

**DRAFT**

**NEW HAMPSHIRE**

**200~~3~~<sup>4</sup> QUALIFIED ALLOCATION PLAN  
FOR THE LOW INCOME HOUSING TAX CREDIT PROGRAM**

**9/17/03 ~~10/24/02~~**



## 20043 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.



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### NEW HAMPSHIRE 20043 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 20043 Allocation Plan was presented to the public in an open hearing on September 12~~\_, 20032~~, approved by the Authority's Board of Directors on October ~~\_\_\_24~~, 20032, 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 Changes for the 20043 QAP

~~□ Due to rapidly escalating development costs in recent tax credit projects, strict cost limits are being implemented. Numerous changes in the scoring criteria are also intended to reduce project costs. Larger projects can be funded as the maximum allocation has been increased to \$700,000. The developer fee schedule has been revised to a "per unit" basis.~~

The full Board of Directors will now review and approve LIHTC reservations.

Point incentive for early submission of conceptual plans

All owners will be required at project completion to enter into a right of first refusal with a qualified nonprofit or the Authority to enable purchase of the property after the initial 30 year compliance period.

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Compliance related information and forms have been incorporated into a compliance manual, and are no longer included in the QAP except by reference.

### 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.

#### A. 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/Special Projects Committee~~ Multi-Family Housing Committee are delineated in Sections HFA:109.06B (Evaluation of Applications) and HFA:109.12 (Appeals). The Board will now review and approve all reservations. In addition the Board ~~of Directors~~ may approve program waivers pursuant to HFA:109.13 (Waiver Authority). The Board of Directors and the Governor must formally approve the New Hampshire Qualified Allocation Plan.

#### B. 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 incomes 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 a gross rent and must include all utility

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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 Multi-Family section or from HUD.

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expenses. If utilities are paid by the tenant, the maximum rent must be reduced according to the NHHFA Utility Allowance Schedule or other approved alternatives.<sup>2</sup>

Other eligibility standards require that the project is 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 also comply with the Fair Housing Act (42 USC §3601 et seq).

#### 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:109.06 F). The Authority also reserves the right to adjust the tax credit rate below the maximum allowed at its sole discretion. The credit rate may vary, but will be approximately 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 of \$3,000 per unit or 10% 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 federal subsidies.
- \* 9% of the qualified basis for the cost of construction of a new building or rehabilitation of an existing building financed without federal subsidies.

Projects located in a U.S. Department of Housing and Urban Development (HUD) designated Difficult Development Area (“DDA”) or Qualified Census Tract (“QCT”) may be eligible for additional tax credits. The additional tax credits are calculated by increasing the eligible basis for the new construction or substantial rehabilitation portion of the project by up to 30%, at the discretion of the Authority. Please see the attached list of current DDA’s and QCT’s in Appendix B.

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

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

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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 limits in HFA:109.05G).

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.<sup>3</sup> The annual tax credit ceiling for the State of New Hampshire is approximately \$2, 200,000. 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

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 .

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<sup>3</sup> This figure is adjusted annually for inflation, in accordance with the Consumer Price Index.

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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:

- 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>4</sup>
- Evaluation of all projects for consistency with the Allocation Plan and for credit need, including projects using tax exempt bond financing.
- There must be an agreement to “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>5</sup>
- Monitoring of compliance with the provisions of Section 42 and notifying the Internal Revenue Service of any noncompliance.

### **109:04 APPLICATION DEADLINES**

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

<u>ROUND</u>	<u>APPLICATION DEADLINE</u>	<u>CREDIT ALLOCATED</u>
1	February <del>13</del> <sup>14</sup> th	Up to <del>50</del> <sup>66</sup> % of the annual -allocation.
2	July <del>11</del> <sup>9</sup> th	All remaining allocation, plus unused, returned, and National Pool credits

The Authority reserves the right to allocate more than ~~50~~<sup>66</sup>% in the first round in order to fully fund a project reservation which has scored sufficiently to receive a portion of the credit amount needed for feasibility, but would otherwise have to wait until the 2<sup>nd</sup> round for a complete reservation. The Authority also reserves the right to re-allocate credits between rounds (based on the existing project scoring from the previous application round), if a project from the previous round withdraws or otherwise is rejected. The Authority may consider making a reservation of tax credits for an application received after the Round 2 deadline provided there are tax credits

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<sup>4</sup> IRC 42

<sup>5</sup> See also HFA:109.05L - Extended Use Agreement, and HFA: 109.11- Land Use Restriction Agreement.

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available and there are no otherwise eligible and/or appropriately sized projects remaining from that round. See also HFA:109.06B.

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 in accordance with IRC 42(h)(5)(B).~~ ~~In order to qualify for the non-profit set-aside,~~
- ~~exempt purposes include fostering of low income housing~~
- ~~interest can be via corporation 100% owned by the nonprofit.~~

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). Non-profits may also compete for all other tax credits.

#### B. Supplemental Set-Aside

The Authority shall set aside \$100,000 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 \$25,000 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:

- 1) have incurred or face substantial unforeseen cost increases;
- 2) would reduce their level of other Authority subsidy funding or financing;
- 3) would improve their financial feasibility but still be consistent with the Authority's underwriting and/or subsidy layering review process.

Any remaining amounts of the supplemental set-aside pool will be included in the tax credit amounts available for Round 2. However if tax credits are still available after the Round 2 reservations have been made, Authority staff can make additional supplemental reservations under the same program guidelines.

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### C. Application Fees

The LIHTC application fee is 7% of the final allocation amount for for-profit applicants, and 5% for non-profit applicants, paid in accordance with the schedule below. There is also a compliance monitoring fee of \$500 per LIHTC unit, which must be paid prior to issuance of the IRS Form 8609 (see HFA:109.16.8).

