



Commonwealth of Massachusetts  
**DEPARTMENT OF HOUSING &  
COMMUNITY DEVELOPMENT**

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**Low Income Housing Tax Credit Program**  
**2009 Qualified Allocation Plan**

Commonwealth of Massachusetts

Department of Housing and Community Development

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## I. Executive Summary: 2009

2008 was an exceptionally difficult and challenging year for all participants in the Low Income Housing Tax Credit -- developers, syndicators, investors, allocating agencies, attorneys, accountants, consultants, and others. Twenty-three years after enactment, the tax credit program has long been the most important affordable housing production and preservation program in the country. Since its inception in 1986, the program has supported the construction, rehabilitation, or preservation of millions of affordable apartments throughout the U.S. In the years prior to 2008, the tax credit program supported the creation or preservation of over 200,000 units each year. The years between 2001 and 2007 were especially productive for the program, driven in part by the keen interest in the credit on the part of major investors. For several years, the giant Government Service Entities – Fannie Mae and Freddie Mac – and many of the nation’s largest banks competed vigorously against each other to invest in the credit projects selected by state allocating agencies. Investor pricing reached historic levels, with hundreds of tax credit projects throughout the country realizing net raises higher than 95 cents per tax credit dollar. The program was widely perceived as stable, productive, and successful. Political support for the credit was widespread – so much so that the leadership of the 110<sup>th</sup> Congress included important and beneficial changes to the program in the Housing and Economic Recovery Act (HERA) of July 2008.

However, in 2008, the importance of the enactment of HERA was overshadowed by the widespread, deep, complex, and negative effects of the national and international subprime financial crisis. As early as January 2008, tax credit syndicators and investors – used to competing against each other for projects -- began withdrawing their support and equity from projects that had been selected by state agencies. The effects of subprime spread and intensified as the year progressed. By fall 2008, approximately 60% of the usual tax credit market – including Fannie Mae, Freddie Mac, and large lending institutions – had virtually stopped investing. As the equity market slowed and as investors disappeared, the prices for credit investments dropped dramatically -- as much 20% to 30% over several months in 2008. And, for the first time in the history of the program, some of the remaining investors walked away from projects after the closing process had begun.

As 2008 came to a close, many state allocating agencies expressed concern about their ability to allocate all available credit authority during 2009. Highly experienced tax credit syndicators, investors, attorneys, and consultants also expressed the view that the equity market would not recover in any meaningful way until 2010 – and then only if new investors, currently unfamiliar with the tax credit program, learned enough about the LIHTC to decide to become participants. Concern about the credit ran so deep that, in the final months of 2008, numerous affordable housing professionals throughout the country joined the effort to work with the incoming 111<sup>th</sup> Congress and the Obama Administration to seek funds through a new federal economic recovery package to replace the equity in eligible tax credit projects without investors. The task is urgent. The subprime catastrophe was generated by the nation’s housing finance system, and the solution to the catastrophe must include the nation’s housing finance system. Many housing experts believe that restoring the viability of the Low Income Housing Tax Credit program is an essential step in the country’s housing recovery. In addition, the need for affordable apartments is as great as ever in many markets throughout the nation, as thousands of families cope with the fall-out from subprime.

During 2009, the Massachusetts Department of Housing and Community Development intends to continue its long-standing commitment to the tax credit program by selecting worthy and eligible projects

that are highly ready to proceed and capable of attracting interest from remaining investors. The challenge to the Department is great. In preparing the 2009 Qualified Allocation Plan (QAP), as required by the U.S. Department of the Treasury, DHCD has attempted to balance four primary goals:

- to build as much flexibility as possible into the tax credit development and selection process;
- to expedite the selection process for eligible projects capable of attracting scarce equity investments;
- to take advantage of key elements of the HERA legislation from July 2008;
- to remain true to the Department's core mission by selecting eligible projects with attributes that have always been important to DHCD.

To achieve these goals during 2009, the Department intends to take the steps described below.

As this 2009 QAP becomes final, DHCD is in the middle of a rental funding competition. The Department soon will finalize the selection of tax credit projects that it deems eligible and ready to proceed. While all projects must meet QAP threshold and scoring criteria, the single most important selection criterion for 2009 must be a project's ability to attract an investor at a price and terms acceptable to the Department. DHCD will give priority in the awards process to sponsors of eligible projects who can demonstrate that they have secured an investor. However, the Department also will establish a period of time in which sponsors of projects without investors – but otherwise worthy and eligible – may continue their efforts to secure an investor. As DHCD staff completes the evaluation of all competition projects in February and March 2009, the Department will place applications into three categories:

- The first category will be credit applications that have met all thresholds and scoring benchmarks, have secured an investor, and can proceed to a full financial closing within six months. DHCD intends to begin announcing funding awards to these applications in February and March 2009.
- The second category will be credit applications that have met all thresholds and scoring benchmarks other than those related to a credit investor. In March 2009, DHCD intends to establish a wait-list for such projects. Sponsors of wait-list projects will have nine months – until December 31, 2009 -- to meet three conditions: to provide evidence to the Department that they have secured an investor at a raise and terms acceptable to DHCD, to confirm that there are no material changes to the project, and to provide evidence that they can proceed to a full financial closing within six months. DHCD intends to award credit and appropriate subsidy to projects whose sponsors can meet these two conditions by December 31, 2009.
- The third category will be credit applications that currently cannot meet threshold and/or competitive scoring criteria. Sponsors of these projects will be asked to address all issues identified by DHCD and submit a modified or new application to one of the Department's next rental funding competitions.

DHCD has taken further steps to provide greater flexibility to the sponsors of 2009 credit projects. Specifically, the Department has:

- raised the per-unit basis cap and recommended cost limits (page 20)
- raised the per-project tax credit limit (page 21)
- added 20 municipalities to the existing list of “difficult-to-develop areas” eligible for a basis increase as currently established by the U.S. Dept of Housing and Urban Development (page 13).

In a further effort to promote flexibility, DHCD will permit sponsors of projects that have received tax credit awards but are unable to achieve anticipated pricing to make additional credit requests on a rolling basis. The Department believes that these actions will aid tax credit sponsors in structuring their projects in this highly challenging environment.

At the same time, in this QAP, the Department is affirming its commitment to tax credit projects that include characteristics of critical importance to DHCD and its mission. Some of the key characteristics are described as follows:

- A set percentage of units within each project must be dedicated to extremely low-income households, including individuals and families making the transition from homelessness;
- Some units within each project will be set aside for persons with disabilities, and appropriate service plans will be developed for these individuals or households;
- Each project must meet some or all of the principles of sustainable development adopted by the Patrick Administration in 2007. As a consequence, each project will feature energy-saving materials and processes and should be located near commercial and retail opportunities;
- Numerous projects, when completed, will have a major impact on the surrounding neighborhood – perhaps through the restoration of derelict or foreclosed properties to residential use;
- Each project will help the Department further fair housing goals by providing opportunities to households representing diverse races, ethnicities, and needs.

Although a 10% set-aside of units for extremely low income (ELI) households is required in every credit project, during 2009, DHCD will permit sponsors of projects that include a greater percentage of ELI units – with some units restricted for homeless families or individuals – to seek tax credits and subsidy funds, at the Department’s discretion, on a rolling basis.

As stated, the subprime impact of 2008 overshadowed to some degree the improvements to the credit program made possible by the enactment of HERA by the 110<sup>th</sup> Congress. However, the legislation was a critical step in improving an already successful affordable housing program, and the leadership of the 110<sup>th</sup> congress is to be commended for enactment of this important bill. The Department, through an amendment of the 2008 QAP, already has incorporated two aspects of HERA -- the increase in per-capita authority and the fixed percentage for the so-called 9% projects. DHCD is incorporating further aspects of HERA into this 2009 QAP; other aspects of the legislation are under Department consideration and may be incorporated at a later time. As 2009 continues, DHCD will evaluate the condition of the financial and equity markets. If the Department determines that further efforts must be made to assist tax credit projects in unprecedented circumstances, DHCD will take appropriate steps to amend the 2009 QAP.

## **Section II. Federal and State Requirements of the Qualified Allocation Plan**

Each year, the state allocating agency for the federal Low Income Housing Tax Credit is required to publish a plan describing how it intends to award the credit. The requirement that states publish a plan was established in the Omnibus Reconciliation Act of 1989. The plan is called the Qualified Allocation Plan, or QAP.

In the Commonwealth of Massachusetts, the Department of Housing and Community Development, or DHCD, is the allocating agency for tax credits. The Department is responsible for preparing the annual allocation plan and making it available for review by interested members of the public before final publication.

Section 42 of the Internal Revenue Code is the federal statute governing the tax credit program. In accordance with Section 42(m), each state allocating agency must include the following in the annual allocation plan:

- Selection criteria for projects receiving tax credit allocations
- Preference for projects serving the lowest income tenants and for projects serving tenants for the longest period of time
- Preference for projects located in qualified census tracts, the development of which will contribute to a concerted community revitalization plan. (Qualified census tracts now are defined as tracts either in which 50 percent or more of the households have income less than 60 percent of the area median gross or with a poverty rate of 25% or greater.)

In addition, Section 42(m) states that the selection criteria must take into consideration the following project, community, or development team attributes:

- Location
- Need for affordable housing
- Project characteristics
- Sponsor capacity
- Tenants with special needs as a target population
- Public housing waiting lists
- Individuals with children as a target population
- Projects intended for tenant ownership

The 2009 Qualified Allocation Plan prepared by the Department of Housing and Community Development conforms to all the plan requirements summarized in the paragraphs above. In preparing the QAP, the Department has paid particular attention to the first three project attributes (location, need, and project characteristics) in order to implement the Commonwealth's sustainable development principles and to address the critical need to produce new housing in Massachusetts.

The 2009 Qualified Allocation Plan reflects the priorities of Governor Deval Patrick. On May 16, 2007, the Governor announced his Administration's Sustainable Development Principles. The ten principles are listed on the following pages. The Department will use the ten principles as part of the threshold evaluation for tax credit applications.

As of May 2007, the sustainable development principles are:

**1. Concentrate Development and Mix Uses.**

Support the revitalization of city and town centers and neighborhoods by promoting development that is compact, conserves land, protects historic resources, and integrates uses. Encourage remediation and reuse of existing sites, structures, and infrastructure rather than new construction in undeveloped areas. Create pedestrian friendly districts and neighborhoods that mix commercial, civic, cultural, educational, and recreational activities with open spaces and homes.

**2. Advance Equity.**

Promote equitable sharing of the benefits and burdens of development. Provide technical and strategic support for inclusive community planning and decision making to ensure social, economic, and environmental justice. Ensure that the interests of future generations are not compromised by today's decisions.

**3. Make Efficient Decisions.**

Make regulatory and permitting processes for development clear, predictable, coordinated, and timely in accordance with smart growth and environmental stewardship.

**4. Protect Land and Ecosystems.**

Protect and restore environmentally sensitive lands, natural resources, agricultural lands, critical habitats, wetlands and water resources, and cultural and historic landscapes. Increase the quantity, quality and accessibility of open spaces and recreational opportunities.

**5. Use Natural Resources Wisely.**

Construct and promote developments, buildings, and infrastructure that conserve natural resources by reducing waste and pollution through efficient use of land, energy, water, and materials.

**6. Expand Housing Opportunities.**

Support the construction and rehabilitation of homes to meet the needs of people of all abilities, income levels, and household types. Build homes near jobs, transit, and where services are available. Foster the development of housing, particularly multifamily and smaller single-family homes, in a way that is compatible with a community's character and vision and with providing new housing choices for people of all means.

**7. Provide Transportation Choice.**

Maintain and expand transportation options that maximize mobility, reduce congestion, conserve fuel and improve air quality. Prioritize rail, bus, boat, rapid and surface transit, shared-vehicle and shared-ride services, bicycling, and walking. Invest strategically in existing and new passenger and freight transportation infrastructure that supports sound economic development consistent with smart growth objectives.

**8. Increase Job and Business Opportunities.**

Attract businesses and jobs to locations near housing, infrastructure, and transportation options. Promote economic development in industry clusters. Expand access to education, training, and entrepreneurial opportunities. Support the growth of local businesses, including sustainable natural resource-based businesses, such as agriculture, forestry, clean energy technology, and fisheries.

### **9. Promote Clean Energy.**

Maximize energy efficiency and renewable energy opportunities. Support energy conservation strategies, local clean power generation, distributed generation technologies, and innovative industries. Reduce greenhouse gas emissions and consumption of fossil fuels.

### **10. Plan Regionally.**

Support the development and implementation of local and regional, state and interstate plans that have broad public support and are consistent with these principles. Foster development projects, land and water conservation, transportation and housing that have a regional or multi-community benefit. Consider the long-term costs and benefits to the Commonwealth.

The Department is committed to providing tax credits to projects in suburban and rural communities in order to provide increased opportunities for underserved populations in those locations. The Administration is also committed to working with municipal government to address local zoning obstacles faced by project sponsors as they attempt to produce critically needed, affordable rental units. Project sponsors are strongly encouraged to seek project sites that will accomplish both sustainable development and fair housing objectives. The Department will continue to work closely with members of the development community and will seek their input in determining appropriate strategies for achieving these goals.

In preparing the 2009 QAP, during a period of instability in the Massachusetts housing market, the Department considered various measures and indicators of affordable housing need in Massachusetts. The measures or indicators included the number of households on public housing waiting lists; average and median sales prices and rental rates, both statewide and in various regions; vacancy rates for rental housing; median household income, both statewide and in various regions; number of households living below the federal poverty level; and so on. The Department also began considering data and findings from a needs assessment undertaken by the University of Massachusetts Donahue Institute.

After evaluating the information described above and reviewing comments and suggestions from interested parties, the Department has established in this QAP its priorities for allocating the housing credit in 2009. Obviously, one of the most important criterion of credit projects in 2009 will be whether the sponsor of a worthy project is able to secure an investor at an acceptable net raise. The Department intends to allocate credit to:

- 1) projects that create new affordable housing units, in particular units suitable for families
- 2) projects whose sponsors actively promote principles of fair housing
- 3) projects that are consistent with the May 2007 ten sustainable development principles, including “green” design principles, etc.
- 4) projects that are part of comprehensive neighborhood improvement plans or initiatives, including HOPE VI projects with approved federal grants
- 5) projects that preserve valuable existing affordable units
- 6) projects that include units for individuals or households with incomes below 30% of area median income, including the homeless
- 7) projects with low per-unit costs
- 8) projects located in communities or neighborhoods with expanding social and/or

educational opportunities, increasing employment opportunities or significant revitalization and investment activity.

This allocation plan also sets forth the application process and scoring system for 2009.

It is important to note that the priorities included in this plan to some extent are priorities for the Department's other affordable housing programs as well. This is true for two reasons. First, tax credit projects often require other DHCD resources in order to proceed. Thus, the priorities established for the tax credit program have a direct impact on DHCD's other housing programs. For example, when DHCD, through the tax credit allocation plan, establishes recommended cost limits for tax credit projects, the cost limits clearly apply to other DHCD programs in support of the same project.

The second reason is that the tax credit program, through the annual allocation plan, undergoes greater and more frequent scrutiny than other state housing programs. Although other housing programs have guidelines and regulations that are modified from time to time, the annual tax credit allocation plan is the public document in which the Department most clearly and most frequently attempts to state its priorities for state-assisted affordable housing projects.

Section 42 requires allocating agencies to make an allocation plan available for public review and comment before publishing a final plan. As it prepared the 2009 plan, the Department encouraged suggestions and comments from housing professionals, other experts, municipal officials, advocates, and concerned citizens and conducted numerous discussion groups on important tax credit issues. Housing professionals and experts representing a wide range of interests and specialties participated in these discussions and contributed to the development of the 2009 allocation plan. The Department wishes to publicly acknowledge their contribution, and to thank them for their time and effort. Finally, in accordance with code requirements, the Department presented the draft allocation plan for public review and comment at a public hearing held on February 10, 2009.

