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# Connecticut Housing Finance Authority

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Low-Income Housing Tax Credit

Qualified Allocation Plan

2011

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## I. FEDERAL REQUIREMENTS

The Federal Low-Income Housing Tax Credit Program ("LIHTC") requires the agency in each state responsible for allocating the Federal Low-Income Housing Tax Credits ("Credits") to adopt a plan for the allocation of such Credits within its jurisdiction which plan is to be relevant to the housing needs and consistent with the housing priorities of such state. This is the Qualified Allocation Plan ("Plan") for the State of Connecticut ("State").

According to Section 42(m) of the Internal Revenue Code of 1986, as amended (the "Code"), the Plan must:

1. Set forth selection criteria to be used to determine housing priorities of the Connecticut Housing Finance Authority ("Authority"), as the housing credit agency for the State, which are appropriate to local conditions;
2. Give preference to projects:
  - a. serving the lowest income tenants, and;
  - b. obligated to serve qualified tenants for the longest period of time;
  - c. which are located in qualified census tracts and contribute to a concerted community revitalization plan, and;
3. Provide a procedure that the Authority (or its agent) will follow in monitoring for non-compliance with the provisions of Section 42 of the Code and in notifying the Internal Revenue Service ("IRS") of project non-compliance that comes to the attention of the Authority.
4. Additionally, the Plan selection process must apply criteria addressing the following:
  - a. project location,
  - b. housing needs characteristics,
  - c. project characteristics,
  - d. sponsor characteristics,
  - e. tenant populations with special housing needs,
  - f. public housing waiting lists,
  - g. tenant populations of individuals with children,
  - h. projects intended for eventual tenant ownership,
  - i. energy efficiency, and
  - j. historic nature.

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## II. STATE HOUSING PLANS

The Plan for allocating Credits in the State supports the needs and priorities as defined in the current State of Connecticut Consolidated Plan for Housing and Community Development (“ConPlan”) and the current Annual Action Plan, as required by the National Affordable Housing Act of 1990 (“Act”). The Act requires that the ConPlan govern the allocation of Federal funds by the State. The ConPlan also is required to be consistent with the State of Connecticut current Conservation and Development Policies Plan (“C&D Policies Plan”). The C&D Policies Plan includes policies for the development of affordable rental housing.

The Plan will not undertake a separate needs assessment or establishment of goals and objectives, but incorporates by reference the needs assessment of the ConPlan and adapts its specific priorities for rental housing for use in this Plan. Additionally, this plan similarly adapts relevant housing policies of the C&D Policies Plan.

### A. ConPlan

The overall goal of the community planning and development programs covered by the ConPlan is to develop viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities principally of low- and moderate-income persons.

The affordable housing development objectives of the ConPlan adapted for use in this Plan may include the following:

1. Make housing investments that support responsible growth and development in the state and the efficient use of existing infrastructure investment in transportation, water, sewer, and other utility systems.
2. Preserve and increase the supply of quality affordable housing in order to support economic growth and the development of stable and healthy communities and neighborhoods.
3. Preserve and increase the supply of affordable housing that expands housing choice and opportunity.
4. Prevent and reduce chronic homelessness.

### B. C&D Policies Plan

Affordable rental housing development policies of the C&D Policies Plan adapted for use in this Plan incorporate the Growth Management Principles of C&D Policies Plan which call for revitalizing regional centers, expanding housing opportunity and choice, as well as concentrating investments that support both development and transportation. In addition, this Plan is also consistent with the C&D Policies Plan regarding its policy to promote “housing mobility and choice across income levels utilizing current infrastructure and the preservation of existing residential neighborhoods and housing stock.”

### III. ALLOCATION PROCESS

#### A. Statutory and Procedure Requirements

All proposed projects must meet occupancy, rent restrictions and other basic statutory requirements of the Code, LIHTC Procedures of the Authority, and applicable State and Federal law.

#### B. Credit Availability

In order to provide predictability to the development community, each time that a 9% round's awards are announced, the Authority will release and estimate the amount of Credits available for the immediately following round. The amount estimated to be available will be based upon the estimated Credit Ceiling, adjusted for forward allocations and any designated exceptional priorities, using the following calculation:

1. The previous round's Credit Ceiling, less;
2. Forward Allocations awarded in the previous round, plus;
3. Forward Allocations from the next year's Credit Ceiling, less;
4. Exceptional Priorities approved by the date of the previous round's award.

#### C. Allocation Priorities

The Plan provides priority for housing development proposals which incorporate:

Affordability Commitment - Creates or preserves rental units dedicated to low-income families, households and individuals with incomes below 50% of the Area Median Income.

Supportive Housing – Creates and provides permanent supportive housing for those at risk of homelessness or the chronically homeless.

Enrichment Features - Provides an array of services which benefit the resident population.

Preservation – Preserves and improves the existing affordable housing stock.

Sponsorship Characteristics – Promotes experienced development team's strong track record in LIHTC and affordable housing development.

Responsible Growth – Supports use of land and resources in ways that enhance the long-term quality of life which contributes to a vibrant and resilient economy and maximizes existing infrastructure while preserving natural resources, giving priority to projects that reuse or capitalize areas within built-up lands, existing commercial properties, and brownfield sites.

Financing Characteristics – Demonstrates cost effectiveness through efficient use of Credits and other sources.

