

Colorado Housing and Finance Authority  
**Low Income Housing Tax Credit**

# Allocation Plan



COLORADO HOUSING  
AND FINANCE AUTHORITY  
*Investing in Home and Business.*

This plan, as amended, was adopted by the Colorado Housing and Finance Authority Board of Directors on December 21, 2000 and approved by the Governor of Colorado on January 23, 2001.

COLORADO HOUSING AND FINANCE AUTHORITY  
 LOW-INCOME HOUSING TAX CREDIT ALLOCATION PLAN  
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## I. PURPOSE AND GOALS

The purpose of Colorado's Low-Income Housing Tax Credit ("LIHTC") Allocation Plan (the "Plan") is to use federal tax credits available under Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"), and state tax credits under Part 21 of Article 22 of Title 39, Colorado Revised Statutes (the "State Tax Credit Act") to the maximum extent possible each year as a tool for the creation and maintenance of rental housing units for low and very low-income households in the State of Colorado (the "State") in such a way as to further the following goals:

1. Make such units affordable to households having the lowest incomes and for the longest time period;
2. Assist in the provision of financially viable, market appropriate housing in areas of greatest housing need in the State;
3. Assist in the provision of quality housing at a reasonable cost to meet a variety of needs, including family, elderly and special need populations;
4. Provide opportunities to a variety of qualified sponsors, both for-profit and non-profit, for a variety of housing development sizes;
5. Allocate only the amount of credit that Colorado Housing and Finance Authority determines to be necessary for the financial feasibility of a development and its viability as a qualified low-income housing development throughout the credit period;
6. Allocate tax credits to rental housing developments which provide the greatest overall public benefits; and
7. Allocate tax credits to as many rental housing developments as possible, considering cost, size, location, and income mix of proposals.

## II. TAX CREDIT ALLOCATION PROCESS

Section 42 of the Code generally requires that LIHTC allocations be made by the State housing credit agency at the time a qualified building is placed in service (available for occupancy). In Colorado, the Colorado Housing and Finance Authority (the "Authority" or "CHFA") is the State housing credit agency. The Code also permits housing credit agencies to award carryover allocations (allows an additional two years to complete development) to developments which are not ready for placement in service by year-end but which have incurred more than ten percent of the total development costs. In addition, CHFA uses a process that permits sponsors to obtain a "preliminary reservation" of tax credits at an earlier stage in the development process than is required for an allocation.

Tax credits against state tax liability are also available for allocation as a result of the State Tax Credit Act. The legislation provides that any development that is eligible for an allocation of the federal tax credit is also eligible for an allocation of the state tax credit. Therefore, the contents of this Plan, except where otherwise noted, also apply to the allocation of state tax credits.

Tax-exempt private activity bond financed developments are eligible for federal tax credits without having to compete for the State's annual housing credit dollar amount ("housing credit ceiling"), but are also subject to review by the Authority and are required by the Code to satisfy the requirements for an allocation of federal credits under the Plan. See Section VII for application instructions. Such developments are also subject to the compliance monitoring requirements as described in Section X. Such developments are not eligible for the Colorado state tax credit.

## II.A. Preliminary Reservation Cycles

Applications for reservations of tax credits from both the federal and state housing credit ceiling will be accepted and reviewed by CHFA once each calendar year. Each year, CHFA will provide application forms and publish a schedule with specific deadlines for application submissions for a preliminary reservation (see also Section IV.A.). CHFA may, with reasonable notice to the public, change the submission deadlines and add a reservation cycle, should CHFA determine that such an action is appropriate for the orderly allocation of available credits. Applicants may apply for federal tax credits only, for state tax credits only or a combination of federal and state tax credits. For the year 2001, CHFA will also accept applications for state tax credits after the Board of Directors has approved a list of developments for tax credits from both the federal and state tax credit ceiling. Such later applications will be accepted only for Preservation Developments (see Section IV.B.3.d. for a definition) which score no lower than the lowest-scoring development that received Board approval. Applications received after October 2001 that meet these criteria must also meet the Carryover requirements listed in Section V.B. at the time of application.

CHFA reserves the right, in its sole discretion, to (i) hold back a portion of the annual state and federal housing credit ceiling for use during later reservation cycles, (ii) carry forward a portion of the current year's housing credit ceiling for allocation in the next calendar year and (iii) under certain conditions, issue a reservation or, in the case of developments that have already placed-in-service, a binding commitment for some portion of the next year's housing credit ceiling.

The Code requires that the State allocating agency notify the chief executive officer of the local jurisdiction where each proposed development is located. A notification will be sent to the affected jurisdiction immediately after an application is submitted and deemed complete. The jurisdiction will then be given an adequate opportunity to comment on the proposed development. CHFA will consider the comments and may contact the local jurisdiction for additional information.

Prior to the allocation of state housing credits, the developer of the proposed development must conduct a public hearing in the community in which the development is to be located. The Authority shall consider any comments or other information provided at the hearing when making allocations. The State Tax Credit Act requires that the developer shall record the public hearing and that the developer makes copies available to interested parties, including CHFA. In addition, any development that receives state credit, whether or not the state credit is combined with federal credit, must obtain a written commitment approved by a public vote of the governing body of a local government to provide some monetary, in-kind or other contribution benefiting the development. Applicants for state tax credits only or for a combination of federal and state tax credits that compete successfully for a preliminary reservation must meet the foregoing requirements as a condition of the reservation. Those that do not meet these requirements will not be eligible for either state or federal tax credits.

## II.B. Amount of Credit Available Annually

The annual "per capita" federal tax credit amount available to Colorado is \$1.75 (\$1.50 for 2001) for each state resident. After 2002 the per capita amount will be multiplied by the Consumer Price Index. The annual amount of state tax credit is \$5,000,000. CHFA is also permitted by the Code and State Tax Credit Act to carry forward any unused credits from the prior year for allocation in the current year ("carry forward credits"). CHFA may also have available for re-allocation, credits recovered from developments that have received carryover allocations in previous years and are no longer able to utilize them ("returned credits"). Should CHFA allocate the entire amount of annual federal credits available, Colorado may be eligible to receive additional credits from the national pool of credits not used by other states.

## II.C. Set-Asides

The Code requires that at least ten percent of the annual federal housing credit ceiling be set-aside for the entire year for developments in which 501(c)(3) or (c)(4) non-profit organizations (having an express purpose of fostering low-income housing) own an interest in the development and materially participate in the development and operation of the development throughout the compliance period. This could result in reserving tax credits to a lower ranking development in order to meet the non-profit set-aside requirement. Such non-profit organizations may not be affiliated with, nor controlled by, a for-profit organization. Material participation is defined in Section 469(h) of the Code as “involved in the operations of the activity on a basis which is regular, continuous and substantial.”

For the 2001 Plan, the Board has approved a set-aside of 15% of the federal housing credit ceiling for HOPE VI developments. Staff, in cooperation with the HOPE VI recipient, will establish deadlines for completion of certain critical path items associated with HOPE VI developments. CHFA will have the ability to withdraw its Preliminary Reservation prior to the typical Carryover Allocation deadline if these critical path deadlines are not met.

## II.D. Maximum Credit Award

No more than 15 percent of the annual “per capita” federal credit housing ceiling amount, or the equivalent state tax credit amount (the amount of state credit needed to provide the same amount of equity as the federal credit), may be allocated to any one development or any one sponsor, or affiliate thereof, in a credit year. The Board may grant exceptions, on a case-by-case basis, taking into consideration such factors as the Board deems relevant.

“Affiliate” means, when used with reference to a specified Person (as defined herein): (i) any Person, directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with another Person or; (ii) any Person owning or controlling 10% or more of the outstanding voting securities of such other person; (iii) any officer, director, agent, consultant, or partner of such Person; and (iv) such other Person is an officer, director, agent, consultant, or partner, of any company for which such Person acts in any such capacity.

“Person” means an individual, partnership, corporation, trust or other entity.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

## II.E. Development Selection

CHFA will first review all applications for completeness, Minimum Application Requirements as described in Section V and Underwriting Requirements as described in Section III. The applicant will be notified of any deficiencies that are related either to the Development Selection Criteria documentation or to Minimum Application and Underwriting Requirements. The applicant will have ten business days from the receipt of the notice of deficiencies to provide the required information. If information regarding Development Selection Criteria is not received by the given deadline, or such material continues to be deficient, there will be no points awarded for those specific criteria. If information regarding Minimum Application and Underwriting Requirements is not received by the given deadline, or such additional information continues to be deficient, the application will be removed from consideration. During this time, the application will not be processed further.

This is an opportunity to only address deficiencies or otherwise clarify information that was submitted with the original application. No new information or documentation that would increase the self-score that was submitted with the original application will be considered. All dated material, regarding either Development Selection Criteria or Minimum Application and Underwriting Requirements must be dated on, or before, the application deadline. Staff decisions regarding Development Selection Criteria and Minimum Application and Underwriting Requirements information, documentation and scoring are final and not subject to appeal.

If CHFA learns that any principal that is involved with a proposed development has serious and/or repeated performance or non-compliance issues in Colorado or any other state at the time of application, the application will be rejected. The prior performance considered might include, but is not limited to, progress made with previous tax credit reservations, development compliance and payment of monitoring fees.

Proposed developments that meet the Minimum Application and Underwriting requirements will be evaluated, ranked and selected for recommendation to the Board based on the criteria described below. Proposed developments are ranked based on aggregate scores earned in the primary and secondary criteria. These criteria are explained in more detail in Section IV of this plan.

1. Primary Criteria: A Proposed development must earn points in both of the primary criteria (low income targeting and low-income use period) to be eligible for credits in Colorado.
2. Secondary Criteria: Proposals earning points under both primary criteria will also be evaluated based on the secondary criteria, which relate to area housing needs, development characteristics, development location, sponsor characteristics, tenant population characteristics, public housing waiting lists.

CHFA will, at least annually, establish a minimum number of points that all applications (including the developments financed with tax-exempt bonds) must score under the Development Selection Criteria to be considered for a reservation of credits and will also establish the number of points awarded for each selection criteria. The minimum score is 60 points.

CHFA reserves the right, in its sole discretion, to request additional documentation from sponsors holding preliminary reservations regarding readiness to proceed or other relevant items. No additional points will be awarded under the development selection criteria for this supplemental documentation, which is for the sole purpose of evaluating whether developments will be able to meet year-end requirements for a carryover or a final allocation of credit.

Regardless of numerical ranking, the scoring does not operate to vest in an applicant or development any right or reservation or allocation of tax credits in any amount. CHFA will in all instances reserve and allocate tax credits consistent with its sound and reasonable judgment, prudent business practices, and the exercise of its discretion. Specifically, but without limiting the generality of the foregoing, CHFA reserves the right NOT to reserve or allocate tax credits to any applicant or development, regardless of that applicant's point ranking, if the CHFA Board of Directors determines, in its sole and absolute discretion, that (i) a reservation or allocation for such applicant or development does not further the purpose and goals set forth in Section I hereof; (ii) the applicant's proposed development is not financially feasible or viable; or (iii) there is not a substantial likelihood that the development will be able to meet the requirements for carryover or final allocation in a timely manner. For purposes of these determinations, the information which may be taken into account includes, but is not limited to, comments of officials of local governmental jurisdictions, comments or other information provided at the public hearing required under the State Tax Credit Act and Section II.A. hereof, the market appropriateness of the development, market information from sources other than the submitted market study and the sponsor's (including any principal's) prior experience and performance with Colorado's and other states' tax credit programs and federal or other states' housing assistance programs. The prior performance considered would include, but is not limited to, progress made with previous tax credit reservations, development compliance and payment of monitoring fees.

