

TITLE 47: HOUSING AND COMMUNITY DEVELOPMENT
CHAPTER II: ILLINOIS HOUSING DEVELOPMENT AUTHORITY

PART 355
ILLINOIS AFFORDABLE HOUSING TAX CREDIT PROGRAM

SUBPART A: GENERAL RULES

Section	
355.101	Authority
355.102	Purpose and Objectives
355.103	Definitions
355.104	Compliance with Federal Law
355.105	Forms and Procedures for the Program
355.106	Fees and Charges
355.107	Amendment
355.108	Severability
355.109	Gender and Number
355.110	Titles and Captions

SUBPART B: AFFORDABLE HOUSING TAX CREDIT ALLOCATIONS

Section	
355.201	Authority to Allocate Affordable Housing Tax Credits
355.202	Transfer of Agency Affordable Housing Tax Credit Ceiling
355.203	Application Process
355.204	Agency Review
355.205	Approval or Rejection by Agency
355.206	Sponsor Participation
355.207	Regulatory Agreement for Rental Projects
355.208	Project Documentation and Certification
355.209	Affordable Housing Tax Credit Allocation
355.210	Recapture of Affordable Housing Tax Credits
355.211	Rescission of Reservation of Affordable Housing Tax Credits

SUBPART C: DONATIONS

Section	
355.301	Acceptable Types of Donations
355.302	Aggregation of Donations
355.303	Minimum Donation Amount
355.304	Cash
355.305	Securities

- 355.306 Real Property
- 355.307 Personal Property
- 355.308 Limitation on Donations
- 355.309 Transfer of Affordable Housing Tax Credits
- 355.310 Material Participation of Sponsor
- 355.311 Donations from State and Local Governments

SUBPART D: PROJECTS

Section

- 355.401 Single Family Project Requirements
- 355.402 Down Payment and Closing Cost Assistance (Repealed)
- 355.403 Employer-Assisted Housing Projects
- 355.404 Recapture Agreement
- 355.405 Multifamily Housing Projects
- 355.406 Set-Aside for Technical Assistance and General Operating Support
- 355.407 Limitations on Amount of Technical Assistance and General Operating Support
- 355.408 Technical Assistance – Home Ownership Counseling

SUBPART E: COMPLIANCE MONITORING

- 355.501 Compliance Monitoring
- 355.502 Monitoring Fees
- 355.503 Books and Records
- 355.504 Furnishing Information

SUBPART F: REPORTS

- 355.601 Agency Reports

AUTHORITY: Section 7.28 of the Illinois Housing Development Act [20 ILCS 3805/7.28].

SOURCE: Adopted by emergency rulemaking at 25 Ill. Reg. 15636, effective November 29, 2001, for a maximum of 150 days; adopted at 26 Ill. Reg. 5902, effective April 15, 2002; emergency amendment at 26 Ill. Reg. 7325, effective April 26, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 13220, effective August 20, 2002; emergency amendment at 27 Ill. Reg. 5033, effective March 10, 2003, for a maximum of 150 days; emergency expired August 6, 2003; amended at 27 Ill. Reg. 14310, effective August 21, 2003; amended at 31 Ill. Reg. 5797, effective March 30, 2007; emergency amendment at 34 Ill. Reg. 6521, effective April 21, 2010, for a maximum of 150 days; emergency expired September 17, 2010; amended at 34 Ill. Reg. 15822, effective September 28, 2010.

SUBPART A: GENERAL RULES

Section 355.101 Authority

This Part is established to set forth the standards for the allocation of Affordable Housing Tax Credits by the Illinois Housing Development Authority under Section 7.28 of the Illinois Housing Development Act [20 ILCS 3805/7.28] in connection with the acquisition, construction, rehabilitation and financing of, or the provision of financing assistance for, affordable housing.

Section 355.102 Purpose and Objectives

This Part is established to accomplish the purposes of Section 7.28 of the Illinois Housing Development Act and Section 214 of the Illinois Income Tax Act [35 ILCS 5/214], and in particular the awarding of Affordable Housing Tax Credits.

(Source: Amended at 27 Ill. Reg. 14310, effective August 21, 2003)

Section 355.103 Definitions

As used in this Part, the following words or terms mean:

"Act": The Illinois Housing Development Act [20 ILCS 3805].

"Affordable Housing Project": A housing project that is either:

a rental project in which at least 25% of the Units that have rents (including tenant-paid heat) that do not exceed, on a monthly basis, 30% of the gross monthly income of a Household earning the maximum income for a Low-Income Household in the geographical area in which the Affordable Housing Project is located and that are occupied by persons and families who qualify as Low-Income Households; or

a Unit for sale to Low-Income Households and who will pay no more than 30% of their gross household income for mortgage principal, interest, property taxes, and property insurance upon the purchase of the Unit.

An Agency may consider a Project to be a rental project even when a tenant does not pay rent if a rental subsidy is received by the Project or tenant.

"Affordable Housing Restrictions": The income and occupancy restrictions for an Affordable Housing Project or an Employer-Assisted Housing Project required by Section 7.28 and this Part, or those set forth in the Application for the Affordable Housing Project or the Employer-Assisted Housing Project, whichever are more stringent.

"Affordable Housing Tax Credits": Affordable Housing Tax Credits, as authorized by Section 7.28 of the Act and Section 214 of the Illinois Income Tax Act [35 ILCS 5/214].