Readiness – Prioritizes developments that are ready to proceed to development in a timely manner.

#### D. 9% LIHTC Allocation Process

The Authority will allocate 9% Credits based upon the selection criteria and application ranking procedures set forth below:

1. Applications in the 9% round will be separated into two classifications: Public Housing and General.

2. Determine LIHTC eligibility based on the criteria in Section III. F. below.
3. Score applications based on the criteria in Section III. G.
4. Select the highest-scoring applications in Public Housing and General Classifications subject to adjustments for the federal non-profit set-aside. The Authority will, if necessary, skip over higher-scoring projects to fulfill the 10% non-profit requirement.

The Authority intends to distribute evenly the available Credits between the Public Housing and the General Classifications and may reallocate available Credits at its discretion.

Tie breakers: If two projects have equal scores, the Authority will use the following tie-breakers, in order:

1. Greatest percentage of low-income housing units
2. Highest scoring Responsible Growth score
3. Lowest Credits per qualified unit

The results of the evaluation and ranking will be determined at the sole discretion of the Authority.

#### **E. Application Classifications**

Applications for 9% Credits are grouped into one of three classifications for evaluation. The Public Housing and General Classifications are used for allocation within the competitive round.

Public Housing Classification – Preservation, rehabilitation or qualified new construction that is part of a comprehensive plan to replace and/or rehabilitate public housing units. This classification is limited to applications that address housing policy to revitalize housing developments that were financed and developed through Federal or State public housing programs. Among its purposes, the project must include but not be limited to integrating units into the community or region and encouraging economic integration.

General Classification - Projects that do not qualify for the Public Housing Classification, and which are not within the Exceptional Priorities Classification.

There is not a separate classification for projects involving qualified non-profit organizations. Credits will be allocated subject to satisfying the non-profit set-aside requirement stated in Section 42(h)(5) of the Code. Non-profit organizations must satisfy the following requirements in order to receive a non-profit designation:

1. The non-profit organization must commit to participating materially (within the meaning of Section 469(h) of the Code) in the development and operation of the project throughout the compliance period; and
2. The non-profit sponsor must be a qualified non-profit organization as defined in Section 42(h)(5)(C) of the Code.

The 9% round is for Public and General Classifications only, consideration for an Exception Priority will be given at times other than during a round.

Exceptional Priorities Classification - Projects must provide extraordinary public benefit including but not limited to development or redevelopment initiatives that demonstrate a high priority for special needs populations, meet a particular local housing, development, or redevelopment objective identified and supported by State law and demonstrates significant public benefits and priority due to a substantial specific commitment of federal or State funding or resources.

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Applicants must submit a complete application in accordance with the Plan in effect. Applications will be rated and must achieve a rating satisfactory to the Authority's Board of Directors. Applicants applying as Exceptional Priority may not apply during the 9% round and will not be ranked within or against any other Classifications.

If approved prior to the current year's 9% round, Exceptional Priorities may receive an award from the subsequent year's Credit availability, subject to Credit limitations. If approved after the current year's 9% round, Exceptional Priorities may receive an award from a future year's Credit availability. Awards exceeding Credit limitations may be allocated from multiple years.

#### **F. Application Criteria**

A completed CHFA/DECD Consolidated Application for Housing Development must be submitted by the published deadline. In addition, the following requirements must be met or evidenced:

1. All applications must meet at least one of the following criteria:
  - a. Located in Housing Incentive Zones as incentive housing development as defined by the Home Connecticut Statute Public Act 07-4 §38(7).
  - b. Growth Areas, Rural Community Centers, or Neighborhood Conservation Areas as defined in the current C&D Policies Plan.
  - c. New construction in Regional Centers is eligible if it is consistent with and part of a municipally approved plan to revitalize a specified location.
  - d. Located in Regional Centers, either to preserve existing affordable rental housing, redevelopment of, or adaptive reuse of an existing structure for use as rental housing.
  - e. Located in a Qualified Census Tract ("QCT") as defined by the most recent U.S. Census. This excludes new construction in Regional Centers.
  - f. Are part of and consistent with a municipally approved plan for a Neighborhood Revitalization Zone ("NRZ") which designates a specific targeted geographic area.
  - g. Are submitted for public housing development activity and are part of, and consistent with, the annual report as required by provisions of C.G.S. Section 8-68d.
2. All applications must also meet policy and administrative requirements of the Authority as follows:
  - a. The proposed development must be ready to proceed as documented by:
    - A credible financing plan as evidenced by letter(s) of commitment or other proof of serious intent on behalf of other sources of funds essential to the viability of the proposed project.
    - Projects proposing to carry amortizing debt, operating income must cover expenses including debt service during the compliance period (first 15 years of operation) and must not be supported by pre-funded reserves. Waivers to this requirement may be considered by the Board of Directors upon request for developments that meet an extraordinary public benefit through deep income targeting (less than 25% AMI). For the purposes of waiver consideration, an extraordinary public benefit would be for developments committing to deep income targeted for a percentage of total units greater than or equal to 40%.

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Waiver requests must include demonstration by the Applicant good faith efforts to secure rental subsidies from all available sources.

A committed source to cover operating reserves from an un-affiliated 3<sup>rd</sup> party which fully offsets the development budget expense for operating reserve shall not require a waiver.