### **Section III. Federal Credit Available in 2009**

#### **9% Credit**

As of the date on which this allocation plan becomes final, the Department of Housing and Community Development anticipates having a total of \$1,795,318 in 2009 federal 9% credit available for allocation. In accordance with Internal Revenue Code Section 42 and Treasury Regulation 1.42 - 14, the 9% credit allocation consisted of:

- 1) \$14,945,324 in per capita tax credits, based on the factor \$2.30 multiplied by the Massachusetts estimated population of 6,497,967 (based upon IRS Notice); and,
- 2) \$2,510,026 of returned credits from prior years; less
- 3) \$15,660,032 of 2009 binding commitments made under the Massachusetts 2008 Qualified Allocation Plan; less
- 4) \$2,000,000 in 2009, 2010 and/or 2011 credit set-aside for the Washington Beech HOPE VI project in Boston (see pages 20-21), subject to the sponsor's ability to attract an investor.

The federal legislation enacted in July 2008 provided each state allocating agency with an additional 20 cents in per capita authority in 2008 and 2009. The Department will continue allocating this additional credit in 2009.

The total amount of 9% tax credits available for allocation in 2009 is subject to change. Additional credit may become available if projects that received allocations in prior years return tax credits to DHCD. Additional credit also may become available if national pool credit is allocated to the Commonwealth of Massachusetts. In addition, Massachusetts state tax credits will be available for allocation during calendar year 2009. The provisions of this allocation plan will apply to the total amount of tax credits the Commonwealth of Massachusetts is authorized to allocate during 2009. The evaluation criteria and selection process for applications submitted during 2009 are included in later sections of this plan.

#### **4% Credit**

Under allocation plans prior to 2007, DHCD delegated the authority to allocate the federal 4% credit to two Massachusetts quasi-public housing agencies – MassHousing and MassDevelopment. Both agencies have the authority to issue tax-exempt bonds subject to the Commonwealth's private activity bond volume cap. Prior to 2007, both agencies made 4% credit allocations in conjunction with tax-exempt bond financing. As of October 31, 2007, DHCD opted not to delegate such authority and therefore is the sole agency that determines eligibility for and allocates federal 4% credit to projects. Both MassHousing and MassDevelopment retain the authority to issue tax-exempt bonds to multifamily rental projects. DHCD will continue working closely with both agencies to coordinate the allocation of the 4% credit with the allocation of volume cap for tax-exempt bond financing.

Developers who are interested in securing an allocation of 4% credit for their projects should contact DHCD's tax credit staff early in the development process. DHCD will require each developer seeking 4% credit to submit components of the One Stop Affordable Funding application in order to determine whether the project is eligible for a 4% allocation. Developers may submit One Stop applications with 4% credit requests to DHCD on a rolling basis, rather than waiting for a DHCD rental funding competition. However, the only determination DHCD will make on a rolling basis is whether the project

is eligible for 4% credit. Developers who also are seeking gap financing must submit a full funding application during a regularly-scheduled rental funding competition.

## Section IV. Impact of Recent Federal Legislation

In July 2008, the United States Congress passed the Housing and Economic Recovery Act (HERA) of 2008 – long-awaited legislation which includes provisions to change and improve the Low Income Housing Tax Credit. DHCD already has incorporated certain changes allowed by HERA, including changes to the calculation of the so-called 9% credit and to the Department’s annual allocation authority.

As of 2009, DHCD is making the following additional changes permitted by HERA:

The Department has added 20 cities in the Commonwealth to the list of Massachusetts’ “difficult to develop areas” (“DDAs”). The cities are:

- |                |                |                 |                 |
|----------------|----------------|-----------------|-----------------|
| 1. Chicopee    | 6. Greenfield  | 11. Lowell      | 16. Pittsfield  |
| 2. Easthampton | 7. Haverhill   | 12. Methuen     | 17. Springfield |
| 3. Fall River  | 8. Holyoke     | 13. New Bedford | 18. Taunton     |
| 4. Fitchburg   | 9. Lawrence    | 14. North Adams | 19. Westfield   |
| 5. Gardner     | 10. Leominster | 15. Northampton | 20. Worcester   |

The Department will determine the extent of the corresponding basis boost (up to 130%) in the communities listed above based on the need for the boost in the context of a project’s financial feasibility. The designation of an area as a DDA and the degree of the resulting basis boost for a particular project or a building within the project will be made at the Department’s discretion. The Department’s decision to permit a basis boost will not necessarily apply to other projects or buildings in the same community if the basis boost is not needed for financial feasibility. The per-unit eligible basis caps and the per-project tax credit allocation limits are described in Section IX of this QAP and will still apply. The sponsor of a credit project located in a community not currently designated as a DDA may contact the Department if he or she believes the community should be included. The Department will require the sponsor to submit substantial documentation before it will evaluate such requests.

It is important to note that previous legislation enacted by Congress provided changes to the credit in 2000. Those changes remain in effect in DHCD’s 2009 QAP. In December 2000, Congress passed legislation that provided \$1.75 in per capita allocation authority to each state, subject to regular cost-of-living increases. As of January 2008, the Commonwealth’s allocation was based on \$2.00 per capita. That amount increased by \$ .20 with the enactment of HERA in July 2008 and increased again on January 1, 2009. DHCD anticipates fully allocating all available credit during 2009.

In addition to providing a per capita increase, the December 2000 legislation required all states to incorporate certain changes in their annual Qualified Allocation Plans. Based on an advisory memo to all state allocating agencies from the National Council of State Housing Agencies (NCSHA), DHCD incorporated the following program changes in the 2002 QAP. These changes remain in effect in the 2009 QAP.

- In accordance with the December 2000 law, the 2009 QAP must give preference to community revitalization projects located in qualified census tracts. (Please note that the Commonwealth of Massachusetts QAPs historically have given preference to such projects.)

- In accordance with the law, the 2009 QAP requires every tax credit applicant to submit a market study of the housing needs of low income individuals in the area to be served. A non-related party approved by DHCD must conduct the study at the developer's expense.
- In accordance with the law, DHCD will continue its practice of conducting regular site inspections to monitor compliance. (Please note that DHCD inspects projects at least once every three years.)
- In accordance with the law, DHCD will make available to the general public a written explanation of any allocation not made "in accordance with the established priorities and selection criteria of the agency."
- In accordance with the law, DHCD will permit sponsors of tax credit projects that receive allocations "in the second half of the calendar year" to qualify under the ten percent test within six months of receiving the reservations, regardless of whether the 10% test is met "by the end of the calendar year." (Please note that developers who receive reservations during the first half of a calendar year must meet their ten percent deadline by the end of the calendar year, or by an earlier deadline established by DHCD.) In addition, and in accordance with NCSHA's recommended industry practices, DHCD will require that developers provide a certified accountant's opinion relative to the ten percent test. The accountant's opinion must be in the format established by NCSHA.

## Section V. The Massachusetts State Housing Tax Credit

The enactment of Chapter 119 of the Act of 2008 has provided the Department with additional authority to allocate the state low-income housing tax credit. Effective with the enactment of Chapter 119 of the Act of 2008, DHCD now has authority to allocate up to \$10 million each year in state housing credit.

During 2009, the Department will allocate the available extended state housing credit by following the same process used to allocate state credit between 2001 and 2008. In accordance with the enabling statute and state tax credit regulations, the state housing credit can be awarded only to projects that receive an allocation of federal tax credit (either 9% or 4%). Thus, the selection process for state credit projects fundamentally will be the same as the selection process for federal credit projects. The sponsors of projects may request an allocation of state credit in combination with federal credit. **However, it is important to note that state credit typically will be allocated in lieu of a portion of federal credit, which the project might otherwise receive.**

An eligible investor may claim each dollar of state credit allocated for a five-year period. In accordance with the process set forth in Section XII of this document, DHCD may elect to issue binding forward commitments of 2010 state credit during 2009.

In selecting projects to receive federal/state credit allocations during 2009, DHCD will evaluate the capacity of the development team to attract an investor and to process a blended federal/state project; the location of the project; and the potential net equity raise to the project estimated by one or more syndicators. If DHCD determines that the net equity raise proposed by the sponsor is not sufficient, DHCD will not make a reservation to the project. At this time, DHCD anticipates making state credit reservations to projects capable of securing a net raise greater than 70 cents on the dollar. Consistent with the enabling statute, DHCD also intends to achieve a degree of geographic balance in the allocation of the state housing tax credit. **Sponsors seeking state credit allocations for their projects during 2009 should note that the Department will give priority to large-scale neighborhood impact projects and to mixed-income projects, and to projects that provide a high percentage of units for extremely low income households, including homeless households.**

Sponsors of projects seeking allocations of both state and federal credit should immediately contact the Department's Division of Housing Development (617-573-1300) to schedule time to discuss their plans. The state tax credit regulations are included in this document as Appendix D.

## Section VI. Special Challenges in 2009

2008 was the most turbulent year in the history of the Low Income Housing Tax Credit Program. In 2008, tax credit sponsors and allocating agencies alike faced the challenge of a deteriorating equity market, significantly impacted by the national subprime crisis, the withdrawal of the GSEs from the equity market, and a widespread decline in equity prices. In Massachusetts, numerous tax credit projects with existing awards from DHCD either lost investors or were confronted by a decline in net raise on the credit ranging from eight cents to twenty cents. As the year ended, the equity markets were depleted and unstable. Regrettably, the difficulties of 2008 continue as 2009 begins.

The most significant challenge for DHCD and other allocating agencies in 2009 will be selecting projects that meet agency and code priorities and preferences, that score well competitively, and that are able to attract equity investors. The Department intends to maintain its commitment to certain types of projects, including but not limited to, projects with some or all of the following characteristics:

- The project is sponsored by a non-profit;
- The project will have a significant impact on the neighborhood in which it is located;
- The project will include units and a service plan for extremely low income households, including the homeless;
- The project will include units and a service plan for persons with disabilities;
- The project will help DHCD implement fair housing principles and affirmative action goals;
- The project will result in abandoned or foreclosed property being restored to residential use;
- The project will preserve as affordable housing units that are threatened by conversion to market rate housing.

In developing the 2009 QAP, DHCD has focused, as always, on two basic questions:

- What kind of projects does DHCD most want to support?
- What is the fair division of tax credits among these projects?

In trying to answer these questions, the Department has considered the following:

- Where is the need for affordable rental units the greatest, as defined by rental rates, vacancy rates, public housing waiting lists, and other factors?
- What kind of impact will a tax credit project have on the surrounding neighborhood?
- Will the project demonstrate consistency with the May 2007 sustainable development principles?
- What kind of unique and beneficial services will be available to the tenants of the completed project?
- What is the appropriate division of resources between family housing and housing intended to serve individuals, including the frail elderly?

The body of this 2009 Qualified Allocation Plan sets forth in detail the answers to the Department's basic questions and establishes the scoring system for 2009 tax credit applications. In brief, the answers to the two basic questions are as follows:

- 1) The Department wishes to support a reasonable mix of affordable housing projects, including small to medium-size projects that create new affordable units; preservation projects that maintain rents at affordable levels for low- income households; and large-scale redevelopment projects with the potential to impact entire neighborhoods.
- 2) During 2009, the Department intends to divide the available credit among these worthy projects such that:
  - 60% of the remaining credit is allocated to projects that create new units, either through rehabilitation or new construction, with an emphasis on small or medium-sized projects.
  - 40% of the remaining credit is allocated to preservation projects, such as projects with expiring use restriction projects, and other preservation projects and smaller scale preservation projects.
- 3) Whether production or preservation, the ideal project must contain certain characteristics that make it worthy of tax credit consideration. These characteristics are described in later sections of the 2009 allocation plan.

## **Section VII. Evaluation of the Need for Affordable Housing in Massachusetts**

Each year, in deciding how to allocate the housing credit, the Department of Housing and Community Development must consider the need for affordable rental units throughout Massachusetts. The effort to evaluate need is complicated by the fact that there is no single Massachusetts housing market. Rather, there are hundreds of local housing markets, and they differ significantly from each other. The median home sales prices in the most affluent western suburbs of Boston exceed \$1,000,000, yet homebuyers in the more rural areas of the state can still find units priced below \$150,000.

Because of the disparate characteristics of various local housing markets, the best measures of affordable housing need in one market may not be the best measures in another. For example, some communities have relatively few residents with household incomes below 50% of area median income. But the average sales prices for homes in these communities may be above \$600,000, and there may be virtually no rental units available. So, while one indicator of need -- the number of poverty households -- may be low, another indicator -- average or median sales prices -- may be extremely high.

In order to evaluate housing need in the many markets in Massachusetts, the Department in 2008 issued a Request for Proposals and selected a qualified contractor to conduct a statewide housing needs assessment, and to evaluate housing need in the context of the potential for economic growth. The contractor selected was Michael Goodwin of the University of Massachusetts Donahue Institute. Working with a consultant, Bonnie Heudorfer, Dr. Goodwin completed a thorough analysis of housing need in Massachusetts late in 2008. At this time, the Department intends to incorporate findings from the analysis over the coming months and will modify the 2009 QAP, as necessary, to reflect key findings from the market study.

However, until that process is completed, the Department will use existing measures of affordable housing need for purposes of allocating the credit available in 2009. While the indicators or measures of need are too numerous to list in full, the most basic measures of need in a given market areas include many or all of the following:

- low median household income
- high percentage of low income households
- high percentage of households at extreme poverty level
- high percentage of renters in proportion to homeowners
- high percentage of households receiving welfare
- generally poor condition of the housing stock
- high rate of unemployment
- high rental rates in and near the market area
- high condominium and single family sales prices in and near the market area
- low vacancy rates
- long public housing waiting lists

For the purposes of identifying need in this allocation plan, the Department has used the comprehensive data and analysis prepared by its policy staff as part of the consolidated plan submission to the U.S. Department of Housing and Urban Development (HUD). The data and analysis are contained in Section 3 of the Massachusetts' 2005-2009 Consolidated Plan. (The section is entitled "Needs Assessment" and can

be downloaded at the following website: [www.mass.gov/dhcd](http://www.mass.gov/dhcd))

The data and analysis contained in the consolidated plan confirm what housing experts already know. The effects of the sub-prime implosion have created even greater pressure on the Massachusetts rental market in 2009. There is still a substantial need for affordable rental housing in Massachusetts. After evaluating the available information, the Department has drawn the following basic conclusions regarding need:

- In most Massachusetts communities, there is a shortage of affordable rental units in good condition.
- There is still a greater need for family rental housing than for other types of affordable rental housing.
- In certain areas with low rental rates and sales prices, the housing stock is so deteriorated that it must either be rehabilitated or demolished and replaced by new units.
- In other areas, the affordable housing stock includes affordable rental projects faced with expiring use restrictions. In some areas, these units will be lost as affordable housing unless there is intervention.
- In some communities in metropolitan Boston, high rental rates and median home sales prices have clearly eroded the supply of affordable housing. New affordable rental units are badly needed in these communities.

The Department's determination of need is reflected in the set-aside categories established for 2009 and described in detail in Section VIII of this allocation plan. DHCD's determination of need also is reflected in the scoring system established for 2009 applications and described in Section XI of this plan.

## **Section VIII. Set-Aside Categories for 2009**

After careful consideration, the Department has established two set-asides for purposes of allocating the credit in the year 2009: a set-aside for production projects and a set-aside for preservation projects, including a special allocation for the Washington Beech HOPE VI project in Boston. In detail, the two set-aside categories for the year 2009 are as follows:

### **1) Production set-aside-- 60% of the available 2009 credit**

The need and demand for affordable rental units is directly linked to the relative shortage of supply. Through this set-aside, the Department intends to allocate credit to support the production or creation of new affordable rental units. Applications for new construction projects will be evaluated in the production category. In addition, applications for rehabilitation will be evaluated in this category if:

- a) The units have been vacant for two or more years; or
- b) The units have been condemned or made uninhabitable through fire damage.

Sixty percent of the credit available for allocation in 2009 is intended to support production. The minimum project size will be eight units.