- Application for Reservation: 1% of the annual tax credit request or \$500, whichever is greater, due with submission of Application Threshold Requirements.
- Commitment Phase: 2% of the annual tax credit reserved, due with submission of Commitment Phase Requirements.
- Application for Final Allocation: 4% (for-profits) or 2% (non-profits) of the annual tax credit, due with the request for Final Allocation - IRS Form 8609 (plus the compliance monitoring fee - see HFA:109.16.8).

Applications will not be processed without the required fees. At the discretion of the Authority, non-profit applicants may be allowed to pay fees at loan closing with the exception of the application fee for Reservation. This must be requested in writing, accompanied by the organization's most recent financial statement.

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 30 days of notification from the Authority. Unsuccessful applicants wishing to apply in future rounds within the same year must submit a non-refundable re-application fee of \$100 for that new round by the appropriate round application deadline.

### D. 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 ~~most current~~ Design and Construction Standards. ~~There is one exception relating to bidding practices, described below.~~ A complete copy of the Design and Construction Standards can be obtained from the Authority, or viewed at the Authority’s website <[www.nhhfa.org](http://www.nhhfa.org)> under the Multi-Family section. ~~Generally speaking, projects will need to:~~

~~\* Meet the Authority’s specific design requirements, including overall site approval; complete lead paint abatement for renovation projects and completion of a Phase I environmental review (and resolution of any issues raised by the review);~~

\* ~~In addition to m~~Meeting standard national and state building code requirements, ~~including projects must meet~~ the federal Uniform Physical Condition Standards (UPCS at

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CFR Parts 5 et al.) ~~and compliance with~~, federal Fair Housing Act and Section 504 Accessibility requirements; ~~minimum insulation standards; etc.;~~

~~\* Have Authority review and approval of architect and engineer stamped plans and specifications prior to bidding;~~

~~\* Have Authority approval of the constructio contract and schedule of values prior to signing;~~

~~\* Have Authority approval of all change orders prior to implementation;~~

~~\* Permit the Authority to observe all work in progress.~~

~~The Design and Construction Standards mandate use of a sealed selective (or public) bidding process, with a public bid opening, and contractors with an identity of interest are not allowed to participate in the bidding. These two items will not be required of LIHTC projects, assuming no other Authority financing. Thus sponsors are free to use any reasonable method for selection of contractors and establishment of the contract price.~~

Sponsors are generally free to use any reasonable method for selection of contractors. The Design and Construction Standards now allow construction management contracts.

Ultimate contractor and subcontractor selection is also contingent upon the per unit cost standards (HFA:109:05G) and contractor overhead and profit limitation (HFA 109:05I). Alternate proposals may be required should the Authority consider the construction manager, general contractor or any subcontractor costs excessive.

#### E. Conceptual Level Project Submittal

The Authority encourages submittal of a conceptual level pre-application site design, building layout, floor plans and construction budget early in the development process. There is a significant scoring incentive for projects which submit satisfactory conceptual plans within a certain timetable (see HFA:109.07.C.9). The pre-application includes:

- spreadsheet application form (i.e., draft development and operating budget)
- conceptual site design
- building layout and floor plans
- unit counts
- proposed management
- tenant service package (if any)
- ownership structure

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- development team
- provision of utilities
- project timetable (including permits and zoning)
- external issues (e.g., environmental)

It is the goal of the Authority to provide a multi-disciplinary review of the project prior to formal application, and to provide the sponsor with a set of written issues and comments.

### **EF. Maximum Tax Credit Restrictions**

The maximum amount of tax credits that any single project may receive is \$700,000 of the annual allocation.<sup>6</sup> This limit will apply even over multiple years. However, any project requesting more than ~~\$400,000~~ \$450,000 in credit must have total development costs at least 10% below the Authority's per unit cost limits (HFA:109:05G).

The maximum amount of "in-cap" tax credits that any one applicant (as one of the general partners or as a development agent) can secure in any single calendar year for all projects is \$700,000 of the annual State allocation.

### **FG. Maximum Number of Applications and Projects**

The Authority will not accept a new application if an applicant (or any one of the general partners or development agents) has:

- \* three 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.

### **HG. Per Unit Cost Standards**

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 Commitment Phase Requirements, or earlier upon request by the Authority. Project

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<sup>6</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.

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applications which indicate unreasonably high total development costs, or have unreasonably high specific costs may be rejected at the application stage at the sole discretion of the Authority. This is considered an important threshold issue (see HFA:109.07B).

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 Authority’s per unit housing development cost limitations ([see definitions below](#)) are as follows:

0 Bedroom	\$121,000
1 Bedroom	\$129,000
2 Bedroom	\$137,000
3 Bedroom	\$145,000
4 Bedroom	\$153,000

For projects with various bedroom sizes, the appropriate limit will be determined based on a weighted average. The per unit amounts represent the maximum amount of Authority resources (plus first mortgage funds from any source) that will be allowed. Authority resources include all amortizing and non-amortizing funds from the Authority as well as the equity amount generated from the sale of Low Income Housing Tax Credits. ~~Projects may exceed the Authority’s cost limits of Authority resources may be considered at the sole discretion of the Authority, and only after construction has started, for unusual circumstances or for unforeseen cost increases beyond the reasonable control of the developer.~~

**H.I. Construction Period Adjustments**

After construction has started, Authority staff has the discretion to increase the cost limits for a particular project due to unforeseen cost increases beyond the reasonable control of the developer.

**H. Contractor Overhead and Profit**

The following limits on general contractor overhead, profit, and general requirements shall [generally](#) apply to all projects:

- \* Profit: 6 percent of construction costs
- \* Overhead: 2 percent of construction costs
- \* General Requirements: 6 percent of construction costs

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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.

~~Additional proposals may be required should the Authority consider the general contractor cost or any subcontractor costs excessive. For projects in which there is an identity of interest between the developer and the contractor, the Authority will evaluate and may reduce the total profit to the developer/contractor.~~ 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.