- Evidence of site control.
  - Evidence of zoning approval.
  - Qualified development team in place, including architect, general contractor and management agent.
- b. Minimum rehabilitation expenditure (for rehabilitation projects) of \$15,000 per qualified unit.
  - c. Developments must meet Established Criteria in accordance with the Authority's current CHFA Standards of Design & Construction ("Standards") document.
  - d. The proposed applicant must commit to undertaking good faith efforts to hire or train very low-income persons in accordance with the Authority's Very Low-Income Construction Employment Policy (as approved 7/29/2010).
  - e. The sponsor of the project has, in the case of rehabilitated housing, provided a preliminary Capital Needs Assessment ("CNA") of the structure to be rehabilitated, in form and content consistent with the Standards.
  - f. Applications may not be filed by applicants who have failed to comply with the terms of any Extended Low-Income Housing Commitment ("ELIHC") for a project they previously sponsored or developed.
  - g. Each application within the Public Housing Classification will be required to provide a plan that assures meaningful resident participation in the planning and implementation process. (For additional information refer to the Application.)
  - h. The Authority's Board of Directors reserves the right to independently review proposals and not award Credits because of non-compliance with requirements of any adopted housing policy, standards, or objectives of the State in the following areas only:
    - Project characteristics enumerated in Sections III.F.2.c. and III.F.2.e. of the Criteria; and
    - Project location (the suitability of the project's site and location for the intended purpose), Housing Needs and Prioritization, as defined in the Plan; and project cost(s).

An allocation of Credits is conditioned upon a Credit reservation by the Authority's Board of Directors and the submission of a housing market study, in form and content consistent with the Authority's Market Study Guidelines, indicating sufficient demand for the housing to be developed.



**G. Scoring**

All applicants in the 9% round will be scored by the following criteria (100 points):

<b>1. Affordability Commitment (23 points)</b>
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**a. Service to Low-Income Households Below 25 Percent of Area Median Income (AMI)**

Service to Low-Income Households Below 25 Percent of Area Median Income (AMI)

Points will be awarded based on the percentage of units that serve households below 25 percent of AMI and provide rents pursuant to HUD guidelines adjusted for family size throughout the extended use period.

Percent of units	Points
≥25%	5
≥20% and <25%	4
≥15% and <20%	3
≥10% and <15%	2

**b. Service to Low-Income Households Between 25 and 50 Percent of Area Median Income (AMI)**

Points will be awarded based on the percentage of units that serve households between 25 and 50 percent of AMI and provides rents pursuant to HUD guidelines adjusted for family size throughout the extended use period.

Percent of units	Points
≥40%	5
≥30% and <40%	4
≥20% and <30%	3
≥10% and <20%	2

**c. Uses Project-Based Rental Assistance**

Project serves low-income households using project-based rental assistance (PBRA). The project must commit in the ELIHC to accept and renew PBRA as available throughout the term of the extended use period. If PBRA is no longer available, units revert to the 60% or 50% AMI restriction as stated in the ELIHC by the sponsor. Projects will receive points based on the percent of qualified units supported by PBRA.

Percent of LI units	Points
≥60%	4
≥45% and <60%	3
≥30% and <45%	2
≥15% and <30%	1

**d. Mixed Income Housing**

Projects that promote economic integration by creating mixed income housing will receive points based on the percent of non-qualified units (housing without income restrictions) included.

Percent of non-qualified units	Points
≥20%	4
≥10% and <20%	2

**e. Length of ELIHC**

Projects that commit to longer periods of affordability are preferred, as long as that commitment is sustainable. Points will be awarded for affordability periods totaling 40

Years of affordability	Points
≥50	5
≥40 and <50	2

years or more (compliance period plus extended use).

**2. Supportive Housing (6 points)**

Points will be awarded based on documentation of supportive services as defined in the Supportive Housing Quality Assurance Monitoring Program Guidelines of the LIHTC application. Funding for supportive services must be separate from property operations and documentation must be submitted evidencing funding commitments. If rental subsidy funding becomes unavailable, the designated supportive housing units may revert to 50% or 60% AMI units as stated in the ELIHC until new rental subsidy funding becomes available.

Points will be awarded based on the percentage of total units designated as supportive housing. Units designated for at-risk or chronically homeless, as defined in the guidelines, earn more points. Documentation on the Homeless Verification Form attached to the LIHTC application must be provided.

Projects earn more points for setting aside more than 20% of the total units and for housing specifically at-risk or chronically homeless residents

Percent of units	Supportive housing	For at-risk or chronically homeless
≥ 20%	3 points	6 points
≥ 10% and < 20%	1 points	2 points

**3. Enriched Features (6 points)**

Any project may earn points for the inclusion of enrichment features listed below:

Feature	Evidence required	Points
On-site education opportunities and employment opportunities for residents. (i.e. GED Program, parenting classes, etc.)	Property budget line item or evidence of arrangement with a third party provider specifying the funding source	1
Daycare facility on-site with State-certified, full-time staff.	Property budget line item or evidence of arrangement with a third party provider specifying the funding source	2
On-site resident services coordinator, working a minimum of 20 hours per week.	Property budget line item or evidence of arrangement with a third party provider specifying the funding source	1

Feature	Evidence required	Points
Community meeting space on-site with free internet, a minimum of two brand new computers and other planned resident activities. (i.e. Resident social event, exercise classes, health and wellness services, etc.)	Certification by the architect of on-site computer access.  And  Certification from the owner of a minimum of two brand new computers at the time of construction with free internet access and planned resident activities.	1
Job training opportunities in the building trades during development via an established State or local job training program or initiative.	Letter from the job training entity certifying existence and purpose of job training opportunities in the building trades during development via an established State or local job training program or initiative.	1

#### 4. Preservation (13 points)

##### a. Preserves At-Risk Affordable Housing

The rehabilitation project preserves existing occupied affordable housing that is at-risk of conversion to unregulated use (expiring use restrictions) and has identified rehabilitation needs. Properties must be at risk of conversion within 3 years of the LIHTC application due date. (Substantial or Moderate rehabilitation, as defined by the Standards).