### **2) Preservation set-aside-- 40% of the available 2009 credit**

Thousands of affordable housing units currently exist in privately owned properties and in federally funded public housing projects. Applications for preservation projects will be considered in this category only if:

- The units are located in expiring use restriction projects. An “expiring use restriction project” is defined as a project whose owner is able to prepay an FHA-insured or MHFA- financed loan within nine months of the date of the tax credit application to DHCD. In addition, the project cannot be subject to any other use restriction that would effectively limit the owner’s ability to convert the development to non-affordable use. When the use restrictions expire, low- or moderate-income tenants in some locations may face steep rent increases they cannot afford. While not all units in expiring use restriction projects can or should be preserved as affordable housing, many units are too valuable to lose. The replacement cost would far outweigh the cost to the state of helping to preserve the existing stock.
- Valuable Section 8 project-based units are located in projects whose owners have the legal right to terminate the Section 8 contracts, or to “opt-out” of the contracts. An “opt-out” project is defined as a project whose owner is able to prepay and opt-out of a Section 8 project-based contract within nine months of the date of the tax credit application to DHCD. In addition, the project cannot be subject to any other use restriction that would effectively limit the owner’s ability to convert the development to non-affordable use. When an owner “opts-out” in a strong housing market, he or she may elect to raise the rents significantly, including the rents paid by low-

or moderate-income tenants. Thus, the “opt-out” projects represent affordable stock that potentially could be lost from the inventory.

- The units are located in distressed or foreclosed properties and are at risk of being lost as affordable housing without an infusion of new capital and/or a new ownership structure. Such “distressed and “at risk” properties will be evaluated based on a capital needs study commissioned by DHCD or a public agency or lender (e.g., MHFA, MHP) that indicates that at least \$30,000 per unit of new capital is needed to address immediate repair and replacement needs.
- The units are located in a large-scale, significantly distressed federal public housing project, with the majority of units at risk due to deteriorated condition, and with HOPE VI funds already awarded to the project. At present, only one Massachusetts project is eligible in this category. Under the 2009 QAP, DHCD will set aside a total of \$2,000,000 in 2009, 2010 and/or 2011 credit, to be matched in part or in full by the HOPE VI award, subject to the sponsor’s ability to attract an equity investor.

The Department intends to allocate its most valuable resources, such as tax credits and HOME, to the projects most at risk from expiring use restrictions and/or Section 8 opt-out. As an example, assume that two projects both qualify as preservation projects and meet the Department’s allocation thresholds and fundamental scoring criteria. One project is at risk from expiring use restrictions, but the owner is willing to sell to a purchaser who will maintain long-term affordability in part through an allocation of 9% credit. The other project is occupied but has rehabilitation needs; the owner seeks tax credits to make necessary capital improvements. For purposes of allocating the 9% credit during 2009, the Department will give priority to the project at risk from expiring use restrictions -- if the project meets threshold and fundamental scoring criteria. If sufficient credit is available, the other project might receive an allocation as well, but it is not a priority project within the preservation set-aside.

Within the preservation set-aside, the minimum project size is eight units, although the Department expects that most or all applications in this category will represent fairly large-scale projects. There is no maximum project size in this category. However, certain cost limits, eligible basis limits, and DHCD allocation and subsidy limits will apply to virtually all 2009 projects and will effectively restrict total project size. Limits on cost, basis, and allocation amounts are described in a later section of this allocation plan. DHCD subsidy limits are described in the section of this plan entitled “Scoring System”.

#### **Non-profit set-aside:**

Federal law requires that at least 10% of the credit available in 2009 be allocated to projects involving “qualified non-profit organizations”. DHCD will meet the 10% requirement by allocating credit to such organizations through either or both of the set-aside categories described in this section. Historically, the Department often has allocated more than 50% of its 9% credit authority to qualified non-profit organizations.

To be considered a “qualified non-profit”, an organization must:

- Meet criteria described in Section 501(c)(3) or (4) of the Internal Revenue Code and be exempt

from payment of taxes under Section 501(a);

- Have as one of its exempt purposes the fostering of low income housing; and
- Not have a prohibited affiliation with, or be controlled by, a for-profit organization, as determined by DHCD.

DHCD will include in the tax credit application the necessary certification to substantiate qualified non-profit status. DHCD will make the required non-profit determination after reviewing the certification.

In order to count toward the 10% set-aside, a qualified non-profit organization, in accordance with Section 42 of the Internal Revenue Code, must:

- Own an interest in the project, directly or through a partnership; and
- Must materially participate (on a regular, continuous, and substantial basis within the meaning of Section 469(h) of the Internal Revenue Code) in the development and operation of the project throughout the tax credit compliance period.

In addition, qualified non-profit developers -- with or without material participation -- may have a right of first refusal to acquire a tax credit project after year 15, in accordance with Section 42 of the code.

It is likely that some applications will be submitted for projects that include both production and preservation units, as described in this plan. If the majority of the units in a project qualify for the production set-aside, DHCD will evaluate the project in the production category. Conversely, if the majority of the units qualify for the preservation set-aside, DHCD will evaluate the project in the preservation category.

The percentages of available credit established for each set-aside in 2009 are goals, rather than absolute minimums or maximums. In evaluating all projects and determining the most effective use of the available credit, DHCD, in its sole discretion, may choose to modify the percentages established as goals for each set-aside.

Regardless of whether an application is submitted as production or preservation, it must represent a project worthy of consideration by numerous housing and development standards. While no project is ever ideal, the Department is intent on allocating its extremely valuable resource, the 9% credit, only to the strongest possible applications. The following statements describe some of the characteristics the Department seeks to encourage and reward through the scoring system, regardless of project type:

- The project will fill a genuine, documented need, readily supported by available market information.
- The completed project will have a positive impact on the surrounding neighborhood.
- The completed project will have characteristics consistent with May 2007 sustainable development principles.
- The completed project will contain elements of “green design” and will promote conservation of energy resources.

- Consistent with fair housing policies, the completed project will offer expanded opportunities to racial, ethnic, and other groups protected under fair housing laws who are underserved in the community in which the project is located.
- From an architectural perspective, the project will be compatible with the surrounding neighborhood.
- The units, including the affordable units, will be well-designed, desirable places to live.
- The completed project will include units reserved for individuals or families earning less than 30% of area median income
- Local elected officials and neighbors actively support the project and participated in the development process.
- The development team has the financial strength to carry out the project.
- The development team has an excellent record in affordable housing development and management.
- Whether new construction or rehabilitation, the intended scope of work is appropriate.
- The total development cost of the project is reasonable, both in the context of industry standards and in the context of public perception.
- The developer's fee and overhead are consistent with the Department's written standards.
- Specific categories of project costs are reasonable, including estimated hard costs, estimated soft costs, and projected operating costs.
- The amount of public subsidy to be invested in the project is reasonable: typically, less than \$95,000 per affordable unit unless the project primarily is a special needs projects.
- No member of the development team will profit unduly from participating in the project.
- The project meets a recognizable public purpose.

**Section IX. Recommended Cost Limits; Caps on Eligible Basis;  
Cap on Allocations Per Project**

From time to time, the Department re-evaluates the appropriate recommended cost limits for tax credit projects using cost information from projects in the Department’s portfolio. The Department has made the decision to increase the recommended cost limits for larger unit projects within metro Boston to \$250,000 per unit. The new limit for larger unit projects outside metro Boston is \$200,000 per unit. Per-project limits on tax credit awards also have been revised (see page 24). For 2009, the recommended cost limits are as follows:

SRO outside the Boston metro area	\$ 90,000
SRO within the Boston metro area	100,000
Enhanced SRO outside the Boston metro area	100,000
Enhanced SRO within the Boston metro area	125,000
Assisted living unit projects outside the Boston metro area	125,000
Assisted living unit projects within the Boston metro area	150,000
Small unit projects outside the Boston metro area	150,000
Small unit projects within the Boston metro area	175,000
Large unit projects outside the Boston metro area	200,000
Large unit projects within the Boston metro area- preservation set-aside	175,000
Large unit projects within the Boston metro area- production set-aside	250,000

**Large unit projects** must have an average of at least two bedrooms per unit or consist of at least 75% two or more bedroom units and 25% three or more bedroom units.

**Enhanced SRO projects** must contain kitchen and bathroom facilities in at least two-thirds of the units.

As indicated, these limits are **recommended** limits: they are not intended to be absolute limits for projects seeking tax credits. Applications for projects with costs higher than the recommended limits will undergo greater scrutiny, so that DHCD may attempt to understand the added costs. In these cases, applicants will have to justify the project costs to DHCD in order to be eligible for 2009 consideration.

**Additional limitations for competitively allocated credits:** Even if an application is accepted for review with costs higher than the recommended limits, DHCD will typically cap the project’s eligible basis. For the purpose of this QAP, DHCD will cap the allowable eligible basis in the production set-aside at \$250,000 per assisted unit for projects within the Boston metro area and \$200,000 per assisted unit for projects outside the Boston metro area. DHCD will cap the allowable eligible basis in the preservation set-aside at \$175,000 per assisted unit.

As an example, to determine the amount of tax credits for which a production project within the Boston metro area is eligible, the sponsor must multiply \$250,000 in maximum basis times the number of tax credit units times 9%. The sponsors of a preservation project must multiply \$175,000 in maximum basis times the number of tax credit units times 9%. **For example, a 30 unit 100% tax credit production project within the Boston metro area will be eligible for \$675,000 ( $\$250,000 * 30 * .09 = \$675,000$ ). A 30 unit 100% tax credit production project outside the Boston metro area will be eligible for \$540,000 ( $\$200,000 * 30 * .09 = \$540,000$ ). A 30 unit 100% credit preservation project will be eligible for \$472,500 ( $\$175,000 * 30 * .09 = \$472,500$ ). (Sponsors should note that the federal legislation (HR 3221) enacted in July 2008 established 9% as the permanent percentage for the “70%” credit projects.)**

Finally, in order to ensure equitable distribution of limited tax credit resources, the Department has established per-project limits for credit allocations. The Department has established \$500,000 as the maximum amount that can be awarded to an assisted living project. In 2009, the Department has established \$1 million as the maximum allocation amount that typically will be awarded to other projects during the term of this allocation plan. However, DHCD may elect to award more than \$1 million in credit -- up to a maximum of \$1.3 million in credit -- to large scale neighborhood impact projects. Requests for allocations greater than \$1 million will be considered on a case-by-base basis if the sponsor is able to demonstrate the potential impact of the project and if DHCD has sufficient credit to make a larger allocation. DHCD expects that a sponsor receiving an award greater than \$1 million – up to \$1.3 million – will request reduced amounts of subsidy financing from the Department. It is important to note again that sponsors of all 2009 credit projects will have to make the case to DHCD that they have secured an investor.

## Section X. Threshold Criteria for 2009 Tax Credit Applications

During 2008, DHCD will first evaluate all tax credit applications in accordance with threshold criteria, then in accordance with competitive scoring criteria totaling 182 points. Unless an application meets all the threshold criteria set forth in this section, the Department will not review the application in the competitive scoring categories. **In addition, each applicant must submit a narrative addressing the project's ability to satisfy the threshold requirements.**

The eleven threshold criteria that all applications must meet are as follows:

- Threshold #1: Conformance with Set-Aside Categories
- Threshold #2: Quality of Site
- Threshold #3: Evidence of Local Support or Local Processing
- Threshold #4: Creditworthiness of Sponsor/Owner
- Threshold #5: Evidence of Site Control
- Threshold #6: Identification of All Financing Sources
- Threshold#7: Status of Compliance Monitoring of Other Tax Credit Projects
- Threshold #8: Good Standing with Respect to Other State Housing Programs
- Threshold #9: Commitment to a Thirty-Year Term of Affordability
- Threshold #10: Tenant Supportive Services
- Threshold #11: Inclusion of Units for Very Low Income Persons or Families
- Threshold #12: Consistency with the May 2007 Sustainable Development Principles
- Threshold #13: Fair Housing Narrative

The requirements included in each threshold criterion are as follows:

### ***Threshold #1: Conformance with Set-Aside Categories***

Each project submitted for 2009 consideration must meet the criteria for either the production or the preservation set-aside. The production set-aside, described in detail in an earlier section of this plan, includes a minimum project size of eight units. At least 75% of the units in a proposed production project must have two or more bedrooms. DHCD will permit exceptions on the number of bedrooms only if efficiency or one-bedroom units are appropriate for the intended residents. (For example, assisted living projects primarily will include efficiency or one-bedroom units and will not be subject to the two-bedroom requirement. An exception to the bedrooms requirement also will be made for single room occupancy projects.) Regardless of the exceptions described in this paragraph, the Department's priority in this set-aside is the production of rental units suitable for families.

The preservation set-aside also is described in detail in an earlier section of this plan. The minimum project size in this category is eight units. There is no maximum project size in this category. However, projects over 100 units will undergo greater scrutiny than projects of 100 units or less. The Department has a preference for projects that include units suitable for families, but recognizes that some preservation projects consist primarily of one-bedroom units for rental by older households. Other preservation projects are predominantly single room occupancy units for rental by individuals with special needs.

### ***Threshold #2: Quality of Site***

The quality of the site is one of the most fundamental aspects of any housing project. Like other lenders,

both public and private, the Department ideally wishes to fund only those projects in outstanding locations, on problem-free sites. However, in reality, many tax credit applications represent existing, occupied residential properties located on sites that are acceptable, but not ideal. Additional applications represent abandoned or distressed properties that previously were occupied by tenants or homeowners. The sites of these properties also may be less than ideal.

The Department anticipates that some 2009 applications will represent occupied or previously occupied HUD properties. If DHCD were making the decision on quality of site, it might not agree with the decision already made by the U.S. Dept. of HUD. Since a whole class of applications includes sites that have been accepted by the federal housing agency, DHCD has elected not to evaluate “site” as a competitive category in 2009.

However, every 2009 application submitted for consideration still must include a site acceptable, by Department standards, for the proposed housing use. Sponsors should review their sites in light of the May 2007 sustainable development principles outlined in Section II of this QAP. Although site characteristics that are generally consistent with the May 2007 sustainable development principles may be present more often in urban areas, the Department believes that there are opportunities for housing development in all communities. Infill sites near services and transportation, buildings for adaptive re-use, former commercial or industrial sites, and other “smart growth” opportunities exist in rural and suburban communities. The Department encourages the development of projects in such locations, especially since such projects tend to offer greater opportunity to underserved racial and ethnic groups.

Before preparing a One-Stop Affordable Housing Application, each tax credit sponsor should contact DHCD’s tax credit staff to schedule a site review. The Department will presume that a site is acceptable if it currently is the location of an occupied housing project, with no significant change proposed to the tenant group to be served. However, DHCD staff will still conduct an on-site assessment using, among other measures, the May 2007 sustainable development principles. To schedule a site review, the tax credit sponsor should contact the Department at least one month prior to the competition deadline for submitting applications. With less than one month's notice, the Department may not be able to conduct a site visit prior to the competition deadline.

### ***Threshold #3: Evidence of Local Support or Local Processing***

In an ideal world, every affordable housing project would have the support of two key constituencies: its neighbors and the elected leaders of the community. Unfortunately, many projects lack local support, whether from the owners of abutting properties, local elected officials, or both. In some cases, support is withheld for good reason; in other cases, support is unreasonably withheld. In general, DHCD encourages applications from tax credit projects that have full local support. Projects with the support of the chief elected official will be rewarded in the competitive scoring criteria.

Sponsors sometimes may submit applications for DHCD’s credit authority for projects that are not locally supported. If a sponsor/owner cannot demonstrate local support, he or she must instead demonstrate through a written narrative accompanying the One-Stop application substantial efforts to respond to local concerns and obtain the chief elected official's support. If DHCD is not satisfied that the sponsor/owner has made every reasonable effort to obtain support, the Department will reject the tax credit application. Sponsors of HOPE VI projects **must** have the written support of the chief elected official of the community in which the housing will be located in order to be eligible to receive an award of credit

through DHCD.