CHFA also may make a tax credit reservation out of the ranking order established by the points earned, based on the amount of tax credit allocation requested relative to the amount of funding available. This could result in reserving tax credits to a lower ranking development whose tax credit request can be fully realized by the amount of credit available, while simultaneously denying tax credits to a higher ranking development which requested more credits than are available.

## II.F. Determination of Tax Credit Amount

The Code and the State Tax Credit Act require that a state housing credit agency not allocate to a development a housing credit dollar amount in excess of the amount of federal and/or state credit that the agency determines necessary for the financial feasibility of the development and its viability as a qualified low-income housing development throughout the credit period. CHFA will evaluate each proposed development, taking into account such factors as it determines relevant, including, but not limited to, the following items:

1. Project cost, including the reasonableness of cost per unit, developer fees and overhead, consultant fees, builder profit and overhead, and syndication costs (For Rehabilitation developments, hard costs, not including costs for acquisition, for rehabilitation must be at least \$6,000 per unit in order to be eligible for tax credits);
2. Sources and uses of funds and the total financing planned for the development, including the ability of the development to service debt;
3. Project income and expenses, including a determination of the reasonableness of the proposed operating costs;
4. The proceeds or receipts expected to be generated by reason of tax benefits;
5. The percentage of the credit dollar amount used for project costs other than the cost of intermediaries;
6. The use of federal funds and other assistance (applicable HUD subsidies will be subject to a subsidy layering review based on HUD's most current subsidy layering review guidelines as further explained in Section II.G. below); and
7. Other factors which may be relevant to the economic feasibility of the development such as the area economy or the housing market.

Based on this evaluation, CHFA will estimate the amount of tax credits to be reserved for the development. This determination is made solely at CHFA's discretion and is in no way a representation as to the actual feasibility of the development. Rather, it will serve as the basis for making an initial determination of credit amounts with respect to a development financed by Private Activity Bonds or a reservation of tax credits for developments competing for credit from the federal and state housing credit ceiling. The amount of tax credits may change during the allocation process due to variations in cost, mortgage amount, tax credit percentage, syndication proceeds, etc.

This analysis to determine the tax credits necessary will be done (i) at the time of preliminary application, (ii) at the time a carryover allocation is approved (if applicable), and (iii) at the time the development is placed in service (after all project costs are finalized and a third party cost certification has been completed).

If there are changes in sources and/or uses of funds or other material changes at these times, CHFA will adjust the tax credit amount to reflect the changes (not to exceed the amount reserved or allocated), and the tax credit amount may be reduced. See Section II.N., Additional Credits, for the process required to receive an increase in the credit amount.

CHFA will limit developer and builder fees and overhead in calculating the amount of tax credits to be allocated to a proposed development as indicated below (a reduction in fees will result in a reduction of total project costs and eligible basis). HUD also restricts these fees for developments subjected to the subsidy layering review (See Section II.G.).

Aggregate Builder's Profit, Overhead\* and General Requirements\*\* as a Percent of Hard Construction Costs (not including Builder's Profit, Overhead, and General Requirements)

Development Type	Number of Units	W/Identity of Interest***	W/O Identity of Interest***
Rehab and New	75 units +	8%	10%
Construction	31-74 units	10%	12%
	30 units or less	12%	14%

\* Overhead must be project-related and may include a percentage for main office expenses for the job.

\*\* General requirements include project-related site costs such as fencing, utilities to the site during construction, job site supervisor, job site office, etc.

\*\*\* Identity of Interest between sponsor, developer, builder and/or subcontractors - An identity of interest will be assumed if any of the following factors are present: common financial interest; any family members; individual and corporation where 50 percent or more of outstanding stock is owned by that individual; members of the same controlled group of corporations; a partnership and each of its partners; S Corporation and each of its shareholders.

Aggregate Developer Fee, (including Overhead and Profit) and Consultant\*\* Fee Limits as a Percent of Total Development Cost\*

Development Type	Number of Units	Percent Allowed
Rehab	75 units +	10%
	31-74 units	12%
	30 units or less	15%
New Construction	75 units +	8%
	31-74 units	10%
	30 units or less	13%

\* Total Development Cost: Total cost to complete the development, not including lands, developer fees, consultant fees and project reserves. In the case of Acquisition and Rehabilitation developments, this calculation requires documentation in the appraisal for the value of the land only.

\*\* Consultant Fee (in lieu of, or as part of, the Developer Fee) is defined as a fee to a third party(ies) for performing tasks that a developer would normally perform, e.g., prepare tax credit application and loan application, manage local government approvals, act as owner agent during project construction.

CHFA will estimate the credit amount needed by a development using three calculation methods. The amount of credits reserved will be based on the smallest of the amounts resulting from these calculation methods. This determination is made solely at CHFA's discretion, and is not a representation of the feasibility or viability of the development. CHFA retains the right to reserve less than the amount produced by application of the three calculation methods. The calculation methods are as follows:

Method One: Qualified Basis Calculation

- Eligible Basis multiplied by the applicable fraction (the lesser of percentage of floor space allocable to the low income units or the percentage of the low income units out of total units in the development)

- Qualified Basis multiplied as follows:  
Qualified acquisition costs multiplied by Applicable Percentage  
= Annual Credit Amount  
  
Qualified new construction or rehab costs multiplied by Applicable Percentage  
= Annual Credit Amount

For the federal credit, CHFA will select an applicable percentage, for purposes of this calculation, at least annually, based on percentage trends. The applicable percentage to be used for the current year is listed in Section XII of the Preliminary Application. The applicable percentage prescribed by the Secretary of the Treasury, as published and distributed monthly, may be locked in by the sponsor at the time of carryover allocation by election under Code Section 42(b)(2)(A)(ii) and, for developments financed with private activity bonds, at the time the bonds are sold. If the election has not been made previously, the applicable percentage used at final allocation will be the percentage prescribed by the Secretary of the Treasury for the month in which the building(s) is placed in service.

For the state credit the applicable percentage will be no more than 30%.

#### Method Two: Gap Calculation

- Total uses of funds minus total sources (excluding equity from the sale of tax credits) of funds = Gap (equity needed from tax credits)
- Gap divided by tax credit equity factor divided by 10 years = annual federal credit amount
- Gap divided by tax credit equity factor divided by 4 years = annual state credit amount

CHFA will select, at least annually, an equity factor based on market conditions.

At the time of the Preliminary Application, the equity factor to be used for this calculation is listed in Section XII of the Preliminary Application. If there is a firm equity commitment in place at this time use the equity factor contained in the commitment.

At the time of the Carryover Allocation there is a requirement that the development has a written letter of intent from a syndicator or equity provider that clearly states the equity factor. That equity factor is to be used in the Gap Calculation for the Carryover Allocation.

The equity factor to be used at final allocation will be the actual equity factor contained in the executed taxpayer entity organizational documents (entity documents).

#### Method Three: Costs Reasonableness Analysis

- This method compares project development costs with standards based on HUD's Maximum Mortgage Limits for the Section 221(d)(3) mortgage insurance program (as may be modified from time to time by CHFA). The unit mix and size, construction features, and location are considered. The current year's limits will be listed in the Information Packet, Exhibit F.

The Code allows a greater amount of tax credits for developments located in one of the following areas.

- Qualified Census Tracts (see Information Packet, Exhibit A): Designated by HUD as areas where 50 percent or more of the households have an income of less than 60 percent of the area median; and
- Difficult Development Areas (see Information Packet, Exhibit B): Designated by HUD as areas experiencing high construction, land and utility costs relative to the area median income.

## II.G. Subsidy Layering Review

Section 911 of the Housing and Community Development Act of 1992 and Section 102 of the Department of Housing and Urban Development Reform Act of 1989 have placed limitations on combining Low Income Housing Tax Credits with certain HUD and other federal programs. The limitations currently apply to a number of programs under the jurisdiction of the HUD Office of Housing, including but not limited to, Section 221(d)(3), 221(d)(4), 223(f) and 542(c) mortgage insurance, flexible subsidy, and project based Section 8 assistance.

As part of a Memorandum of Understanding (MOU) between HUD and CHFA, developments combining federal Low Income Housing Tax Credits with these programs will be subject to a subsidy layering review by CHFA. The MOU requires that HUD and CHFA share information on the developer's disclosure of sources and uses of funds and on development costs for all developments financed with a combination of federal tax credits and HUD Housing assistance. This review is designed to ensure that such developments do not receive excessive assistance. Under the subsidy layering review developer fees and contractor overhead, profit and general requirements are limited to those percentages listed in Section II.F. HOME or CDBG funding, when combined solely with tax credits, do not trigger the subsidy layering review process.

## II.H. Reservations

Subject to any set-asides and to CHFA's discretionary right not to reserve credits based upon scoring, proposed developments which rank the highest under the Development Selection Criteria and whose tax credit amounts are within the tax credit amount available for reservation, will be recommended to the Board for approval.

Developments which receive approval from the Board are given a preliminary reservation of tax credits. Preliminary reservations may be made subject to such conditions as CHFA determines necessary or appropriate to assure that the development will timely meet the goals of this Plan, including, without limitation, the development's progress toward completion and compliance with CHFA and federal and state tax credit requirements. Reservations of state tax credits shall be conditioned on, among other things, compliance with the public hearing requirements of Section 39-22-2102(5)(a), C.R.S. and with the local governing body contribution requirement of Section 39-22-2102(5)(b), C.R.S. Reservations of federal credits may be conditioned on the taxpayer meeting the 10 percent basis test for a carryover allocation (see Section II.L.) by the end of the calendar year in which the reservation is made. Reservations, if any, made after June 30 of any year may be treated as an "allocation" for purposes of the Code to the extent and in the manner necessary to permit the 10 percent basis test to be met by the date which is six months after the date of any such reservation.

CHFA will maintain a waiting list of eligible applications for tax credits should any remain after all credits for any given reservation cycle have been reserved. These applications may be reviewed and ranked, should credits become available. The time of year that credits become available, as well as the amount available relative to the amount requested, could result in reserving tax credits to a lower ranking development whose tax credit request can be fully realized by the amount of credit available at the time the credits become available, while simultaneously denying tax credits to a higher ranking development which requested more credits than are available.

## II.I. Status Reporting

Developments receiving reservations may be required to provide reports, in a format prescribed by CHFA, outlining progress toward placement in service. Information requested will be development specific and may include, but is not limited to, such items as zoning and other local development approvals, firm debt, equity and/or gap financing commitments and construction progress towards development completion. Developments that will not be placed in service in the year that the reservation is given may also be required to provide information regarding the sponsor's ability to meet Code and CHFA year-end requirements to obtain a carryover allocation.

## II.J. Changes to Development

A reservation of tax credits is based upon information provided in each development application. Until a development is placed in service, any material changes to the development, such as changes in the site, scope, costs, ownership or design, as submitted in the application will require written notification to and approval by CHFA. Changes in development characteristics, which were the basis, in whole or in part, of CHFA's decision to reserve credits, may result in a revocation of the reservation, or a reduction in the amount of the tax credit reservation.