Rehabilitation Level	Points
Substantial rehabilitation	6
Moderate rehabilitation	3

##### b. Production and Preservation of Units

The Authority prefers to produce more affordable housing units, as long as such production is appropriate to the site and the needs of the community.

Effect on unit count	Points
Resulting project will have 10% or more units than the development it replaces	4
No net loss of units	2
Reduction of units	0

##### c. Affordability Profile

Points will be awarded if the units after revitalization are affordable to current residents so that no permanent displacement of current residents is required for reasons of affordability (relocation plan required). 3 points

**5. Sponsorship Characteristics (9 points)**

**a. Experience of the General Partner**

The Authority will award points for demonstrated experience of the general partner (“GP”), either principal or entity, in successful LIHTC development(s) within and outside of the State, based on the scales below up to a maximum of 5 points combined for the number of projects and the years of LIHTC experience.

To count, projects must have a minimum 5 years of operation since being placed in service. Applicants claiming points for experience should include a list of developments, locations, and years placed in service.

Joint ventures are eligible. Co-GP or joint venture arrangements may combine experience, subject to the approval of the Authority.

**Number of Projects:** To use the scale, add the applicable points for projects in the State to those for projects outside the State. A maximum of 3 points are possible in this category.

Total projects in the State	Total projects outside the State	Points (max of 3 total)
≥ 6	≥ 8	3
≥ 4 and < 6	≥ 5 and < 8	2
≥ 2 and < 4	≥ 3 and < 5	1

Example A: GP has 2 projects in the State and 5 projects in other states for possible points of 1 + 2 = 3. Score would be 3.

Example B: GP has 4 projects in the State and 8 projects in other states for possible points of 2 + 3 = 5. Score would be the maximum 3.

**Number of Years Experience:** To use the scale, add the applicable points for years of ownership. A maximum of 2 points are possible in this category.

Total Years LIHTC Experience	Points
≥ 10	2
≥ 5 and < 10	1

**b. Experience of the Management Agent**

The Authority will award points for demonstrated experience of the management agent (principal or entity) in successful management of LIHTC properties within and outside of the State, based on the scale, up to a maximum of 2 points. To count, projects must have a minimum 5 years of operation since being placed in service.

Total projects in the State	Total projects outside the State	Points (max of 2 total)
≥ 5	≥ 8	2
≥ 1 and < 5	≥ 1 and < 8	1

Applicants claiming points for experience should include a list of developments, locations, and years placed in service.

Joint ventures are eligible. Joint venture arrangements may combine experience, subject to the approval of the Authority.

**c. Women and Minority Participation**

Women and/or minorities participate in the ownership, development, or management of the project by holding directly a 51 percent or more ownership and voting interest in project ownership, development entity or management firm. For qualified non-profits, women and/or minorities should hold directly a 51 percent voting interest on the board of directors. 1 point

**d. Connecticut-based Businesses**

Developer/sponsor is a State based organization whose principal place of business has been located in the State for a minimum of 3 years. 1 point

**6. Responsible Growth (18 points)**

Projects may earn points for the degree to which they are consistent with the C&D Policies Plan definition of Smart Growth and related energy efficiency goals as measured by the features in the table below.

<i>Feature</i>	<i>Description</i>	<i>Points</i>
Priority locations	Project is located in a Regional Center or a Qualified Census Tract.	4
High rent/low income Communities	Project is located in a community where average rent to income ratio is $\leq 85\%$ as defined in the most recent available Census or American Community Survey data.	2
Communities with comparatively less rental housing	Project is located in a community where $\geq 75\%$ owner occupied single family detached homes as defined in the most recent available Census or American Community Survey data.	2
Transit-Oriented Development or Neighborhood Conservation Area/Rural Community Center	“Transit Oriented Development” means the development of residential, commercial and employment centers within one-half mile from a train station or one-quarter mile from other public transportation facilities. (For additional information refer to the Glossary)  Project is in a Neighborhood Conservation Area or Rural Community Center. Note: for those developments not located in a transit oriented development.	2  1

Public Park or Community Recreation Center	Public park or community recreation center within ¼ mile.	1
Historic Place or Adaptive re-use	Renovation of a designated historic property.	2
	Renovation of any vacant or abandoned non-residential structure.	
Brownfield Development	Remediation of polluted site. (For additional information refer to the Glossary)	2
Renewable Energy/Low Impact Design	Provides either a Renewable Energy System which reduces utility grid impact or site drainage/storm water retention design which reduces impact on storm water systems as outlined in the Standards.	2
High-performance building envelope	Energy efficient design measures that limit heating and cooling loss as outlined in the Standards.	1

**7. Financing Characteristics (17 18 points)**

**a. Credits Per Unit/Bedroom**

Projects will be ranked by the lowest to highest Credits per Unit/Bedroom. Per-Unit Bedroom figures may be modified by the results of the Authority’s financial feasibility analysis. Points will be awarded based upon those ranks.