"Affordable Housing Tax Credit Ceiling": The aggregate amount of Affordable Housing Tax Credits available for Allocation in a State fiscal year.

"Agency": The Authority, the City of Chicago or any other municipality that may subsequently be designated by law as an agency for the Allocation of Affordable Housing Tax Credits.

"Agency Affordable Housing Tax Credit Ceiling": That portion of the Affordable Housing Tax Credit Ceiling that is available for Allocation by an Agency. That amount is 24.5% of the Affordable Housing Tax Credit Ceiling for the City of Chicago, and 75.5% of the Affordable Housing Tax Credit Ceiling for the Authority.

"Agency Head": The Executive Director of the Authority or the Housing Commissioner of the City of Chicago.

"Allocation": An award by an Agency of Affordable Housing Tax Credits in connection with a Project.

"Applicant": The Sponsor (and any other affiliated entities) applying for an Allocation.

"Application": An application to an Agency for a Reservation and an Allocation submitted by an Applicant, including the required supporting documentation.

"Authority": The Illinois Housing Development Authority.

"Certificate": The certificate issued by an Agency evidencing an Allocation. The Certificate shall be issued and delivered to the Donor unless otherwise directed by the Donor pursuant to Section 309 of this Part and shall state the effective date of the Allocation.

"Compliance Period": The period during which a Project is obligated to comply with the Affordable Housing Restrictions, as set forth in the Application. The Compliance Period for an Affordable Housing Project shall be a minimum of 10 years from the date of the issuance of the certificate of occupancy from the municipality in which the Affordable Housing Project is located (or the like, as acceptable to the Agency in its discretion, for Affordable Housing Projects that

are rehabilitated and when the municipality does not re-issue a certificate of occupancy). The Compliance Period for a Single Family Project or an Employer-Assisted Housing Project in which a Sponsor provides construction subsidies, down payment and closing cost assistance or homeownership counseling to Low-Income Households or, for Employer-Assisted Housing Projects, Moderate-Income Households purchasing a Single Family Residence shall be 5 years from the date of the closing of the purchase of the Single Family Residence. The Compliance Period in connection with the purchase of a Single Family Residence may be reduced as provided in Section 355.404 of this Part.

"Donation": Money, securities, real property, or personal property that is provided without consideration to a Sponsor and that is used for:

costs associated with purchasing, rehabilitating, constructing, or providing or obtaining financing for an Affordable Housing Project, including fees for attorneys, architects, accountants, surveyors and appraisers;

Technical Assistance; or

General Operating Support of the Sponsor; or

an Employer-Assisted Housing Project.

"Donor": An individual or entity, other than the Federal government, the State government, any local municipality or any agency, board commission, corporation or authority of the Federal government, the State government or any local government, except as provided in Section 355.311 of this Part, making a Donation. For purposes of this definition and related provisions of this Part, any school district within the State of Illinois will not be deemed to be a local municipality or agency, board, commission, corporation or authority or the Federal government, the State government or any local government.

"Employer-Assisted Housing Project": A project that involves Donations made to a Sponsor that are used for down payment and closing cost assistance, reduced-interest mortgages, mortgage guarantee programs, rental subsidies, or individual development account savings plans that are:

provided by the Sponsor to the employers' employees to assist them to secure housing near the employer's work place; and

restricted to housing near such work place; and

restricted to employees who qualify as Moderate-Income Households.

"General Operating Support": Any cost incurred by a Sponsor, directly or indirectly, in connection with an Affordable Housing Project or an Employer-Assisted Housing Project. Such costs may include a proportionate amount of the general overhead expenses of the Sponsor.

"Gross Household Income": The total annualized income of a Household from whatever source derived and before taxes or withholdings.

"Household": A single person, family or unrelated persons living together.

"Initial Closing Date": The date by which the Agency has determined that the Sponsor and the Project have met all legal requirements of the Program. As applicable to Projects, an Agency may consider whether the Sponsor and the Project have satisfied the requirements of any other funding sources for the Project.

"Low-Income Household": A Household whose adjusted income is less than or equal to 60% of the median income of the geographical area of the Household's prospective residence, adjusted for family size, as such adjusted income and median income for the geographical area are determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937 (42 USC 1437).

"Material Participation": An individual or entity that provides personal services to tenants or prospective tenants of a Multifamily Housing Project or rental Single Family Project, or professional services to a Multifamily Housing Project, on a regular, continuous, and substantial basis for more than 300 hours during each year during the Compliance Period. The requirement for Material Participation, as established in Sections 355.206 and 355.310 of this Part, will be satisfied if the Sponsor is the owner, or holds a controlling interest in the entity that is the owner, of the Project; or is the managing general partner, or holds a controlling interest in the entity that is the managing general partner, of a limited partnership that is the owner of the Project; or is the managing member, or holds a controlling interest in the entity that is the managing member, of the limited liability company that is the owner of the Project.

"Members": The Members of the Authority.

"Moderate-Income Household": A Household whose adjusted income is less than 120% of the median income of the geographical area of the Household's Employer-Assisted Housing Project, adjusted for family size, as such adjusted income and median income for the geographical area are determined from time to

time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937 (42 USC 1437).

"Multifamily Housing Project": An Affordable Housing Project comprised of one or more buildings (other than Single Family Residences) containing an aggregate of five or more rental Units.

"Program": The Illinois Affordable Housing Tax Credit Program.