With respect to local contributions, numerous projects submitted for tax credit consideration are located in municipalities that have their own funds through federal sources (i.e. Community Development Block Grant monies, the HOME Program, etc.), or through other sources. For projects located within such municipalities, DHCD typically requires a local contribution of funds in order for the project to receive tax credit consideration.

***Threshold #4: Creditworthiness of Sponsor/Owner***

The Department will accept tax credit applications from sponsoring entities that are creditworthy by DHCD standards. The standards of creditworthiness include the following:

- 1) The debt obligations of a partner or other principal of the sponsor/developer entity and the proposed mortgagor/owner entity are paid current;
- 2) No liens exist against property owned by the partner or other principal;
- 3) The partner or other principal of the sponsor/developer entity and the proposed mortgagor/owner entity has not failed to respond to a public filing such as a lien or a judgment;
- 4) The sponsor/developer entity and the proposed mortgagor/owner entity (including any affiliates) have not experienced any event(s) of foreclosure over the past five years.
- 5) The sponsor/developer entity and the proposed mortgagor entity (including any affiliates) have not declared bankruptcy.

In general, a corporation will not be considered creditworthy if there are tax liens against the corporation, its affiliates, its subsidiaries, or its properties. In addition, if there is a bankruptcy lien against the corporation, it will not be considered creditworthy. DHCD also will determine whether a corporate sponsor is current in payments to its creditors and will require a certificate that all state tax payments are current. The Department will require that a sponsor certify that all of the standards of creditworthiness listed above have been satisfied as part of the One-Stop application submission package.

DHCD is considering entering into a Memorandum of Understanding (MOU) with the Internal Revenue Service in order to obtain tax information useful in determining an applicant's creditworthiness and good standing with the agency. If an MOU is executed during 2009, DHCD reserves the right to require that all tax credit applicants complete Form 8821, Tax Information Authorization (Rev. 9-98), naming DHCD as the appointee to receive tax information.

***Threshold #5: Evidence of Site Control***

The project sponsor must be able to demonstrate full control of all land and buildings included in the project through a fully executed agreement such as an option agreement, a purchase or sale agreement, or another similar instrument. The instrument demonstrating site control must include a sales price and an expiration date. The expiration date of the instrument should extend at least eight weeks beyond the tax credit application deadline. Ownership of a note and assignment of a mortgage when combined with other factors may constitute full site control in certain limited circumstances.

The “Competitive Scoring System” section of this plan discusses the Code requirement for incurring costs which meet the so-called ten percent test. Property acquisition often serves as a substantial portion of these costs. If a project sponsor receives a tax credit reservation and later cannot meet the ten percent test, DHCD risks losing the credits. In order to avoid this potential outcome, DHCD attempts to ascertain that sponsors have full site control of all properties included in their respective projects.

The Department will consider all relevant circumstances in determining whether the site control threshold has been satisfied.

***Threshold #6: Identification of All Financing Sources***

In the One-Stop Affordable Housing application, the sponsor of each tax credit project must identify funding sources sufficient to cover all development and operating costs. The sponsor may not be able to submit firm financing commitments for all sources by the application submission deadline. However, at minimum, the sponsor must submit documentation demonstrating a strong interest from each financing source. All sponsors are expected to submit strong letters from lending sources and a tax credit syndicator or investor. During 2009, DHCD will place particular emphasis on the letters from syndicators and investors.

***Threshold #7: Status of Compliance Monitoring of Other Tax Credit Projects***

Many development team members submitting projects for 2007 consideration previously have participated in the development of tax credit projects that now are occupied. These projects may already have been monitored to determine compliance with Section 42 of the Internal Revenue Code. DHCD will not accept 2009 applications for tax credits if the proposed development team includes members who are affiliated with existing projects for which Forms 8823 (“Low income Housing Credit Agencies Report of Noncompliance”) have been issued for material and/or continuing, but curable, non-compliance. In addition, DHCD may not accept applications from developers of tax credit projects financed in previous years with outstanding compliance monitoring fees due to the agency. These restrictions apply to all members of the development team. (Ownership and management of a project constitute an affiliation.) Before submitting a 2009 application, a sponsor/owner must verify that all team members can meet this threshold requirement.

***Threshold #8: Good Standing with Respect to Other State Housing Programs***

Many development team members submitting 2009 tax credit applications have participated in other DHCD-assisted projects. All key members of a development team seeking 2009 tax credits must be in good standing with DHCD with respect to other DHCD-assisted projects. As one example, many tax credit developers have used state HOME assistance. If a developer -- or other key team member -- participated in a state-assisted HOME project that has been monitored and determined to be out of compliance, DHCD will not accept a 2009 tax credit application from a team that includes this team member.

As another example, if a key team member has not made satisfactory progress on an earlier DHCD-assisted project, the Department may not accept a 2009 tax credit application that includes this team member. Developers of tax credit projects financed by DHCD in previous years will not be considered in good standing with the agency unless compliance monitoring and/or tax credit processing fees have been paid in full for all their existing projects. Before submitting a 2009 tax credit application, the sponsor/owner must determine that the following members of the team are in good standing with DHCD:

consultant; architect; contractor; management agent; attorney. Obviously, the sponsor/owner also must be in good standing with DHCD.

***Threshold #9: Commitment to a Thirty-Year Term of Affordability***

The sponsor/owner of each 2009 application must commit to at least a thirty-year term of affordability. With respect to affordability, the sponsor/owner must commit:

- To maintain the tax credit project as low income rental housing for at least 30 years; and
- To offer to the state an opportunity to present a “qualified contract”, as such term is defined in Section 42 of the Internal Revenue Code, for the purchase of the project after expiration of the term of the Agreement.

Each tax credit project owner will be required to sign a Tax Credit Regulatory Agreement and Declaration of Restrictive Covenants (“the Agreement”) before receiving the IRS Form(s) 8609. In the Agreement, the owner will be required to submit to DHCD a written request one year before expiration of the term of the Agreement (i.e., applicable term of affordability) for DHCD to procure such a qualified contract.

***Threshold #10: Tenant Supportive Services***

Sponsors of some tax credit projects, including assisted living projects and HOPE VI projects, provide extensive supportive services for their tenants. The cost of services at assisted living properties and HOPE VI projects is part of the total development cost of the projects. At other tax credit projects, developers – especially non-profit developers -- work with neighborhood groups, churches, local schools, and local employers to attempt to create opportunities for their tenants. The services ultimately available at these projects are not part of total development cost but may prove highly beneficial to both tenants and owners over time. In the 2009 Qualified Allocation Plan, DHCD is requiring each applicant for credit to provide a narrative with the One-Stop funding application describing services available in the community to the existing or future tenants of the project. Developers do not necessarily have to pay for the services, but must identify the services and indicate how they will notify tenants, on a regular basis, of opportunities for education and employment training, and other important services.

***Threshold #11: Inclusion of Units for Very Low Income Persons or Families***

DHCD requires sponsors of 2009 9% tax credit applications to reserve ten percent of the total number of units in their projects for persons or families earning at or below 30% of area median income. Sponsors seeking allocations of 4% credit for primarily affordable projects will be required to reserve ten percent of the total number of units in their projects for persons or families earning less than 30% of area median income. If a tax credit sponsor is utilizing tax exempt financing and seeking an allocation of 4% tax credits for a mixed income project with at least 50% of the units at market rates, the sponsor must reserve 15% of the total affordable units for persons or families earning less than 30% of the area median income.

***Threshold #12: Consistency with the May 2007 Sustainable Development Principles***

The May 2007 sustainable development principles will be applied as a threshold for projects seeking state funding from DHCD and its partner entities. A listing of the principles can be found on pages five and six of this document.

***Threshold # 13: Fair Housing Narrative***

Each sponsor must provide a narrative describing how the project location and type, tenant selection plan, and other applicable policies and procedures will further the Department's Fair Housing Principles provided in Appendix I. The narrative also should clearly describe the efforts that will be made to ensure affirmative fair marketing and outreach to those households and individuals least likely to apply for the affordable units within a project.

**Each tax credit applicant must submit a narrative addressing the project's ability to satisfy all threshold requirements listed above and on the preceding pages.**

## **Section XI. The Competitive Scoring System**

During 2009, DHCD will evaluate all tax credit applications first in accordance with threshold criteria, then in accordance with competitive criteria, totaling 182 points. Applications for projects that meet all applicable threshold criteria will be scored in two competitive categories totaling 182 points. The two competitive categories are:

- I) Fundamental Project Characteristics -- 100 points
- II) Special Project Characteristics -- 82 points

The threshold criteria are set forth in the preceding section of this plan. The components of the two competitive categories are as follows:

### **Fundamental Project Characteristics**

A total of 100 points is available in this category, which includes the five fundamental components of any affordable housing project, regardless of type. The five fundamental components, valued equally at 20 points each, are:

- A. Financial Feasibility
- B. Design
- C. Development Team
- D. Marketability
- E. Readiness to Proceed

Each of the five components of “Fundamental Project Characteristics” is described in detail below and on the following pages. Every tax credit application must score at least 12 points in each of the five components of fundamental project characteristics. If an application scores fewer than 12 points in any of the five categories, it will not receive an allocation of tax credits during 2009. If an application scores at least 12 points in each of the five categories, totaling at least 60 points, it will be evaluated and scored in the second competitive category, “Special Project Characteristics”.

If a project is evaluated favorably and receives a 2009 allocation of credit, the sponsor should note that later modifications to the project may result in a re-evaluation by the Department. If a project is modified substantially, the allocation may be withdrawn. DHCD reserves the right to suspend further review of a project once it has identified that the project has failed in any one of the categories included in “fundamental project characteristics.”

#### **A. Financial Feasibility -- 20 points total; 12 points required minimum**

The information contained in the One-Stop Affordable Housing Application must demonstrate to DHCD's satisfaction that the proposed project is financially feasible during construction and after completion. The

sponsor/owner must include in the application solid evidence of financing commitments from construction and permanent lenders. The sponsor/owner must include a comprehensive letter of interest from a syndicator or investor. The quality of the letter is of utmost importance in 2009. The sponsor/owner must identify sufficient financing sources for all project uses in the One-Stop application. The operating proformas included in the application must include trending assumptions and debt service coverage acceptable by current industry standards and explicitly acceptable to DHCD.

The amount of equity raised per tax credit dollar is determined by market forces and, therefore, is subject to change. For 2009 underwriting purposes, DHCD will assume that each project sponsor will obtain \$.75 per tax credit dollar available for development costs. In determining the financial feasibility of the proposal, DHCD will consider the adequacy of the developer's fee and overhead to cover any gap that would result if an equity raise lower than \$.75 per tax credit dollar is achieved.

Sponsor/Owners are encouraged to refer to the Program Guidelines for the Low Income Housing Tax Credit Program dated January 2007 for further details regarding recommended financing. A sponsor/owner using assumptions that deviate from the DHCD-recommended assumptions must justify such deviations to DHCD's satisfaction.

#### **B. Design -- 20 points total; 12 point minimum required score**

The design elements and the proposed scope of work for each 2009 tax credit project will be reviewed by architects and/or cost estimators under contract to DHCD. The architects and/or cost estimators will evaluate the architectural aspects of each project to determine:

- Whether the project conforms with all applicable laws, regulations, code requirements, including those specific to accessibility;
- Whether the project has incorporated certain aspects of "universal design" to increase accessibility (see attached checklist in Appendix G);
- Whether the architectural treatment is appropriate, given community standards and the surrounding neighborhood, as well as the project site;
- Whether proposed amenities are sufficient, appropriate for the target population, but not excessive;
- Whether the site layout and site design adequately address environmental issues; parking needs; rainwater management; appropriate open space requirements; outdoor improvements appropriate for the target population, visitability, etc.;
- Whether the owner/developer has incorporated energy conservation measures that exceed those required by the Building Code, and whether the project complies with energy efficient building envelope guidelines such as EPA's Energy Star standards, for appliance and light fixture selection as well as air sealing and insulation measures, which will result in both greater comfort and operating cost efficiencies;
- Whether the owner/developer has incorporated material selection consistent with promoting a healthful interior environmental quality;
- Whether the owner/developer has incorporated mechanical ventilation measures to control humidity and promote good indoor air quality;
- Whether the owner/developer has provided interior CO detectors as mandated by state regulations;
- Whether the project conforms to state and local coded-mandated regulations for water conservation requirements (1.6 gal toilets, low-flow devices, etc.) as well as storm water

retention/recharge. The sponsor should identify and advance water conservations measures that go beyond state/local regulations;

- Whether developer has provided for sufficient construction oversight, building envelope testing, and building system commissioning to ensure that the design and efficiency measures are properly installed and adjusted.

Project designs that incorporate site planning, exterior envelope detailing and mechanical system technologies to achieve energy efficiency are preferred. Demolition, renovation, and construction processes that result in waste reduction and conservation of resources are preferred. Building materials that are local in origin, that are durable, that incorporate recycled content, or that avoid toxic materials, are preferred. Sponsors must submit the completed forms found in Appendix H to demonstrate the measures that were utilized to achieve high performance and efficiency. Sponsors also should submit the accessibility checklist found in Appendix G in order to enable our reviewing architects to better evaluate the accessibility provision of each project.

In order to be considered eligible for tax credit funding, all units should be built with 3 distinct networks:

- One network installed for phone using CAT5e or better wiring.
- A second network for data installed using CAT5e or better, networked from the unit back to a central location (or a similarly configured wireless data network).
- A third network for TV services using COAX cable.

Costs associated with installing the data network are eligible development cost expenses. This will be a threshold requirement in the design scoring section. Sponsors of projects that do not include the above in their plans and specifications may not be considered eligible for a tax credit award.

In general, DHCD will follow the HOME Rental Program Guidelines and Regulations with respect to the minimum unit and room sizes, minimum suggested counter space, etc., for tax credit projects. With respect to the rehabilitation of existing structures, these minimum standards are intended for guidance and should be met wherever possible. The Department recognizes that, in some cases, constraints such as existing partitions, walls, plumbing, or excessive construction costs will prevent compliance with these standards. If a sponsor determines that it is not feasible to comply with all the HOME standards, he or she should provide an explanation in the tax credit application.

As was the case during 2008, DHCD will require during 2009 that each sponsor include in his or her application a construction cost proforma prepared by a qualified contractor or architect or a qualified construction cost consultant. DHCD also will require that all sponsors of existing projects submit a letter from the primary lender supporting the construction cost proforma and the proposed scope of work and confirming that such costs cannot be funded in part through a mortgage increase. **In addition, in accordance with industry recommended practices, sponsors of projects applying for funding under the preservation set-aside must submit a capital needs assessment that adequately supports the scope of proposed improvements to the Department's satisfaction. A qualified, licensed architect or engineer must perform this study.**

In cases where the developer and the general contractor are affiliated, a qualified, unrelated third party contractor, architect or qualified construction cost consultant must prepare the construction cost proforma. Related party contractors are subject to the maximum allowable builder's profit and overhead and general requirements indicated in the Program Guidelines as well.

### **C. Development Team -- 20 points total; 12 point minimum required score**

The key members of the development team are the owner/developer; the consultant; the architect; the contractor; the management agent; and the attorney. DHCD will review the background of the key team members to determine:

- Prior successful experience in developing tax credit projects
- Financial strength
- Physical and financial condition of other properties developed by the sponsor/owner
- Prior experience on other DHCD-assisted projects
- Inclusion of SOMWBA-certified Minority/Women's Business Enterprise members on the team as sponsor/owner; management agent; contractor.
- Inclusion of SOMWBA-certified Minority/Women's Business Enterprise members on the team as architect; attorneys; syndicators; accountants; consultants.

The intent of this scoring category is to identify those teams capable of financing and developing complicated tax credit projects and managing the projects successfully after completion and occupancy. The scoring in this category will reflect whether members of the team currently own or manage troubled properties. The scoring also will reflect whether members of the team recently have been involved with other DHCD-assisted projects that have not progressed to DHCD's satisfaction. In addition, the scoring will reflect whether the team includes members who are M/WBE certified in Massachusetts by the State Office of Minority and Women Business Assistance (SOMWBA).