## II.K. Recapture of Reservations

A preliminary reservation is subject to revocation and recapture should the development sponsor fail to timely comply with the conditions thereof, including, failure to provide evidence, satisfactory to CHFA, of financial feasibility, sufficient progress toward placement in service or eligibility for a carryover allocation. CHFA may also, in its sole discretion, ask sponsors with preliminary reservations to pay an additional fee to retain their reservations. Such fee, if paid, would be credited towards the allocation fee.

## II.L. Carryover Allocations of Federal Credit

The Code allows an allocation of federal tax credits to a qualified building that has not yet been placed in service, provided that, (i) the building is placed in service not later than the close of the second calendar year following the calendar year of the allocation, and (ii) if the building is part of a development and the taxpayer's basis in the development (including land and depreciable real property), as of the later of the date which is six months after the date the allocation is made or the end of the calendar year in which the carryover allocation is made, or as of such earlier date as the Authority may establish, is more than 10 percent of the taxpayer's reasonably expected basis in the development as of the end of the second calendar year following the year in which the carryover allocation is received.

CHFA requirements to qualify for a carryover allocation are listed in Section V.B. of the Plan.

A carryover allocation is for a specific credit amount; however, a sponsor may request allocation of additional credits in a subsequent year or cycle (see Section II.N.). The carryover credit amount may be reduced, if warranted, at the time a final allocation is made.

CHFA will provide an application package for carryover allocation requests (see Section V.B.). Reasonable deadlines for carryover requests will be established in order to permit timely review and preparation of documents prior to year-end. If there are multiple reservation cycles in a year, recipients of tax credit reservations in the first reservation round may be required to meet carryover requirements earlier than the recipients in subsequent rounds.

## II.M. Recapture of Carryover Allocations

CHFA retains the right to recapture a carryover allocation of credits to a development prior to the end of the two-year carryover allocation period allowed under the Code. Each carryover allocation will be subject to a written agreement which will contain conditions, obligations and deadlines that are precedent to a final allocation of tax credits by the Authority. Should the development or owner fail to comply with all such terms and conditions, CHFA may, in its discretion, rescind the carryover allocation and make the recaptured credits available for other developments.

## II.N. Additional Credits

Sponsors may apply for an increase in tax credit amounts in subsequent years if a development's eligible basis has increased. Additional credits may be awarded if (i) there are additional credits available, (ii) the development successfully competes against all other developments requesting credit, (iii) CHFA is satisfied that the additional amount is necessary for the financial feasibility and viability of the development, and (iv) the increased amount of credits does not exceed CHFA's cost reasonableness limits. Such applications will be subject to the same competitive ranking process described above beginning with Section II.E.

## II.O. Sponsor Elections

1. Applicable Credit Percentage for federal credits – The applicable percentage (except for developments financed with tax exempt bonds) may be “locked in” at two points in the allocation process, (i) the month in which such building is placed in service, or (ii) at the election of the taxpayer, at the time of a carryover allocation. The Authority's Carryover Allocation Agreement provides a space for such election.

For developments financed with tax-exempt bonds, the applicable credit percentage is established at either, (i) the month in which the building is placed in service, or (ii) at the owner's election, the month in which the bonds are issued. If the latter is desired, the Election Statement (form issued by CHFA) must be signed by the owner, notarized and submitted to CHFA before the close of the fifth calendar day following the month in which the bonds are issued.

2. Gross Rent Floor – Section 42(g)(2)(A) of the Code provides that a Low-Income unit is “rent restricted” if the gross rent for such unit does not exceed 30 percent of the imputed income limitation applicable to the unit. Under Revenue Procedure 94-57, the effective date of the income limitation used to establish the gross rent floor is the time the Authority initially allocates a housing credit dollar amount to the development (that is, the date of a carryover allocation, or if no carryover allocation is made, the date of final allocation) unless the sponsor designates a building's placed in service date as the effective date for the gross rent floor. Such designation must be made by advising the Authority in writing no later than the placed in service date. The Carryover Allocation Agreement provides a space for such designation. The gross rent floor for developments not seeking a carryover allocation will be the date of final allocation, which ordinarily closely follows the placed in service date. For developments financed with tax-exempt bonds, the effective date of the income limitation used to establish the gross rent floor is the date the Authority initially issues a determination letter to the building, unless the sponsor designates a building's placed in service date as the effective date for the gross rent floor. Such designation must be made by advising the Authority in writing no later than the placed in service date.
3. Begin Credit Period – Section 42(f)(1) of the Code defines the credit period for federal tax credits as the ten (10) taxable years beginning with (i) the taxable year in which the building is placed in service, or (ii) at the election of the taxpayer, the succeeding taxable year. The State Tax Credit Act defines the credit period for state tax credits as the four (4) taxable years beginning with the taxable year in which the qualified development is placed in service. If a qualified development is comprised of more than one building, the development shall be deemed to be placed in service in the taxable year during which the last building of the qualified development is placed in service.

## II.P. Final Allocations of Federal Credit

CHFA will make final allocations of tax credits no later than the end of the year in which an eligible building or development which has received a reservation or a carryover allocation is placed in service unless CHFA decides, in its sole discretion, to issue a binding commitment of the next year's housing credit ceiling. The credit amount which will be allocated is based on CHFA's final determination of the qualified basis for the building or development based on an accountant's certification of final costs provided by the sponsor and a final determination of the credit amount as outlined in Section II.F. The credit amount allocated may be less than the amount reserved or

allocated on a carryover basis. Also, a sponsor may request additional credit in accordance with Section II.N.

CHFA will provide an application package for final allocation requests (see also Section V.C.). Reasonable year-end deadlines for final allocation requests will be established in order to permit timely review and preparation of documents.

#### II.Q. Allocation of State Tax Credits

The State Tax Credit Act is in effect until December 31, 2002 and, therefore all state credit needs to be allocated by that date. Allocations are made by an issuance of an allocation certificate. Owners may apply for issuance of an allocation certificate at the time the development is placed-in-service or at the time the development meets the requirements described in Section II.L. for an allocation of federal credit.

As with the federal credit, the final state credit amount determination is based on CHFA's final determination of the qualified basis for the building or development based on an accountant's certification of final costs provided by the sponsor and a final determination of the credit amount as outlined in Section II.F. The final state credit amount may be less than any amount allocated prior to placement-in-service.

#### II.R. Land Use Restriction Agreement

Section 42(h)(6) of the Code requires that a development be subject to "an extended low-income housing commitment". The State Tax Credit Act requires that a development be subject to "recorded restrictive covenant". The Authority complies with these requirements with the execution and recording of a Land Use Restriction Agreement at the time of the final allocation of credits. The Land Use Restriction Agreement sets forth, as covenants running with the land for a minimum of thirty (30) years (or additional years if the development owner has committed to a longer use period), in the case of federal credits and a minimum of thirty (30) years in the case of state tax credits, the low-income unit set-asides, the percentages of median income to be served, the special housing needs units committed to (if any), and any other such requirements as CHFA may apply based on the allocation plan.

The development owner will be required to have all lien holders of a development complete and sign a Partial Subordination to the Land Use Restriction Agreement which will subordinate their liens to certain provisions of the Land Use Restriction Agreement.

#### II.S. Administration of Plan

CHFA reserves the right to resolve all conflicts, inconsistencies or ambiguities, if any, in this Plan or which may arise in administering, operating or managing the reservation and allocation of credits or Colorado's Low-Income Housing Tax Credit program and the right, in its sole discretion, to modify or waive, on a case by case basis, any provision of this plan that is not required by the Code. All such resolutions or any such modifications or waivers are subject to written approval by the Executive Director and are available for review, as requested, by the general public.

## II.T. Amendments

CHFA reserves the right to amend this Plan from time to time, pursuant to the Code, for any reason, including, without limitation (i) to reflect any changes, additions, deletions, interpretations, or other matters necessary to comply with Section 42 of the Code or regulations promulgated thereunder; (ii) to cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in this Plan; (iii) to insert such provisions clarifying matters or questions arising under this Plan as are necessary or desirable and are not contrary to or inconsistent with this Plan or Section 42 of the Code; (iv) to modify identified housing needs and selection criteria reflecting those needs, based upon continuing assessment of such needs, provided that no such amendment shall retroactively affect a reservation of credit previously made under this Plan; (v) as to state tax credit matters, to comply with the State Tax Credit Act; and (vi) to facilitate the award of Credits that would not otherwise be awarded. All such amendments shall be fully effective and incorporated herein upon the Board's adoption of such amendments. This Plan also may be amended as to substantive matters at any time following public notice and public hearing, and approval by the Board and by the Governor of the State.

## II.U. Transfers of Reservations and Carryover Allocations

Reservations, Carryover Allocations and/or state tax credit allocations are non-transferable, except to an entity in which the transferring holder of the Reservation or Carryover Allocation is the general partner or controlling principal, without CHFA's express written consent. Because all representations made with respect to the sponsor, its experience and previous participation are material to the evaluation made by CHFA, it is not expected that CHFA's consent will be granted for transfers to an unrelated entity unless a new application is submitted and scores no less than the original application.

## III. UNDERWRITING CRITERIA

CHFA has adopted minimum underwriting standards for all developments that wish to compete for tax credits under this Plan. These standards must be met at the time of preliminary application. Developments that do not meet the following minimum standards will not be considered for an allocation of tax credits. Implementation of these standards does not constitute a representation of the feasibility or viability of the development.

### III.A. Market Study Requirements

All preliminary applications must contain a market study prepared by an experienced market analyst, approved by CHFA, who is totally unaffiliated with the developer and/or owner of the proposed development. An analyst will be considered "approved" if the market study that is submitted meets the requirements of the Market Study Guide that is attached to the Plan as Appendix A. The study must justify the need for the number, size, and type of rental housing proposed. The market analyst must follow the Market Study Guide or the market study and the application will be rejected if its deficiencies are not corrected as allowed in Section II.E. of the Plan.

A favorable statement of conclusions about the strength of the market for the proposed development does not operate to vest in an applicant or development any right to a reservation or allocation of tax credits in any amount. As stated in Section II.E, CHFA reserves the right NOT to reserve or allocate tax credits to any applicant or development, regardless of that applicant's point ranking and CHFA will in all instances reserve and allocate tax credits consistent with its sound and reasonable judgment, prudent business practices, and the exercise of its discretion.

CHFA will accept a previously written study if the study is amended to contain all of the above elements of the market study guide, including formatting, and data older than twelve months is updated to present time. If any of the above items are not addressed in the market study, the study will not be accepted and the preliminary application will be rejected if its deficiencies are not corrected as allowed in Section II.E. of the Plan.



### III.B. Minimum Operating Reserve Requirements

The total development budget for the development must include minimum operating reserves equal to four (4) months of projected annual operating expenses and four months of debt service payments. This is a minimum requirement. However, market study results regarding lease-up projections may require a larger reserve amount. Reserves must remain with the development for a minimum of three years from the time the development is placed in service. These requirements, as well as provisions for reserve account reductions over time as development benchmarks are achieved, must be contained in the entity partnership agreement.

CHFA will consider developer/owner guarantees in lieu of the above requirements. Exceptions may be considered only after a review of the developer/owner's financial capacity and liquidity, developer track record of previous developments, and the number and amount of outstanding guarantees for other developments.