"Project": An Affordable Housing Project, Employer-Assisted Housing Project, or Technical Assistance.

"Recapture Agreement": The Recapture Agreement to be recorded against a Single Family Residence in connection with a Very Low-Income, Low-Income or, for Employer-Assisted Housing Projects, Moderate-Income Household's purchase of the Single Family Residence.

"Regulatory Agreement": The Illinois Affordable Housing Tax Credit Regulatory Agreement to be recorded against rental Affordable Housing Projects and Employer-Assisted Housing Projects, as applicable.

"Reservation": An Agency's conditional reservation of Affordable Housing Tax Credits for a Sponsor, as may be amended from time to time. A Reservation shall be valid for a period no longer than 12 months from the date of the Reservation Letter unless extended pursuant to Section 355.205(d) of this Part.

"Reservation Letter": The letter from an Agency to a Sponsor conditionally reserving Affordable Housing Tax Credits.

"Section 7.28": Section 7.28 of the Act.

"Single Family Project": An Affordable Housing Project consisting of:

the construction of Single Family Residences; or

the rehabilitation of a 2, 3, or 4 Unit building; upon completion of rehabilitation, the Units are sold or rented; or

the rehabilitation of Single Family Residences, which are then sold or rented; or

the rehabilitation of buildings containing more than 4 Units; upon completion of rehabilitation, the Units are sold as condominiums; or

the financing of Single Family Residences using junior mortgages with a below market interest rate; or

construction subsidies to lower the purchase price of Single Family Residences; or

down payment and closing cost assistance.

"Single Family Residence": A house, condominium, townhouse or other residence used for occupancy by a single Household as its primary residence.

"Sponsor": A not-for-profit organization that is:

organized under the laws of this State or any other state and:

for an Affordable Housing Project, has as one of its purposes the development of affordable housing; or

for an Employer-Assisted Housing Project or Technical Assistance, has as one of its purposes either the development of affordable housing or home ownership education; or

organized for the purpose of constructing or rehabilitating affordable housing Units and has been issued a ruling from the Internal Revenue Service of the United States Department of the Treasury that the organization is exempt from income taxation under provisions of the Internal Revenue Code; or

an organization designated as a community development corporation by the United States Government under Title VII of the Economic Opportunity Act of 1964; or

a limited liability company that has a not-for-profit organization as its sole member.

"State": The State of Illinois.

"Technical Assistance": Any cost incurred by a Sponsor for:

planning for a Project; or

assistance with an Application; or

homeownership counseling services provided to prospective purchasers of a Single Family Residence in connection with a Single Family Project or an Employer-Assisted Housing Project.

"Unit": A housing unit contained in an Affordable Housing Project, a Multifamily Housing Project, a Single Family Project, or a Single Family Residence; housing units intended as dormitories, hotels, or transitional or temporary housing do not qualify as Units.

"Very Low-Income Household": A Household whose adjusted income is less than or equal to 50% of the median income of the geographical area of the Household's prospective residence, adjusted for family size, as such adjusted income and median income for the geographical area are determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937 (42 USC 1437).

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

Section 355.104 Compliance with Federal Law

Notwithstanding anything in this Part to the contrary, this Part shall be construed in conformity and compliance with applicable federal law.

Section 355.105 Forms and Procedures for the Program

An Agency may prepare, use, supplement, and amend forms, agreements, and other documents and procedures as may be necessary to implement the Program, all as may be prescribed by the Agency Head.

Section 355.106 Fees and Charges

In connection with an Application, an Agency may collect a fee from the Applicant in an amount not to exceed \$2,500, payable when the Application is submitted. In connection with a Reservation, an Agency may collect a fee from the Applicant in an amount not to exceed 5% of the Reservation, payable by the due date specified in the Reservation Letter. The Agency may assess a modification fee for changes in the Sponsor or owner, the name of the Sponsor or owner or the characteristics of a Project, such as unit type, distribution or population to be served in an amount not to exceed \$1,500, payable when the request for a modification is submitted. An Agency may assess a fee in connection with an extension of time to obtain a Donation, in accordance with Section 355.205 of this Part, in an amount not to exceed \$1,500, payable when the request for an extension is submitted. An Agency may assess a fee in connection with a request to increase the amount of the Affordable Housing Tax Credits in an amount not to exceed

\$1,500, payable when the request for an extension is submitted, plus an amount not to exceed 5% of the Reservation associated with the increase in the amount of Affordable Housing Tax Credits, payable by the due date specified in the Reservation Letter. An Agency may assess an annual compliance fee in amounts not to exceed: \$125 for Projects containing one to 10 affordable Units per year; \$250 for Projects containing 11 to 19 affordable Units per year; and \$20 per affordable Unit per year for Projects containing 20 or more affordable Units per year. All compliance fees are payable as determined by the Agency. Applicants and Sponsors shall pay an Agency in advance for expenses related to any third party studies, including but not limited to appraisals, in connection with an Application for Affordable Housing Tax Credits.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

Section 355.107 Amendment

This Part may be supplemented, amended, or repealed by the Members from time to time and in such manner as they may determine consistent with this Part, the Act, including but not limited to Section 7.28 of the Act, Section 214 of the Illinois Income Tax Act [35 ILCS 5/214] and other applicable provisions of law. This Part shall not constitute or create any contractual rights.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

Section 355.108 Severability

If any clause, sentence, paragraph, subsection, Section, or Subpart of this Part is adjudged by any court of competent jurisdiction to be invalid, that judgment shall not affect, impair, or invalidate the remainder of this Part, but shall be confined in its operation to the clause, sentence, paragraph, subsection, Section, or Subpart as to which that judgment is rendered.