To determine the application score in this category, the Department will evaluate the capacity of each key member of the team as identified in the One-Stop. Sponsors of tax credit projects should note that they have two options with respect to identifying a general contractor:

- 1) A sole contractor can be listed in the One-Stop, and the Department will evaluate the capacity of that contractor as part of the scoring process; or
- 2) The names of three possible general contractors can be listed in the One-Stop, and the Department will evaluate all three entities for scoring purposes. If the sponsor chooses this option, the score for the contractor will be the average of the scores for each of the three entities listed.

Whether the sponsor chooses to make the final selection of a contractor before or after submitting the tax credit application, certain subcontract bidding processes must be followed to the Department's satisfaction. If a general contractor is selected before the project is submitted, the sponsor will have to demonstrate at a later time that subcontractors were selected through a process demonstrating competitive pricing of construction. This requirement will be a condition in the tax credit reservation letter. If the sponsor elects to choose a contractor after receiving a tax credit reservation, he or she must select the lowest qualified bidder from a pool of at least three bidders and must document the selection process to the Department's satisfaction. Again, this requirement will be a condition in the tax credit reservation letter.

Regardless of which approach the sponsor selects, the Department will require a submission describing bidding procedures later in the tax credit process.

In order to ensure that management entities have adequate experience in managing tax credit properties, DHCD reserves the right to require tax credit compliance training as a condition of its funding award.

**D. Marketability-- 20 points total; 12 points required minimum**

Unless a market exists for the proposed project, the project will fail. **The sponsor/owner identified in each 2009 tax credit application must include in the One-Stop Affordable Housing Application a detailed market study prepared by a qualified professional acceptable to DHCD. This Internal Revenue Service requirement applies to all projects, whether production or occupied preservation projects.**

The National Council of Affordable Housing Market Analysts (NCAHMA) has adopted guideline documents detailing its standards for definitions and content in an affordable housing market study. These guideline documents have been included as Appendix F to this allocation plan. The Department will accept membership in the NCAHMA organization as indication that the market analyst is a qualified professional acceptable to the Department. DHCD strongly encourages sponsors to direct their market analyst to produce a market study consistent with NCAHMA guideline materials and standards.

If, during the course of its review, DHCD determines that the market study submitted with the application is inadequate, DHCD will require the sponsor/owner to submit a new market study. An application that includes a market study that does not confirm the viability of the proposed project will in all likelihood not score the minimum points required in this category. The market study included in the application should address need and demand in the specific housing market, including typical sales prices, rental rates for various types of projects, vacancy rates. The market study should include the sponsor/owner's analysis of why the proposed project will be competitive.

As part of the determination of marketability, DHCD will conduct an independent evaluation of housing need. This evaluation will investigate the project's marketability including whether the project is located:

- a) In a community in which the public housing waiting list exceeds, by a ratio of three to one, the total number of existing federal and state public housing units available for the proposed population (not including units occupied by federal or state rental assistance certificate holders); or
- b) In a community in which there is no public family housing; or
- c) In a community where the rent burden is greater than 30%. Rent burden is defined as the median percentage of gross income spent on housing in the community in which the proposed project is located.

Sponsors of projects for populations with special needs and/or persons with disabilities (including assisted living facilities) should carefully address the anticipated demand for the proposed project and the reasons why the project will be attractive to the particular consumer group(s). Sponsors of these projects must include a resident social services plan acceptable to DHCD. DHCD will place special emphasis on the market study for assisted living applications. Given the marketing issues that some assisted living projects have encountered, DHCD may require significant additional documentation from sponsors of such projects. It has become clear to the Department that assisted living projects are particularly difficult to market and operate successfully over time. Sponsors of new assisted living projects will have to make an

exceptional case to the Department as to why their projects should be considered for tax credits and other DHCD resources.

DHCD also will review every proposed project's rent structure. In general, the proposed rents will be compared to rents for comparable, unassisted units in the subject market. DHCD also may consider such market factors as home sales, rentals, and average vacancy levels. Additional factors to be evaluated include, but are not limited to, the sponsor's comparables submitted with the One-Stop application and/or market study information, newspaper ads, etc. In determining the feasibility of the projected rents, DHCD will use Section 8 contract rents only if satisfactory evidence of a housing assistance payments contract is included with the One-Stop application. If an executed payments contract is not included, DHCD will compare the proposed rents to the lower of the current HUD FMR for the area or to comparable market rents for the area.

DHCD also will evaluate the sponsor/owner's marketing and outreach plan. All sponsor/owners should include a detailed plan with their respective applications. The plan must indicate in detail how the sponsor intends to market to and attract underserved populations to the project, indicating persons with disabilities and minority households.

#### **E. Readiness to Proceed -- 20 points total; 12 points required minimum**

The sponsor/owner of each tax credit application must demonstrate to DHCD's satisfaction the ability to meet the Internal Revenue Service Code ten percent test and to receive a carryover allocation in timely fashion. The ability of the sponsor to attract an investor obviously is critical to readiness. For projects receiving a reservation of tax credits in the first half of the calendar year 2009, the sponsor/owner must incur costs, no later than the close of calendar year 2009, which are more than ten percent of the project's reasonably expected basis. In keeping with recent amendments to the IRS Code, a sponsor/owner receiving a reservation of tax credits in the second half of the calendar year 2009 will have an additional six months from the date of the 2009 carryover allocation or binding commitment (or until June 30, 2010) to meet the ten percent test. The Department recognizes that ten percent test deadlines could be further extended but, at this time, has decided to extend the ten percent test deadline by six months, rather than longer. **Sponsor/Owners must include with the One-Stop a narrative that addresses the proposed costs to be incurred in meeting the ten percent test as well as an anticipated timeframe for meeting the test.**

The One-Stop application should include evidence of progress in areas including but not limited to land use and zoning approvals, environmental and historic reviews, ability to close on sources of financing, and so on. All applications for projects seeking tax credits should include an ASTM Phase One environmental site assessment for all properties in the project and any other applicable environmental reviews including but not limited to lead, asbestos, and radon testing. For properties located in historic districts or designated as buildings having historical significance, the sponsor/owner must include in a narrative the status of required historical approvals and evidence that the Massachusetts Historical Commission review process is underway or completed. **A sponsor seeking tax credits for a project that requires a comprehensive permit under Chapter 40B should be advised that the Department will not issue a reservation of tax credits until the sponsor has been granted the comprehensive permit from the local zoning board of appeals and until the requisite appeals period has ended.**

During 2009, DHCD will give special consideration in this scoring category to projects that were submitted during a previous competition but not selected for funding, if DHCD determines that the project sponsors have addressed all issues that prevented them from receiving an earlier allocation.

### **Special Project Characteristics**

The Department has designed this scoring category to encourage and reward projects that include some of the characteristics DHCD would most like to support in affordable housing projects. The points in this category are available to projects that include the following special characteristics:

- Official local support
- Part of a comprehensive neighborhood planning effort
- Inclusion of MBE/WBE members on the development team
- Non-profit sponsorship
- Special needs groups and/or persons with disabilities as intended consumers
- Inclusion of market rate units in the project
- Location in a community with less than 10% subsidized stock
- Conformance with Section 42 Code preferences
- Emphasis on environmentally friendly design
- Enhanced accessibility
- Proximity to transit
- Location in low poverty area

The Department values all of these project characteristics. The maximum points available per category are described on the following pages:

#### **Official Local Support -- 4 Points Maximum:**

DHCD will award up to four points to any application with a letter of support from the chief elected official of the community to benefit from the tax credit project. The support letter must specifically endorse the proposed project. The number of points awarded in this category will depend, in part, on whether the chief elected official commits local resources to the project and the extent to which the chief elected official offers support and resources in furtherance of the Department's Fair Housing Principles provided in Appendix I.

#### **Inclusion in a Comprehensive Neighborhood Revitalization Effort -- 2 Points Maximum:**

Some proposals for tax credit projects are part of neighborhood plans prepared and endorsed by municipal officials. DHCD will award up to two points for 2008 applications that include some or all of the following features:

- Evidence that the proposed project is part of a formal neighborhood plan approved by the chief elected official of the municipality. The formal plan must be a written plan with the neighborhood delineated; target properties identified; proposed demolition, rehabilitation, and new construction identified; etc.
- The plan also must include reliable information on local housing need, including current characteristics of the neighborhood's housing stock; supply and demand for affordable rental and ownership units within the neighborhood, etc.
- The plan must indicate how the neighborhood revitalization effort incorporates and coordinates housing related amenities such as transit, employment, community services, and

affordable homeownership opportunities.

- Evidence that the proposed project is located in a qualified census tract.
- If the funding application seeks tax credits for a project with expiring use restrictions, the neighborhood plan must address the importance of the project, the need for preservation of the units, and the other housing options available to residents if the preservation effort is not successful.

**MBE/WBE Membership on the Development Team -- 6 Points Maximum:**

If the project sponsor, general contractor, or management agent is certified by the State Office of Minority and Women Business Assistance (SOMWBA) as a Minority Business Enterprise (MBE) organization or a Women's Business Enterprise (WBE), DHCD will award six points in this category. If another key member of the development team -- the architect; the developer's consultant; the attorney; the accountant, the syndicator -- is SOMWBA-certified as MBE or WBE, DHCD will award a maximum of three points in this category. (It is important to note that six points will be awarded only if the sponsor, contractor, or management agent is MBE or WBE certified by SOMWBA.) No points will be awarded for development team members who are certified in trades not to be used at the proposed project nor will points be given for any subcontractors who are not under contract with the owner. All SOMWBA certifications must be current in order for the application to receive points.

**Non-Profit Sponsorship -- 4 Points Maximum:**

Section 42 of the Internal Revenue Code requires that each allocating agency award at least 10% of the annual credit available to projects sponsored by non-profit organizations. In addition to meeting the Section 42 requirements, DHCD wants to encourage non-profit sponsorship of tax credit applications. These applications often represent community-based projects that have strong local support and are critical to the redevelopment of troubled neighborhoods. DHCD will award four points in this category to any tax credit application sponsored by a non-profit organization that meets the qualifications in Section VIII.

**Special Needs Groups and/or Persons with Disabilities as Intended Consumers -- 8 Points Maximum:**

DHCD will award eight points in this category to projects with at least 15% of the units set aside for individuals or households with special needs and/or persons with disabilities. This category includes but is not limited to tenants with developmental disabilities; formerly homeless households making the transition to permanent housing; individuals with children; frail elderly to be served in assisted living projects; and so on. However, the points will be available only if the project design, amenity package, and services package are appropriate, in DHCD's estimation, for the intended residents. For example, if the sponsor of an assisted living project does not include adequate common space or services in the tax credit application, no points will be awarded in this category. Projects designed to serve the elderly but not intended as assisted living developments will not be eligible for points in this category.

**Inclusion of Market Rate Units in the Project -- 6 Points Maximum:**

The Department will award six points to a tax credit application that includes at least 50% market rental units. Three points will be awarded to a project with at least 25% market rental units. DHCD will award points in this category only if the marketing information presented by the sponsor and confirmed by the Department supports the proposed mix of market and affordable units.

**Location in an Opportunity Area-- 14 Points Maximum:**

DHCD will award up to fourteen points to any family housing project located in an “opportunity area” defined as a municipality which has less than 10% subsidized housing and a census tract within that municipality where the poverty rate is below 15%. Poverty levels of the project’s surrounding areas also will be considered. The sponsor must provide a detailed affirmative fair marketing plan for attracting those tenants least likely to apply based on the location of the units. DHCD will make this determination based on a municipality’s percentage of low and moderate income housing as identified in DHCD’s most recent subsidized housing inventory. The Department wishes to encourage development in such communities, as long as the proposed projects are consistent with the May 2007 sustainable development principles and the Department’s Fair Housing Principles provided in Appendix I. The sponsor must provide detailed affirmative fair marketing plan for attracting those tenants least likely to apply based on the location of the units.

**Conformance with Section 42 Code Preferences -- 6 Points Maximum:**

In this category, the **total** number of points available to any project is six.

**Extended Term of Affordability**

DHCD will award six points in this category to applications whose sponsors commit to an affordability term in perpetuity. Three points will be awarded to applications whose sponsors commit to a 50-year term of affordability. The extended terms of affordability will be included in the project’s regulatory agreement. If a project receives points in this category, DHCD will not permit the term of affordability to be reduced at a later date.

**Lowest Income Population to be Served**

DHCD will award six points in this category to projects whose sponsors commit to renting at least 15% of the tax credit eligible units to individuals or families with incomes at or below 30% of median income. If a project receives points in this category, DHCD will require the sponsor’s commitment to be included in the project’s regulatory agreement. Units intended to count towards this set-aside must be clearly identified in the application in order for the project to earn points in this category.

**Projects Located in Qualified Census Tracts**

DHCD will award six points in this category to a project located in a qualified census tract, the development of which contributes to a concerted community revitalization plan. Internal Revenue Code 42 (d)(5)(C)(ii) defines “Qualified Census Tract” as any census tract designated by the Secretary of HUD in which 50 percent or more of the households have an income less than 60 percent of area median gross income or, in certain instances, there is a poverty rate of at least 25 percent.

**Emphasis on Environmentally Friendly Design and Enhanced Accessibility—26 Points Maximum**

DHCD will award up to 26 points in this category for projects that meet the following design criteria.

**Energy Efficient Envelope Design—5 Points Maximum**

DHCD will award up to five points to projects where the exterior envelope has been insulated beyond requirements of the Building Code, achieving the values listed below:

**Walls-**

- R-19 with 2x6 wood stud walls or R-13 plus R-3 continuous insulation with 2x4 wood studs or metal framing.

**Foundation Walls-**

- R-11 between wood studs or R-8 continuous

**Slab-on-grade floor-**

- R-5 at slab perimeter with a complete thermal break and R-5 continuous under slab

**Roof-**

- R-35 between wood joists or trusses, or R-30 continuous.

**General-**

- Provide a sealed vapor barrier on the conditioned side of the insulation, and a continuous air infiltration barrier around the insulated perimeter, with all joints sealed, including terminations at roof, windows and doors.
- Install spray foam (minimally expanding) to seal and insulate around all doors and windows, and at framing joints.
- Confirm effective air-sealing measures by commissioning an independent blower door test. Results should show air leakage of less than 8 ACH50. Submit test results at the time of cost certification.
- Confirm that adequate mechanical ventilation is provided throughout in order to maintain healthy air quality.

**Efficient Building Systems—5 Points Maximum**

DHCD will award up to five points to projects that include the following in their plans and specifications.

- Installation of boilers with an efficiency of 85% or more, or furnaces with an efficiency of 90% or more. Install controls and heat distribution systems that allow operation of the boiler or furnace at peak efficiency.
- Installation of thermostats with an upper limit of 75 degrees Fahrenheit.
- Installation of an indirectly-fired domestic hot water system or a tankless hot water system.
- No central air-conditioning systems (unless for elderly housing). If local AC units are installed, electricity must be individually metered.
- Where applicable, provision of automatic lighting controls controlled by occupancy and/or lighting conditions.
- Installation of water conservation measures beyond those required by building code including both domestic water system components (low/no water-use appliances and fixtures) as well as water recapturing systems- (rainwater for irrigations, graywater recycling systems, etc.).

**Healthy Indoor Air Quality—4 Points Maximum**

DHCD will award up to four points to projects that include the following in the plans and specifications.

- Installation of kitchen exhaust fans ducted to the outside.
- Provision of continuous or intermittent mechanical ventilation of interior living spaces using bathroom exhaust fans.

- Use of only low-VOC or no-VOC paints, coatings, and adhesives. Ventilate the building during initial curing period.
- No installation of carpet, or use of only carpets specifically designed to eliminate off gassing. Use of only low-VOC carpet adhesives, or installation with tackless strips. No installation of carpets in areas of the building exposed to heavy pollutant load.
- Avoidance of interior products made with formaldehyde or urea-formaldehyde binders.
- Provision of separate air exhaust systems for any building areas where janitorial or maintenance chemicals are to be stored.

