

New Hampshire Housing Finance Authority

Mortgage Credit Certificate Program HFA 341

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**New Hampshire Housing Finance Authority
Mortgage Credit Certificate Program
HFA 341**

HFA 341 PART ONE: Overview, Purpose, Applicability

HFA 341.01 Overview and Purpose

- (a) These rules establish requirements for any Mortgage Credit Certificate (MCC) Program established by the Authority. The MCC Program is authorized by the Internal Revenue Code § 25 and is an alternative use of the Authority’s tax exempt bond capacity. The MCC is designed to provide Eligible Borrowers with additional disposable income to help make homeownership more affordable.
- (b) With an MCC, Eligible Borrowers may obtain a credit toward their federal income tax liability. The MCC tax credit is based on a portion of the mortgage interest paid. MCC Holders may use this credit over the life of the Underlying Mortgage, provided the MCC Holder continues to qualify for the MCC. However, the actual value of an MCC and the associated tax credit will depend on the individual MCC Holder’s tax situation. Specifically, to use the MCC tax credit, the MCC Holder must have tax liability because the MCC tax credit reduces taxes owed. The MCC is not a refundable credit.

HFA 341.02 Applicability and Additional Rules and Requirements

- (a) These rules govern the Authority’s overall MCC Program. Each Authority conversion of bond capacity to MCC Capacity will constitute a Specific MCC Program. In addition to these rules, the Authority will issue a Specific MCC Program Guide for each Specific MCC Program.
- (b) These MCC rules do not address all MCC issues. For complete program details, Eligible Borrowers, Participating MCC Lenders, and Underlying Mortgage Lenders should consult the IRS MCC law and rules, the Website and Authority contracts, program guides, and other material.

HFA 341 PART TWO: Definitions

HFA 341.03 Definitions

The following words or terms as used in these rules shall have the following meanings:

“Acquisition Costs” means the Eligible Borrower’s cost of acquiring the Eligible Property from the seller, as defined in the Code.

“Acquisition Cost Limits” means those limits set by the Authority for tax exempt homeownership programs, including loans using mortgage revenue bonds and MCCs. The Acquisition Cost Limits shall be posted on the Website.

"Authority" is defined in HFA 301.

"Bonds" means bonds issued by the Authority for the purpose of financing single family housing within the state.

"Code" means all federal requirements for administering and providing Mortgage Credit Certificates, including those requirements in:

- (1) Internal Revenue Code of 1986, as amended, including:
 - (A) I.R.C. § 25 (Mortgage Credit Certificates); and
 - (B) I.R.C. § 143 (mortgage revenue bonds).
- (2) All applicable Treasury regulations, as amended, including:
 - (A) 26 CFR §§ 1.25 1T-8T; and
 - (B) 26 CFR § 103A.

“Eligible Borrower” means a person or family who will be liable on the Underlying Mortgage and who:

- (1) Meets the definition of “Eligible Borrower” in HFA 341.07 as modified by these MCC rules and the MCC Program Guidelines;
- (2) Is a “first-time homebuyer” as defined in the Code unless purchasing in a targeted area. See HFA 341.09; and
- (3) Meets all other MCC Program Guidelines.

“Eligible Property” means any single-family residence, including a stick built house, modular home, manufactured home, or presite built housing, located in the State that meets all MCC Program Guidelines and is being purchased in connection with the issuance of an MCC. An Eligible Property must be the Eligible Borrower’s Principle Residence (See HFA 341.08 for additional Property Eligibility requirements).

“Household” means any individual, group of individuals, or family members living in a home as their Principal Residence.

“Mortgage Credit Certificate” (MCC) means an Authority-issued document that provides an Eligible Borrower with a potential tax credit for a portion of mortgage interest paid.

“MCC Capacity” means the amount of tax exempt bond capacity that the Authority has elected to utilize for issuing MCCs. Each Specific MCC Program will have a certain MCC Capacity that is calculated based on the amount of bond cap converted to MCCs, using the formula established by the Internal Revenue Service.

“MCC Holder” means the person(s) who have been issued an MCC by the Authority.

“MCC Home” means the Eligible Property purchased in connection with the issuance of the MCC.

“MCC Program” means the Authority’s overall program to provide MCCs and includes all Specific MCC Programs.

“MCC Program Guidelines” means all MCC requirements in the IRS Code, IRS regulations, these Authority MCC rules, and all product sheets created by the Authority for the MCC Program.