1st quartile	5 6 points
2nd quartile	2 3 points
Below 2nd quartile	0 points

**b. Developer/Sponsor Resources**

Points will be awarded based upon the percentage of Developer/Sponsor Resources to the project’s Total Development Resources.

≥10%	3 points
≥ 5% and <10%	2 points
< 5%	0 points

**c. Cost Effectiveness, Intermediary Costs**

Cost efficient designs and reasonable soft costs, such as developer’s fees and other professional fees are strongly encouraged. Two (2) points will be awarded to the top three projects per classification with the lowest percentage of Intermediary Costs. 2 points

**d. Cost Effectiveness, Hard Costs**

Points will be awarded for square foot costs that fall within an acceptable range as evaluated according to the Standards. Points may be awarded to an applicant’s

% Deviation	
≤3%	6 points
>3% and ≤7%	3 points

score based upon deviation from the Authority's anticipated construction square foot cost. (For additional information refer to the Standards.)	>7% and ≤9%	1 point
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**e. Municipal Resources**

Commitment(s) received from the municipality of financial resources in excess of 5% of Total Development Resources. These may be a non-debt contribution such as PILOT or tax abatement, block-grant funds administered by the municipality, or other funds from the municipality. 1 point

## 8. Readiness (7 points)

**a. 40% building plans and specifications**

Applications that submit building plans and specifications in excess of the minimum requirements may be awarded points as shown in the adjacent table.

Percent of building plans and specs	Points
≥ 90%	3 points
≥ 40% and < 90%	2 points

**b. Site Plan Approval**

Applicant demonstrates that it has obtained all site plan approval (i.e. inland/wetland and variances) and/or all permits other than construction permits. 1 point

**c. Equity investor preliminary commitment**

Project submits evidence that an equity investor has performed a detailed underwriting review, including a site visit, and has made a preliminary commitment to invest at a specified price. 3 points

## IV. PROJECTS FINANCED WITH TAX-EXEMPT BONDS

To the extent projects are financed with the proceeds of tax-exempt bonds subject to the annual volume cap limitation under Section 146 of the Code, such projects may receive Credits without receiving an allocation from the Authority. If fifty percent (50%) or more of the aggregate basis of a project (including land) is financed with the proceeds of such tax-exempt bonds, the entire project is eligible for Credits based on its qualified basis without receiving an allocation of Credits from the Authority. However, all credits for such projects must be determined by the Authority to have been consistent with the State's QAP, such consistency being determined by the following:

- A. Application Criteria: Tax-exempt bond financed projects must meet the application criteria set forth in Section III. F.
- B. Underwriting Criteria: Tax-exempt bond financed projects must also meet the underwriting criteria adopted from time to time by the State Bond Commission for

multifamily rental housing financed with bonds issued pursuant to an allocation of volume cap authority approved by the State Bond Commission.

C.

D. Credit Limitation: Tax-exempt bond financed projects are also subject to the limitation on the amount of Credits available to a project contained in Section 42(m)(2)(A) of the Code.

## **V. TAX CREDIT COMPLIANCE MONITORING**

### **A. Introduction**

Section 42(m)(1)(B)(iii) of the Code requires that a qualified allocation plan provide a procedure that the agency, or an agent or other private contractor of such agency (“Authorized Delegate”), will follow in monitoring for non-compliance with the provisions of the Code and in notifying the IRS of such non-compliance which the agency may become aware of.

The compliance monitoring process will determine if a project is in compliance with the requirements of the LIHTC pursuant to Section 1.42-5 of the Treasury Regulations. The Authority’s monitoring process is outlined in the LIHTC Manual (“Manual”), which can be downloaded from the Authorized Delegate’s website. For additional information, refer to the Manual. The Authority’s compliance monitoring requirements apply to all Credit projects including those financed with tax-exempt bonds.

In January 2007, the IRS published the LIHTC 8823 Guide for State Housing Credit Agencies. The Guide includes instructions for completing Form 8823 and guidelines for determining non-compliance and reporting dispositions. The purpose of the Guide is to standardize the treatment of non-compliance issues.

If an owner fails to comply with the requirements of the Code and the Regulations promulgated thereunder, the Authority will notify the IRS of such non-compliance by filing Form 8823. See Section V.F. below.

The owner and management agent must attend the Authority’s Tax Credit Compliance Monitoring Conference a minimum of six months prior to the date the first building of a project is expected to place in service. The owner/agent is required to contact the Authority in writing prior to such placed in service date to arrange a pre-occupancy meeting with the Authority. Form(s) 8609 may not be issued unless both the owner and agent attend this conference.

### **B. Management Experience**

The Authority must approve a prospective management agent prior to the reservation of Credits as required by Section III.F.3.