#### **Site Design—4 Points Maximum**

DHCD will award up to four points to projects that include the following in the plans and specifications.

- Where possible, orientation of buildings and structures to maximize energy-efficiency and thermal performance. Consideration of building proportions as well as solar, wind, vegetation and other factors.
- Installation of systems for the control of roof/site rainwater via groundwater recharge and/or controlled release into municipal storm sewer systems. This may include storm water retention systems (above or below ground) and/or downspouts to permeable landscape surfaces ample for percolation (including drywells where applicable).
- Use of native landscape plants that are drought tolerant. Avoidance of plants that are on the Massachusetts Invasive Species list. Use of native ground-cover plants in lieu of grass where appropriate. Preservation of existing trees where possible.
- Minimization of light pollution of the night sky by avoiding over-lighting outdoor spaces and by directing lighting toward the ground plane.
- Planting of fast-growing deciduous trees along the south side of the buildings and paved surfaces to provide summer shade.
- Installation of covered bike racks.

#### **Renewable Energy—2 Points Maximum**

DHCD will award up to two points to project that include any of the following in the plans and specifications.

- Wind energy
- Stationary fuel cells
- Hydro-electric power
- Solar Photovoltaics
- Solar thermal collectors (hot water)
- Landfill gas
- Bio diesel

#### **Enhanced Accessibility—6 Points Maximum**

DHCD will award up to six points to projects that incorporate any of the following into their plans and specifications.

- 5% or more Group 2 units (minimum 1 unit) in developments otherwise exempt from this requirement.

- Group 1 units in adaptive reuse projects in existing buildings where Group 1 units are not otherwise required.
- In projects that consist of 1 or 2 family dwellings, a minimum of 5% Group 2 units.
- 5% of units outfitted with devices for vision or hearing impaired residents.
- In Group 2 units, two accessible means of egress that are not an exit stairway with areas of refuge.
- Provision of features of Universal Design.
- Provision of features of Visitability.

**Proximity to Transit—6 Points**

DHCD will award six points to projects located within a half mile of a commuter rail station/stop; subway station or stop; bus station/stop; or ferry terminal.

## **Section XII. The Application Process for 2009 Credit**

The Department of Housing and Community Development typically awards the 9% credit through regularly scheduled competitive funding rounds. On June 25, 2009, the Department will accept applications for tax credits and other DHCD resources in support of affordable rental housing. In addition, the Department will accept a limited number of applications, meeting very specific criteria, on a rolling basis. Please refer to page 43-44 of this document for eligibility criteria for rolling applications.

### **2009 Funding Round:**

The deadline for submitting applications for the 2009 rental funding round will be June 25, 2009. All applications must be submitted on the most current version of the computerized One-Stop Affordable Housing Application. Sponsors are required to submit two disks, two copies of architectural materials, four application hard copies, and the application fee no later than the close of business on June 25, 2009 to:

MA Department of Housing & Community Development  
Division Housing Development  
100 Cambridge Street, Suite 300  
Boston, MA 02114

Applicants should refer to the most recent Notice of Funding Availability for further instruction regarding the number of application copies required for proposals seeking multiple funding resources.

**Applications received after the close of business on June 25, 2009 will not be reviewed. Prospective applicants are strongly encouraged to meet with DHCD tax credit staff to discuss their particular projects prior to the funding round deadline.**

In addition to the submissions to DHCD, each tax credit sponsor must provide a full copy of the One-Stop application to the chief elected official of the municipality in which the project is located. By July 22, 2009, the sponsor must submit to DHCD a certification that a One-Stop application identical to the submission to DHCD has been delivered to the chief elected official. If at any time during the competition DHCD determines that the sponsor failed to fully comply with this requirement, the Department will disqualify the sponsor's application.

The Department anticipates announcing the results of the June 2009 funding competition in October 2009.

### **2010 Funding Rounds:**

The Department anticipates scheduling two rental funding competitions in 2010. The first competition will begin in January 2010. The second competition will begin in September 2010.

### **Rolling Application Process for Projects with Prior Awards and/or Homelessness Projects**

The application process in Massachusetts for the 9% credit is a competitive process. DHCD typically accepts applications for the 9% credit as well as the Department's rental subsidy resources during regularly scheduled funding competitions. However, during 2009, DHCD reserves the right to accept a limited number of applications, representing projects with very specific characteristics, on a rolling basis. These applications will be reviewed competitively according to the same evaluation criteria used for all

9% credit applications and described in detail within this QAP. During 2009, DHCD will accept rolling applications, on an invitation-only basis, for two types of projects:

- Tax credit projects with prior awards from DHCD, whose sponsors are facing the loss of substantial equity as a consequence of the widespread decline in the equity markets and the withdrawal of the government-sponsored entities from credit investing. Sponsors of projects facing this challenge must meet with DHCD to describe the issues they are confronting and the efforts they have made to solve their problems. On a case by case basis, DHCD reserves the right to accept rolling applications from these sponsors for limited amounts of additional credit.
- Tax credit projects in an advanced state of readiness whose sponsors have incorporated a high percentage of units restricted for rental to individuals or households earning less than 30% of area median. The percentage of restricted units must be at least 25%, and a significant number of these units must be further restricted for individuals or households deemed homeless by DHCD. In addition, the sponsor must provide a long-term service plan, approved by DHCD, for occupants of the restricted units. Sponsors who believe their projects have the characteristics described above-- with special emphasis on the project's readiness to proceed-- must meet with DHCD. The Department then will determine whether to accept an application for the sponsor's project in advance of the next scheduled funding competition.

**Application Completeness:**

Although most development projects change over time, and some projects change substantially, the Department must evaluate all project applications in a fair and equitable way. The One-Stop application essentially is a "snapshot" of a project on the day of submission. For purposes of threshold review and competitive evaluation, the Department will not accept the submission of additional documentation after the application deadline. Each project will be reviewed based on the materials contained in the One-Stop on the deadline for all submissions.

During 2009, DHCD will make an exception to this policy for projects that receive favorable financing commitments during funding competitions conducted by other public-purpose lenders. For example, the Federal Home Loan Bank Board -- an important source of funds for many affordable housing projects -- may announce the results of its first 2009 competition in spring or summer 2009. If the DHCD competition is underway at that time, DHCD will permit sponsors of projects that receive Federal Home Loan Bank Board commitments to notify the Department that they have received awards. DHCD will consider the new commitments in its review process during the 2009 tax credit competition. In addition, in its sole discretion, the Department may contact tax credit applicants after the application deadline to seek clarification on certain materials contained in the One-Stop application.

## **Section XIII. Processing Fees; Late Fees; Compliance Monitoring Fees**

### **A. Processing Fees:**

Sponsors seeking tax credits during 2009 will be required to pay processing fees as follows. Assuming that the sponsor/owner meets Department deadlines for submitting carryover documentation, the total processing fee will be either 8.5% or 4.5%. For tax credit projects sponsored by for-profit developers, the total processing fee is equal to 8.5% of the annual credit amount. For projects sponsored by non-profit developers, the total processing fee is equal to 4.5% of the annual credit amount. The credit amount will be the amount identified on the carryover allocation. If the project does not need a carryover allocation, the credit amount will be the amount identified on IRS Form 8609.

The processing fee for each project submitted during 2009 will be due in three installments:

- at the time of application;
- at the time the project receives a carryover allocation;
- at the time of final commitment of the credit.

**It is important to note that the Department will charge a late fee to all sponsors of projects who fail to submit the required documentation and processing fee installments by their deadlines as described below.**

#### **First Installment at Application:**

All tax credits sponsors must pay either \$1,000 or \$5,000 at the time of application. Checks must be made payable to the Department of Housing and Community Development. The application fee is non-refundable. The application fee for non-profit sponsors and for sponsors of projects with 20 or fewer units is \$1,000. All other sponsors must pay \$5,000.

#### **Second Installment at Carryover:**

Sponsors must pay the second installment of the processing fee before receiving a carryover allocation from DHCD. The amount due in this installment will be one-third of the total processing fee, less the amount of the first installment paid at the time of application. This second payment also is non-refundable.

#### **Third Installment at Allocation:**

Each sponsor must pay the remainder of the total amount of the processing fee before receiving a final allocation of credit and IRS form 8609 from DHCD. The third installment also is non-refundable.

### **B. Late Fees:**

Given the time-sensitive and critical nature of year-end Internal Revenue Code requirements, DHCD reserves the right to charge late fees to any and all sponsors failing to meet the deadlines for submitting required documentation and processing fee payments. **The Department will assess a \$3,000 penalty to any non-profit sponsor and a \$5,000 penalty to any for-profit sponsor who fails to remit the required documentation and the second or third installments of the processing fee within the time**

**specified by the agency. Materials that are more than 60 days past due will trigger an additional penalty fee in the amount of \$5,000 to a non-profit sponsor and \$7,500 to a for-profit sponsor.** The carryover allocation and/or IRS Form 8609(s) will not be released to the sponsor until any outstanding processing fees and late fees have been paid.

Late submission of a signed regulatory agreement to the Department is also subject to a late fee. A finalized regulatory agreement, suitable for execution by the Department, must be submitted by the due date indicated in the regulatory agreement notification package forwarded to the sponsor by tax credit program staff. **A fee assessed for late submission of a regulatory agreement - \$3,000 to a non-profit sponsor, \$5,000 to a for-profit sponsor - will be in addition to any late fee detailed above.**

In addition, any sponsor who fails to meet his or her carryover allocation deadline--thus endangering a portion of the Commonwealth's valuable tax credit resource--should note that the Department has the right to withdraw the tax credit commitment to the particular project. Furthermore, the Department reserves the right to reject future applications for tax credits from those parties who have failed to meet the Department's deadlines for year-end submissions. The Department is prepared to exercise these rights if necessary.

### **C. Compliance Monitoring Fees:**

An annual monitoring fee will be due and payable by all projects (allocation years 1987-2009) to DHCD or its authorized delegate during the term of the compliance period (as defined in Internal Revenue Code Section 42) or required to be placed in an escrow by the owner. The fee will be based on a charge of \$30 per low income unit per year, as adjusted periodically by DHCD by the Consumer Price Index (CPI). If the actual compliance period for a project will begin in a year later than 2009, the monitoring fee will be required beginning in that same year. Projects which received an allocation of tax credits in years prior to 2009 will be required to pay only a tax credit monitoring fee as set forth below, notwithstanding any provision to the contrary in any prior year's Qualified Allocation Plan and/or Program Guidelines, including without limitation provisions for an annual administrative or monitoring fee. DHCD will utilize 1997, the first year that it collected compliance monitoring fees, as its base year in determining all subsequent fee adjustments.

The actual annual fee will be calculated and collected according to one of the two following methods, the selection of which will be at DHCD's sole discretion:

- The annual monitoring fee will be due and payable on a date designated annually by DHCD throughout the term (or remaining term) of the compliance period. Under this method, the fee will be calculated at \$30 per low income unit in 2009, which amount may be adjusted by DHCD periodically by the Consumer Price Index (CPI) for subsequent years. The total annual fee will not exceed the amount of \$4,000 per project in 2009, which amount may be adjusted by DHCD periodically by the Consumer Price Index (CPI) for subsequent years;
- The total amount of monitoring fees for the 15-year compliance period (or remaining years of the compliance period beginning with 2009) will be due and payable in one payment at a date designated by DHCD. DHCD may require projects that have not

previously received IRS Form 8609 to make payment prior to the release of Form 8609. Under this method, the fee will be calculated at \$30 per low income unit multiplied by 15 or the number of remaining years in the compliance period, whichever number is less.

- **The total fee will not exceed the amount of \$4,000 per project** multiplied by 15 or the number of remaining years in the compliance period, whichever number is less. At DHCD's discretion, this total amount will be placed in escrow by DHCD or the Owner and will be used for the purpose of monitoring during the compliance period. If DHCD does not institute this method of collection in 2009, **DHCD may adjust the \$30 per low income unit and \$4,000 per project amounts by the Consumer Price Index (CPI) in any subsequent year.**

DHCD reserves the right to charge a reasonable monitoring fee to perform compliance monitoring functions after the completion of the tax credit compliance period (as defined in Internal Revenue Code Section 42) for the remainder of the term of the Tax Credit Regulatory Agreement and Declaration of Restrictive Covenant.

## **Section XIV. Modification of the Allocation Plan**

DHCD will administer the allocation of tax credits in such a manner as it deems appropriate in accordance with federal law and procedure. It will make determinations, publish rules and guidelines, and require use of particular forms as necessary.

The Governor delegates to DHCD the power to amend this plan in response to changes in federal law or regulations. In addition, the Governor recognizes that circumstances not foreseen in the Plan may arise, and therefore delegates to DHCD the authority to resolve conflicts, inconsistencies, and ambiguities in the plan and operation of the program; to respond to any abuse of the allocation system; and, if necessary, to amend the plan after a public hearing. (Please refer also to Appendix B.)

## Section XV. Program Policies

**Sponsors of 2009 tax credit projects should take into consideration the program policies described in this section. Additional program policies are described in the Low Income Housing Tax Credit Guidelines available from DHCD.** All applicants should read the guidelines in effect at the time of application.

### **A. Assumptions Regarding Value of the Credit and Least Amount Necessary for Feasibility**

Federal legislation requires that the administering agency allocate only the amount of credit necessary to make a project feasible. To determine the least amount of credit necessary for feasibility, DHCD must be aware of the full extent of financial resources available to a project and the project costs. In particular, federal law requires developers to certify to state credit agencies the extent of all federal, state, and local resources that apply or might apply to a project, as well as project costs at three different points in time:

- 1) At the time of application,
- 2) At the time an allocation is made, and
- 3) When the project is placed in service.

To determine the least amount of credit necessary for feasibility at the time of application and at the time of allocation, DHCD will assume that a project is to be syndicated and will determine a credit amount based on a set of assumptions regarding projected net equity to be raised. Developed by DHCD, these assumptions will be applied to all tax credit projects unless the developer provides definitive information, acceptable to DHCD, indicating that different assumptions should be used.

When a project places in service, DHCD requires an audited cost certification in its established format. The IRS Form 8609(s) will not be released to the project owner until the final analysis is completed by DHCD. DHCD may reduce the final allocation as it appears on the 8609(s) for the project if:

- The project does not have enough basis to support the original allocation; or
- The project costs are not acceptable to DHCD.

**DHCD will examine all costs for reasonableness, including but not limited to the following: acquisition; construction costs; general development costs; syndication costs; builder's profit, overhead, and general requirements; and operating costs. Only reserves required by a lender and/or DHCD will be allowed. If a developer has proceeded with or completed construction of a project without DHCD's knowledge, DHCD may deem tax credits unnecessary for the feasibility of that project. In these circumstances, the project will not be eligible for an award of tax credits. DHCD will not allow a development budget line item carried both as a source and a use, if it has no reasonable basis for being paid but is included for the purpose of calculating the eligible basis in an effort to increase the annual tax credit calculation.**

## B. Developer's Fee/Overhead

DHCD will determine the calculation of each tax credit allocation based on eligible costs that include a developer's fee and overhead that conform to DHCD's maximum allowable developer's fee and overhead limits as calculated below. **Please note that the calculation of fees was changed in the 2000 QAP and those changes are reflected in this document.** DHCD will determine the developer's fee and overhead at three points in time: at the time of application, at the time of carryover allocation, and when the project sponsor applies for IRS form 8609. If the developer's fee and overhead exceed the allowable limits at any of the three points in time, the tax credits allocation will be reduced accordingly. Although DHCD recognizes the evolving nature of projects, in order to promote readiness and to encourage the best possible cost estimates, DHCD reserves the right to disallow increases in total developer's fee and overhead that result primarily from increases in replacement costs after the time of application. For purposes of calculating the developer's fee and overhead, total replacement costs are defined as all total development costs net of project reserves and syndication costs approved by DHCD.