#### KJ. Developer Fee

The maximum developer fee allowed is generally calculated in accordance with the Authority's Developer Fee Schedule (A).

The developer fee is not a 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" counted as developer fee do not include professional fees such as architectural, engineering, or appraisal fees.

#### LK. 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 obtained from the Authority, or viewed at the Authority's website <[www.nhhfa.org](http://www.nhhfa.org)> under the Multi-Family section. Applications not meeting the underwriting standards may be rejected at the sole discretion of the Authority.

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

Professional studies, if required by the Authority, must be completed by the Commitment phase of 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:109.07C8.). Appraisals and market studies may be waived at the discretion of the Authority. If required by the Authority, particularly due to a request for other Authority financing, appraisals and market studies must be contracted by the Authority directly. Contractors for appraisals and market studies are chosen through a selective bid to pre-qualified

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contractors. The Authority will request payment from the Applicant prior to the bid being awarded.

1. **Appraisal:** Acquisitions costs which exceed the appraised value are generally not acceptable except under 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 I environmental report is a requirement for the allocation of tax credits. The report must meet ASTM Standard E 1527-97 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 I report should be resolved to the extent possible (e.g. further testing of suspect materials). Phase I reports can be contracted directly by the sponsor in all cases.<sup>7</sup>

3. **Market Study:** As required by statute, a market study of the housing needs of low income individuals in the area served must be completed by a third party professional, approved by the Authority, and done at the expense of the developer. Exceptions may be allowed in situations where relevant market studies were recently completed.

### N. Extended Use Agreement

IRC Section 42 [Sec. 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 (except “qualified nonprofits”), prior to issuance of IRS Form 8609 by the Authority, must sign a right of first refusal offer (ROFR) with a qualified nonprofit and the Authority to offer the property for sale at any time after the initial 30 year compliance period for a price equal to the minimum set forth at Section 42(i)(7)(B).

<sup>7</sup> Projects applying for Authority financing may need to comply with HUD environmental protocols, so please check with your development officer before proceeding with the Phase I.

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2. All Owners shall be bound to the LIHTC rent and income limits to be set forth in the Land Use Restriction Agreement (LURA) in perpetuity, unless the Owner chooses to sell through the following process:

Offering the property to the qualified nonprofit (or its successor) named in the ROFR; then if the nonprofit turns down the offer to purchase the property at the statutory price, the Authority would then be given the opportunity to purchase the property on the same terms, either for its own purposes or on behalf of another qualified nonprofit.

If the qualified nonprofit decides to purchase, the original LURA would be released. All rent and income limitations would be lifted premised on the notion that the purchasing qualified nonprofit would attempt to maintain low income residency and affordability to the extent possible.

If the Authority is given the opportunity and decides to pursue the purchase, either for its own purposes or on behalf of another qualified nonprofit, the Authority can decide whether to release the original LURA, maintain it, or renegotiate a new LURA. However the intent would be to maintain low income residency and affordability along the lines of the original LURA to the extent possible.

If the Authority is given the opportunity but decides not to purchase the property, either for its own purposes or on behalf of another qualified nonprofit, the LURA would be released and the Owner would be free to sell or convert the property to market rents after adequate notice to existing tenants and compliance with existing law.

3. Project Owners will not be allowed to request that the Authority find a buyer to acquire the low income portion of the development during the low income compliance period. Thus the LIHTC income and rent restrictions set forth in the LURA will not be allowed to terminate at the end of the 14<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 Item #2 above.
4. The Owner may not sell or transfer the Project during the low income compliance period without the prior written consent of the Authority, which consent approves the proposed buyer and the terms of any proposed sale, and which consent shall not be unreasonably withheld provided the Owner and proposed transferee satisfy the conditions set forth herein.<sup>8</sup> The Authority's interest in reviewing the proposed buyer and the terms of any proposed sale of a tax credit property (including the non-LIHTC units) is in maintaining and not jeopardizing the affordability, condition of housing

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<sup>8</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.

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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 as quality affordable housing for the remainder of the low income compliance period.

The Authority shall be under no obligation to approve any transaction, except for ownership transfers by a partnership which has entered into a Right of First Refusal with a qualified non-profit corporation (as per IRC 42(i)(7). “Right of First Refusal” [see IRC 42(i)(7)(A)] acquisition prices cannot exceed the price cited as a minimum at IRC 42(i)(7)(B).

NM. Extended Use Agreement

IRC Section 42 [Sec. 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. Subelause (II) shall not apply to the extent more stringent requirements are provided in the agreement or in State law.

All projects receiving an allocation of Low Income Housing Tax Credits shall be bound to a minimum 30 year low income compliance period. Project sponsors will not be allowed to request that the Authority find a buyer to acquire the low income portion of the development until 30 years from the placed in service date, and thus the LIHTC income

and rent restrictions will not be allowed to terminate at the end of the 14<sup>th</sup> year for any reason.

The Owner may not sell or transfer the Project during the 30 year low income compliance period without the prior written consent of the Authority, which consent approves the proposed buyer and the terms of any proposed sale, and which consent shall not be unreasonably withheld provided the Owner and proposed transferee satisfy the conditions set forth herein.<sup>9</sup> The Authority’s interest in reviewing the proposed buyer and the terms

<sup>9</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.