Section 355.109 Gender and Number

All terms used in any one gender or number shall be construed to include any other gender or number as the context may require.

Section 355.110 Titles and Captions

Titles and captions of Subparts, Sections, and subsections are used for convenience and reference and are not a part of the text.

SUBPART B: AFFORDABLE HOUSING TAX CREDIT ALLOCATIONS

Section 355.201 Authority to Allocate Affordable Housing Tax Credits

For any State fiscal year, an Agency may reserve and/or allocate Affordable Housing Tax

Credits in an amount not to exceed the Agency Affordable Housing Tax Credit Ceiling. Any Affordable Housing Tax Credits in the Agency Affordable Housing Tax Credit Ceiling that are not reserved or allocated during that State fiscal year shall expire and shall not be reserved or allocated in any succeeding State fiscal year.

Section 355.202 Transfer of Agency Affordable Housing Tax Credit Ceiling

After March 1 of a State fiscal year, an Agency may transfer all or a portion of its Agency Affordable Housing Tax Credit Ceiling for that State fiscal year to another Agency.

Section 355.203 Application Process

A Sponsor may apply for an Allocation by submitting an Application on forms prescribed by an Agency that may require the following information:

- a) The name and location of the proposed Project;
- b) The name, address and telephone number of the Sponsor and the proposed owners of the Project, and, if known and applicable, the attorney, accountant, architect, general contractor and consultant for the Project;
- c) A copy of the Sponsor's current Articles of Incorporation, certified by the Secretary of State or equivalent official of the state of incorporation;
- d) A history of the Sponsor's experience in developing affordable housing;
- e) A complete description of the proposed Project, including but not limited to the site, the number and type of Units or Single Family Residences and, if applicable, a rent schedule for the Project, and identifying any proposed tenant or homeownership populations with special housing needs;
- f) The amount of the proposed financing for the Project, including letters of interest or commitments from prospective lenders;
- g) The type of, amount of and nature of the Donation or proposed or anticipated Donation, including the legal and financial interests of the Sponsor, seller, buyer and developer entities in the Donation transaction and a description of the flow of funds into the Project, including any financing provided by the Sponsor, if applicable;
- h) For a Multifamily Housing Project or a rental Single Family Project, the percentage of Units to be reserved for Low-Income Households and Very Low-Income Households;

- i) The estimated total cost of the proposed Project, including, as applicable, the cost of land acquisition, the cost of construction, the amount of projected reserves, architects' fees, attorneys' fees, accountant's fees, surveyor's fees, title insurance and all other costs associated with the Project;
- j) A schedule for the proposed Project showing the anticipated Initial Closing Date and the anticipated date of completion;
- k) The amount of General Operating Support requested, if any, and the purposes for which it will be used;
- l) The amount of Technical Assistance requested, if any, and the purposes for which it will be used;
- m) The amount of Affordable Housing Tax Credits requested;
- n) A certification from the Sponsor to the Agency that all information contained in the Application and all accompanying information is true, accurate, and complete, to the best of the Sponsor's knowledge;
- o) If a Donation has occurred, a notarized affidavit from the Donor acknowledging the Donation to the Sponsor or such other documentation evidencing the Donor's knowledge of the making of a Donation and eligibility for receipt of a Certificate, as determined acceptable by an Agency in its discretion; and
- p) Any additional documentation that the Agency may require in order to confirm the information in the Application, including but not limited to a legal description of the Project.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

Section 355.204 Agency Review

The Agency shall review each complete Application and approve or reject it. The Agency's review of an Application shall include, but not be limited to, the following criteria (where applicable):

- a) **Section 7.28 Requirements.** The ability of the Project to meet the requirements of Section 7.28 and this Part throughout the Compliance Period;
- b) **Financial Feasibility.** The financial feasibility of the Project, taking into consideration the existing housing for Very-Low Income Households, Low-

- Income Households and, for Employer-Assisted Housing Projects, Moderate-Income Households in the geographical area in which the Project will be located, the cost of the Project, the projected income and operating expense of the Project, and all sources of financing for the Project, including owner's equity;
- c) **Sponsor's Ability.** The ability of the Sponsor to successfully construct the Affordable Housing Project and place it in service, taking into consideration the construction or other schedule submitted with the Application, the Sponsor's experience in the development, construction and/or rehabilitation of housing, and the size and scope of the Affordable Housing Project; or the ability of the Sponsor to provide the Technical Assistance; or the ability of the Sponsor to implement the Employer-Assisted Housing Project;
 - d) **Site Control.** Evidence of site control, satisfactory to the Agency, for the Affordable Housing Project, which shall include, but not be limited to, a purchase contract, an option to purchase, or a letter of intent from a prospective Donor of real property or from a governmental agency;
 - e) **Donations.** The amount of the Donation and the nature of the Donation transaction; or the amount of the proposed or anticipated Donation and the Sponsor's plan for obtaining the proposed or anticipated Donation;
 - f) **Location.** The need for housing for Very Low-Income, Low-Income and, for Employer-Assisted Housing Projects, Moderate-Income Households in the geographical area in which the Project will be located, based on census data, social surveys, published data, or on-site inspections and the location of other Projects for which the Agency has allocated or reserved Affordable Housing Tax Credits;
 - g) **Housing Stock.** The likelihood that the Project will increase the quality and quantity of housing stock and redevelop blighted areas or prevent the occurrence of slum conditions;
 - h) **Preservation.** The likelihood that the Project will preserve housing projects in danger of being lost as affordable housing stock;
 - i) **Involuntary Displacement.** For Multifamily Housing Projects or rental Single Family Projects involving rehabilitation, the Sponsor must minimize involuntary displacement of current tenants who are Low-Income and Very Low-Income Households, taking into consideration their safety during rehabilitation and the scope and nature of the proposed rehabilitation;
 - j) **Special Needs Populations.** The availability and accessibility of the Project for