In calculating the allowable developer's fee and overhead, sponsors should consider any development or operating reserves or escrows funded by cash at closing or through syndication as part of the developer's fee and overhead, as follows:

- Reserves or escrows that are intended to remain in the project for more than five years will not be included in the developer's fee and overhead. The five year holding period is assumed to begin on the first day that the development has achieved full occupancy, and end five years following such date;
- 80% of reserves or escrows that are intended to remain in the project for less than five years are included in the developer's fee and overhead;
- All consultant costs, including but not limited to development consultant, syndication consultant, and historic consultant fees, are included in the maximum developer's fee and overhead allowed.

The maximum allowable developer's fee and overhead shall be calculated according to the following schedule (see the exception below):

- Developer's fee and overhead may equal up to 5% of project acquisition cost, and, in addition;
- Developer's fee and overhead may equal up to 15% of the first \$3 million in total replacement costs less acquisition, and, in addition;
- Developer's fee and overhead may equal up to 12.5% of the total replacement costs less acquisitions that are from \$3 million to \$5 million, and, in addition;
- Developer's fee and overhead may equal up to 10% of the total replacement costs less acquisition that is over \$5 million.

If the developer's fee and/or overhead for a project is determined to be unreasonable, the Director of

DHCD reserves the right to reduce the permissible fee, even though that fee may otherwise meet program guidelines based on the project's size. As previously noted, DHCD intends to re-evaluate its maximum allowable developer's fee and overhead limits as part of its overall review of program costs. The Department will make any proposed changes available to the public for review and discussion once its review has been completed. Once any changes to the current limits have been approved, the Department will hold a public hearing and modify the allocation plan accordingly to incorporate the new limits.

### C. Compliance Monitoring

Beginning with 1990 allocations, the federal legislation requires that an extended low income use agreement be in effect for a minimum of 30 years for every project receiving tax credits. To enforce these and other program use restrictions, DHCD will require that each project owner enter into a Tax Credit Regulatory Agreement and Declaration of Restrictive Covenants ("the Agreement"). In the case of buildings of which at least 50% of the aggregate basis (including land and the building) is financed with the proceeds of tax-exempt bonds, DHCD will require that the owner enter into an Extended Low Income Housing Agreement and Declaration of Restrictive Covenants ("the Agreement") with the Massachusetts Housing Finance Agency (MHFA) or the Massachusetts Development Finance Agency (MDFA). These Agreements limit the use of all of the low income units to rental housing, with income and rental restrictions, for a minimum period of thirty years.

In addition, DHCD has an obligation, as of January 1, 1992, to monitor the compliance of all tax credit projects with tax credit requirements as set forth in Section 42 of the Internal Revenue Code and applicable regulations. DHCD will monitor tax credit projects for compliance with the requirements of the Agreement. DHCD also will perform physical inspections taking into consideration local health, safety and building codes. Owners may be charged an annual fee to cover the administrative costs of such monitoring.

DHCD's procedure for monitoring compliance with Low Income Housing Tax Credits requirements is outlined in Appendix A to this plan. DHCD's procedure is adopted pursuant to Section 42(m) (1)(B) of the Internal Revenue Code and Treasury Regulation Section 1.42-5. DHCD reserves the right to amend this procedure as may be necessary or appropriate to conform to applicable changes in the Internal Revenue Code or regulations promulgated there under. Notwithstanding anything to the contrary in this Allocation Plan, DHCD may adopt such amendments without a public hearing process, but shall give reasonable notice before implementation of any such amendment to all tax credit applicants and owners. In addition, DHCD may adopt further monitoring forms and procedures as part of its Low Income Housing Tax Credit Guidelines or as otherwise deemed appropriate.

Pursuant to Section 42(m) (1) (B) and Treasury Regulation Section 1.42-5(f), DHCD may retain an agent or other private contractor ("Authorized Delegate") to perform compliance monitoring functions. Any reference to DHCD in this monitoring procedure shall also include, where appropriate, an Authorized Delegate of DHCD.

Pursuant to Section 42 (m)(1)(B)(iii), **this monitoring procedure applies to all owners of buildings or projects for which the low income housing credit is or has been claimed at any time.** If DHCD becomes aware of noncompliance that occurred prior to January 1, 1992, DHCD is required to notify the Internal Revenue Service of such noncompliance. The monitoring procedure includes provisions for

record keeping and record retention, annual certification and review, on-site records review, building inspection, and notification to owners and the Internal Revenue Service of noncompliance.

#### **D. 130% Rule**

Projects located in qualified census tracts or difficult-to-develop areas as identified by the U.S. Department of Housing and Urban Development and/or by the Department of Housing and Community Development may seek up to 130% of the rehabilitation credit basis amount for which they are eligible. Current information on the designation of difficult development areas by DHCD is included on page 13 of this QAP. The 130% factor may not be applied to the acquisition basis. DHCD will award up to 130% of the rehabilitation credit at its discretion and only if necessary for project feasibility. Current information about the designation of qualified census tracts and difficult development areas was issued by HUD on September 3, 2008.

Tax-exempt projects are eligible for up to 130% of credit, subject to the determination of least amount of credit necessary for feasibility, only if the project is located in a qualified census tract or difficult-to-develop area as identified by the U.S. Department of Housing and Urban Development.

#### **E. Lead Paint**

All units in all tax credit buildings must be de-leaded prior to the issuance of a final allocation (IRS Form(s) 8609) for the project. All de-leading work must be performed in accordance with the provisions of M.G.L. c.111, 190-199B, 105 CMR 460.000.

#### **F. Handicapped Accessibility**

In order to enable DHCD to evaluate the accessibility provisions of each project, sponsors must provide summary information regarding accessibility using the checklist found in the Appendix G. Design. In addition to the requirements of the Massachusetts Architectural Access Board (MAAB), projects may also be subject to other applicable federal, state, and local statutes and regulations such as the Fair Housing Act (FHA), Section 504 of the Rehabilitation Act of 1973, the Architectural Barriers Act of 1968 (ABA), and the Americans with Disabilities Act (ADA).

#### **G. Affirmative Action**

DHCD requires developers to establish affirmative action goals for the percent of minority participation in each project. Developers and management agents must establish effective marketing plans to reach the identified minority groups that are least likely to apply for the housing being provided. Prior to initial occupancy of any unit in the project, the owner shall adopt and implement 1) an affirmative fair marketing plan for all units and 2) a tenant selection plan for the low income units, in both cases consistent with any standards and guidelines adopted by DHCD as then in effect and consistent with all applicable laws. Both the affirmative fair marketing and tenant selection plans shall be subject to review by DHCD, at DHCD's request.

If a tax credit project is located in a predominantly white neighborhood in the City of Boston, according to a list maintained at DHCD, the affirmative fair marketing plan shall have the percentage goals for occupancy of the low income units which reflect the racial composition of the City of Boston as determined in the most recent U.S. Census. As of the date of the issuance of this allocation plan, these percentages are as follows:

49.5% White

- 23.8% Black
- 14.4% Hispanic
- .3% Native American
- 7.5% Asian/Pacific Island
- 4.5% Other

## **H. Local Preference**

DHCD will allow up to 70% local preference in tax credit projects if the sponsor is able to demonstrate to DHCD's satisfaction that a need for such preference exists. The documentation of local housing need must be fully substantiated in the project's market study or through other supporting documentation such as the Municipality's Consolidated Plan or a local affordable housing plan. The Department will issue further guidance on documenting local housing need during 2009. To ensure that the local preferences established for the project do not violate applicable fair housing laws and, therefore, do not have a discriminatory effect on protected classes, the sponsor must:

- develop an affirmative fair marketing plan targeting those least likely to apply in accordance with the DHCD's Affirmative Fair Marketing Plan guidelines provided in Appendix I;
- list vacant units upon availability with Citizen's Housing and Planning Association's (CHAPA's) Massachusetts Accessible Housing Registry at <http://www.chapa.org>;
- list vacant units located in the Boston-Cambridge-Quincy MSA, upon availability, with the City of Boston's Metrolist (Metropolitan Housing Opportunity Clearing Center), at Boston City Hall, P.O. Box 5996, Boston, MA 02114-5996 (617-635-3321);
- develop a tenant selection lottery system consistent with that described in the "Guidelines for Housing Programs in Which Funding is Provided Through a Non-Governmental Entity" (NEF Guidelines) as published by the Department as well as the additional provisions provided in Appendix I.

Both the affirmative fair marketing plan and the tenant selection lottery system will be reviewed by DHCD program staff at the time of carryover allocation. Please see Appendix I for additional information on developing the lottery.

## **I. HUD Subsidy Layering Guidelines**

Pursuant to Section 911 of the Housing and Community Development Act of 1992, HUD is required to determine that projects receiving or expecting to receive both federal, state or local assistance and tax credits do not obtain subsidies in excess of that which is necessary to produce affordable housing. On December 15, 1994, the U.S. Dept. of HUD issued administrative guidelines referred to as subsidy layering guidelines, regarding limitations on combining Low Income Housing Tax Credits with HUD and other government assistance in the Federal Register. The guidelines make a provision for housing credit agencies to implement the subsidy layering reviews for projects that are at least receiving HUD housing assistance and are receiving or allocated Low Income Housing Tax Credits. Housing credit agencies may perform the subsidy layering review function provided that the housing credit agency certifies to HUD that it will properly apply the guidelines that HUD establishes. DHCD is the housing credit agency in Massachusetts. However, at the time of issuance of this allocation plan, DHCD has not made the certification to HUD to assume these responsibilities. Applicants should call the Low Income Housing Tax Credit Program office for updated information and/or a copy of the guidelines. If DHCD does not assume these responsibilities, subsidy layering will be performed by HUD in accordance with its guidelines.

## **J. Project Size**

In order to avoid undue concentration of resources in any one area, DHCD will consider tax credit projects of 100 units or more on a case-by-case basis. DHCD will require a detailed market study and will closely examine the probable absorption rate for these projects.

## **K. Single Room Occupancy**

Federal law requires that a Low Income Housing Tax Credit unit may not be used on a transient basis. Tax regulations require a minimum lease term of six months. However, single room occupancy units rented on a month-to-month basis may qualify for the credit if they are funded under the Stewart B. McKinney Act.

## **L. Housing for the Homeless**

The tax credit has become a substantial resource for transitional housing for the homeless. The portion of a building used to provide supportive services may be included in the qualified basis. Transitional housing for the homeless must contain sleeping accommodations and kitchen and bathroom facilities and be located in a building used exclusively to facilitate the transition of homeless individuals to independent living within 24 months.

## **M. Luxury Items In Tax Credit Projects**

In accordance with federal tax law, the eligible basis of a building must be reduced by the amount of the adjusted basis attributable to those market units in the building that are above average quality standard of the low income units. However, the developer may elect to exclude from the eligible basis the excess cost of the market units, provided that such excess cost does not exceed 15% of the cost of a low income unit.

## **N. Fair Housing and Occupancy Data Collection**

The mission of DHCD through its programs and partnerships is to be a leader in creating housing choice and providing opportunities for inclusive patterns of housing occupancy for all residents of the Commonwealth, regardless of income, race, religious creed, color, national origin, sex, sexual orientation, age, ancestry, familial status, veteran status, or physical or mental impairment. It shall be DHCD's objective to ensure that new and ongoing programs and policies affirmatively advance fair housing, promote equity, and maximize choice. In order to achieve this objective, DHCD shall be guided by the following principles found in Appendix I below.

In order to help the Department assess the impacts of local preference on affirmative marketing goals and compliance with applicable civil rights laws, all project owners will be required to report household characteristic data for all tax credit units at the time of final rent-up and on an annual basis from that point forward. The report will include but may not be limited to the following data points: capital subsidies restricting the unit, size of the tenant household, income level of the tenant household, race and ethnicity of the head of household (to the extent available), number of children under the age of six, number of children under the age of 18, and type of rental assistance if any. Project owners or their specified designees will be required to report using the web-based data collection system developed by the Department.

## **APPENDICES**

## Appendix A: Compliance Monitoring Procedure

The compliance monitoring procedure includes five components:

1. Record keeping and Records Retention
2. Annual Certification and Review
3. Records Review
4. Building Inspection
5. Notification of Noncompliance

These components are based on and incorporate the requirements of Internal Revenue Code Section 42 and Treasury Regulation Section 1.42-5. “Low income units” refers to tax credit eligible units as defined by Section 42(g).

### **I. Record keeping And Record Retention**

Record keeping: For each year in the compliance period, which is equal to 15 taxable years beginning the first year the tax credit is taken, the Owner shall maintain records for each building in the project showing the:

- a. Total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
- b. Percentage of residential rental units in the building that are low income units as defined by Section 42(g), and the size in square feet of each low income unit.
- c. Rent charged on each residential rental unit in the building (including any utility allowance);
- d. Number of occupants in each low income unit if the rent is determined by the number of occupants per unit under Section 42(g)(2) (as in effect prior to 1989 amendments);
- e. Annual income certification for each low income tenant per unit unless specifically waived by the Internal Revenue Service under Revenue Procedure 2004-38.
- f. Documentation to support each low income tenant’s income certification (for example, a copy of the tenant’s federal income tax returns, W-2 Form, verification from a third party such as an employer or a state agency paying unemployment compensation, and/or a statement from the local housing authority declaring that the tenant did not exceed the income limit under Section 42(g) if a tenant is receiving Section 8 housing assistance payments,);
- g. Each low income vacancy in the building and information that shows when, and to whom, the next available units were rented;

- h. Eligible basis and qualified basis of the building at the end of the first year of the credit period;  
and
- i. Character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d).

**Specific Requirements:** In accordance with Treasury Regulation Section 1.42-5 and Revenue Procedures 94-64 and 94-65, DHCD adopts the following specific requirements: (i) As provided in Section 5.01(3) of Revenue Procedure 94-64, the requirement for annual income re-certification will apply to all owners, including all owners of 100% low income buildings unless specifically waived by the Internal Revenue Service under Revenue Procedure 2004-38. (ii) As provided in Section 4.04 of Revenue Procedure 94-65, DHCD will require owners to obtain documentation, other than the statement described in Section 4.02 of the Revenue Procedure, to support a low income tenant's annual certification of income from assets.

**Records Retention:** The Owner shall retain records for the first year of the credit period for at least six years beyond the due date (with extensions) for filing the tax return for the last year of the compliance period of the building. The Owner shall retain the records described above for all subsequent years in the compliance period for at least six years after the due date (with extensions) for filing the federal income tax return for that year.

Additionally, for each year that the Agreement remains in effect after the compliance period, the Owner shall retain records adequate to demonstrate compliance with the terms and conditions of the Agreement, including, but not necessarily limited to, income and rent records pertaining to tenants. The Owner shall retain the records pertaining to a particular year for at least 6 years following the close of that year.

**Inspection Records Retention:** The Owner shall also retain and provide, for DHCD's inspection, any original report or notice issued by a state or local authority of a health, safety, or building code violation concerning the Project. Retention of the original violation report or notice is not required beyond the time when DHCD reviews the report or notice and completes its inspection pursuant to Section III below, except where the violation remains uncorrected.