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~~of any proposed sale of a tax credit property (including the 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 30 year period. The Authority must be satisfied in all respects that the proposed new owner can effectively manage and operate the project as quality affordable housing for the remainder of the 30 year low income compliance period.~~

~~Further the Authority must approve the proposed buyer and the terms of any proposed sale of a tax credit property (including the non-LIHTC units), so that the affordability, condition of housing and quality of management of the low income units will be maintained and not jeopardized during the 30 year period. The Authority shall be under no obligation to approve any transaction, except for ownership transfers by a partnership which has entered into a Right of First Refusal with a non-profit corporation (or its subsidiary) that was a general partner at the time of the original allocation. No proposed “Qualified Contract” [as defined by IRC 42(h)(6)(F)] transaction will be approved if the purchase terms of such a transaction exceed the acquisition price formula cited as a minimum at IRC 42(h)(6)(F). Similarly, “Right of First Refusal” [see IRC 42(i)(7)(A)] acquisition prices cannot exceed the price cited as a minimum at IRC 42(i)(7)(B).~~

~~In addition, at the end of the 30 year compliance period, property owners (other than entities which already meet the definition of “qualified buyers” set forth below) must offer the property for sale to a qualified buyer who will commit to maintain the LIHTC income and rent restrictions in perpetuity, at a purchase price which does not exceed the acquisition price formula (cited as a minimum) at IRC 42(h)(6)(F). A “qualified buyer” is a nonprofit housing corporation or limited equity cooperative approved by the Authority which has adequate expertise and housing management capacity. The offer period would start at the end of Year 29 with official written notice to the Authority of intent to sell. If after one year no qualified buyer is found, then the Owner is free to discontinue the LIHTC income and rent restrictions and/or to sell the property without restriction.~~

~~If the applicant chooses to commit to a longer compliance period (see scoring—HFA:109.07C.10), every reference to the 30 year period above will be revised to be a 40 year period in the LURA.~~

### **NO. 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 and permanent relocation of tenants should generally meet standards equivalent to the federal Uniform Relocation Act (URA).<sup>10</sup>

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<sup>10</sup> LIHTC projects are not covered by the federal URA unless other funding is involved in the

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### OP. Reference and Federal Tax Information Authorization

IRS Federal Revenue Ruling 9-98 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>11</sup>

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

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

There are three phases of application processing - the **Reservation Phase**, **Commitment Phase** and the **Allocation Phase**. All applications shall be made on the application form provided by the Authority.<sup>12</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 the discretion of the Authority. The Authority reserves the right to seek clarification of applications for purposes of establishing scoring.

### A. Supplemental Allocations

Reservations of projects applying for supplemental credits (after having received a carryover allocation in a previous year) may apply at any time, and will be evaluated outside of the competitive scoring process. Reservations of supplemental credits can be approved by Authority staff without further ~~Board or Multi-Family/Special Projects Committee~~ Multi-Family Housing Committee approval. See section HFA:109.05B for further information.

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project such as CDBG, HOME or project based Section 8 certificates.

<sup>11</sup> IRS documents can be secured on the internet at [www.irs.ustreas.gov](http://www.irs.ustreas.gov)

<sup>12</sup> Applicants are strongly encouraged to use the computer spreadsheet version of the application and submit a signed application page with the computer file. The application can be secured from the Authority's website [www.nhhfa.org](http://www.nhhfa.org) under the Multifamily section. Applications can be e-mailed to [mkoppelkam@nhhfa.org](mailto:mkoppelkam@nhhfa.org).

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### B.A.

### Evaluation of

#### Applications

All applications are checked against the General Threshold Criteria (HFA:109.07) and checklist (Appendix C). Contacts may be made with local town 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 the 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. Projects must receive a minimum of 60 points to be eligible to receive a tax credit reservation in Round 1, and a minimum of 40 points in Round 2 and thereafter.

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 a 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 ~~Multi-Family/Special Projects Committee~~ Board of Directors -(except for supplemental credits, as described above). ~~The Multi-Family/Special Projects Committee will also review and ratify projects which are rejected.~~

Applicants not receiving a Tax Credit Reservation will be considered rejected for that application round, but can be considered in subsequent rounds. These Applicants may be placed on a waiting list until the end of the calendar year in which the application was received.

#### Applicants

must submit a request to be placed on a waiting list and the appropriate fee (HFA:109.05C) within 30 days of notification that tax credits have not been awarded during that round, or the application will be considered withdrawn. Applicants on the waiting list will not receive any ranking priority and will compete equally with all other applicants in any subsequent rounds in that same calendar year. The Authority may require the Applicant to submit amendments to the application and the Applicant will be required to meet any changes in the IRC 42 or the Allocation Plan.

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The Authority may consider making a reservation of tax credits for an application received after the Round 2 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.B. 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:

- i. The project with the highest percentage of tax credit eligible family units, compared to total units.
- ii. If still tied, location in town with the lowest percentage of family units as reflected in the table shown as Appendix V (Location Points), e.g., location in Column A beats Column B, etc. For purposes of this tiebreaker, towns not shown shall be considered to be in Column C.
- iii. If still tied, the most efficient use of tax credits (i.e., lowest amount of tax credit dollars 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. Based on the Authority's analysis, 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 underwritten using the Authority's underwriting criteria (see HFA:109.05K). 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

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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.

The amount of tax credits reserved will establish the maximum tax credit amount that can be allocated to the project without applying for additional credit. Depending on availability, the amount of the Reservation may be calculated using a tax credit rate slightly higher than the prevailing “4%” credit rate for acquisition or new construction or substantial rehabilitation costs financed with federal subsidies, or the prevailing “9%” credit rate for new building or substantial rehabilitation costs not financed with federal subsidies.