### III.C. Minimum Replacement Reserve Requirements

Minimum replacement reserves must equal \$200/unit annually for new construction and \$300/unit annually for rehabilitation. CHFA will consider an adjustment to the rehabilitation replacement reserve based on the extent of the rehabilitation. Capitalized replacement reserves may also substitute for the annual per unit requirement depending on the amount to be capitalized.

### III.D. Minimum Pro Forma Underwriting Assumptions

The following minimum underwriting assumptions must be used for the 15 year pro forma provided as part of the application. These are minimum requirements. Results of the market study may require higher assumptions.

1. Vacancy Rate – 7% on all development income; 10% vacancy rate for any retail/commercial income.
2. Annual Rental Income Growth – 2%
3. Annual Operating Expense Growth – 3%
4. Per Unit Per Annum Operating Expenses (PUPA) - \$2,700 (higher for developments that are providing additional services; \$14,000 for licensed assisted living facilities).
5. Debt Coverage Ratio – Minimum 1.1 to 1.0 for all amortized debt. Developments with debt coverage ratios that exceed 1.3 to 1.0 may be eligible for less credit than the amount calculated as per Section II.F. of the Plan.

## IV. DEVELOPMENT SELECTION CRITERIA

### IV.A. *Primary Selection Criteria*

#### 1. Low-Income Targeting

The Code mandates that to be eligible for Low Income Housing Tax Credits, a development must meet one of two minimum thresholds: either a minimum of 20 percent of the total development units must be rent restricted for and occupied by tenants with incomes of 50 percent or less of the area median income; OR a minimum of 40 percent of the total development units must be rent restricted for and occupied by tenants with incomes of 60 percent or less of the area median income. The tenants of these rent-restricted units are to pay no more than 30 percent of the imputed income limitation applicable to the unit for both rent and utilities. The income and rent limits are adjusted for household size.

For mixed-income developments, including developments financed with private activity bonds, CHFA requires that Low-Income set-aside units be distributed proportionately throughout the development and the bedroom/bath mix and type. Both market rate and low-income units must have the same design regarding unit amenities and square footage.

Low-Income Targeting Points Given as Follows (applicants must choose either threshold (a) or (b) below and may also choose (c), if the requirements therein are met; Developments located in counties with median incomes below \$39,100 will be allowed to use the weight factor of 60 instead of 40 for selecting the 60% of A.M.I. threshold, a weight factor of 80 instead of 60 for selecting the 50% of A.M.I. threshold and a weight factor of 100 instead of 80 for selecting the 40% of A.M.I. threshold.

(a) THRESHOLD 40% at 60% of area median

% of Median Income	# of Rent Restricted Units	% of Rent Restricted Units a÷b	Weight	Points
60%	(a) _____	_____	X <u>40</u>	= _____
50%	(a) _____	_____	X <u>60</u>	= _____
40%	(a) _____	_____	X <u>80</u>	= _____
NOTE: No more than 60 percent of total number of low-income units can be designated as serving tenants at or below 40% of the Area Median Income for purposes of determining the points in the 40% A.M.I. category unless the development has federally funded project-based rental assistance or operating subsidies.				
TOTAL of rent restricted units	(b) _____	_____	Total Points	= _____

(b) Threshold 20% at 50% of area median (the Code requires that if a sponsor elects the 20% at 50% threshold, any units in excess of the 20% that are intended to qualify for tax credits may not exceed the 50% of median income limit).

% of Median Income	# of Rent Restricted Units	% of Rent Restricted Units a÷b	Weight	Points
50%	(a) _____	_____	X <u>60</u>	= _____
40%	(a) _____	_____	X <u>80</u>	= _____
NOTE: No more than 60 percent of total number of the low-income units can be designated as serving tenants at or below 40% of the Area Median Income for purposes of determining the points in the 40% A.M.I. category unless the development has federally funded project-based rental assistance or operating subsidies.				
TOTAL of rent restricted units	(b) _____	_____	Total Points	= _____

- (c) Targeting 30% of area median income or below. Additional points will be awarded for developments that target very, very low-income residents. This targeting is available only to Colorado-based non-profit entities that are developing housing for the homeless, as defined in Section IV.B.5 of the Plan, for-profit or non-profit entities that are developing licensed assisted living facilities that are for Medicaid eligible residents and for-profit or non-profit entities that are eligible for the Preservation Development set-aside. For licensed assisted living facilities, points under this category will only be granted to developments that are targeting 75% of the units to Medicaid residents. CHFA may consider a different mix of market rate and Medicaid assisted living units if the market study supports the proposed mix of units and the cost of the non-Medicaid unit rent and service package is below the prevailing market rates. The non-profit entity developing housing for the homeless must have at least five (5) years experience in the development and management of housing for the homeless. Developments providing housing for the homeless must provide a range of supportive services to the residents, at no cost to the residents, in order to receive the additional points. Supportive services might include, but are not limited to, case management, job training and/or placement, continuing education, transportation, child care and health care. These services must be provided by a service provider(s) with a minimum of three years experience in the related field of service provision. Documentation must be provided.

Very, Very Low-Income Targeting (Select One)			Total Points
_____ 10% of total units at/or below 30% AMI - 5 Points	_____ 20% of total units at/or below 30% AMI – 10 Points	_____ 30% of total units at/or below 30% AMI – 15 Points	_____
NOTE: No more than 60 percent of total number of the low-income units can be designated as serving tenants at or below 40% of the Area Median Income for purposes of determining the points in the 40% A.M.I. category unless the development has federally funded project-based rental assistance or operating subsidies.			

## 2. *Extended Low-Income Use*

The Code requires that the low-income occupancy and rent restrictions be maintained during the initial compliance period of 15 years [Section 42(i)(1)]. In addition, the occupancy restrictions must be maintained for an extended use period of an additional 15 years [Section 42(h)(6)(D)] subject to termination by foreclosure and sale using a qualified contract [Section 42(h)(6)(F)]. The Code also requires that state allocating agencies give priority to developments with the longest low-income use period.

Colorado requires that an application must commit to fifteen (15) years plus a minimum waiver of five (5) years of the rights to termination by sale using a qualified contract to be considered for evaluation. The CHFA requirements do not change the Code requirements (initial compliance period of 15 years plus 15 year extended use period), except that the Code provisions for termination in connection with a sale of the property do not apply during the period which the owner has committed to CHFA that it will maintain the occupancy and rent requirements.

Developments wishing to convert to home ownership at the end of the initial 15-year compliance period are eligible to receive points for extended low-income use under the following conditions:

- a. Single family detached and townhouse units only;
- b. Intent to convert must be expressed, in writing, at the time of application in a manner satisfactory to CHFA;
- c. Rental restrictions convert to ownership restrictions for the remaining term of the extended use period, which restrictions for initial and subsequent sales include, but are not limited to the following:

1. must be owner occupied;
2. must be sold to household earning 80 percent of State median income or less; and
3. purchase price can be no more than 90 percent of the average area purchase price.

\*Townhouse is defined as a single-family, attached dwelling unit with party walls, usually an individual unit in a series of five to ten houses, with common walls between the units; may have one to three stories.

CHFA will award points for developments that receive federal tax credits which waive any rights to terminate the Extended Use Period under Section 42(h)(6)(E)(i)(ii) of the Code in the following increments:

15 Years' Compliance + 5 Years' Waiver  
15 Years' Compliance + 10 Years' Waiver  
15 Years' Compliance + 15 Years' Waiver  
15 Years' Compliance + 20 Years' Waiver  
15 Years' Compliance + 25 Years' Waiver

CHFA will award points for developments that receive only state tax credits which extend the minimum requirements of Section 39-22-2102(4) of the State Tax Credit Act in the following increments:

15 Years' Compliance + 5 Years' Extension  
15 Years' Compliance + 10 Years' Extension  
15 Years' Compliance + 15 Years' Extension  
15 Years' Compliance + 20 Years' Extension  
15 Years' Compliance + 25 Years' Extension

3. CHFA will award points for developments located in a Qualified Census Tract, the development of which contributes to a community revitalization plan (CRP)\*

\*Until such time as the Internal Revenue Service provides a definition for a community revitalization plan, CHFA defines such a plan as a published document, approved and adopted by the local governing body by ordinance or resolution, that targets local funds to specific geographic areas (the geographic area cannot be the entire town or city that has adopted the plan) for both commercial/retail and low-income residential developments (serving residents at, or below, 60% of the area median income).

#### IV.B. Secondary Selection Criteria

1. Housing Need Characteristics

Points may be earned under this category if the area where the proposed development is located is experiencing housing problems. Based on HUD's 1991 Comprehensive Housing Affordability Strategy (CHAS) regulations, households with housing problems include those that (1) occupy units with significant physical defects; (2) are overcrowded; and/or (3) have a cost burden of greater than 30 percent of annual income for gross housing costs, as determined by 1990 U.S. Census Data.

Exhibit C-1 of the Information Packet is a listing, by county or metropolitan area, of the percentage of renter households with incomes below 51 percent of the area median income experiencing housing problems. Exhibit C-2 of the Information Packet is a listing, by county or metropolitan area, of the number of renter households experiencing housing problems. Sponsors should review these exhibits, and identify the location of the proposed development (a city or, if the city is not listed, the county), to determine the appropriate number of points for that area.



Sponsors may submit additional data from local, state, area Council of Governments (COGS), a Community Housing Development Organization (CHDO) or credible independent study for CHFA's consideration. The data must be quantitative and specifically address the above-identified issues or, if the development will house special needs tenants, the data must address these needs.

## 2. Development Location

Points may be earned for proposed developments located in the following:

- a. Developments located in a community that has an identified community housing priority (e.g. supports a local, regional or state plan, a neighborhood plan, a CHAS, or some other community-sponsored need assessment, master plan etc.) Applicant must provide evidence, clearly demonstrating the development fits into the community's need;

## 3. Development Characteristics

Points may be earned for the following:

- a. Development that provides housing for a mix of incomes (i.e. that have no more than 60% tax credit-eligible units) For mixed-income developments, including developments financed with private activity bonds, CHFA requires that Low-Income set-aside units be distributed proportionately throughout the bedroom/bath mix and type. Both market rate and low-income units must have the same design regarding unit amenities and square footage.
- b. Development of 50 or fewer units
- c. Rehabilitation of blighted buildings OR locally or federally designated historic structures. Blighted buildings are buildings that are in severe disrepair, including, but not limited to, boarded up, abandoned, or uninhabitable buildings, all of which have serious building code violations. Rehabilitation expenditures must be at least \$6,000 per unit to be eligible for rehabilitation credits. Substantial rehabilitation developments that are changing the buildings use to residential but do not fit the above description of a blighted building do not qualify for points under this category.
- d. Preservation Developments: Preservation Developments are defined as follows: developments eligible for acquisition/rehabilitation that have federally subsidized rental assistance (HUD Section 8, Rural Development Section 515, etc.) and are likely to lose that subsidy, and their low income use, within two years from the time of application without federal or state Low Income Housing Tax Credits, or developments that currently have rents that, although not restricted by any federal or state program, are within the federal tax credit rent limits.
- e. Rehabilitation Developments in an area that is part of a community revitalization plan (CRP)\*. (Cannot score under this category if also scoring under Section IV.A.3. of the Allocation Plan)

\*Until such time as the Internal Revenue Service provides a definition for a community revitalization plan, CHFA defines such a plan as a published document, approved and adopted by the local governing body by ordinance or resolution, that targets local funds to specific geographic areas (the geographic area cannot be the entire town or city that has adopted the plan) for both commercial/retail and low-income residential developments (serving residents at, or below, 60% of the area median income).

