



Appendix 2 - LIHTC GENERAL INFORMATION

I. INTRODUCTION

The Tax Reform Act of 1986 established the Low-Income Housing Tax Credit (LIHTC) Program to provide market incentives to acquire and develop or rehabilitate affordable rental housing.¹ Over the past two decades the LIHTC Program has helped construct and rehabilitate the nation's affordable housing stock.

The LIHTC Program works as follows. The Internal Revenue Service (IRS) allocates federal tax credits to State Housing Credit Agencies like the Connecticut Housing Finance Authority (Authority). The Authority awards tax credits to eligible affordable housing developments. The developers use the equity capital generated from the sale of the tax credits to lower the debt burden on tax credit properties, making it easier to offer lower, more affordable rents. Investors purchase the tax credits to lower their federal tax liability.

Developers typically structure LIHTC projects as limited partnerships (LPs) or limited liability companies (LLCs), providing limited liability to investors. This structure allows the investors to receive tax credit benefits and passive losses.²

The IRS requires that the Authority publish annually its housing priorities and eligibility criteria for awarding housing tax credits in a plan. The Qualified Allocation Plan (Plan) must give priority to projects that serve the lowest income households and that remain affordable for the longest period of time. The Plan was developed to be appropriate to State housing needs and consistent with State housing priorities in Connecticut.

The actual amount of tax credits awarded to the developer cannot exceed the amount the Authority deems necessary for the project's financial feasibility and its viability as a low-income housing project throughout the compliance period.

If any statements in the Plan, LIHTC Procedures or the General Information conflict with the laws governing the LIHTC Program, those laws take precedence. The materials should not be relied upon solely or as a substitute for an applicant's own tax or legal counsel or interpretation of laws relating to the LIHTC Program. Applicants are ultimately responsible for providing the information necessary for the determination of the project's eligibility and compliance under the LIHTC Program.

Each application will compete and be evaluated pursuant to the Plan, the LIHTC Procedures and the Section 42 of the Internal Revenue Code (the Code). Please familiarize yourself with this information prior to completing the application.

For assistance in understanding the LIHTC Program and how it might benefit a low-income housing project application in Connecticut, call the Authority's Manager, Tax Credit Programs at (860) 571-3527.

¹ Tax Reform Act of 1986, PL 99-514, 100 Stat 2085, HR 3838, 99th Congress, 2nd Session (October 22, 1986). The Internal Revenue Code (IRC) Section 42 contains the LIHTC provisions and is commonly referred to as "Section 42" or "the Code".

² Under federal income tax law, LIHTCs may be taken only by property owners who have the benefits and burdens of ownership. This would include LPs, LLC owners, and other equity investors in the property. For example, if a bank is a 99 percent owner in a LP partnership, it will receive 99 percent of the tax credits and passive losses, which include, but are not limited to, depreciation and interest expenses.

II. APPLICATION SUBMISSION

- a) Application submissions must consist of:
 - i) One original Consolidated Application binder, including Workbooks 1-3 (Refer to the LIHTC column in the Exhibit Checklist in each workbook and complete the threshold exhibits only).
 - ii) Application fee in the form of a certified or bank check payable to the Connecticut Housing Finance Authority:
 - (1) \$1,000 for for-profit developer, or
 - (2) \$500 for for-profit developer with developments under 20 units, or
 - (3) \$250 for non-profit developers.
 - iii) In addition to the completed tax credit binder, applicants must submit their Excel application workbooks via e-mail to TaxCreditApps@chfa.org.
- b) The review process will begin at the time of submission. Application packages must be mailed or hand delivered to:

Tax Credit Unit
Connecticut Housing Finance Authority
999 West Street
Rocky Hill, CT 06067-4005

For 2011, all 9% LIHTC application packages must be submitted no later than 4:00 p.m. EST on April 4, 2011 to the above address. Upon submission, the application will be date stamped and assigned an application file number. The Authority's Board of Directors decision date is tentatively scheduled to occur in July/August 2011.

III. PROJECT SELECTION CRITERIA

The Authority allocates the 9% LIHTCs through a competitive review of applications from affordable housing developers. The Authority allocates non-competitive 4% LIHTCs on a first come, first serve basis to affordable housing projects that are financed with Tax-Exempt Private Activity Bond Program funds from the State of Connecticut.