#### F. Irrevocable Election

After a Reservation is made, the sponsor may irrevocably elect to lock in the applicable percentage, provided the Authority's Binding Agreement and Irrevocable Election document is executed by the fifth day following the month in which the applicable percentage is elected. 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 specific objectives. These objectives are largely based on conclusions contained in the 2001-2005 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 ~~Multi-Family/Special Projects Committee~~ 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:

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- \* The project location is considered infeasible or inappropriate. For example, proposed sites 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 a location that is not conducive for senior or family residential use.
- \* Project or housing characteristics (e.g. style, density, undue concentration of income targeting or large family units) are inappropriate for the neighborhood, do not appear to satisfy market need, or there is undocumented /unsupported market demand.
- \* The project's developer or any party affiliated with the development team does not have the experience or ability to successfully complete the project or has failed to meet the objectives of the program on past proposals.
- \* The project's management agent or general partner has a history of chronic noncompliance in accordance with HFA:109.16.11, has failed to meet the requirements of the Land Use Restriction Agreement for previous projects, or has any significant negative tax credit history with other state tax credit allocating agencies as documented in IRS records (see HFA: 109.05N).
- \* The project's developer, management agent, or anyone affiliated with the general partner is or has been noncompliant or otherwise in default with this or any other Authority program as determined by the Authority.
- \* The developer or general partner(s) has another tax credit project that has not started construction within six months from the LIHTC commitment date.
- \* Development costs in total or in part, including but not limited to developer fees, intermediary costs, and syndication expenses are judged to be unreasonable.
- \* The project is determined to be financially infeasible due to high costs and/or lack of adequate financing sources.
- \* The Authority concludes that the project will not be able to satisfy the criteria of the Commitment 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, the ability of the sponsor to apply for or obtain grant or debt financing, problems with statutory requirements, etc.

Note that representations 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

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enforced by the Land Use Restriction Agreement (See HFA:109.11). 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 HFA109.08A Commitment 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.

### 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.

Note for the “family units” definition in categories 1 (Project Impact) and 6 (Location), more than 70% of the units must have 2 or more bedrooms, and there can be no “senior housing” designation.

#### **1. Project Impact**

Applicant can score points in only one section in this category:

- |   |           |
|---|-----------|
| a. 60% net new units (family and other non-senior) in existing downtown or urban locations, infill sites and/or adaptive reuse projects   | 25 points |
| b. 60% net new units (family and other non-senior)  | 20 points |
| c. 60% net new units (senior) in existing downtown or urban locations, infill sites, and/or adaptive reuse projects   | 15 points |
| d. 60% net new units (senior)   | 10 points |
| e. New construction and/or substantial rehabilitation with construction costs equal to or exceeding 50% of total development cost (including contingency, but not including the cost of land) | 5 points  |
| f. Other projects   | 0 points  |

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### 2. Family Units

An applicant can score points in either section in this category: a and/or b.

a. Family projects with greater than or equal to 70% of the units having 2 or more bedrooms. 10 points

b. Family projects with 20-49% of the units having 3 bedroom units. 10 points

or

Family projects with 50% or more of the units having 3 or more bedrooms. 15 points

### 3. Income Targeting

An applicant can score points in only one section in this category: a or b.

a. Greater than 20% but less than or equal to 50% of the total number of units reserved for very low income ( $\leq 50\%$ MAI) 5 points

or

b. Greater than 50% of the total number of units reserved for very low income ( $\leq 50\%$ MAI). 10 points

### 4. 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 documentation at application, including a service plan, commitment of financial support<sup>13</sup>, letters of intent to partner/contract from service providers (when services are to be contracted), a marketing plan describing outreach to potential tenants to whom the services are targeted, a description of how the services will be managed and by whom, and other such items as defined and required in Appendix M.

Projects receiving scores in this section must continue in this use for the full compliance period, which will be enforced through the Land Use Restriction Agreement. Projects can score in only one section.

a. Service Enriched Housing Level IV –Substantial level and range of services are integrated into the housing to support tenant needs. A minimum of 50% of the tenants selected for occupancy will be people/families who are identified as needing the services being provided. 7 points

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<sup>13</sup> Commitment can be from sponsor or third party service agreement.

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- b. Single Room Occupancy (SRO) /Homeless - Single room occupancy (SRO) units, homeless shelters, transitional housing, etc. Project must have a design and service package which addresses the needs of the homeless or transitional clientele.  
15 points

**5. Public Housing Waiting Lists**

Projects that can demonstrably provide housing to persons on waiting lists for public housing will be eligible for points in this category. To meet this requirement the local public housing authority must be the managing co-general partner or the management agent.  
3 points

**6. Location**

Scoring for location is by the community in which the project is located. The ranking is based on U.S. Census data regarding the number of rental housing units compared to the number of total housing units. Family and other non-senior projects must score in category 1 (Project Impact) under 1a, 1b or 1e in order to be scored higher than zero in this category. Any senior project will score zero. See Appendix V for the community lists. Projects located in:

Family and other non-senior projects:

- Communities with <15% rental housing units 10 points
- Communities with >=15% up to 25% rental housing 5 points
  
- Communities with less than 700 total housing units 3 points

Senior projects:

- Any senior project anywhere in the state 0 points

**7. Neighborhood or Community Improvement**

Applications can secure up to 10 points in this category (a, b, and c).

- a. Points may be awarded for projects which are located in formally designated community revitalization areas, such as HUD Enterprise Zones, Main Street programs, designated blighted areas, or otherwise targeted areas. The minimum size improvement zone for this scoring category is generally a 1 block area. The formal designation must come from an official act by a government agency, such as a City Council or Town Board.  
5 points

- ~~e.~~ b. Points will be awarded for projects approved for points in 7a which are also in QCT's.  
3 points

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- c. Points will be awarded for projects approved for points in 7a which preserve and renovate existing housing. 2 points

**8. 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 Control or Partial Ownership	1 point
Site Ownership	2 points
Phase I Environmental completed <sup>14</sup>	3 points
Market Study completed - must be commissioned by the Authority	2 points
Grant/Soft Loan Commitment <sup>15</sup> (significant dollar amount)	2 points
Preliminary Plans OR	3 points
Comprehensive Plans and Specs	1 point
Appropriate zoning with no variances or special exceptions needed	3 points
<u>All necessary local, state and federal permits in hand</u>	
<u>except local building permit – family projects only -</u>	
<u>Project must also secure points under scoring</u>	
<u>Categories #2 and #9</u>	<u>10 points</u>
Maximum for Category	<u>+269</u> points

**9. Conceptual Plan Submission**

Submission of satisfactory conceptual plans to Authority 60 days prior to deadline (see HFA:109.05E - Conceptual Level Submittal for detail)

10 points

**910. Project Grants and Assistance**

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

- a. Family projects which have a new rental assistance subsidy for at least 90% of the units, for at least 15 years. Authority project based Section 8 units are not eligible. +510-points

or

<sup>14</sup> See also HFA:109.05L. The Phase I Environmental Assessment is an Authority LIHTC requirement, but may be contracted by the sponsor directly if no other Authority financing is being requested. If other Authority financing is being requested, the study may need to be contracted for directly by the Authority. Please contact Authority staff if you have any questions.