special needs populations, including, but not limited to, homeless or displaced individuals, persons with physical, mental or developmental disabilities, persons with alcohol or substance abuse problems, and persons with AIDS and related diseases;

- k) **Compliance Period.** Whether the Compliance Period of the Project exceeds the minimum requirements of Section 7.28;
- l) **Lower Income Households.** The ability of the Project to serve Households with incomes less than the maximum income for Very Low-Income, Low-Income or, for Employer-Assisted Housing Projects, Moderate-Income Households for the geographical area in which the Project will be located.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

Section 355.205 Approval or Rejection by Agency

- a) Upon an Agency's completion of its review of an Application, the Agency shall notify the Sponsor in writing of its approval or rejection of the Application.
- b) Upon the approval of an Application, the Agency shall issue a Reservation Letter conditionally reserving Affordable Housing Tax Credits. The amount of the Affordable Housing Tax Credits reserved shall be 50% of the amount of the approved amount of the Donation or the actual Donation, whichever is less.
- c) The Reservation Letter shall set forth the terms and conditions upon which the Affordable Housing Tax Credits will be allocated to the Project, including, but not limited to:
 - 1) Certification from the Sponsor to the Agency that the Sponsor and the Project is or will be in full compliance with the requirements of Section 7.28 and this Part and will continue to be in compliance during the Compliance Period;
 - 2) Certification from the Sponsor to the Agency that there will be no material change in the Sponsor, the Sponsor's ownership structure, the ownership structure of the Affordable Housing Project, or the structure of the Project without the prior written approval of the Agency; and
 - 3) If applicable, execution of either a Regulatory Agreement, as required by Section 355.207 of this Part, or one or more Recapture Agreements, as required by Section 355.404 of this Part.

- d) The Sponsor shall have 12 months from the date of the Reservation Letter to obtain a Donation. However, Affordable Housing Projects and Employer-Assisted Housing Projects may submit a written request for an extension of an additional 12 months as approved by the Agency in the Agency's discretion; provided, however, that the Sponsor shall pay the fee for the extension as set forth in Section 355.106 of this Part. If the extension is not granted, the Sponsor may re-apply for the Affordable Housing Tax Credits or the Affordable Housing Tax Credits may be reserved or allocated to other Projects. For Technical Assistance, the Sponsor shall have 12 months from the date of the Reservation Letter to obtain a Donation.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

Section 355.206 Sponsor Participation

For a Multifamily Housing Project or a rental Single Family Project, the Sponsor must have a Material Participation in the development and operation of the Multifamily Housing Project or rental Single Family Project throughout the Compliance Period.

(Source: Amended at 31 Ill. Reg. 5797, effective March 30, 2007)

Section 355.207 Regulatory Agreement for Rental Projects

The Sponsor and the owner of each Affordable Housing Project that involves the rental of housing Units shall enter into a Regulatory Agreement with the allocating Agency before the Agency makes an Allocation in connection with that Affordable Housing Project. Under the Regulatory Agreement, the owner of the Affordable Housing Project shall be required to adhere to the Affordable Housing Restrictions for a period equal to the Compliance Period, and agree not to transfer the ownership, or materially change the ownership structure of the owner of the Affordable Housing Project, without the prior written approval of the Agency. The Regulatory Agreement shall be recorded in the Office of the Recorder of Deeds in the county where the Affordable Housing Project is located as a restrictive covenant on the Affordable Housing Project. The Regulatory Agreement shall cease to apply in the event of a foreclosure, transfer of title by deed in lieu of foreclosure or similar event, unless the allocating Agency determines that such foreclosure, transfer of title by deed-in-lieu of foreclosure or similar event has occurred pursuant to an arrangement between the owner of the Affordable Housing Project and any lenders or any other party, a purpose of which is to terminate the occupancy restrictions set forth in the Regulatory Agreement.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

Section 355.208 Project Documentation and Certification

On or before the Initial Closing Date of a Project, the Sponsor shall provide to the Agency the following documentation:

- a) a certification of the amount of the Donation, a notarized affidavit from each Donor acknowledging the Donation to the Sponsor or such other documentation evidencing the Donor's knowledge of the making of a Donation and eligibility for receipt of a Certificate as determined acceptable by an Agency in its discretion, and documentation as the Agency shall require under Sections 355.304, 355.305, 355.306 and 355.307 of this Part to substantiate the facts set forth in the certification;
- b) the name and address of the Sponsor;
- c) the total number of Units or Single Family Residences, as applicable, in the Project;
- d) the number of Units or Single Family Residences, as applicable, in the Project to be occupied by Very Low-Income, Low-Income and, for Employer-Assisted Housing Projects, Moderate-Income Households;
- e) the type of Households to be served (such as elderly or special needs);
- f) for Multifamily Housing Projects, the number of bedrooms in each Unit; and
- g) the amount of Affordable Housing Tax Credits allocated for General Operating Support and Technical Assistance, and the uses of such General Operating Support and Technical Assistance.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