The management agent listed on the application must be retained by the ownership entity for at least two (2) years after the project completion, unless the agent is guilty of specific non-performance of duties. Owners must notify the Authority in writing regarding any subsequent change in management. The management agent must have five years of relevant experience



and a minimum of one staff person assigned to the property that has tax credit compliance monitoring experience and is certified in tax credit compliance monitoring. Such certification must be from an organization acceptable to the Authority. In lieu thereof, the owner must retain a tax credit compliance monitoring consultant prior to the start of rent-up and extending through completion of the first year of the Credit Period. Such consultant must be acceptable to the Authority. Thereafter, the owner may assign a staff person that satisfies the above criteria.

### **C. Recordkeeping, Retention and Inspection**

#### **1. Recordkeeping.**

The owner of a LIHTC project must keep records for each qualified LIHTC building in the project for each year of the 15-year compliance period and the extended use period. These records must include:

- a. the total number of residential rental units in the building (including the number of bedrooms and square footage of each residential rental unit);
- b. the percentage of LIHTC units in the building;
- c. the rent charged for each residential rental unit in the building (including any utility allowances);
- d. the number of occupants in each LIHTC unit, but only if rent is determined by the number of occupants in each unit under Section 42(g)(2) of the Code (as in effect before the amendments made by the Revenue Reconciliation Act of 1989);
- e. the LIHTC unit vacancies in the building and information that shows when, and to whom, the next available units are rented;
- f. the annual income certification of each LIHTC tenant per unit;
- g. documentation to support each LIHTC tenant's income certification

[Please Note: Tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 ("Section 8"), not in accordance with the determination of gross income for federal income tax liability. Accordingly, in the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under Section 42(g) of the Code.];

- h. the eligible basis and qualified basis of the building at the end of the first year of the credit period; and
- i. the character and use of the non-residential portion of the building included in the building's eligible basis under Section 42(d) of the Code (for example, tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged, or facilities reasonably required by the project).

#### **2. Record Retention.**

The owner of a LIHTC project shall retain the records required in Section V.C.1. of this section for each building in a qualified LIHTC project for at least six years after the due date (with extensions) for filing the Federal income tax return for that year. The original records for the first year of the credit period must be retained for at least six years beyond the due date (with

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extensions) (21 years) for filing the Federal income tax return for the last year of the compliance period of the building. Duplicate copies of first year files should be kept at an accessible and secure off-site location. Copies may be scanned, retained in a PDF file or recorded on a Compact Disc.

### 3. Inspection Record Retention Provision

The owner of a LIHTC project must retain the original local health, safety, or building code violation reports or notices that were issued by the State or local government unit for the Authority's inspection and submit copies with the annual certification. Retention of the original violation reports or notices is not required once the Authority reviews the violation reports or notices and completes its inspection, unless the violation remains uncorrected.

## D. Certification and Review

### 1. Certification

At least annually, for the entire 15-year compliance period and the extended use period, the owner of a LIHTC project shall certify under penalty of perjury that, for the preceding twelve (12) month period, the project met the requirements of either:

- a. the 20-50 test under Section 42(g)(1)(A) of the Code; or
- b. the 40-60 test under Section 42(g)(1)(B) of the Code; and
- c. if applicable, the 15-40 test under Sections 42(g)(4) and 142(d)(4)(B) of the Code for "deep rent-skewed" projects.

2. In addition, at least annually, for the entire 15-year compliance period and the extended use period, the owner of a LIHTC project shall certify under penalty of perjury that:

- a. there was no change in the applicable fraction, as defined in Section 42(c)(1)(B) of the Code, of any building in the project or that there was a change, a description of that change;
- b. the owner has received an annual LIHTC certification from each LIHTC tenant and documentation to support that certification; or in the case of a tenant receiving Section 8 housing assistance payments, the appropriate statement from a public housing authority as defined hereinafter;
- c. each LIHTC unit in the project is rent restricted under Section 42(g)(2) of the Code;
- d. all units in the project were for use by the general public, including the requirement that no finding of discrimination under the Fair Housing Act occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of the Department of Housing and Urban Development ("HUD"), an adverse final decision by a substantially equivalent state or local fair housing agency, or an adverse judgment from a federal court;
- e. the buildings and LIHTC units in the project were suitable for occupancy, taking into account Uniform Physical Condition Standards ("UPCS"), 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 violation report for any building or LIHTC unit in the project. If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing

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the violation report or notice or a copy of the violation report or notice to the annual certification submitted to the Authority. In addition, the owner must state whether the violation has been corrected;

- f. there has been no change in the eligible basis (as defined in Section 42(d) of the Code) of any building in the project, or that there has been a change, and the nature of the change;
- g. all tenant facilities included in the eligible basis under Section 42(d) of the Code of any building in the project, such as swimming pools, other recreational facilities, and parking areas, are provided on a comparable basis without charge to all tenants in the building;
- h. if a LIHTC unit in the project becomes vacant during the year, reasonable attempts are made to rent that unit to tenants having a qualifying income and, while the unit is vacant, no units of comparable or smaller size are rented to tenants not having a qualifying income;
- i. if the income of tenants of a LIHTC unit in the project increases above the limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size in the project will be rented to tenants having a qualifying income;
- j. an ELIHC as described in Section 42(h)(6) of the Code was in effect, including the requirement that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8.