<sup>15</sup> This category can include commitments of Authority funds.

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Family projects which have a significant rental assistance subsidy for 25% of the units, for a minimum of 5 years. Authority or local PHA project based Section 8 units are eligible. 10 points

- b. Projects which have a contribution of a significant amount of CDBG, Neighborhood Housing Services 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. Authority administered funds are not eligible for this point category. 5 points

~~c. Projects that score in 9b (above) which also apply at least 25% of those funds (i.e., funds referenced in 9b) toward replacing Authority funding sources (i.e., 25% of outside funding sources are being applied below the Authority's per unit cost standards at HFA:109.05G). 5 points~~

**110. Long Term Affordability**

~~An applicant can score points for either a and/or b.~~

~~a. Developer commits to a minimum 10 year extension beyond the 30 year requirements for tax credit level rents and incomes. This additional commitment would be written into the LURA. 5 points~~

~~b. Project proposal has a specific and credible plan (including funds for organization of the tenants and professional representation) to establish tenant ownership of the project (or all of the individual units) after the initial 15 year compliance period. 2 points~~

**121. Participation of Local Tax-Exempt Organizations**

~~New Hampshire nonprofit corporation (or wholly owned subsidiary) or a local housing authority is project sponsor and sole general partner. 5 points~~

**132. Local Support**

Project is supported by local elected public officials, local housing authority, local community development organizations, with written documentation. Scoring correlates with the perceived level of local support. 0 to 5 points

**143. Management Experience**

To receive points for this category, the management agent must complete and submit the Management Questionnaire (Appendix G of the application). In addition, the developer must

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have an executed agreement from the management agent, to be included in the application. Applicant can score points for either a or b.

a. Developer's management agent has demonstrated experience defined as having managed a tax credit property which has had at least one compliance monitoring review, has met the Annual Training requirements and does not have a history of non-compliance (see HFA:109.16). 10 points

or

b. Developer's management agent meets the experience requirements as defined in the Management Questionnaire. 8 points

**154-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 projects which have significant non-compliance issues(as defined by HFA:109:16.11);

\* the project's developer, management agent, or anyone affiliated with the general partner is or has been noncompliant or otherwise in default with this or any other Authority program as determined by the Authority;

\* has been awarded credits in the past that were subsequently returned or otherwise unused (unless with good cause).

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

Minus 1 to Minus 20 points

**HFA:109.08 POST RESERVATION PROCESSING**

A. Commitment Phase

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

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The Authority may require additional information from third parties for this Phase, such as a market study or appraisal.<sup>16</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 Commitment Phase requirements.

Projects that meet the requirements of the Commitment Phase will be eligible to apply for an allocation of tax credits. Commitment 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 Commitment Phase Requirements, or if the project scoring has been reduced.

Once a project has met the Commitment Phase requirements, a Land Use Restriction Agreement (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 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 a 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 second round (or 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.

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<sup>16</sup> See also HFA:109.05L Professional Reports: Appraisal, Phase I, Market Study. 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 or Final Allocation by the appropriate date may lose its tax credit Reservation, at the sole discretion of the Authority.

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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 L for further explanation.

#### **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 state's 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).
- \* 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 transaction, assuming all other LIHTC program requirements have been or will be met.

Fees for tax exempt bond tax credits will be 7% of the anticipated tax credit dollar amount (regardless of sponsor type), with 2% payable prior to issuance of the Determination Letter, and 5% payable at application for IRS Form 8609. These fees are non-refundable.

Tax exempt bond funded projects must also pay the one-time compliance monitoring fee of \$500 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.

#### **HFA:109.11 LAND USE RESTRICTION AGREEMENT**

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 Land Use Restriction Agreement (LURA). The LURA will be prepared by the Authority and may be modified periodically.

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Please contact the Authority if you do not have a prepared document at least 14 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 or under the Internal Revenue Code of 1954 as in effect on the date of enactment of the Code. The LURA shall remain in effect for the 30 year compliance period. 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 noncompliance as defined in HFA:109.16.10, including but not limited to an IRS 8823 filed three consecutive years for the management agent's direct failure to adhere to serious non-compliance with IRC 42 and/or failure to adhere to NHHFA's recommendation for correction or improvement.

### **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 which are to be presented, if any, stating the specific reasons for the appeal, related evidence and the requested remedy. A hearing will be scheduled within 45 days of the initial appeal request by the Authority's ~~Multi-Family/Special Projects Committee~~ Multi-Family Housing Committee, which has the authority to render a ~~final~~ decision on the appeal subject to affirmation by the full Board. The ~~Multi-Family/Special Projects Committee~~ Multi-Family Housing Committee may hear appeals that request waiver of program rules and make recommendations to the full Board for subsequent action on such rule waivers (pursuant to HFA:109.13).

### **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. 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.

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### **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 QAP TECHNICAL CLARIFICATIONS AND AMENDMENT**

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, agent, 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.

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.