The Authority will allocate 4% and 9% LIHTCs based upon the selection criteria and application ranking procedures set forth in the Plan, with each application undergoing the following review process.

a) Application Classifications

Applications for 9% LIHTCs are grouped into one of three Classifications for evaluation in accordance with the Plan. The Public Housing and General Classifications are used for allocation within the competitive round. Applicants applying under the Exceptional Priority classification may not apply during the 9% round and will not be ranked within or against the other classifications.

b) Tax-Exempt Bond Financing

Projects with tax-exempt bond financing may receive tax credits without a charge against the State's tax credit ceiling allotment. Nonetheless, projects must satisfy the requirements for allocations under the Plan, LIHTC Procedures and the Code.

In addition, the governmental unit which issued the bonds must determine the amount of tax credits necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

The amount of credits is limited to the thirty percent (30%) of present value percentage under the Code. Projects with tax-exempt financing are required to obtain a building identification number from the Authority. Such requests must be accompanied by the financing agency's determination of the credit amount.

c) Application Criteria

The following requirements must be satisfied IN TOTAL before ranking and credit evaluation will occur:

- i) All applications must meet at least one of the development location criteria as established in Section 3.F.1. of the Plan.
- ii) Pursuant to the Plan, all applications must also meet the policy and administrative requirements of the Authority as outlined in Section 3.F.2. of the Plan. The policy and administrative requirements are outlined as follows:
 - (1) A demonstrated readiness to proceed including a:
 - A credible financing plan as described in the Plan;
 - Evidence of site control must be in the form of a Contract For Sale, Option Agreement, Purchase Agreement, Deed, a fully executed ground lease, or other documentation acceptable to the Authority for a site suitable for the intended purpose, including the acquisition and sale terms, as appropriate;
 - Written evidence of zoning approval and compliance therewith for the proposed development;
 - Resumes of members of the development team stating who the principals are including developer, architect, general contractor, management agent, consultant, if any, and evidence that the team is in place.
 - (2) Minimum rehabilitation expenditure (for rehabilitation projects) of \$15,000 per unit.
 - (3) Developments must comply with the 2011 CHFA Standards of Design & Construction.
 - (4) Compliance with the Authority's Very Low-Income Construction Employment Policy.
 - (5) Rehabilitation project applications must include a Capital Needs Assessment.
 - (6) Applicants must be in compliance with the terms of any Extended Low-Income Housing Commitment for a project previously sponsored or developed.
 - (7) Public Housing Classification developments must include a plan that assures resident participation in development planning and implementation.
 - (8) The Authority's Board of Directors reserves the right to not award specific applications due to non-compliance with any adopted housing policy, standards, or objectives of the State relative to the design, level of rehabilitation, suitability of the development location, housing needs, and project costs.

d) Underwriting Criteria

i) Operating Budget

(1) Rent Restrictions

The proposed development must meet the minimum income occupancy and rent restriction requirements of the Code.

Refer to the HUD Schedule of Maximum Affordable Gross Rent and Income Limits, which can be found on the Authority's website. The applicable gross rent is associated with the fewest number of persons per household for the designated bedroom size. These gross rents include all utilities with the exception of telephone charges. The applicable utility allowance amount must be deducted to arrive at the maximum net affordable rent.

(2) Income and Expense Assumptions

When reviewing the Operating Budget and the 15-year cash flow projections, the Authority will review the financing institution's assumptions for reasonableness and may seek additional information. The minimum assumptions to be used are as follows:

- Vacancy Assumptions

Residential Vacancy – The vacancy rates will be based on the percentage of the Area Median Income (AMI) of the intended tenant population as of the stabilized year. The stabilized year is defined as the first 12 months after 100% occupancy less vacancy assumption.

<u>AMI</u>	<u>Vacancy Rate</u>
0 – 50%	2.5 – 5%
51 – 80%	5.1 -10%
Over 80%	10 – 15%
Over 80%: Year 2	10 – 12%
Over 80%: Year 3 +	10%

Commercial Vacancy – Commercial Income Vacancy Rates Allowances may be considered for pre-leased AAA tenants. Rates may be adjusted upward depending on market conditions:

<u>Year</u>	<u>Vacancy Rate</u>
1	20%
2	15%
2+	15%

- Income/Expense Trends

Income Trends – Income will be projected on an annual basis to the stabilized year as determined by the financing institution. If the month of the stabilized year indicated by the applicant falls in September through December, the stabilized year will be considered the following year. However, the Authority reserves the right to modify income trends based on relevant information. Commercial space income will be

determined based on market data. Other documentation, including Consumer Price Index (CPI) and other indices may be considered.