Note: This requirement applies to buildings that have received allocations of Credits in 1990 and later years;

- k. all LIHTC 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));
- l. the owner received its credit allocation from the portion of the State ceiling set-aside for a project involving "qualified non-profit organizations" under Section 42(h)(5) of the Code, and its non-profit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code (if applicable);
- m. there has been no change in the ownership or management of the project;
- n. the owner complies with IRS Revenue Ruling 2004-82, which at Question and Answer 5, states that Internal Revenue Code ("IRC") Section 42(h)(6)(B)(i) requires that an ELIHC include a prohibition during the extended use period against 1) the eviction or termination of tenancy (other than for good cause) of an existing tenant of any LIHTC unit (no-cause eviction protection) and 2) any increase in the gross rent with respect to the unit not otherwise permitted under Section 42;
- o. the person responsible for Credit compliance of the property has completed a continuing education course during the last two years. Such course must be acceptable to the Authority. A copy of the certificate of continuing education must be included with the Owner's Certificate of Annual LIHTC Program Compliance.

Note: The certifications made in and required by Section V.D. A shall be provided on Authority forms.

### 3. Review

- a. The owner of a LIHTC project shall also submit the following:

- The owners of all LIHTC projects must submit to the Authority information on tenant income and rent for each unit in the form and manner designated by the Authority.
  - The owner of a LIHTC project must submit completed IRS Form 8609 (with Parts I and II completed) to the Authority for every building in the project for the first year of the compliance period. For every year of the compliance period thereafter, the owner must submit to the Authority IRS Forms 8609-A for every building and Form 8586 for the property.
  - The owner of a LIHTC project must submit to the Authority a copy of the Annual Financial Statement (“AFS”) for the project no later than April 1. A copy of the AFS submitted to a lender, syndicator or investor is acceptable.
- b. The Authority will review annually all certifications submitted by the owner and may review such other certifications and supporting documentation and rent records of LIHTC tenants or perform an inspection thereof as may be necessary or appropriate in the sole discretion of the Authority to determine compliance with the requirements of Section 42 of the Code.
- c. The Authority will update housing credit income and rent limits and make them available to development sponsors and managers annually.
- d. With respect to each LIHTC housing project:
- the Authority may conduct inspections and file reviews any time from the beginning of construction through the Placed in Service date (“PIS”) or execution of IRS Form 8609 in order to confirm compliance with the terms of the Carry-Over Allocation Agreement and Section 42 of the Code, 1.42 of the Regulations and the Manual.
  - the Authority will conduct on-site inspections of all buildings in the project by the end of the second calendar year following the year the last building in the project is placed in service and, for at least 20 percent (or a minimum of three (3)) of the project’s LIHTC units, inspect the units and review the LIHTC certifications, the documentation supporting the certifications, and the rent records for the tenants in those units;
  - at least once every three years, the Authority will conduct on-site inspections of all buildings in the project and, for at least 20 percent (or a minimum of three (3)) of the project’s LIHTC units, inspect the units and review the LIHTC certifications, the documentation supporting the certifications, and the rent records for the tenants in those units;
  - the Authority will randomly select which LIHTC units and tenant records are to be inspected and reviewed by the Authority. The review of tenant records may be undertaken wherever the owner maintains or stores the records (either on-site or off-site). The units and tenant records to be inspected and reviewed will be chosen in a manner that will not give owners of LIHTC projects advance notice that a unit and tenant records for a particular year will or will not be inspected and reviewed. However, the Authority may give an owner reasonable notice that an inspection of the building and LIHTC units or tenant record review will occur so that the owner may notify all tenants of the inspection or assemble tenant records for review; and

- On-site inspections of buildings and LIHTC units will include a review of any local health, safety, or building code violations reports or notices required to be 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, as determined by the Authority, the UPCS for public housing established by HUD (24 CFR 5.703) or other standards made applicable by the Treasury Regulations.

e. Special Rules:

- The Review provisions required in Section V D.3.d. do not apply to the following exempted buildings:
  - buildings financed by the Rural Housing Service (RHS) under its Section 515 program; and
  - buildings of which 50 percent or more of the aggregate basis (taking into account the building and the land) is financed with the proceeds of tax-exempt obligations issued under Section 103 of the Code.
- In order for these buildings to be exempt, the Authority must have entered into an agreement with RHS or the tax-exempt bond issuer. Under this agreement the RHS or tax-exempt bond issuer must agree to provide information on income, assets and rent of the tenants in the building to the Authority. The Authority will review the information and determine that the income limitation and rent restriction of Section 42(g)(1) and (2) of the Code are met.

The Authority reserves the right, at its sole discretion, to make inspections and require additional reports of exempted projects that it deems necessary to ensure compliance with the LIHTC throughout the compliance period.

[Please Note: Owners must contact the Authority and inquire as to whether the agreement contemplated herein is in effect.]

- Notwithstanding anything to the contrary, the owner of any exempted buildings must:
  - certify to the Authority that the building complies with the requirements for RHS assistance or tax-exempt bond financing, as applicable;
  - make the certifications required by Section V. D. above; and
  - provide the Authority with additional information where, in the sole discretion of the Authority, the information submitted by RHS or the issuer is not sufficient.

- f. The Authority will report its compliance monitoring activities annually on Form 8610: "Annual Low-Income Housing Credit Agencies Report."

## E. Inspection Provisions

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The Authority has the right, to perform an on-site inspection of any low income housing project during any year of the compliance period or extended use period, as defined under Section 42(h)(6)(D) of the Code, for each building in the project.