### **HFA:109.16 COMPLIANCE MONITORING**

The 1990 Omnibus Reconciliation Act requires tax credit allocating agencies to monitor project compliance with Low Income Housing Tax Credit regulations. This requirement became effective January 1, 1992 and applies to all projects which have received a tax credit allocation since the inception of the tax credit program.

Specifically, IRC 42 requires the tax credit allocating agency to monitor compliance with the tax credit program on a project by project basis. 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. [The procedures the Authority will follow in conducting compliance monitoring of tax credit projects in New Hampshire are set forth in the LIHTC Compliance Manual.](#) The Authority or its agent will notify owners of projects scheduled for review and will examine record keeping and record retention provisions in accordance with the following Compliance Monitoring Procedures.

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The following is a description of the procedures the Authority will follow in conducting compliance monitoring of tax credit projects in New Hampshire:

- ~~1. Record Keeping and Record Retention—Project owners are required to retain the following records for each building in a project for a minimum of 6 years after the due date (with extensions) for filing the federal income tax return for that year. Records for the first year of the credit period must be retained for at least 6 years beyond the due date for filing the federal income tax return for the last year of the compliance period of the building.~~
  - ~~a. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);~~
  - ~~b. The percentage of residential rental units in the building that are low income units;~~
  - ~~c. The rent charged on each residential rental unit in the building (including any utility allowances);~~
  - ~~d. The number of occupants in each low income unit, but only if rent is determined by the number of occupants in each unit under section 42(g)(2) of the Internal Revenue Code (as in effect before the amendments made by the Revenue Reconciliation Act of 1989);~~
  - ~~e. The low income unit vacancies in the building and information that shows when, and to whom, the next available units were rented;~~
  - ~~f. The annual income certification of each low income tenant per unit (Appendix Q);~~
  - ~~g. Documentation to support each low income tenant's income certification (for example, a copy of the tenant's federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation). In the case of a tenant receiving Housing Assistance Payments under Section 8, the documentation requirement of this paragraph (g) is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limits under section 42(g) of the Internal Revenue Code (see Appendix Q for format);~~
  - ~~h. The eligible basis and qualified basis of the building at the end of the first year of the credit period; and~~
  - ~~i. The character and use of the non-residential portion of the building included in the building's eligible basis under section 42(d) of the Internal Revenue Code (e.g., tenant~~

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~~facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).~~

### **2. Tax Credit Compliance Monitoring Status Report**

~~Project owners are required to submit annually on or before February 1st the LIHTC Compliance Monitoring Status Report (Appendix O) in the spreadsheet format found on our web site < www.nhhfa.org> This report is to be submitted electronically to the Tax Credit Compliance Officer. Any report found to be incomplete will be returned and the property will be considered in non-compliance until such report is corrected to NHHFA satisfaction. The Owner will also be required to submit two additional forms in the year following the first year in which the project placed in service, Form CM-1, "Location Preference Sheet" (Appendix T) and Form CM-2, "Original Qualified Basis Tracking Sheet" (Appendix U).~~

### **3. Annual Certification of Continuing Program Compliance**

~~Each tax credit project owner shall be required to certify annually to the Authority that, for the preceding 12-month period, the project complied with certain requirements for maintaining tax credit compliance under IRC 42. The Certificate of Continuing Program Compliance (Appendix P) must be submitted to the Authority or its agent on or before March 1<sup>st</sup> of each year of the compliance period. (The compliance period is the period of 15 taxable years beginning with the first taxable year of the credit period.) The Authority or its agent will review all certifications of compliance. Project owners who fail to submit or properly complete the certification will be notified that their project is in noncompliance in accordance with paragraph 7 of this section.~~

### **4. IRS Form 8609**

~~A copy of the IRS Form 8609 (Parts I and II, including Schedule A) completed by the owner for each building, shall be submitted to the Tax Credit Compliance Officer of the Authority when requested.~~

### **5. Project Inspection**

~~The Authority or its agent will conduct on-site project inspections in accordance with IRC 42. At a minimum, the low income certification, the documentation the owner has received to support the certification, and the rent received for each low income tenant will be reviewed and units inspected in at least 20 percent of the low income units in these projects. Project inspection may also include the following:~~

~~a. Review of qualified basis for all properties for the first year the tax credit is claimed.~~

~~b. Review of initial compliance requirements for all properties.~~

~~c. Review of tenant income certifications and back-up documentation for all low income units, along with review of income eligibility of all low income unit occupants by~~

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~~comparison of gross income to appropriate 20/50 or 40/60 income limits, and calculation and review of rent restrictions.~~

~~d. Review of re-rental activity for the given year for each tax credit unit, along with review of subsequent changes in income, household composition, student status, impact of the 140% rule and vacant unit tax credit regulations.~~

~~e. On-site inspection of common areas and low income units, in accordance with the Uniform Physical Condition Standards (UPCS).~~

~~f. Review of corrective action requirement from noncompliance findings.~~

~~g. Review of representations made about the project used in the initial application and selection criteria process and all requirements of the Land Use Restriction Agreement.~~

~~h. The minimum set-aside will be reviewed based on the choice made by the owner on the application, unless the owner notified the Authority in writing prior to the placed in service date of a different election percentage.~~

~~i. Certificate of Compliance with Special Conditions (Appendix S). The Owner is required to submit this Certification annually on or before March 1st.~~

~~Owners will be given at least a 30-day advance notice of an inspection but will not be notified what units will be inspected. Note that the Authority or its agent has the right to inspect any buildings of the Low Income Housing Tax Credit project at least through the end of the compliance period. This right to inspect is separate and in addition to any review of low income certification, supporting documents and rent records required under this paragraph, including the Tenant Income Certification form (Appendix Q) to be signed by each adult member of the household at initial move-in and annual re-certification.~~