Section 355.209 Affordable Housing Tax Credit Allocation

- a) An Agency shall make Allocations:
 - 1) for Affordable Housing Projects, after the Agency has received documentation, in a format acceptable to the Agency, that establishes to the satisfaction of the Agency that the Sponsor and the Affordable Housing Project are in compliance with all of the requirements of Section 7.28 of the Act and this Part; the date of the Allocation shall be the date of the Initial Closing.
 - 2) for Technical Assistance and Employer-Assisted Housing Projects, after the Agency has received documentation, in a format acceptable to the

Agency, that establishes to the satisfaction of the Agency that the Sponsor is in compliance with all of the requirements of Section 7.28 and this Part and has the ability to provide the Technical Assistance or to implement the Employer-Assisted Housing Project, as applicable; the date of the Allocation shall be the date of the satisfaction of these requirements.

- b) The effective date of the Allocation shall be the date set forth in the Reservation Letter to the Sponsor, or the date of the Allocation at the election of the Sponsor. No Allocation shall be made with an effective date earlier than the effective date of Section 7.28. The Agency shall submit forms as the Illinois Department of Revenue may require to notify the Department of the Allocation for the Affordable Housing Project.

(Source: Amended at 31 Ill. Reg. 5797, effective March 30, 2007)

Section 355.210 Recapture of Affordable Housing Tax Credits

Except in the case of fraud committed by a Donor, there shall be no recapture of Affordable Housing Tax Credits after Allocation.

(Source: Amended at 27 Ill. Reg. 14310, effective August 21, 2003)

Section 355.211 Rescission of Reservation of Affordable Housing Tax Credits

An Agency may rescind a Reservation of Affordable Housing Tax Credits if a Sponsor that has received a Reservation is unable to obtain a Donation within the time periods set forth in Section 355.205(d) of this Part or if the Sponsor has not complied with the terms and conditions of the Reservation Letter. In such a case, an Agency may reserve to other Projects any Affordable Housing Tax Credits that have been rescinded; provided however, that the Affordable Housing Tax Credits must be reserved during the State fiscal year in which the Affordable Housing Tax Credits were originally reserved.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

SUBPART C: DONATIONS

Section 355.301 Acceptable Types of Donations

Donations may only be made in the form of cash, securities, real property or personal property. Provision of services of any kind shall not constitute a Donation. Upon receipt of a Donation, a Sponsor shall notify the allocating Agency and provide to the Agency documentation evidencing both the Donation and its value, which must be determinable as of the date of the Donation. Documentation evidencing the Donation shall include a notarized affidavit from each Donor

acknowledging the Donation to the Sponsor or such other documentation evidencing the Donor's knowledge of the making of a Donation and eligibility for receipt of a Certificate, as determined acceptable by an Agency in its discretion.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

Section 355.302 Aggregation of Donations

Subject to Section 355.303, a Sponsor may aggregate a number of Donations into a single Donation in connection with an Allocation. For Employer-Assisted Housing Projects, a Sponsor may aggregate a number of Donations from multiple employers into a single source of funds for use in assisting eligible employees secure housing near their work place. Each Donor shall receive a Certificate evidencing the Donor's share of the aggregate Allocation.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

Section 355.303 Minimum Donation Amount

Except in the case of the transfer of a portion of a Certificate as set forth in Section 355.309 of this Part, the minimum amount of a Donation shall be \$10,000. Individual Donations in an aggregated Donation, including Donations for which the Affordable Housing Tax Credits are transferred as permitted under Section 355.309 of this Part, may be less than \$10,000; however, the aggregated Donation must be at least \$10,000.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

Section 355.304 Cash

The amount of a cash Donation shall be evidenced by a copy of the check or cashier's check from the Donor, evidence of a wire-transfer of funds by the Donor, or such other evidence of the provision of cash by the Donor that may be satisfactory to the allocating Agency.

(Source: Amended at 27 Ill. Reg. 14310, effective August 21, 2003)

Section 355.305 Securities

Donations of stocks, bonds or other securities shall be documented by the certificate transferring ownership of the security to the Sponsor or a certificate evidencing the transfer of the beneficial interest in the security to the Sponsor; the amount of the Donation shall be the market value of the security at the close of the market on the day of the transfer.