Note: Entities, or any affiliates thereof, that successfully compete, or have successfully competed in 1995 or later, for a reservation and that receive points under section 3.b. above, cannot apply in any subsequent application round for new developments adjacent to the original development, or additional phases of a development, until the original development is completed and has received a final allocation.

#### 4. Sponsor Characteristics

Points may be earned for the following:

- a. Sponsor is a Colorado-based tax-exempt organization, having an express purpose of fostering low-income housing, or a Colorado public housing authority, is the owner of the development and will remain as general partner (either itself or through its or a related subsidiary) and will from the time of application materially participate\* in the development and operation of the development throughout the compliance period. A Colorado-based tax-exempt organization is defined as an entity that has a base of operations in Colorado, including offices and a full-time staff whose responsibilities include the development of housing in Colorado. Entities that are merely registered with the Colorado Secretary of State as a non-profit, but whose staff works and lives in another state, do not meet the definition of a Colorado-based tax-exempt organization;
- b. Significant participation\*\* by a developer (either for-profit or non-profit) that has been responsible for the construction, completion and placement in service of a multi-family rental housing development. In order to receive points under this category, the application must include historical operating expense data for the most recently audited year for all multi-family housing developments that the developer has placed in service. This information must include the number of units for each development.

\*Materially participate is defined in Section 469(h) of the Code as “involved in the operation of the activity on a basis which is regular, continuous and substantial”.

\*\*Significant participation means that an individual or entity must serve in a role as owner or co-owner of at least 51 percent (of the general partner) and materially participate\* in the development and/or operation of the development throughout the construction period, the lease-up period and the compliance period.

#### 5. Tenant Populations with Special Housing Needs

Points may be earned for the set-aside of at least 33 percent of the units for special needs tenant populations listed below. Applicant must provide evidence of client source (e.g. letters from referring agencies, marketing plans, etc.). A sample agreement is in Exhibit G to the application. This agreement must be typed on the entity’s letterhead, must be signed and dated by both parties and a copy must be included with the application in order to receive points. Documentation must be provided that demonstrates previous experience for the entities that will be providing services and managing the property. These units must be held available and rented only to these populations. (The minimum set-aside of 33% may be waived if any State regulations restrict the number of special needs units in a development. Waivers will be considered on a case by case basis and only with documentation of State imposed restrictions.)

Homeless◆      Assisted Living for Elderly★      Supportive Housing■  
For Non-Elderly Special  
Needs Tenants

- ◆ Eligible Individual or Family (under Section 42 of the tax Code) who: a) Lacks a fixed, regular and adequate nighttime residence; and b) Has a primary nighttime residence that is: 1) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing); 2) An institution that provides a temporary residence for individuals intended to be institutionalized; or 3) A public or private place not designed for, or ordinarily used as a regular sleeping accommodation for human beings. The term “Homeless Individual” does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

The development must provide services, such as job counseling, transportation, education, etc., to the homeless clients in order to receive points under this section.

- ★ An assisted living facility is defined as a facility licensed by the State of Colorado as a Personal Care Boarding Home that is providing a combination of housing and personalized services designed to respond to the individual needs of those who need help with activities of daily living, such as meals, housekeeping, and laundry. Due to current market concerns, points under this category will only be granted to developments that are targeting 75% of the units to Medicaid residents. CHFA may consider a different mix of market rate and Medicaid assisted living units if the market study supports the proposed mix of units and the cost of the non-Medicaid unit rent and service package is below the prevailing market rates.
- Supportive Housing – Housing facilities serving persons with chronic, sometimes severe, disabilities (e.g. developmental, mental illness, AID's, physical handicap). The focus is on providing a stable, long term living environment, access to appropriate services and in many cases, meals and assistance with tasks of daily living.

#### 6. Subsidized Housing Waiting List

Points may be earned by sponsors who enter into a written agreement with the local public housing representative to give priority to households on waiting lists for subsidized or public housing. The information required in the written agreement is included in Exhibit F to the Application.

#### 7. Tenant Populations with Children

Tiebreaker preference will be given to developments with tenant populations with children (see Section IV.C.).

### IV.C. Tie Breakers

In the case of a tie between two or more developments' scores, the following tiebreakers, applied in the order shown until the tie is broken, will determine the ranking of the developments. CHFA may, however, in its sole discretion, choose to award a reservation for the purpose of maximizing the use of the current year's allocation while minimizing the use of the subsequent year's allocation that is being reserved as a forward commitment.

1. Development scoring the highest total score under Section IV.A.1 of the Development Selection Criteria,
2. Development scoring the highest total score under Section IV.A.2 of the Development Selection Criteria,
3. Developments with lowest amount of tax credit request per low income, tax credit unit (before 130% for DDA/QCT is added).
4. Developments that are intended for tenant populations with children (i.e., not senior independent or assisted-living developments and that have two (2) and three (3) bedroom units).

## V. APPLICATION REQUIREMENTS

CHFA will make available application packets for Preliminary Reservation of state and federal tax credits, Carryover and Final Allocation of federal tax credits and allocation certificate for state tax credits. The application forms are the same for federal and state tax credits.

### V.A. Preliminary Reservation

Application packets are available at all times. CHFA staff will provide information and assistance to sponsors regarding CHFA application requirements up to the cycle submission deadline.

### Minimum Application Requirements

To be eligible for a preliminary reservation, all applications, due on February 21, 2001, no later than 5:00 p.m. Mountain Standard Time, must be complete and must contain, at a minimum, the following:

1. Market study (see Section III – Underwriting Criteria for Market Study Requirements.)
2. Detailed development information which includes:
  - i. a description of the development and the location;
  - ii. location maps (clean, legible copies of both the local neighborhood and a city-wide map showing the development location) and site plan;
  - iii. development type and unit mix;
  - iv. line item development costs, sources and uses of funds;
  - v. projected rents and expenses;
  - vi. a 15-year pro forma that meets the requirements in Section III.D
  - vii. a development timeline.
3. Detailed sponsor and development team information, including resumes and historical operating expense data on all multi-family housing developments that have placed in service;
4. Evidence of site and/or building control;
5. Evidence of zoning status, provided by the local zoning or planning department;
6. Proposed financing information, including source(s) and terms, on financial institution letterhead and signed by a financial institution representative. An “Enforceable commitment” as defined in Section V.B. of the Plan is acceptable but is not required at the time of preliminary application; For funds listed in the financing section of the application from Colorado State Division of Housing and other grant programs, the applicant must provide evidence that these funds have already been applied for at the time of the tax credit application deadline. For the Federal Home Loan Bank Board Affordable Housing Program, the applicant must provide evidence that these funds have already been applied for no later than the April 15 AHP application deadline. The applicant must also provide evidence that the award date of these funds occurs before the end of the September, 2001.
7. Two letters of comment, one from the local public housing authority and one from the local planning agency or other appropriate units of local government (only one letter is required if the development is in a location that is not served by a public housing authority.);
8. Completion of the Development Selection Criteria Worksheet which is a part of the application;
9. Certification of the architect, who has designed the development, that the development has been designed to comply with the requirements of all applicable local, state or federal fair housing and other disability-related laws, however denominated. The development design should consider, at a minimum, the applicability of the following laws: local building codes, Colorado Fair Housing Act, as amended, Colorado Standards for Residential Construction (C.R.S. Section 9-5-112), Federal Fair Housing Act, as amended, the Americans with Disabilities Act, and the Rehabilitation Act of 1973, as amended;
10. Other documentation as required in the CHFA application packet; and
11. Bond inducement resolution with respect to developments financed with Private Activity Bonds.

### V.B. Carryover Allocation for Federal Credit and Allocation Certificate for State Credits

In addition to meeting the requirements of the Code, the sponsor must provide CHFA with the following:

1. Completed carryover application packet;
2. Capital Needs Assessment for Rehabilitation Developments (see Appendix B of the Plan for the requirements of the capital needs assessment);
3. Documentation of enforceable financing commitments\* for all Construction and Permanent financing;
4. Documentation of all grant funds listed in Sections VIII and IX of the Carryover Application;
5. Documentation of owner equity (equity other than that obtained from the sale of tax credits) listed in Sections VIII and IX of the Carryover Application;

6. Copy of appraisal for land and/or building acquisition for acquisition/rehabilitation developments only;

7. Letter of interest from a syndicator, or equity investor, OR executed entity documents that clearly identify the terms of their equity commitment, including the equity factor and equity pay-in schedule;
8. Documentation of the ownership of the building(s) and/or land and the Certificate as to Ownership and Basis;
9. Documentation of proper zoning and/or other land use permits provided by the local zoning or planning department;
10. Attorney's Opinion letter;
11. Independent Auditor's Report for Carryover Allocation (Accountant's opinion letter with Exhibit A to Independent Auditor's Report);
12. Updated cash flow analysis (15 year pro-forma);
13. Updated documentation of Utility Allowance amounts; and
14. Such other documents or certifications as CHFA determines necessary or useful in the determination that the development is eligible for a carryover allocation.

\*Enforceable commitment – The authorized body (Investment Committee, Loan Committee, Board, etc.) of the funding source must have given approval and the commitment is subject only to those conditions which are totally under the control of the sponsor to meet. The terms and conditions of the commitment must be clearly identified. Application and commitment fees must have been paid or must be required to be paid upon closing.

Sample enforceable commitments are an exhibit to the application.

#### V.C. Final Allocation for federal tax credits.

Sponsors must request a final allocation of credits by the deadline established by CHFA for the year in which an eligible development is placed in service. CHFA may establish deadlines earlier than year-end in order to efficiently complete its reviews and documents. At a minimum, the following is required:

1. Project owner's certification of actual total project costs and eligible basis incurred, signed (original signatures) and attested
2. a completed Accountant's Independent Auditor's Report, CHFA Form B, by independent tax accountant, with correct tax identification number
3. a completed Costs Incurred by Building, CHFA Form C for each building in the project, showing costs incurred separately for each building and Form C-1
4. Forms C-2, C-3 if applicable
5. a completed Owner's Attorney's Opinion; by independent tax attorney
6. Certificate of Occupancy for each building in the project (a certificate of completion is required for all rehabilitation projects). For acquisition credits, proof of the date the project was placed in service for acquisition purposes.
7. Photos of the completed building(s) identified by address and Building Identification Numbers (for Private Activity Bond financed projects, contact CHFA staff for BIN's)
8. a complete copy of the executed partnership entity documents (with all exhibits)
9. a completed Project Ownership Profile
10. a completed Form 8609 Certificate with original signature (not required for developments only receiving state tax credits)
11. a completed Partial Subordination to the Land Use Restriction Agreement from every lien holder(s) with original signature (not required for developments only receiving state tax credits)

12. a check for the final allocation fee (only if the project did not receive a carryover allocation) and a check for the compliance monitoring fee
13. CHFA compliance training certificate for both owner and management company and a copy of the CHFA Property Inspection Report
14. Updated cash flow analysis (15-year pro forma)
15. Updated documentation of Utility Allowance Amounts
16. Updated Agreement with local housing authority OR notification of development completion to local housing authority

### Additional Requirements for Developments Financed with Private Activity Bonds

17. Election of Applicable Percentage
18. Issuer Certificate including the date the Certificate was issued
19. Designation of Placed-In-Service Date for Gross Rent Floor effective date
20. Agreement for Section 42(m)(2)(D) Determination

Developments must place-in-service by the end of the second year following the year of the allocation ("Year 2") or the tax credits are subject to recapture. If your development places in service in Year 2, but you will not have all of the required documentation completed by this time, 8609(s) will not be issued in Year 2. You must, however, submit the following completed items to our office by 5:00 p.m., the first business day in November of Year 2, without exception, so that CHFA is able to record the Land Use Restriction Agreement prior to the end of Year 2:

- Certificate(s) of Occupancy
- Photographs of the completed building(s), identified by address and Building Identification Number(s) (BIN)
- Project Ownership Profile
- Completed Form 8609 Certificate
- Partial Subordination to the Land Use Restriction Agreement from every lien holder
- Following completed sections of Final Application: I. General Project Information, IV. Applicable Fraction Determination and VI. Unit Distribution and Rents

The remaining requirements for the Final application must be received within six (6) months from the date of receipt of the Placed-in-Service application. Starting with the 7<sup>th</sup> month, a \$2,000 per month late fee will be assessed until the remaining requirements are received.