## **F. Notification of Non-Compliance**

### 1. In General

The Authority shall give both the owner of the LIHTC project and the IRS the notices described in Section V.F.2.

### 2. Notice Provisions

- a. Notice to Owner. The Authority shall provide the owner of a LIHTC project with prompt written notice if the Authority fails to receive the certifications described in Section V.D. above or does not receive or is not permitted to inspect the tenant certifications, supporting documentation and rent records or discovers by inspection, review, or in some other manner, that the project is not in compliance with the provisions of Section 42 of the Code.
- b. Notice to IRS. Whether or not the non-compliance or failure to certify is corrected, the Authority will file with the IRS, Form 8823, "Low-Income Housing Credit Agencies Report of Non-Compliance," no later than 45 days after the end of the correction period, including permitted extensions.

### 3. Correction Period

- a. In General. The owners of LIHTC projects shall have 30 days from the date of the notice to supply any missing certifications and bring the project into compliance with the provisions of Section 42 of the Code.
- b. Extensions
  - The correction period may be extended, in the sole discretion of the Authority, for up to an additional 60 days upon the written appeal of the owner (received on or before the expiration of the 30-day period described in Section C.1) requesting such an extension, if the Authority determines, in its sole opinion, that:
    - the owner is making a good faith effort to provide the missing information and/or bring the project into compliance with the provisions of Section 42 of the Code; and
    - such additional time is necessary for such purposes.
  - The Authority may thereafter extend the correction period for up to six (6) months, but only if the Authority determines, in its sole and exclusive discretion, that there is good cause for granting the extension.

### 4. Additional Review Policy

- Section 1.42-5(e)(3) of the LIHTC Compliance Regulations states that if non-compliance or failure to certify is corrected within three (3) years after the end of the correction period, the HCA is required to file Form 8823 with the Service reporting the correction of the non-compliance or failure to certify.
- Requests to correct non-compliance after the end of the Correction Period described in Section C, will be processed under the Authority's Additional Review Policy.

- An Additional Review is defined as that process required when an owner submits information to the Authority or its Authorized Delegate past the deadline imposed in Section 1.42-5 (e) (4) of the Compliance Regulations and in the Authorized Delegate's 'Forwarding of Non-Compliance Letter' and after submission of IRS Form 8823 (Low-Income Housing Credit Agencies Report of Non-Compliance) by the Authority to the IRS.
- The Authorized Delegate will charge the owner a fee, as determined by the Authority's Board of Directors, in order to process an Additional Review request. The current fee of \$225.00 is based on a minimum of three (3) hours work. Any time beyond the initial three (3) hours will be billed at \$75.00 per hour. The fee is subject to adjustment annually by the Authority's Board of Directors.
- Upon receipt of information that corrects previously reported continuing non-compliance and, upon payment in full for the review, an amended Form 8823 will be submitted to the Authority for execution and forwarding to the IRS. The owner will receive a copy of Form 8823 submitted to the IRS.

#### **G. Authority Retention of Records**

1. The Authority will retain records of non-compliance or failure to certify for six (6) years after the Authority's filing of the applicable Form 8823.
2. The Authority will retain certifications and records, in all other cases, for three years from the end of the calendar year the Authority receives the certifications and records.

#### **H. Annual Certification Requirements for 100% LIHTC & Tax Exempt Bond Projects**

The Authority has adopted a modified waiver of annual certification for housing credit and tax exempt bond projects that are 100% low-income. The policy is articulated in the Manual located at [www.spectrumlihtc.com](http://www.spectrumlihtc.com).

#### **I. ELIHC Compliance Monitoring Policy (Post Year 15)**

Section 42 (h)(6)(A) of the Code requires that a Housing Credit Agency and owner enter into an ELIHC, that will promote extended or long term use of LIHTC properties. An ELIHC has the legal status of a restrictive covenant, is recorded in the land records of the State and runs with the property.

The ELIHC requires owners receiving Credits in 1990 or later years to continue to maintain the LIHTC occupancy of their projects for a minimum of an additional 15 years beyond the end of the tax credit compliance period. Failure to comply with the provisions of the ELIHC is an event of default and the Authority or its successors may exercise any of the remedies available in the ELIHC and any other applicable agreements.

Furthermore, the Authority may seek specific performance of the ELIHC by the owner or any successor in interest thereto, without declaring an event of default and without waiving any remedies of the ELIHC, by filing an action any court of competent jurisdiction in the State.

Therefore, the Authority will establish a Post Year-15 Policy regarding how properties will be monitored and the consequences for non-compliance during the ELIHC. The Authority will advise owners and management agents of the Post Year-15 ELIHC monitoring requirements once the policy is approved and adopted.

**J. Liability & Delegation**

1. Compliance with the requirements of Section 42 of the Code is the responsibility of the owner of the building for which the Credits were allocated. The Authority's obligation to monitor for compliance with the requirements of Section 42 of the Code does not make the Authority liable for an owner's non-compliance.

2. The Authority may choose to delegate all or a portion of its compliance monitoring responsibilities to an agent or other private contractor Authorized Delegate. This option, if chosen, does not relieve the Authority of its obligation to notify the IRS of non-compliance. The Authority may also delegate some or all of its compliance monitoring responsibilities to another state agency. This delegation may include the responsibility of notifying the IRS of non-compliance.