Expense Trends – Expenses may be forecast as determined by the financing institution. However, the Authority reserves the right to modify expense trends based on relevant information. Other documentation, including CPI and other indices, may be considered. Tax abatement and/or deferment agreements approved by the governing body of the municipality are the only acceptable sources for lower tax trends.

ii) Development Budget

(1) Letter of Attestation

The application budget must be accompanied by a letter from the applicant's tax attorney/accountant stating that he/she has reviewed the budget and that he/she attests to the calculation of eligible basis and sources of funds.

(2) Qualified Census Tract/Difficult Development Areas

If the project is within either a HUD designated "difficult development area" or "qualified census tract," then the eligible basis may be increased by 30% (Basis Boost). These HUD designations are included in the CHFA/DECD Consolidated Application package as an Appendix. The applicant will need to submit census tract documentation from the local Planning Office or Regional Planning Office.

(3) Developer's Fee

To the extent economically feasible, the developer's fee shall be 12.5% and may be increased with specific consideration up to and not to exceed 15% of the Total Development Cost, inclusive of non-profit overhead and exclusive of land, building and syndication fees as established from time to time by the Authority.

For properties in default and which are being purchased from an insured depository institution, a fee on the acquisition (net of land) of up to 6.70 percent shall be considered at the Authority's sole discretion. This portion of the developer's fee shall be based on the lesser of the As-Is Appraised Value or purchase price.

(4) Contractor's Profit, Overhead and General Requirements

The Authority will allow a range of acceptable general requirements, contract profit and overhead maximums depending upon the complexity of the job. An acceptable range is 12 to 20 percent of the site and building costs. The general requirements may not exceed 4 percent of site and building costs. The Authority will determine the appropriate number for each job.

(5) Construction Cost

The construction costs will be reviewed for overall reasonableness. The Authority will rely on Marshall & Swift hard cost database, Means cost database and the Authority's historical construction data as well as evaluating developing labor and materials market conditions.

Independent professional Capital Needs Assessment may be required on all proposed multifamily rehabilitation developments.

(6) Consultant's Fees

All consultant fees will be paid from the proceeds of the developer's fee. The definition of consultant includes any person or firm hired for their professional advice in compiling the

information and packaging the financial and/or tax credit funding applications and syndication agreements, including historic credit consultants.

(7) Syndication Costs

The costs of syndication shall not exceed a rate acceptable to the Authority based on fees as a percentage of syndication proceeds. Syndication costs include all direct and indirect costs incurred in securing syndication proceeds (e.g., syndicator legal costs).

(8) Construction Contingency

Only 50% of the amount budgeted for construction contingency may be included as eligible basis.

(9) Subsidy Layering

The Authority will take into account the combination of tax credits with other subsidies or Federal, State and governmental programs, including but not limited to, the Section 8 Project Based Vouchers Preservation and Recapitalization Program, Low-Income Housing Preservation, Resident Homeownership Act, etc., when allocating credits, and the Authority will also allocate credits in accordance with any Federal law or procedures (i.e., HUD Revised Subsidy Layering Guidelines), where appropriate.

IV. APPLICATION APPROVAL

a) Approved Applications

If an application is approved by the Authority's Board of Directors, the project sponsor is notified in writing and a Tax Credit Reservation is issued.

b) Unsuccessful Applicants

If an application does not receive a LIHTC award, the project sponsor is notified of the action and the reasons for its finding and the application is terminated.

c) Reassessment Process

At the conclusion of the review, scoring and ranking process, an applicant may petition the Authority to reassess its decisions relating to the acceptance, scoring, or ranking of applications for each reservation cycle.

An applicant must file a petition for reassessment in writing, with the Authority no later than the (10) business days following the receipt of an unsuccessful application letter. The applicant's petition must specifically identify in detail each issue sought to be challenged. The applicant's justification for the reassessment must be based on the documents filed with the original application. No applicant may request a reassessment of the evaluation and scoring of another Applicant's application.

If the petition for reassessment relates to the amount of housing tax credits recommended to be allocated, the Authority will provide the applicant with the application underwriting upon request. An applicant must complete a Freedom of Information Act requesting the Authority's underwriting relating to the subject application.