#### V.D. Final Allocation for state tax credits.

As with the federal credit, the final state credit amount determination is based on CHFA's final determination of the qualified basis for the building or development based on an accountant's certification of final costs provided by the sponsor and a final determination of the credit amount as outlined in Section II.F. The final state credit amount may be less than any amount allocated prior to placement-in-service. Unless otherwise noted, all of the foregoing requirements for a final allocation of federal credits also apply to a final allocation of state credits.

## VI. FEES

### VI.A. Preliminary Reservations

1. Application fee – An application fee of one percent of the annual federal tax credit amount for which the development is eligible or \$2,000 (\$1,000 for a non-profit) whichever is less. The fee is non-refundable and must be submitted with the application at the time of submittal.
2. Reservation Fee – After a development has received a preliminary reservation, a reservation fee of two percent of the actual federal tax credit amount for which the development is eligible must be paid prior to the issuance of the Reservation Confirmation Letter. The sponsor will have 30 days in which to pay the reservation fee and maintain the tax credit reservation. This fee is non-refundable and will not be adjusted if the final tax credit amount is reduced or the tax credits are returned or unused.
3. Reservation Hold Fee – CHFA may also charge an additional one percent fee to hold a reservation for a specific period which otherwise is subject to recapture as provided in Section II.K. above.

### VI.B. Carryover Allocations

1. Developments requesting carryover allocations of federal credits or an allocation of state credits at the time of compliance with the federal carryover requirements will be charged two and one-half percent of the federal tax credit carryover amount for which the development is eligible. This is due at the time the carryover application is submitted. This fee is non-refundable and will not be adjusted if the final tax credit amount is reduced, or the tax credits are returned or unused.

### VI.C. Final Allocations

1. Final Allocation Fee – A final allocation fee of two and one-half percent of the federal tax credit amount for which the development is eligible is payable at the time of application for a final allocation of tax credits. If a development has paid a two and one-half percent fee at the time of carryover, or, for state credits, the allocation certificate, the final allocation fee will be waived.
2. Recording Charge – A recording charge equal to \$5 per page plus \$1 for the first page will be due when the executed LURA is returned to CHFA for recording.

### VI.D. Developments Financed with Tax Exempt Bonds

1. An application fee of one percent of the annual tax credit amount requested, or \$2,000 (\$1,000 for a non-profit), whichever is greater, is due at the time an application is submitted for review.
2. An additional two percent of the annual tax credit amount determined (minimum \$1,500) is due at the time an initial determination letter is issued.
3. A final allocation fee of two and one-half percent of the annual tax credit amount allocated (minimum \$2,000) is payable at the time of application for a final allocation of tax credits.

### VI.E. Compliance Monitoring Fee

A compliance monitoring fee will be assessed to cover the costs of the compliance monitoring program. This fee will be assessed to cover the initial 15 years of the compliance period in a lump sum, at the time of final allocation. This fee (which will be determined in the year the development receives a final allocation of credit) will be based on the number of low-income units, any designated manager and/or maintenance units, the compliance time period, and then present valued. The payment of this fee will be required prior to the issuance of the 8609(s). The amount of the compliance monitoring fee for the remainder of the contractual extended use period will be determined in year 15.

There are no clear rules establishing whether or not this lump sum fee can be included in the eligible basis. If a sponsor obtains an opinion from a tax attorney and an accountant stating that the

requirements have been met to include this fee in the eligible basis, CHFA may allow the sponsor to do so. This will be done on a case-by-case determination.

## VII. DEVELOPMENTS FINANCED WITH TAX-EXEMPT BONDS (FOR FEDERAL TAX CREDITS ONLY)

Unless otherwise stated, all other provisions of this Plan also apply to developments financed with tax-exempt bonds. Under Section 42(h)(4) of the Code, developments financed with tax-exempt bonds may be entitled to 30% present value tax credits outside the federal housing credit ceiling. The bonds must have received an allocation of private activity bond cap pursuant to Section 146 of the Code, and principal payments on the bonds must be applied within a reasonable period to redeem the bonds. Credits are allowed for that portion of a development's eligible basis that is financed with the tax-exempt bonds. If 50% or more of a development's aggregate basis (land and building) is so financed, the development is entitled to credits for up to the full amount of qualified basis.

Developments financed with tax exempt bonds are required by the Code to apply through the state credit agency for an allocation and for a determination that the development satisfies the requirements of this Plan. CHFA may accept the underwriting criteria of the permanent lender and/or the provider of credit enhancement if a summary of the financial analysis performed by the lender that addresses the criteria of Section III of this Plan is provided to CHFA. Otherwise, the criteria in Section III of this Plan will be applied. CHFA has established 60 points as the minimum number of points which a tax-exempt bond financed development will have to score under the Development Selection Criteria (Section III) to be considered for tax credits in Colorado. Sponsors may submit an application at any time in accordance with the following process:

The sponsor must submit a request for LIHTC's to CHFA after the issuer of the bonds has approved an "inducement" for the development and after the development has been assured that private activity bond volume cap is available. If the development is seeking mortgage insurance through the Federal Housing Administration (FHA), or credit enhancement from another source, the sponsor should submit the request to CHFA after the credit enhancer has approved a preliminary mortgage amount.

The request should be submitted on a CHFA LIHTC application form, and should include all required support documents.

CHFA is required by the Code to notify the Chief Executive Officer of the local jurisdiction, where the proposed development will be located, of the tax credit application, and provide adequate opportunity for comment.

CHFA staff will review the application, determine whether the development is eligible and meets the requirements of this Plan, and make an initial determination of the development's tax credit amount. This determination will be made in accordance with the procedures described in Section II.F.

For mixed-income developments, including developments financed with private activity bonds, CHFA requires that Low-Income set-aside units be distributed proportionately throughout the development and the bedroom/bath mix and type. Both market rate and low-income units must have the same design regarding unit amenities and square footage.

If the development loan will be FHA-insured, CHFA will complete a HUD-required subsidy-layering review to assure that the development complies with HUD guidelines pursuant to Sec. 911 of the 1992 Housing and Community Development Act (See Section II.G.).

CHFA will provide the sponsor and the bond issuer with a letter confirming that the development satisfies the requirements of the Plan and stating the preliminary amount of LIHTC. At this time, CHFA will request that the issuer confirm CHFA's determination of the tax credit amount, as required by the Code.

The Applicable Percentage is established at either, (i) the month in which the building is placed in service, or (ii) at the owner's election, the month in which the bonds are issued. If the later is desired, the Election Statement (form issued by CHFA) must be signed by the owner, notarized and submitted to CHFA before the close of the fifth calendar day following the month in which the bonds are issued (see Section II.O.).

In the year in which the development is placed in service, the owner must request a final allocation of credits no later than the end of the year. CHFA will provide an application package for final allocation requests. Reasonable year-end deadlines for final allocation requests will be established in order to permit timely review and preparation of documents.

Developments receiving credits in accordance with this Section VII are required to enter into a Land Use Restriction Agreement (see Section II.Q.), which will govern the low-income use and any other Plan requirements, and to follow the same final allocation application process as described in Section V.C.

#### VIII. USE OF HOME or NAHASDA FUNDS

The federal statute governing the HUD HOME program permits participating jurisdictions to use HOME funds to assist in the development of eligible housing. Assistance provided under the HOME Investment Partnership Act (HOME) and the Native American Housing Assistance or Self-Determination Act (NAHASDA) The use of a federal HOME grant will generally result in a development being classified as “federally subsidized” and, thus, ineligible for the seventy (70) percent present value tax credit. However, the Code provides that below-market loans, funded with HOME or NAHASDA dollars, will not result in a tax credit development being classified as “federally subsidized”, if the sponsor contractually commits that at least 40 percent of the dwelling units will be occupied by individuals whose incomes are 50 percent or less of the area median gross income. Such a development would therefore qualify for the nine-percent tax credit.

Careful, detailed documentation and CPA certification of the use of the HOME or NAHASDA funds will be required by CHFA at the time of final allocation.

The increase in eligible basis allowed for developments situated in “qualified census tracts” and “difficult development areas” is not allowed for properties using below market HOME or NAHASDA loans and the nine-percent credit.

#### IX. OTHER CONDITIONS

In making reservations or allocations, CHFA relies on information provided by or on behalf of the sponsor. CHFA’s review of documents submitted in connection with the tax credit allocation process is for its own purposes. In making reservations or allocations, CHFA makes no representations to the sponsor or anyone else as to compliance of the development with the Internal Revenue Code, Treasury regulations, or any other laws or regulations governing federal tax credits or with the state housing tax credits.

No member, director, officer, agent or employee of CHFA shall be personally liable on account of any matters arising out of, or in relation to, the allocation of Low Income Housing Tax Credits.

**MISREPRESENTATIONS OF ANY KIND WILL BE GROUNDS FOR DENIAL OR LOSS OF THE TAX CREDITS AND MAY AFFECT FUTURE PARTICIPATION IN THE TAX CREDIT PROGRAM IN COLORADO.**

#### X. SECTION 42 COMPLIANCE MONITORING PROCESS

Section 42(m)(1)(B)(iii) of the Code mandates that state housing credit agencies monitor all placed in service tax credit developments for compliance with the provisions of Section 42. The Code also mandates that the Internal Revenue Service be notified, by the state housing credit agencies, of any instance of noncompliance. The State Tax Credit Act also requires that CHFA monitor compliance with the Act. CHFA will also monitor for compliance with Land Use Restriction Agreement provisions which contain any additional owner commitments made to secure points in the development selection process, e.g. additional low income units or an extended low-income use period. CHFA has assembled and will make available to development owners, a Compliance Manual explaining the LIHTC monitoring process in detail. All owner representatives and their management agent representatives will be required to successfully complete a compliance training session conducted or approved by CHFA prior to the release of IRS Form 8609 for federal tax credits or the Allocation Certificate for state tax credits.