(Source: Amended at 27 Ill. Reg. 14310, effective August 21, 2003)

Section 355.306 Real Property

Donations of real property be: the fee simple interest in such real property; the beneficial interest of a land trust if a land trust holds title to such real property; a ground lease with a minimum term of 50 years leasing the real property to the Sponsor; or a sale of the fee simple interest on real property at a discount ("Discounted Sale"). Donations of a fee simple interest in real property shall be evidenced by a copy of the recorded deed conveying the fee simple title of the real property to the Sponsor and a title search or equivalent documentation showing that the Donor held fee simple title to the real property as of the date of the transfer. A Donation of a ground lease shall be evidenced by a copy of the ground lease under which the real property is leased. A Donation of real property held in a land trust shall be evidenced by the document transferring the beneficial interest in the land trust to the Sponsor and a copy of the land trust agreement, certified by the land trustee, showing that the Sponsor is the sole beneficiary of the land trust. The value of the real property or the leasehold interest in a ground lease shall be determined on or within 6 months prior to the date of the Donation by a current independent appraisal done by a State-licensed appraiser, as approved by the Agency, based on the market value of the real property as it is currently zoned and in its then current condition and use and subject to any existing economic encumbrances (unless an economic encumbrance is expiring, has expired, or would otherwise terminate upon transfer of the property). The appraisal may be ordered by the Agency or the Sponsor and shall be completed at the Sponsor's expense. The appraiser must be an Agency-approved appraiser. An Agency may, in its discretion, have another appraisal done by a State-licensed appraiser, as approved by the Agency, and at the expense of the Sponsor with payment required in advance; in such a case, the value shall be the lesser of the two appraisals. In a Discounted Sale, the Agency must be provided with a copy of the contract of sale and the settlement statement, and the Agency may order an appraisal of the real property at the expense of the Sponsor. The amount of Donation shall be the difference between the appraised value of the real property and the sale price. No appraisal shall be provided to the Applicant or Sponsor, unless the Applicant or Sponsor has reimbursed the Agency for the expense of the appraisal.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

Section 355.307 Personal Property

A Donation of personal property, such as construction or other materials and equipment sold in the ordinary course of business, shall be valued at the lesser of its fair market value or its cost to the Donor, and may include costs incurred in making the transfer, such as delivery costs, but excluding sales tax. For personal property such as art, antique furniture, coin collections or jewelry, the value may be established by an appraisal done by a qualified appraiser approved by the Agency. In the case of personal property, an Agency may, in its discretion, have another appraisal done by a qualified appraiser approved by the Agency; in such a case, the value of the property shall be the lesser of the two appraisals.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

Section 355.308 Limitation on Donations

Funds used by a prospective Donor to acquire an ownership interest in an Affordable Housing Project shall not qualify as a Donation. Donations may not take place prior to 3 years before the Initial Closing Date unless otherwise approved by the allocating Agency in the Agency's discretion.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

Section 355.309 Transfer of Affordable Housing Tax Credits

A Donor that has received a Certificate may transfer all or a portion of the Affordable Housing Tax Credits represented by this Certificate to the purchaser of land that has been designated solely for Affordable Housing Projects in accordance with the Act and this Part or to another Donor who has also made a Donation in accordance with the Act and this Part. Any taxpayer claiming credit pursuant to this Section must do so in accordance with Section 214 of the Illinois Income Tax Act [35 ILCS 5/214]. An individual or entity receiving a transfer of Affordable Housing Tax Credits in an amount less than \$100,000 must make a Donation, in accordance with the Act and this Part, of at least 10% of the amount of the transferred Affordable Housing Tax Credits. An individual or entity receiving a transfer of Affordable Housing Tax Credits in an amount equal to or greater than \$100,000 must make a minimum Donation, in accordance with the Act and this Part, of \$10,000. The Certificate shall indicate the name of the original Donor and the name of the entity to which the Certificate is transferred. Absent a notarized letter of direction from the original Donor, an Agency shall not deliver a Certificate nor all or a portion of the Affordable Housing Tax Credits represented by the Certificate to an individual or entity other than the original Donor.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

Section 355.310 Material Participation of Sponsor

No transfer of cash, securities, real property or personal property to a Sponsor shall be a Donation unless the Sponsor is committed to Material Participation in the Multifamily Housing Project or rental Single Family Project for the full term of the Compliance Period.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

Section 355.311 Donations from State and Local Governments

Sponsors may accept Donations from the State government, local municipalities and agencies, boards, commissions, corporations or authorities of State governments and municipalities in the form of the following:

- a) money, provided that the money does not come directly or indirectly from any Federal source or any State program providing funding either related to affordable housing or services provided in connection with affordable housing; and further provided that the money does not have to be repaid with funds from the operation of the Project;
- b) the value of waived permit fees or other customary charges, such as water and sewer permit fees, hook up charges or impact fees, when the waiver is made in a manner that achieves a reduction in the cost of construction of an Affordable Housing Project or an Employer-Assisted Housing Project;
- c) real property, as described in Section 355.306 of this Part; and
- d) loans made at a below-market interest rate. The value of the Donation shall be the present value, as of the date of the Donation, of the difference of the market rate interest that would be paid over the term of the loan and the actual interest to be paid over the term of the loan.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

SUBPART D: PROJECTS

Section 355.401 Single Family Project Requirements

An Agency may make Allocations for Single Family Projects. In each Single Family Project, other than Employer Assisted Housing Projects, all of the units or Single Family Residences shall be sold or rented to Low-Income Households.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

Section 355.402 Down Payment and Closing Cost Assistance (Repealed)

(Source: Repealed at 27 Ill. Reg. 14310, effective August 21, 2003)

Section 355.403 Employer-Assisted Housing Projects

An Agency may make Allocations for Employer-Assisted Housing Projects. \$2,000,000 of the Affordable Housing Tax Credit Ceiling for a State fiscal year shall be reserved for Employer-Assisted Housing Projects. Of this ceiling, 24.5% shall be available for allocation by the City of

Chicago and 75.5% shall be available for allocation by the Authority. If those funds are not reserved for Employer-Assisted Housing Projects by March 31 of that State fiscal year, the funds shall be available for Reservation and Allocation for Affordable Housing Projects, Technical Assistance or General Operating Support.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

