% of the project's low-income units will be inspected using standards governed by HUD, Uniform Physical Conditions Standards (UPCS). These standards require properties to be in decent, safe and sanitary condition and in good repair.

#### **D. Notification of Noncompliance**

The Authority is required to provide prompt written notice to the owner when the Authority does not receive the required certifications and other forms, does not receive or is not permitted to inspect the tenant income certifications, supporting documentation and rent records or discovers by inspection, review or in some other manner that the project is not in compliance with the provisions of Section 42. The correction period, established by the Authority, is 30 days from the date of the notice. The Authority is required to file Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition with the IRS.

#### **E. Compliance Monitoring Fees**

Projects allocated Tax Credits are required to pay an upfront monitoring fee of \$600 per LIHTC unit. The fee is paid prior to the issuance of the IRS Form 8609. The Authority reserves the right to make adjustments to annual monitoring fees due to increased monitoring requirements and or costs.

#### **F. Asset Management Fees**

The Authority will perform Asset Management functions throughout the compliance period on projects receiving TCAP, 1602 or other new federal credit exchange program funding. The capitalized fee charged for projects receiving any of these funding sources shall be \$60,000. Projects receiving any of these funding sources plus an actual tax credit allocation shall be charged the greater of \$60,000 or 7% of the tax credit allocation.

## 2011 New Hampshire Qualified Allocation Plan

### **G. Other**

The Authority reserves the right to revise compliance monitoring policies and procedures as required by IRC § 42, including other guidance published by the IRS.

The 2008 HERA Law requires the Authority to report tenant data to HUD annually, including tenant race, ethnicity, family composition, age, income, use of rental assistance or other similar assistance, disability status, and monthly rental payments. The specifics of this requirement have not yet been determined.

Please refer to [www.nhhfa.org/LIHTC](http://www.nhhfa.org/LIHTC) Compliance for further information and required documents.

Liability: Compliance with the requirements of Section 42 of the Code is the responsibility of the owner of the qualified low income building for which the tax credit is allocated. The Authority's obligation to monitor for compliance with the requirements of Section 42 of the Code does not make the Authority liable for an owner's noncompliance.