“MCC Rate” means the Authority-determined rate(s) that an MCC Holder will apply to mortgage interest paid to determine the yearly potential MCC tax credit. Example: 35% MCC Rate \times mortgage interest paid = potential tax credit, subject to a \$2,000 maximum. The Authority will establish the MCC Rate(s) for each Specific MCC Program.

“Participating MCC Lender” means a lender that:

- (1) Has been approved by the Authority to participate in the MCC Program; and
- (2) Has agreed to provide Underlying Mortgages.

“Principal Residence” means an Eligible Borrower’s permanent place of living. An Eligible Borrower can only have one Principal Residence at any time.

“Specific MCC Program” means a distinct MCC Program authorized by the Authority’s Board of Directors to:

- (1) Allocate bond capacity to the MCC Program; and
- (2) Thereby initiate a Specific MCC Program.

“Specific MCC Program Guide” means the Authority’s document that provides all program requirements for a Specific MCC Program.

“State” is defined in HFA 301.

“Underlying Mortgage” means a mortgage that:

- (1) Complies with all MCC Program Guidelines; and
- (2) Is used to finance the purchase of an Eligible Property in connection with an MCC.

“Underlying Mortgage Lender” means a lender that has requested to be included on the Authority’s list of mortgage lenders that will provide Underlying Mortgages. Underlying Mortgage Lenders are not authorized to act as a Participating MCC Lender without the Authority’s approval.

HFA 341 PART THREE: Specific MCC Programs

HFA 341.04 Specific MCC Program Guide

- (a) In addition to these rules and the MCC Program Guidelines, the Authority shall establish and publish for each Specific MCC Program a guide that shall describe for that Specific MCC Program:
 - (1) The name of the Specific MCC Program with reference to the year the MCC election occurred, e.g., the 2012 MCC Program;
 - (2) The total amount of MCC Capacity;
 - (3) The MCC Rate(s);
 - (4) The maximum allowed interest rate on the Underlying MCC Mortgage;
 - (5) The permitted MCC fees;
 - (6) The permitted closing costs limit;
 - (7) The program’s expiration date under HFA 341.05; and
 - (8) Any other information or requirements.
- (b) The Authority may revise and amend the Specific MCC Program Guide.

HFA 341.05 Duration of Specific MCC Programs

The Authority will continue to issue MCCs under a Specific MCC Program until the earliest of:

- (a) All MCC Capacity for a Specific MCC Program has been reserved and awarded to Eligible Borrowers;
- (b) The Specific MCC Program has expired under IRS law; or

- (c) The Authority terminates a Specific MCC Program.

HFA 341 PART FOUR: MCC Eligibility Requirements

HFA 341.06 Eligibility Overview

- (a) In addition to any other requirements, an MCC shall only be issued if:
 - (1) The MCC applicant is an Eligible Borrower;
 - (2) The property being purchased in connection with the MCC is an Eligible Property;
and
 - (3) The Underlying Mortgage complies with all MCC Program Guidelines.
- (b) The Authority's decision regarding any aspect of MCC eligibility is final, including determinations about Eligible Borrower, Eligible Property, and Underlying Mortgage.

HFA 341.07 Borrower Eligibility and Training

To be eligible for an MCC, the MCC applicant shall:

- (a) Be an Eligible Borrower;
- (b) Be purchasing an Eligible Property, HFA 341.08
- (c) Have successfully completed the Authority's online MCC training at the Website as evidenced by an MCC training completion certificate for each Eligible Borrower who will be on the Underlying Mortgage and who will be named on the MCC;
- (d) Obtain a complying Underlying Mortgage;
- (e) Have paid all applicable MCC fees; and
- (f) Have provided, completed, and executed all required MCC documents, including affidavits related to qualifications and waivers.

HFA 341.08 Property Eligibility and Purchase Price Limits

- (a) To qualify as an Eligible Property, the property to be purchased in connection with the MCC shall meet all federal requirements as defined in the Code.
- (b) An Eligible Property's Acquisition Cost cannot exceed the MCC Program Acquisition Cost Limits (Purchase Price Limits).