The petition for reassessment shall be submitted to the Authority's Executive Director. The reassessment will be conducted by senior staff persons who were not directly involved in the evaluation of the application. The Authority's shall:

- i) review the acceptance, scoring, or ranking issue presented in the petition;

- ii) determine whether or not the evaluation of the application is consistent with the criteria and other aspects of the Plan, the LIHTC Procedures and other applicable policy and administrative requirements;
- iii) at the discretion of the Board of Director's, reassessments may result in a forward commitment of 9% LIHTC in accordance with the current Plan and the policy objectives and administrative requirements of the Authority. A successful reassessment will not result in the cancellation of previously approved reservations; and
- iv) a request for a reassessment on any given project, when directed to the Executive Director or the Board of Directors, must be accompanied by a one time \$5,000 fee payment. In the event that the petition is favorably reevaluated the reassessment fee will be fully refunded.

V. CREDIT RESERVATION/ALLOCATION

a) Credit Reservation

The tax credit reservations will be awarded according to ranking within each Classification based upon the credits available for the particular funding decision period.

Upon the Authority's Board of Directors approval, the applicant will receive a Credit Reservation setting forth the annual credit amount. This reservation must be executed by the applicant and submitted to the Authority with the appropriate Tax Credit Servicing Fee. The agreements will be issued at the end of each funding decision period to all approved applicants.

- i) Pursuant to the LIHTC Procedures the Authority requires an independent, professional appraisal and market study, on all proposed developments receiving a reservation. The appraisal and market study will be commissioned by the Authority from an approved list of professionals and paid in advance by the applicant at the time of reservation. The appraisal and market study fee is nonrefundable.

(1) Independent professional "As Is" and "To-Be-Developed" appraisals prepared according to industry standards and within guidelines and standards established by the Authority. The proposal may be modified for not-for-profit sponsored developments of 15 units or less at the Authority's discretion.

(2) A professionally prepared market study will be commissioned by the Authority utilizing the Authority's criteria outlined in the Market Study Guidelines.

b) Carryover Allocation Agreement/Allocation Form 8609

Prior to the end of the allocation year, the Authority will issue a Carryover Allocation Agreement to applicants with credit reservations. A Carryover Tax Credit Allocation Agreement will be issued when the applicant has satisfied Section 42(h)(1)(E) of the Code for each qualified building, which is part of the project.

The Carryover Tax Credit Allocation Agreement allows the applicant two years to complete projects and have the units placed-in-service. In order to qualify, the limited partnership or other ownership entity must have been formed and proper documentation filed with the Secretary of State, and the project must satisfy the ten-percent test, mandated by the Code, 12 months from the date of the Carryover Allocation Agreement.

Owners must secure building permits (where required by local law) by the end of the first calendar year after the allocation is made. Failure to do so will result in a rescinded allocation.

In order to be eligible for a Carryover Allocation, the applicant must:

- i) Form its ownership entity (e.g., file a certificate of limited partnership or other organizational document with the Secretary of the State).
- ii) Document that the project satisfies the 10% test prescribed by the Code; for purposes of meeting the 10% test:
 - (1) The Authority's Tax Credit Servicing Fee is not includable in the development's basis.
 - (2) For Developer's Fees to be included in basis, the applicant must provide reasonable and adequate documentation of the services for which the fee has been paid and accrued.
 - (3) Construction period interest cost recognized by the Authority will be no greater than that which would have been incurred if the interest rate on the construction loan were equal to the PRIME lending rate plus 200 basis points 30 days prior to application.
 - (4) The schedule of project costs must specify those costs included in the development's basis and must be accompanied by a certified public accountant's audit report on the schedule. Such audit must be conducted in accordance with generally accepted auditing standards and the auditor's report must be unqualified.
 - (5) The applicant must have a certificate prepared by a certified public accountant or an attorney in accordance with the requirements of section 1.42 – 6(c) of the Treasury Regulations stating that the 10 percent test has been met.
 - (6) Establish development financial feasibility; and
 - (7) Remit the balance of the Tax Credit Servicing Fee.
 - (8) The Developer/Sponsor is required to erect a project sign in a prominent place on the property, the size, the content and the location of which shall be subject to prior approval by the Authority. The sign shall designate, among other things, the participation of the State of Connecticut in financing of the Development. Failure to erect a project sign may result in a canceled Tax Credit Allocation
- c) Cost Certification

Upon a development's completion, the owner must submit a Low Income Housing Tax Credit cost certification documenting the actual total project cost. A General Contractor's cost certification is also required. The cost certifications must include, as part of it's analysis, a certified public accountant's opinion letter. The opinion letter must state the certification was performed to an audited standard and, in fact, renders an opinion.