Section 355.404 Recapture Agreement

Each Household receiving assistance or a subsidy under a Single Family Project or Employer-Assisted Housing Project in connection with the purchase of a Single Family Residence shall execute a Recapture Agreement for the benefit of the Sponsor. The Recapture Agreement shall be recorded in the Office of the Recorder of Deeds in the county in which the Single Family Residence is located as a restrictive covenant on the Single Family Residence. The Recapture Agreement shall provide that, if the Single Family Residence is transferred during the term of the Compliance Period, other than by will, inheritance or a transfer by law to a joint tenant owner, the Household shall repay to the Sponsor a pro-rated portion of any funds provided as a grant or subsidy toward the purchase of the Single Family Residence. In cases of hardship to a Very Low-Income, Low-Income or, for Employer-Assisted Housing Projects, Moderate-Income Household, such as serious illness or loss of employment, an Agency may reduce the Compliance Period.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

Section 355.405 Multifamily Housing Projects

An Agency may make Allocations for Multifamily Housing Projects that involve the construction or rehabilitation of multifamily rental housing buildings.

Section 355.406 Set-Aside for Technical Assistance and General Operating Support

\$1,000,000 of the Affordable Housing Tax Credit Ceiling for a State fiscal year shall be reserved for Technical Assistance and General Operating Support. Of this ceiling, 24.5% shall be available for allocation by the City of Chicago and 75.5% shall be available for allocation by the Authority. If these funds are not reserved for Technical Assistance or General Operating Support by March 31 of that State fiscal year, the funds shall be available for Reservation and Allocation for any type of Affordable Housing Projects or Employer-Assisted Housing Projects.

(Source: Amended at 31 Ill. Reg. 5797, effective March 30, 2007)

Section 355.407 Limitations on Amount of Technical Assistance and General Operating Support

No Affordable Housing Project shall receive Affordable Housing Tax Credits for Technical Assistance and General Operating Support for the Sponsor of the Affordable Housing Project in an amount greater than 10% of the Allocation for the Affordable Housing Project.

Section 355.408 Technical Assistance – Home Ownership Counseling

An Agency may allocate Affordable Housing Tax Credits for Technical Assistance for Donations to entities that provide home ownership counseling services. The Allocations may be in connection with the purchase of a Single Family Residence or an Employer-Assisted Housing Project; however, all Allocations for Technical Assistance in connection with a particular Affordable Housing Project shall be pursuant to Section 355.407 of this Part. All such home ownership counseling services shall be provided to Households that qualify as Low-Income Households or, in the case of Employer-Assisted Housing Projects, Moderate-Income Households as of the date of the provision of the services.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

SUBPART E: COMPLIANCE MONITORING

Section 355.501 Compliance Monitoring

The allocating Agency will annually monitor the compliance of each Project.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

Section 355.502 Monitoring Fees

An Agency may assess an annual fee for compliance monitoring of Projects. If an Agency decides to charge such a fee, the amount of such fee shall be established on July 1 of the year in which such decision is made. An Agency may redetermine the amount of its compliance monitoring fee as of each July 1. The Agency shall determine the amount of the fee, or the amount of the redetermined fee, based on the cost to the Agency of compliance monitoring of Projects for the previous State fiscal year.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

Section 355.503 Books and Records

The books and records of each Sponsor and each Project shall be subject to inspection, examination and copying by the allocating Agency and its authorized representatives or agents at such times as the allocating Agency reasonably requires for the purpose of determining whether the Sponsor and the Project are in compliance with Section 7.28 and this Part.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

Section 355.504 Furnishing Information

Each Sponsor shall furnish such information and operating reports as the allocating Agency shall require in connection with the monitoring of the Sponsor and the Sponsor's Project for compliance with Section 7.28 and this Part.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)

SUBPART F: REPORTS

Section 355.601 Agency Reports

Each Agency shall submit quarterly reports to the Authority setting forth the Agency's activities under the Program for that quarter. The report shall include the following information:

- a) the amount of Affordable Housing Tax Credits reserved or allocated since the date of the last report;
- b) the name and address of each Sponsor;
- c) For each Affordable Housing Project:
 - 1) the amount of Affordable Housing Tax Credits reserved or allocated;
 - 2) the total number of Units or Single Family Residences in the Affordable Housing Project;
 - 3) the number of Units or Single Family Residences to be occupied by Low-Income and Very Low-Income Households;
 - 4) the type of Households to be served (such as elderly or special needs); and
 - 5) for Multifamily Housing Projects, the number of bedrooms in each Unit;
- d) For each Affordable Housing Project, the amount of Affordable Housing Tax Credits reserved or allocated for General Operating Support and Technical Assistance, and the Sponsor's use of that General Operating Support and Technical Assistance;
- e) In connection with Technical Assistance for home ownership counseling services, the amount of Affordable Housing Tax Credits reserved or allocated and the

number of Low-Income, Very Low-Income and, for Employer-Assisted Housing Projects, Moderate-Income Households receiving counseling; and

- f) In connection with an Employer-Assisted Housing Project, the amount of Affordable Housing Tax Credits reserved or allocated and the number of Very Low-Income, Low-Income and Moderate-Income Households that received assistance.

(Source: Amended at 34 Ill. Reg. 15822, effective September 28, 2010)