In general, CHFA will monitor the following for compliance, all of which are also applicable to developments receiving state tax credits:

X.A. Record Keeping, Record Retention and Inspection Provisions

1. The owner of a low-income housing development is required to keep records for each qualified low-income building in the development showing:
  - 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;
  - 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;
  - g. Documentation to support each low-income tenant's income certification;
  - h. The eligible basis and qualified basis of the building at the end of the first year of the credit period;
  - i. The character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) of the Code (e.g. tenant 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 development); and
  - j. Copies of all correspondence with the IRS or with the Colorado Department of Revenue.
2. The Owner is required to retain the records described in paragraph A.1 of this section for each building in the development for at least six (6) years after the due date (with extensions) for filing the federal or state income tax return for that year. The records for the first year of the credit period must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal or state income tax return for the last year of the compliance period of the building.
3. The Owner is required to retain any original health, safety or building code violation reports or notices that were issued by the State or local government unit for CHFA's inspection under Section X. C. Retention of such original reports or notices is not required once CHFA reviews them and completes an inspection, unless the violation remains uncorrected.

X.B. Certification Provisions

1. In accordance with Section 42(1)(1) of the Code, following the close of the first taxable year in the credit period with respect to any qualified low-income building with federal tax credits, the owner must certify to the Secretary of the Treasury (i) the taxable year and calendar year in which such building was placed in service, (ii) the adjusted basis and eligible basis of such building as of the close of the first year of the credit period, (iii) the maximum applicable percentage and qualified basis of such building, (iv) the election made for the low-income targeting threshold as defined in Section 42(g)(1) of the Code, and (v) such other information as the Secretary may require. This certification is accomplished by completing Part II of the 8609(s). A copy of the completed 8609(s) must also be submitted to CHFA.
2. Following the close of the first taxable year in the credit period with respect to any qualified low-income development with state tax credits, the owner must certify to CHFA (i) the taxable year and calendar year in which such development was placed in service, (ii) the adjusted basis and eligible basis of such development as of the close of the first year of the credit period, (iii) the maximum applicable percentage and qualified basis of such development, (iv) the election made for the low-income targeting threshold as defined in Section 42(g)(1) of the Code, and (v) such other information as CHFA may require. This certification is accomplished by completing the Allocation Certificate and submitting it to CHFA.

3. The owner of a low-income housing development with federal or state tax credits is required to certify annually, by January 15<sup>th</sup> of each year, in a form to be provided by CHFA, that for the preceding 12-month period:
  - a. The development met the requirements of the 20-50 or 40-60 test as defined in Section 42(g)(l) of the Code, whichever minimum set-aside is applicable to the development, and, if applicable to the development, the 15-40 test under Section 42(g)(4) for “deep rent skewed” developments;
  - b. There was no change in the applicable fraction {as defined in Section 42(c)(1)(B)} of any building in the development, or that there was a change and a description of the change;
  - c. The owner has received an annual income certification from each low-income tenant and documentation to support that certification;
  - d. Each low-income unit in the development was rent-restricted under Section 42(g)(2);
  - e. All units in the development were for use by the general public and no finding of discrimination under the Fair Housing Act, 42 U.S.C 3601-3619, has occurred for the development. [A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616a(a)(1), or an adverse judgment from a federal court];
  - f. Each building and low-income unit in the development were suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making local health, safety or building code inspections did not issue a report of a violation for any building or low income unit in the development. [If the governmental unit issued a violation report or notice, the Owner must attach to the certification a statement summarizing the violation report or notice or a copy of the violation report or notice. In addition, the Owner must state whether the violation has been corrected];
  - g. There was no change in the eligible basis {as defined in Section 42(d)} of any building in the development, or that there was a change, and the nature of the change;
  - h. All tenant facilities included in the eligible basis under Section 42(d) of any building in the development, such as swimming pool, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;
  - i. If a low-income unit in the development became vacant during the year, reasonable attempts were, or are being, made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the development were, or will be, rented to tenants not having a qualifying income;
  - j. If the income of tenants of a low-income unit in the development increased above the applicable income limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the development was, or will be, rented to tenants having a qualifying income;
  - k. An extended low-income housing commitment, as described in Section 42(h)(6), was in effect, including the requirement under Section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the development to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s and the Owner has not refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 voucher or certificate;
  - l. All low-income units in the project were used on a non-transient basis (except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii) or single-room-occupancy units rented on a month-by-month basis under Section 42(i)(3)(B)(iv));
  - m. The development meets the additional Owner agreements contained in Section 6 of the Land Use Restriction Agreement;
  - n. There was no change in the Owner entity (for example, transfer of general partnership interest);
  - o. If the Owner received its credit allocation from the portion of the State’s ceiling set-aside for developments involving “qualified non-profit organizations” under Section 42(h)(5) of the Code, the non-profit organization has materially participated in the operation of the development (within the meaning of Sec. 469(h) of the Code).

4. The federal tax credit certifications referenced in paragraphs B.1 and B.3 of this section are required to be made at least annually through the end of the 15-year compliance period under Section 42(i)(1) of the Code and the certifications are to be made under penalty of perjury.
5. The state tax credit certifications referenced in paragraphs B.2 and B.3 of this section are required to be made at least annually through the end of the 15-year compliance period.
6. The owner is required to provide to CHFA a copy of the Completed 8609(s) and Schedule A(s) that is submitted to the IRS for federal tax credits or a copy of the Allocation Certificate that is submitted to the Colorado Department of Revenue for state tax credits.
8. The owner is required to provide to CHFA, as it occurs, copies of all correspondence with the IRS or Colorado Department of Revenue.

X.C. Inspection and Review Provisions

1. CHFA will review the owner certifications submitted pursuant to paragraph B.3 of this section for compliance with the requirements of Section 42 of the Code.
2. Between the time a building is placed in service and applies for a final allocation of credit, and prior to the issuance of an 8609 or Allocation Certificate, CHFA will physically inspect the property. Within 2 years after placement in service, CHFA will conduct on-site inspections of all buildings in the development and, for at least 20% of the development's low-income units, inspect the unit and review the tenant income certification, supporting documentation and rent records.
3. At least once every 3 years, CHFA will conduct on-site inspections of all buildings in the development and, for at least 20% of the development's low-income units, inspect the unit and review the tenant income certification, supporting documentation and rent records.
4. CHFA will randomly select which low-income units and tenant records are to be inspected and reviewed by CHFA.
5. For the building and unit inspections referred to in paragraphs C.2 and C.3 of this section, CHFA will review any local health, safety, or building code violation reports or notices retained by the Owner and will determine whether the buildings and units are suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards) or whether the buildings and units satisfy the uniform physical condition standards for public housing established by HUD (24CFR 5.703). The HUD physical condition standards do not supersede or preempt local health, safety, and building codes. The development must continue to satisfy these codes and, if the CHFA becomes aware of any violation of these codes, the CHFA must report the violation to the IRS.
6. CHFA has the right to perform an audit of any low-income housing development during the term of the Land Use Restriction Agreement. An audit includes a physical inspection of any building in the development, as well as a review of the records described in section X.A. The auditing provision of this paragraph C.6 is in addition to any inspection of low-income certifications and documentation under paragraphs C.1 through C.5 of this section.

X.D. Notification of Noncompliance Provisions

1. CHFA will provide prompt written notice to the owner of a low-income housing development if CHFA does not receive the certification described in section X.B or does not receive, or is not permitted to inspect, the tenant income certification, supporting documentation and rent records described in section X.C, or discovers on audit, inspection or review, or in some other manner, that the development is not in compliance with the provisions of the Land Use Restriction Agreement. The owner shall have a period of time designated by CHFA (30 to 90 days) from the date of such notice (the "Cure Period") to supply any missing certifications and bring the development into compliance with the Land Use Restriction Agreement. CHFA may extend, in its sole discretion, the Cure Period for up to six months for good cause.
2. CHFA must file Form 8823 (Low-Income Housing Tax Credit Agency's Report of Noncompliance) with the IRS or State Noncompliance Form to the Colorado Department of Revenue no later than 45 days after the end of the Cure period whether or not the noncompliance or failure to certify is corrected. CHFA will explain on Form 8823 or State Noncompliance Form the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis that results in a decrease in the qualified basis of the development as defined in Section 42(c)(1)(A) is an event of noncompliance that must be reported under this paragraph.
3. If the noncompliance or failure to certify is corrected within 3 years after the end of the correction period, CHFA will file Form 8823 to the IRS or State Noncompliance Form to the Colorado Department of Revenue reporting the correction of the noncompliance.

X.E CHFA Record Retention Provisions

CHFA will retain records of noncompliance for 6 years beyond CHFA's filing of the respective Form 8823 or State Noncompliance Form. In all other cases, CHFA will retain the certifications and records for 3 years from the end of the calendar year CHFA receives the certification and records.

X.F. Monitoring Fee

A monitoring fee will be assessed to cover the costs of the compliance monitoring program. A compliance monitoring fee will be assessed to cover the initial 15 years of the compliance period in a lump sum, at the time of final allocation. This fee (which will be determined in the year the development receives a final allocation of credit) will be based on the number of low-income units, any designated manager and/or maintenance units, and the compliance time period, and then present valued. The payment of this fee will be required prior to the issuance of the 8609(s) or Allocation Certificate. The amount of the compliance monitoring fee for the remainder of the contractual extended use period will be determined in year 15.

There are no clear rules establishing whether or not the up front fees can be included in the eligible basis. If a sponsor obtains an opinion from a tax attorney and an accountant stating that the requirements have been met to include these fees in the eligible basis, CHFA may allow the sponsor to do so. This will be done on a case-by-case determination.

## Appendix A

### MARKET STUDY GUIDE

The Colorado Housing and Finance Authority (CHFA) is responsible for allocating tax credits toward the development of affordable rental housing in areas where there is sufficient market support for it. It is therefore important to submit a complete and in-depth market study that conforms to the CHFA guidelines. The study must contain a statement by the analyst that the report was written according to CHFA's Market Study Guide, that the information included is accurate and that the report can be relied upon by CHFA to present a true assessment of the low-income housing rental market. The consultant must also indicate that the document is assignable to lenders and/or syndicators that are parties to the development's financial structure. The analyst must also acknowledge and agree that the market study will be shared with the Department of Housing and Urban Development (HUD) as part of HUD's assistance to CHFA in the analysis of the market study.

The data and analysis outlined here represent the required elements of a market study submitted to CHFA. It is critical that you provide your overall impressions, conclusions and recommendations on the proposed development. You must relate all data back to the proposed development.

Each study must provide up-to-date demographic data on the market area. The source must be clearly identified, e.g., the 1990 U.S. Census of Population and Housing updated to 2000. Any additional relevant data should also be included and the source identified.

The market study must adequately address, and an index must clearly identify, the items listed below in the order in which they are listed.

1. Project Description:

A. a description of the development that includes numbers of units, unit type and size, unit rent and income targeting, and project amenities

2. Location Analysis:

A. Location of the proposed site, using closest street boundaries. Include pictures and a map indicating the location of the proposed site (clean legible copies of both the local neighborhood and a citywide map showing the development location);

B. Location amenities (e.g., neighborhood shopping, drug store, major employers, schools, public transit, hospitals, highways or other major traffic arteries, churches, cultural attractions, and recreational facilities). Indicate proximity in miles to the proposed site;

C. Indicate what type of development(s), if any, is/are located in the vicinity of the proposed site (e.g., vacant land, commercial/business, industrial, public housing, subsidized housing [including tax-exempt-bond-financed properties]). Indicate proximity in miles to the proposed site. Describe all developments on all sides of the property. Indicate present condition of properties. What is the zoning of surrounding area? Is it likely to change?