- i) The cost certifications must be completed by an IPA/CPA for projects with 12 units or more. The owner may complete the cost certification for projects with less than 12 units. The Authority's Low-Income Housing Cost Certification Form must be used.
- ii) Final Certificates of Occupancy, affidavits of financing and other such information as the Authority deems appropriate for purposes of making the final financial feasibility and viability determinations under the Code and the terms and conditions of the Carryover Allocation Agreement must be submitted with the Cost Certification.
- iii) In its review of the LIHTC Cost Certification, staff determines a development's final eligible basis and recalculates gap analysis to insure the development's initial underwriting assumptions have remained constant. The results of the final eligible basis and equity gap analysis are forwarded to the President Executive Director or designee for his/her approval.

iv) The approval of the cost certifications are contingent upon the attendance of the applicant and its management agent at a compliance monitoring seminar conducted by the Authority or its designee.

d) 8609 Issuance

A Form 8609 is a tax credit allocation and must be filed in the appropriate year with the IRS.

The Authority will issue Form(s) 8609 upon review and acceptance of cost certification. The amount of tax credits originally reserved will be reduced accordingly if the review of the certified costs shows the financing gap is less than the one originally projected. The tax credit amount will not change if the certified costs are higher than the estimated project costs, unless the owner applies for an additional allocation due to reasonable unforeseen hard cost overruns. Applicants wishing to apply for additional allocations should refer to the LIHTC Procedures.

The final credit amount referenced in the Form 8609 is predicated upon the Applicable Federal Rate (AFR). The AFR is established as of the month when the building is placed in service or, at the election of the owner, the month when the Authority and the owner have entered into a binding agreement to allocate the credits, such as the Carryover Allocation Agreement. For projects financed with tax-exempt bonds, the owner may elect to set the AFR percentage as of the month in which the tax-exempt obligations are issued.

All outstanding fees must be received prior to the issuance of the Form 8609.

VI. LONG-TERM USE OF UNITS/COMPLIANCE MONITORING

a) Long-term Use of Units

Subsequent to the time of allocation, all applicants will execute an Extended Low-Income Housing Commitment Agreement that will be recorded in a priority position on the land records. The Agreement sets forth the number of low-income and rent restricted units in the project, the parameters defining a qualified tenant, the resale restrictions, the term that the units will remain qualified, the default and remedies governing the rent restricted units.

Should the development fail to place in service, the owner will enter into an agreement with the Authority to return the credits. The Authority will refund 40 percent of the Tax Credit Servicing Fee upon the execution of the agreement to return the credits.

b) Monitoring Compliance

In order for a project to continue to qualify for Low-Income Housing Tax Credits, compliance with the LIHTC Program is required throughout the qualified project period. To facilitate this process, the Authority has developed procedures and guidelines to ensure the owner's compliance with the Code and the Authority's policies. Refer to the compliance section of the Plan for further information.

VII. TAX CREDIT SERVICING FEES

A servicing fee in the amount of 8% of the annual allocation, is to be paid as follows:

- a) For-profit Sponsors
 - i) 50% of the tax credit fee is due upon reservation, or in the case of 4% tax-exempt projects at the time just prior to the issuance of the 8609's; and
 - ii) The remaining 50% is due at the time of allocation of the tax credit.
 - (1) Either at the time the Carryover Allocation is executed or the placed-in-service date, whichever occurs first.
- b) Non-profit Sponsors
 - i) 25% of the tax credit fee is due upon reservation, or in the case of 4% tax-exempt projects at the time just prior to the issuance of the 8609's; and
 - ii) The remaining 75% of the tax credit fee is due at the construction loan closing or syndication closing, whichever occurs first.

PAYMENT MUST BE BY A CERTIFIED OR BANK CHECK, PAYABLE TO CHFA. Personal checks will not be accepted and will be returned to the applicant upon receipt.

VIII. FEE SCHEDULE

Fees are established by the President - Executive Director or his/her designee, and are NON-REFUNDABLE.

<u>Fee Type</u>	<u>For Profit Developer</u>	<u>For Profit Less than 20 Units</u>	<u>Non-Profit Developer</u>
Application Fee	\$1,000	\$500	\$250
Tax Credit Servicing Fee	8% of allocation	8% of allocation	8% of allocation
Late Documentation Fee	.2% of allocation	.2% of allocation	.2% of allocation
Re-Assessment	\$5,000	\$5,000	\$5,000