HFA 341.09 First-Time Homebuyer and Targeted Areas

- (a) Generally, to be an Eligible Borrower the MCC applicant shall be a “first-time homebuyer” as defined in the Code.
- (b) Otherwise Eligible Borrowers who are purchasing a home in targeted areas shall not be required to be first-time homebuyers, provided their previous Principal Residence has been sold before participating in the MCC Program.
- (c) The following municipalities have been designated “targeted areas” pursuant to the Code:

Berlin	Laconia	Pittsfield
Claremont	Lancaster	Portsmouth
Concord	Littleton	Rochester
Dover	Manchester	Somersworth
Goffstown	Newmarket	Whitefield

HFA 341.10 Underlying Mortgage Eligibility

- (a) To qualify as an Underlying Mortgage, the mortgage shall:
 - (1) Meet all MCC Program Guidelines;
 - (2) Have a term of 15 to 30 years;
 - (3) Be a new, fixed-rate, fully amortizing mortgage used to fund the purchase of an Eligible Property;
 - (4) Not be a refinance loan;
 - (5) Be government insured (FHA, RD or VA) or a conventional loan eligible for sale to Fannie Mae or Freddie Mac; and
 - (6) Have a mortgage interest rate, on the date the rate for the Underlying Mortgage is locked, equal to or less than the Authority’s maximum rate established for the Specific MCC Program.
- (b) The Authority may approve mortgage programs that vary from the requirements in HFA 341.10(a) when such approval would accomplish program and participation goals, provided such variances are consistent with any applicable statutes and other program rules, and will help to ensure fair treatment of Eligible Borrowers. Pursuant to the Authority’s operating policies, the Executive Director may delegate variance approval authority to appropriate staff.

- (c) To apply for a variance, the Underlying Mortgage Lender shall:
 - (1) Apply in writing for approval of a specific mortgage program;
 - (2) Describe the program's goals and state how those goals warrant a variance; and
 - (3) State the applicable terms for such program with reference to how those terms vary from HFA 341.10(a)
- (d) The Underlying Mortgage shall not be funded by tax exempt bond funds.
- (e) In addition to all MCC Program requirements, Underlying Mortgages that will be sold to the Authority must comply with applicable Authority loan program requirements from HFA 320.

HFA 341 PART FIVE: The MCCs

HFA 341.11 MCC Rate and Maximum Credit

- (a) For each Specific MCC Program, the Authority shall establish and publish the MCC Rate(s).
- (b) Based on IRS requirements, the annual potential maximum credit is \$2,000.

HFA 341.12 MCC Fees and Closing Costs Limit

- (a) The Authority shall publish a list of MCC fees and the maximum amount allowed for each such fee.
- (b) Participating MCC Lenders may waive any MCC fee that is paid by the Eligible Borrower and that is to be retained by the Lender.
- (c) Participating MCC Lenders and Underlying Mortgage Lenders shall not charge the Eligible Borrower any fees associated with the MCC in addition to or in excess of the permitted MCC fees.
- (d) Closing costs for the Underlying Loan are limited to actual out-of-pocket expenses and other fees that are usual and customary for loan closings. The Authority may, in the Specific MCC Program Guide, set a dollar limit for closing costs.

HFA 341.13 Recapture

- (a) The MCC provides a federal tax benefit to the MCC Holder. Therefore, MCC Holders may be subject to a federal recapture tax under the Code (See, I.R.C. § 143 (m)) when they sell the home financed in connection with the MCC.

- (b) Recapture is generally due if the MCC Holder:
 - (1) Sells the home within nine years of obtaining the MCC;
 - (2) Is earning significantly more income at the time of sale than earned when the MCC was issued; and
 - (3) Gains or profits from the sale of the home.

All three of these criteria must be met for the recapture tax to be due.

HFA 341.14 Expiration, Revocation, Reissuance, and Nontransferability

- (a) An MCC is only valid for the term of the Underlying Mortgage for which the MCC was issued.
- (b) In addition, an MCC expires and is no longer valid:
 - (1) When the MCC Holder no longer lives in the MCC Home as the MCC Holder's principal residence or is using the MCC Home as a business;
 - (2) When the MCC Holder no longer owns the MCC Home;
 - (3) When the MCC Holder has refinanced the Underlying Mortgage without the MCC being reissued; or
 - (4) When the MCC Holder otherwise is no longer eligible for the MCC.
- (c) Before revoking an MCC for noncompliance with the MCC Program Guidelines, the Authority shall provide the MCC Holder with:
 - (1) Written notice of the proposed revocation and the reasons thereof; and
 - (2) An opportunity to respond to the proposed revocation.
- (d) An MCC Holder may apply, no later than one year after refinancing, to have the MCC reissued for a refinanced loan on the MCC Home. To qualify for a reissuance, the MCC Holder must comply with all applicable MCC reissuance rules and all MCC Program Guidelines.
- (e) MCCs are not transferable without the Authority's prior written consent. In limited circumstances, the Authority may be able to permit a transfer (See, Treasury Regulation §125-3T (h)). All transfer requests must comply with all IRS and Authority MCC requirements.