~~The Authority may make an exception for buildings financed by Rural Development (RD) under the Farmers Home Administration (FmHA) 515 program, or buildings in which 50 percent or more of the aggregate basis (taking into account the building and the land) is financed with tax exempt bonds. Review of tenant income certification, supporting documentation, and rent records may not be required for such buildings if the Authority enters into an agreement with RD or the tax-exempt bond issuer. Under such agreements, the Authority or its agent would review information on tenant income and rent provided by RD or the tax-exempt bond issuer. Further review of these buildings would occur if such information were not sufficient to determine compliance with tax credit regulations. **The Authority will not grant exceptions to the review process for FmHA properties at this time.**~~

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~~6. Notice to Owner—If the Authority or its agent becomes aware of noncompliance, the owner will be given written notification of such noncompliance and will be given a reasonable time period (not to exceed 90 days from the date of the notice to correct the deficiency). An extension of the correction period may be granted for a period of up to 6 months if the Authority determines there is good cause to grant an extension. Occurrences of noncompliance include, but are not limited to, failure of the owner to submit the annual certification of program compliance, the Authority or its agent is not permitted to inspect tenant income certifications, supporting documentation and rent records and if the Authority or its agent discover that the project is not in compliance with the provisions of IRC 42 or the owner fails to pay the tax credit compliance monitoring fee. Extensions must be requested in writing. Approvals will be granted in writing. Corrections must be submitted in writing and include supporting documentation in order for the deficiency to be considered corrected.~~

~~7. Notice to Internal Revenue Service (IRS)—IRS compliance monitoring regulations require the Authority to submit a "Low Income Housing Credit Agencies Report of Noncompliance" (IRS Form 8823) for all instances of noncompliance, regardless of the severity or evidence of correction within a reasonable time period. The IRS, not the Authority, is responsible for determining whether a project owner is subject to recapture of tax credits due to noncompliance. Therefore, the Authority will file IRS Form 8823 no later than 45 days after the end of the correction period including extensions, and no earlier than the end of the correction period.~~

~~If all the deficiencies are corrected after the initial IRS Form 8823 is submitted, the Authority will submit an amended IRS Form 8823 to the IRS detailing the corrections.~~

~~8. Fees—A one time, non refundable tax credit monitoring fee that incorporates the Authority's cost of monitoring the project for the full 15 year compliance period shall be paid to the Authority prior to final allocation. The fee is \$500 per LIHTC unit and must be paid prior to issuance of the IRS Form 8609~~

~~Due to the increase monitoring required by the IRS, effective January 1, 2001 (Ref. IRS 1.42-5) an additional management review (MR) fee will be charged to projects scheduled for a full on-site review. The MR fee is based on a range depending on the project size. The MR fee will be invoiced at the end of the compliance monitoring year for the project, thus it is due just once every three years. The fee is as follows:~~

<u># of units</u>	<u>Fee</u>
1-20	\$150
21-30	\$200
31-50	\$250
Over 50	\$300

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~~It is important to note that this MR fee is in addition to the one-time monitoring fee.~~

~~The Authority may in its sole discretion approve a waiver of the compliance monitoring fee, or alternative payment terms. The Authority reserves the right to increase the monitoring fee, including requiring an annual monitoring fee, if compliance monitoring requirements are modified by NHHFA or the IRS. Additional fees, based on actual cost incurred, will be charged to owners for the additional monitoring required for projects which have been cited for noncompliance.~~

~~Projects prior to 1996 may also be subject to an annual increase in the monitoring fee at the sole discretion of the Authority. Owners will be notified prior to such an increase. Owners of such projects may pre-pay the tax credit monitoring fee based on the per unit cost and the number of years remaining in the compliance period. These properties will still be subject to any annual increase if the Authority, at its sole discretion, deems it necessary.~~

~~Owners that fail to maintain compliance with LIHTC requirements as established in the project's LURA, the Authority's compliance monitoring procedures, and IRS Code may be charged additional fees for non-compliance. The fee charged will be the actual cost incurred by NHHFA for any additional monitoring required as a result of non-compliance, or continuing technical errors, and is at the discretion of the Authority.~~

~~Failure to pay monitoring fees in a timely manner will also hinder future LIHTC applications by an owner. (See General Criteria HFA:109.07B and scoring criteria HFA:109.07C14.)~~

~~9. Liability—Compliance with the requirements of IRC 42 is the sole responsibility of the owner of the building for which the tax credit is allocated. The Authority's obligations to monitor for compliance with the requirements of IRC 42 does not make the Authority liable for an owner's noncompliance.~~

~~10. Annual Training—The Management Agent must certify that the management agent (or a member of the on-site staff) has received tax credit management training at least once annually. See Appendix R. Certifications of training must be submitted to the Tax Credit Compliance Officer by March 1<sup>st</sup> of each year.~~

~~11. Noncompliant Owners and Management Agents—Owners and agents who are found to be in noncompliance may be subject to IRS notification, sanctions and/or loss of further tax credit allocations. Noncompliance may include, but is not limited to the following:~~

- ~~Failure to allow the agency or its agent to complete a review or inspection of the property.~~

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- ~~Repeated failure to properly verify tenant income in the manner prescribed by IRC 42.~~
- ~~Repeated failure to obtain income certification forms.~~
- ~~Failure to obtain an executed lease and/or executing a lease which is less than 6 months.~~
- ~~Failure to annually recertify two or more tenants in a one year period. Annual recertification is defined as once within a twelve month period.~~
- ~~Failure to pay the required tax credit monitoring fee.~~
- ~~Failure to maintain the property in decent, safe, and sanitary condition, as defined in 24 CFR Parts 5, et al Uniform Physical Condition Standards (UPCS), and/or failing to correct deficiencies cited in previous reviews.~~
- ~~Failure to adhere to requirements of the Land Use Restriction Agreement including Special Conditions.~~
- ~~Failure to meet the requirements of the Authority's Compliance Manual, or any reasonable request for Fair Housing or Tax Credit related compliance.~~