D. Indicate if there are any road or infrastructure improvements planned or under construction in the proposed market area;

E. Include an analysis of how the site will enhance or detract from development marketability (analyst must visit the proposed site). Be specific (3 acre park across the street, electric utility sub-station on the corner).

F. Identify the major current employers and their location with respect to the proposed development site;

- G. Indicate the level of economic activity occurring within the region where the proposed development is to be located.

### 3. Identification of Market Boundaries

Provide a reasonable rationale for the suggested market areas, taking into account such things as political and natural boundaries, socioeconomic characteristics, and the experience of comparable multifamily developments at each geographic level.

Provide a legible map outlining the primary and secondary market area. Identify the proposed site, location amenities, and existing as well as proposed rental developments.

### 4. Demand Analysis

Base the demand on current households and forecasted household growth. The analysis must be performed under two scenarios. The first scenario assumes that tenants are paying 30% of their income for shelter rent and the second scenario assumes that tenants are paying 40% of their income for shelter rent. The purpose behind this requirement is for CHFA and the developer to understand to what extent the development is depending on tenants that have to pay more than 30% of their income for shelter rent. A high percentage may indicate a need for more conservative underwriting of the development.

Both scenarios must use, for items A.iii. and B.ii. below, the following assumptions: one bedroom units have 1 occupant, two bedroom units have no more than 3 occupants, three bedroom units have no more than 5 occupants. The demographic analysis must update all 1990 census data and the methodology for the update must be explained satisfactorily. Developments serving independent or assisted-living elderly populations must break out the household data by age. The analysis for independent senior developments must be for person 55 years or older and must be for person 75 years or older for assisted-living developments.

Given: 2000 HHs - 18,272                      2005 HHs - 21,300

#### A. Demand From Existing Households

i. Number of existing households for current year	18,272
ii. Number of renters based on Census data update	<u>x 16.9%</u> 3,101
iii. Income qualify households by using current demographic data. Apply the percentage of households whose incomes are within program guidelines to <u>renter</u> households only.	3,101 <u>x 23.9%</u> 741
iv. Turnover Rate from U.S. Census Bureau Estimate of percentage of renter households that Move within a 15-month period	741 <u>x 35%</u>
iv. Estimated annual demand from existing households	259

B. Demand From New Households

i. Estimate of annual new households	21,300
(This is the difference between number of HHs in current year (existing HHs) and forecasted HHs five years from now.) Divide by 5 to determine annual household growth.	<u>18,272</u> 3,028 <u>5</u> 606
ii. Estimate of number of renters based on Census data update	<u>X 16.9%</u> 102
iii. Income qualify households by using current demographic data. Apply to renter households the percentage of households whose income is within program guidelines.	102 <u>X 23.9%</u> 24
Estimated demand from new households	24

C. Total annual demand from new and existing HHs (259 + 24) 283

D. Determination of the number of all tax credit housing units in the proposed market area, including existing units, units under construction and proposed units. For existing developments, yearly status reports are available on CHFA's website ([www.colohfa.org](http://www.colohfa.org)) under "Rental Housing and Tax Credits". The market analyst should retrieve that information from the website rather than through a request to CHFA staff.

5. Capture Rate Analysis: CHFA requires that two separate analysis be performed, a capture rate analysis for the specific development and a total market penetration analysis. These are defined below:

A. Project Specific Capture Rate Analysis

1. Total annual demand from new and existing HHs	246
2. Total existing affordable units (tax credit units and non-restricted units with affordable rents)	30
3. Total proposed tax credit units	70
	$\frac{70}{246-30} = 32\%$

B. Total Market Penetration Rate Analysis

1. Total income-qualified Renter Households	741
2. Total existing affordable units (tax credit units and non-restricted units with affordable rents)	30
3. Total proposed tax credit units	70
	$\frac{30 + 70}{741} = 13\%$

Note: The number of people on the Section 8 waiting list is frequently used in market studies to suggest a shortage of affordable rental units. Typically, this list does not represent a shortage of affordable rental units, but a shortage of subsidy money. Many families on the waiting list have incomes so low that they are unable to rent even the most affordable units without subsidies. Therefore, the waiting list for subsidies may be very long even in an overbuilt market.

In instances where a significant number (more than 20%) of proposed units are comprised of three- and four-bedroom units, refine the analysis by factoring in number of large households (generally, 4+ persons). In many cases, the number of income-qualified households looking for three-bedroom apartment units is quite small; in these instances, a demand analysis, which does not take this into account, may overestimate demand.

## 6. EXISTING RENTAL DEVELOPMENT ANALYSIS

A. Existing Comparable Rental Developments: The analyst must perform a large enough survey of the existing rental product to give an accurate overview of the rental housing market. Non-subsidized and non-tax credit developments with rents that are not significantly higher than the proposed rents should be included in the survey. All tax credit developments, both the competitive 9% developments and the non-competitive 4% developments MUST be included in the survey, as well as all subsidized developments. Yearly status reports are available on CHFA's website ([www.colohfa.org](http://www.colohfa.org)) under "Rental Finance" and "Tax Credits". The market analyst should retrieve that information from the website rather than through a request to CHFA staff.

The following information must be provided for comparable rental developments in the local market area. Existing multifamily units with rents similar to the proposed development should be analyzed. Subsidized low-income developments must be considered, and specifically analyzed. In rural areas where few multifamily developments exist, provide information on rental trailer homes and single family homes in an attempt to address where potential tenants are currently living. This is critical in situations where the developer is proposing the construction of a significant number of three-bedroom units. If there are no low-income complexes, state this. Each comparable site used in the survey must be visited. Include a legible map showing the location of all comparable properties. Pictures of all properties should be included.

In addition to providing the required information, the market study must contain analysis of the data. Discuss issues such as how each complex compares with the subject property in terms of such things as total units, mix, rents, occupancy, location, etc.

The following information must be included; if certain information is not available, this should be noted. Such information must be formatted so that the subject property is listed on the same page as the comparable properties for easy comparison of the unit characteristics.

- i. Name, address, and telephone number of the contact person at the development. Date contact was made.
- ii. Year built.
- iii. Number of units by unit type (i.e., one-bedroom, two-bedroom, etc.) and structure type (i.e., flat, townhouse, etc.).
- iv. Square footage by unit and structure type.
- v. Current rents by unit and structure type.
- vi. Reduced rent and/or security deposit specials offered by the rental development. Concessions should be explained and their impact described.
- vii. Number of tenants receiving rental assistance and the type of assistance they are receiving (e.g., Section 8).
- viii. Tenant-paid utilities.
- ix. Heat fuel source.
- x. Amenities (both unit and development).
- xi. Vacancy rates, waiting lists, and turnover rates. Whenever possible, this information should be provided by unit type. In addition, indicate the lease-up history of the comparable developments in the proposed market area.
- xii. Condition of property.

## B. Upcoming Competition

In order to determine what new developments will likely compete with the proposed project, a careful examination of upcoming competition is necessary. In addition to checking with local governments and other public or private agencies, analysts should also check with CHFA for information on tax-exempt-bond-financed projects and new tax credit or HOME-funded developments are currently under consideration. The market study should include information on the availability and proximity of land in the proposed market area that is zoned or could be zoned for multifamily use.

Information on upcoming competition should include the following, if available:

1. Name of project.
2. Address/location.
3. Name of owner.
4. Proposed number of units, unit mix, square footage, rental rates, etc.
5. Estimated completion date.

## C. Other Assisted Projects

Address whether the proposed project, in light of vacancy and absorption rates for the local market area, is likely to result in a higher vacancy rate for comparable units within the market area, especially those standard well-maintained units within the market area which are reserved for occupancy by low-income tenants. These properties and any others reserved for occupancy by low-income tenants must be included in the comparables. Failure to address such properties may compromise the value of the analysis.

## 7. RECOMMENDATIONS AND CONCLUSIONS

In this section, please provide your opinion as to the most realistic product mix and rent structure for the property as dictated by the target population and market conditions. In addition, provide an assessment of the developer's proposal for the project. Please state the reasons for your recommendations and conclusions.

All recommendations and conclusions must be supported by data contained in the market study.

- A. The following recommendations and conclusions must reflect your opinions and evaluation of market conditions. Recommendations given here are to be independent of the developer's proposals for the project.
  1. Product Mix: number of units by unit type (i.e., one-bedroom, two-bedroom, etc.), square footage and structure type (i.e., flat, townhouse, etc.). Detail how market research supports this recommendation;
  2. Based on your assessment of market conditions, optimum rents and security deposits by unit type.
  3. Assessment of average rents and concessions (i.e., move-in specials, rent concessions, deposit concessions, etc.) in market area for specific unit types;
- B. In addition to providing your recommendations as to product mix and rents, evaluate the developer's proposal for the project. The following items are to be addressed:
  1. Proposed rents and security deposits by unit and structure type. Summarize market justification for rent structure addressing whether projected initial rents for the project are reasonably affordable by low-income tenants;

2. Proposed product mix: number of units by unit type, square footage and structure type. Address market justification for proposed mix.
3. Based on developer's proposed unit mix, estimated absorption and leasing start date;
4. Proposed development amenities (e.g., community building, playground, laundry facilities);
5. Proposed amenities available to the tenant at an additional cost, (e.g., washer/dryer - \$15/month, fireplace - \$10/month);
6. Proposed unit amenities (e.g., dishwasher, washer/dryer hookups, blinds, central air);
7. Utility recommendation: tenant paid or included in rent;
8. Proposed heat fuel source (e.g., gas or electric);

## Appendix B CAPITAL NEEDS ASSESSMENT REQUIREMENTS

Developments that receive a preliminary reservation of tax credits for rehabilitation must, for carryover, submit a capital needs assessment conducted by a third party architect or engineer. The assessment should include a site visit and physical inspection of the interior and exterior of units and structures, as well as an interview with available on-site property management and maintenance personnel to inquire about past repairs/improvements, pending repairs, and existing or chronic physical deficiencies. The assessment should also consider the presence of hazardous materials on the site.

The assessment should include an opinion as to the proposed budget for recommended improvements and should identify critical building systems or components that have reached or exceeded their expected useful lives. The assessment should also include a projection of recurring probable expenditures for significant systems and components impacting use and tenancy, which are not considered operation or maintenance expenses, to determine the appropriate replacement reserve deposits on a per unit per year basis. The following components should be examined and analyzed for a capital needs assessment:

- site, including topography, drainage, pavement, curbing, sidewalks, parking, landscaping, amenities, water, sewer, storm drainage, gas and electric utilities and lines;
- structural systems, both substructure and superstructure, including exterior walls and balconies, exterior doors and windows, roofing system, and drainage;
- interiors, including unit and common area finishes (carpeting, vinyl tile, plaster walls, pain condition, etc.), unit kitchen finishes, cabinets and appliances, unit bathroom finishes and fixture, and common area lobbies and corridors; and
- mechanical systems, including plumbing and domestic hot water, HVAC, electrical, lighting fixtures, fire protection, and elevators.

Issues identified by the capital needs assessment should be addressed during the rehabilitation process and considered in establishing replacement reserve accounts.