HFA 341 PART SIX: MCC Distribution and Lender Eligibility

HFA 341.15 Distribution of MCCs

- (a) Each Specific MCC Program shall include a set amount of MCC Capacity. Therefore, MCCs shall be issued on a first-come, first-served basis. For the first year of each Specific MCC Program, the Authority shall reserve 20% of the MCCs for targeted areas, as described in the Code, these rules, and as listed on the Authority's Website.
- (b) The Authority issues the MCCs to Eligible Borrowers. The Authority will approve Participating MCC Lenders. The Authority will also directly issue MCCs to Eligible Borrowers without the involvement of a Participating MCC Lender.
- (c) Eligible Borrowers may apply for an MCC with either a Participating MCC Lender or with the Authority.
- (d) The Authority may set aside a portion of MCC Capacity to programs that advance the Authority's mission. This could include set asides based on specific housing developments, property types, income levels, rehabilitation programs, community improvement efforts, or mortgage programs. Once approved, the Authority may reduce or eliminate such MCC set asides if the program is not meeting performance goals or benchmarks or for such other good cause as determined by the Authority.

HFA 341.16 Lender Eligibility and MCC Holder Discretion

- (a) All lenders legally authorized to originate residential mortgages in New Hampshire may participate in the MCC Program in one or both of the following capacities:
 - (1) Acting as a Participating MCC Lender; or
 - (2) As a lender that provides the Underlying Mortgage.
- (b) The Authority shall post on its Website a list of Participating MCC Lenders and a list of Underlying Mortgage Lenders. In addition, the Authority shall provide these lists upon request.
- (c) Eligible Borrowers may obtain their Underlying Mortgage from any lender that they choose. In obtaining an Underlying Mortgage, Eligible Borrowers are not required to use a lender that is a Participating MCC Lender or an Underlying Mortgage Lender. If an Eligible Borrower obtains an Underlying Mortgage alongside an additional Authority loan, both the Underlying Mortgage and the additional loan must comply with applicable Authority loan program requirements from HFA 320.
- (d) Eligible Borrowers may obtain both the MCC and the Underlying MCC Mortgage from a Participating MCC Lender. IRS rules, however, state that a Participating MCC Lender cannot require an Eligible Borrower to finance with that same Participating MCC Lender.

HFA 341.17 Participating MCC Lenders

- (a) The Authority shall review and evaluate all applications to be a Participating MCC Lender, ensuring the applicant has the capability to comply with all MCC Program Guidelines.
- (b) Lenders that want to be approved as Participating MCC Lenders shall:
 - (1) Complete the required application to be a Participating MCC Lender, including information on the lender's organization; authority to do business in New Hampshire; experience in mortgage lending and mortgage operations; and financial information;
 - (2) Pay required Authority MCC-related fees;
 - (3) If approved by the Authority, execute the contract for Participating MCC Lenders; and
 - (4) Provide the Authority with all required reports, documents, and fees.
- (c) Participating MCC Lenders shall:
 - (1) Perform MCC outreach to potential Eligible Borrowers;
 - (2) Complete the MCC application and collect required MCC underwriting documents;
 - (3) Make an initial MCC eligibility determination;
 - (4) Reserve an MCC with the Authority; and
 - (5) Comply with all MCC Program Guidelines and the Participating MCC Lender contract.
- (d) Participating MCC Lenders may also provide the Underlying Mortgage.
- (e) The Authority may suspend or revoke a Participating MCC Lender for noncompliance with the MCC Program Guidelines, nonperformance or other good cause.
- (f) The Authority may waive any MCC fees due from lenders.

HFA 341.18 Underlying Mortgage Lender

- (a) To be listed as an Underlying Mortgage Lender, lenders shall:
 - (1) Submit a written request to the Authority to be recognized as an Underlying Mortgage Lender; and

- (2) Sign a letter of acknowledgement that the lender shall comply with all MCC Program Guidelines in providing the Underlying Mortgage.
- (b) The Authority may suspend or revoke an Underlying Lender for noncompliance with the MCC Program Guidelines or other good cause.