## **II. Annual Certification and Review**

**Submission of Certification:** The Owner of every project that has received tax credits must submit to DHCD at least annually for each year in the compliance period an Owner's Certification of Continuing Tax Credit Compliance, which will be provided by DHCD. In this document, the Owner shall certify to DHCD, under the penalty of perjury, that for the preceding 12-month period:

- a. The project was continually in compliance with the terms and conditions of its Agreement with DHCD, MHFA or MDFA;
- b. The project met either the 20-50 test under Section 42(g) (1) (A) or the 40-60 test under Section 42(g) (1) (B), whichever minimum set-aside test was applicable to the project (The 20-50 test means that a minimum of 20% of the project's units were set aside for tenants at 50% of the area median income at tax credit restricted rent levels. The 40-60 test means that a minimum of 40% of the project's units were set aside for tenants at 60% of the area median income at tax credit restricted rent levels);

- c. There was no change in the applicable fraction as defined by Section 42(c)(1)(B) of any building in the project, or that there was a change, and a description of that change is provided;
- d. The Owner has received an annual income certification from each low income tenant, and documentation to support that certification; or in the case of a tenant receiving Section 8 housing assistance payments, that the Owner has received a statement from a public housing authority that the tenant's income does not exceed the applicable income limit under Section 42(g). In accordance with Treasury Regulation Section 1.42-5 and Revenue Procedures 94-64, 94-65 and 2004-38, DHCD adopts the following specific requirements: (i) As provided in Section 5.01(3) of Revenue Procedure 94-64, the requirement for annual income recertification will apply to all owners, including all owners of 100% low income buildings, unless specifically waived by the Internal Revenue Service under Revenue Procedure 2004-38. (ii) As provided in Section 4.04 of Revenue Procedure 94-65, DHCD will require owners to obtain documentation, other than the statement described in Section 4.02 of the Revenue Procedure, to support a low income tenant's annual certification of income from assets;
- e. Each low income unit in the project was rent-restricted under Section 42(g)(2);
- f. All units in the project were for use by the general public (as defined in Treas. Reg. 1.42-9), including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, 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), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court.);
- g. The buildings and low income units in the project were suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government office responsible for making local health, safety, or building code inspections did not issue a violation report or notice for any building or Low Income unit in the project. Alternatively, if a violation report or notice was issued by a state or local government office, the owner must state whether the violation has been corrected and must also attach to the Owner's Certification either a statement summarizing the violation report or notice or a copy of the violation report or notice;
- h. There was no change in the eligible basis (as defined in Section 42(d)) of any building in the project, or there was a change, and information regarding the nature of that change is provided;
- i. All tenant facilities included in the eligible basis under Section 42(d) of any building in the project were provided on a comparable basis without charge to all tenants in the building;
- j. If a low income unit in the project became vacant during the year, reasonable attempts were made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;

- k. If the income of tenants of a low income unit in the building increased above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the building was or will be rented to tenants having a qualifying income;
- l. An extended low income housing commitment as described in Section 42(h)(6) was in effect (for buildings subject to Section 7108(c)(1) of the Omnibus Budget Reconciliation Act of 1989), including the requirement under Section 42(h)(6)(B)(iv) 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 of the United State Housing Act of 1937;
- m. All low income units in the project were used on a nontransient basis (except for transitional housing for the homeless provided under Section 42(i)(3)(iii) or single room occupancy units rented on a month-by-month basis under Section 42(i)(3)(B)iv); and
- n. Any additional information that DHCD deems pertinent.

In addition, the Owner must submit completed IRS Forms 8609 [with parts I and II (the top and bottom sections) completed] to DHCD 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 Schedule A of Form 8609 for every building in the project. The Owners of all low income housing projects will also be required to submit to DHCD at least once each year information on tenant income and rent for each low income unit, and documentation regarding the occupancy characteristics for all units, including DHCD project completion reports and other data collection requests in the form and manner designated by DHCD, in order to illustrate compliance with fair housing requirements.

Review of Certification: DHCD will review the above-described certifications submitted by Owners for compliance with the requirements of Section 42 for all tax credit projects, including those buildings financed by the Rural Housing Services (RHS), formerly the Farmers Home Administration (FMHA), under its Section 515 Program, and buildings of which at least 50% of the aggregate basis (including land and the building) is financed with the proceeds of tax-exempt bonds and administered by MHFA or MDFA.

The submission and review of certifications described above shall be made at least annually covering each year of the compliance period which is equal to 15 taxable years beginning with the first year the tax credit is taken. DHCD reserves the right to continue monitoring for any additional term that the Agreement remains in effect.

### **III. Records Review**

DHCD will conduct a records review of a project's low income units which have been selected for on-site inspection pursuant to Section IV below.

The records review will include an examination of the annual low income certifications, the documentation the Owner has received supporting the certifications, and the rent records for the tenants in those units. The Owner must have definitive documentation to support the income certification. For example, in the case of a tenant receiving Section 8 housing assistance payments, a letter from the local housing authority will only be accepted if that statement notes the tax credit income limit for the tenant's

family size in the municipality, states that the tenant's income does not exceed such tax credit income limit, and states the effective date of the certification.

In conjunction with the selection of units to be inspected under Section IV below, DHCD will select the records to be reviewed randomly and in a manner that will not give an owner advance notice that tenant records for a particular year will or will not be reviewed. However, DHCD may give an owner reasonable notice that tenant record review will occur so that the owner may assemble the tenant records. The review of tenant records may be undertaken wherever the owner maintains or stores the records (either on-site or off-site).

In addition to the above procedures, DHCD will review the records from the first year of the compliance period for every project in order to establish initial eligibility for the Low Income Housing Tax Credit.

Buildings financed by the RHS under its Section 515 Program and buildings of which at least 50% of the aggregate basis (taking into account the building and land) is financed with the proceeds of tax-exempt bonds will be excepted from this records review provision if DHCD enters into an agreement with the RHS and/or MHFA or MDFA, providing among other terms and conditions that RHS and/or MHFA or MDFA must provide information concerning the income and rent of the tenants in the building to DHCD. DHCD may assume the accuracy of any such information provided by RHS, MHFA, or MDFA. DHCD shall review such information and determine that the income limitation and rent restriction of Section 42(g) (1) and (2) are met. However, if the information so provided is not sufficient for DHCD to make this determination, DHCD must request the necessary additional information directly from the Owner of the buildings.

The certifications and review under Sections I and II must be made at least annually covering each year of the 15-year compliance period. DHCD retains the right to require such certifications and review for any additional term that a Low Income Housing Tax Credit Regulatory Agreement between the owner and DHCD (or its successors) remains in effect.

#### **IV. Building Inspection**

DHCD will conduct an on-site inspection of all buildings in a project by the end of the second calendar year following the year the last building in the project is placed in service. The minimum number of units to be inspected will be the greater of twenty percent of the project's low income units or three low income units.

Following the initial inspection, DHCD will conduct an on-site inspection of all buildings in a project at least once every three years. The minimum number of units to be inspected will be the greater of twenty percent or the project's low income units or three low income units.

DHCD will select the low income units to be inspected randomly and in a manner that will not give an owner advance notice that a unit will or will not be inspected. However, DHCD may give an owner reasonable notice that an inspection of the building and low income units will occur so that the owner may notify tenants of the inspection.

DHCD will review any health, safety, or building code violations reports or notices retained by the owner as required in Section I above and will determine:

- a. Whether the buildings and units are suitable for occupancy, taking into account state and local health, safety and building codes (or other habitability standards); or
- b. Whether the buildings and units satisfy, as determined by DHCD, the uniform physical condition standards for public housing established by HUD (24 CFR 5.703).

Regardless of whether DHCD makes its determination under a. or b. above, the project must continue to satisfy applicable state and local health, safety, and building codes. If DHCD becomes aware of any violation of these codes, it must report the violation under Section V below.

A building financed by RHS under its Section 515 program will be excepted from this inspection provision if RHS inspects the building (under 7 CFR part 1930) and the RHS and DHCD enter into a memorandum of understanding, or other similar arrangement, under which RHS agrees to notify DHCD of the inspection results.

DHCD retains the right to perform on-site inspections of the buildings of any project at least through the end of the compliance period and for any additional term that a Low Income Housing Tax Credit Regulatory Agreement and Declaration of Restrictive Covenants between the owner and DHCD remains in effect.

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

DHCD will provide prompt written notice to the Owner if DHCD does not receive the certifications described above, does not receive or is not permitted to review the tenant income certifications, supporting documentation, and rent record described above, or discovers by inspection, review, or in some other manner, that the project is not in compliance with Section 42. DHCD will file Form 8823, "Low Income Housing Credit Agencies Report of Noncompliance of Building Disposition", with the IRS no later than 45 days after the end of the correction period and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The correction period, as specified in the noncompliance notice to the Owner, shall not exceed 90 days from the date of the notice to the Owner, unless extended by DHCD for up to six months where DHCD determines that there is good cause for granting an extension. DHCD will retain records of noncompliance or failure to certify in accordance with applicable Treasury regulations. If noncompliance or failure to certify is corrected within three years after the end of the correction period, DHCD will file Form 8823 reporting the correction.

DHCD will report its compliance monitoring activities annually on Form 8610, "Annual Low Income Housing Credit Agencies Report".

## **Appendix B: Future Changes to the 2009 Allocation Plan**

Without limiting the generality of DHCD's power and authority to administer, operate, and manage the allocation of Low Income Housing Tax Credits according to federal law, federal procedures and this Plan, DHCD shall make such determinations and decisions, publish administrative guidelines and rules, require the use of such forms, establish such procedures and otherwise administer, operate, and manage allocations of tax credits in such manner as may be, in DHCD's determination, necessary, desirable, or incident to its responsibilities as the administrator, operator, and manager of the Low Income Housing Tax Credit Program.

The Governor recognizes and acknowledges that DHCD may encounter situations which have not been foreseen or provided for in the Plan and expressly delegates to DHCD the authority to amend the Plan, after the public has had the opportunity to comment through the public hearing process, and to administer, operate, and manage allocations of tax credits in all situations and circumstances, including, without limiting the generality of the foregoing, the power and authority to control and establish procedures for controlling any misuse or abuses of the tax credit allocation system and the power and authority to resolve conflicts, inconsistencies or ambiguities, if any, in this Plan or which may arise in administering, operating, or managing the Low Income Housing Tax Credit Program.

The Governor further expressly delegates to DHCD the ability to amend this Plan to ensure compliance with federal law and regulations as such federal law may be amended and as federal regulations are promulgated governing tax credits.

## **Appendix C: Summary of Comments and Suggestions from the Public Process**

During the process of developing the 2009 Qualified Allocation Plan, the Department of Housing and Community Development met with interested parties, including for-profit and non-profit developers, municipal officials, consultants, other public and private lenders, attorneys, syndicators, advocates, and other members of the affordable housing community. The Department solicited comments and suggestions on various aspects of the tax credit allocation process, including but not limited to the priorities to be included in the 2009 allocation plan, the set-aside categories, the scoring system, and the best approach to allocating both the federal credit and the Massachusetts state housing credit.

In accordance with Section 42 federal requirements, DHCD held a public hearing on the draft 2009 QAP in the Department's offices on February 10, 2009. The following representatives spoke, and their comments were recorded for the record:

- Don Bianchi, Massachusetts Association of Community Development Corporations
- Mark Curtiss, Massachusetts Housing Partnership
- Peter Daly, Homeowners Rehab Inc.
- Mike Rabourn, Representative of the Northeast Regional Council of Carpenters
- Peter Munkenbeck, Development Consultant
- Bart Mitchell, Developer

In addition, DHCD received written comments from Local Initiatives Support Corporation, Jewish Community Housing for the Elderly, Massachusetts Association of Community Development Corporations, Massachusetts Housing Partnership, Barnstable County HOME consortium, Metropolitan Boston Housing Partnership, Northeast Regional Council of Carpenters, Preservation of Affordable Housing, and the National Housing Trust.

The comments can be summarized as follows. Despite the downturn in the tax credit investment market, and the flight by investors to well-capitalized tax credit project sponsors, the non-profit community seeks a reinforcement of the Department's support for non-profit sponsors of tax credit projects by increasing the non-profit scoring and the scoring for projects that are part of a comprehensive revitalization effort. The non-profit community is also asking for increased emphasis on green housing and an increase in subsidy limits.

Some commenters reflected agreement with the "waiting list" concept for projects that do not have tax credit investors but are otherwise ready to close. Others praised the addition of newly designated "Difficult to Develop" areas for 9% credit projects and the increase in the per unit basis caps and the per project limits. Others felt that non-Boston metro areas should have benefited from a higher increase in the basis cap.

Specific comments were given on design standards for accessibility included in Appendix G.

One commenter suggested a longer period from award of tax credits to closing for projects with investors. The commenter also suggested a larger cap amount on credits and a lower pricing rate for federal credits, rather than 75 cents.

Comments on the need for prioritizing preservation projects, sustainable development and environmental friendly design were also provided.

In a letter that post-dated the end of the comment period, the New England Carpenters Labor Management Program stated to DHCD that some tax credit developers or their subcontractors engage in unacceptable labor practices and should be denied tax credits in the future and should have existing tax credit awards revoked.

## Appendix D: The Massachusetts Low Income Housing Tax Credit Program

### 760 CMR 54.00 MASSACHUSETTS LOW INCOME HOUSING TAX CREDIT PROGRAM

#### Section

- 54.01: Scope, Purpose and Applicability
- 54.02: Definitions
- 54.03: Amount of Credit Authorized
- 54.04: Eligible Projects
- 54.05: Eligible Recipients
- 54.06: Allotment of Credit Among Partners, etc.
- 54.07: Transferability of Credit
- 54.08: Prerequisites to Claiming Credit
- 54.09: Placed in Service Requirement; Time for Claiming Credit
- 54.10: Carryforward of Credit
- 54.11: Limitations on Credit; Ordering of Credit
- 54.12: Recapture
- 54.13: Reporting and Recordkeeping Requirements
- 54.14: Application Process and Administrative Fees
- 54.15: Reference to Federal Credit Rules
- 54.16: Authorization of Department to Take Further Actions

#### 54.01: Scope, Purpose and Applicability

(1) General. 760 CMR 54.00 explains the calculation of the low-income housing tax credit established by M.G.L. c. 23B, s.3, M.G.L. c .62, s. 61 and M.G.L. c. 63, s. 31H (St. 1999, c. 127, s.s. 34, 82, 90). The Department of Housing and Community Development may allocate annually, for the five-year period beginning January 1, 2001 and ending December 31, 2005, Massachusetts low-income housing tax credit in the amount set forth in M.G.L. c. 23B, s.3, M.G.L. c .62, s. 61 and M.G.L. c. 63, s. 31H (St. 1999, c. 127, s.s. 34, 82, 90) for projects that qualify for the federal low-income housing tax credit under Section 42 of the Internal Revenue Code of 1986, as amended.

(2) Effective Date. 760 CMR 54.00 takes effect upon promulgation and applies to tax years beginning on or after January 1, 2001.

#### 54.02: Definitions

For purposes of 760 CMR 54.00 et seq., the following terms have the following meanings, unless the context requires otherwise:

Act, M.G.L. c. 23B, s. 3, M.G.L. c. 62, s. 61 and M.G.L. c. 63, s. 31H (St.

1999, c. 127, s. s. 34, 82, 90).

Allocation of Massachusetts Credit, the award by the Department of the authorized Massachusetts low-income housing tax credit among qualified Massachusetts projects.

Allotment, in the case of a qualified Massachusetts project owned by an unincorporated flow through entity, such as a partnership, limited liability company or joint venture, the share or portion of credit allocated to the qualified Massachusetts project that, consistent within and subject to 760 CMR 54.06, may be claimed by a taxpayer who is designated a member or partner of such entity or by a transferee of such member or partner.

Building Identification Number, the identification number assigned to each building in a qualified Massachusetts project by the Department.

Code, the Internal Revenue Code of 1986, as amended and in effect for the taxable year.

Commissioner, the Commissioner of Revenue.

Compliance Period, the period of 15 taxable years beginning with the first taxable year during which a qualified Massachusetts project first meets all of the requirements of 760 CMR 54.08. The following text is effective 11/24/2000

Credit Period, the five-year period during which a qualified Massachusetts project is eligible for the Massachusetts low-income housing tax credit. The credit period begins with the taxable year in which a project meets all of the requirements of 760 CMR 54.08 and ends five years later.

Department, the Department of Housing and Community Development.

Eligibility Statement, a statement authorized and issued by the Department certifying that a given project is a qualified Massachusetts project and setting forth the annual amount of the Massachusetts low-income housing tax credit allocated to the project. The Department shall only allocate tax credit to qualified Massachusetts projects consisting of one or more buildings that are all placed in service on or after January 1, 2001.

Federal Carryover Allocation, federal carryover allocation of a tax credit where a federal low-income housing tax credit is allocated under Section 42 (h)(1)(E) or (F) of the Code prior to the calendar year in which the buildings comprising the project are placed in service.

Federal Low Income Housing Tax Credit the federal tax credit as provided in Section 42 of the Code.

Low income Project, a qualified low-income housing project, as defined in Section 42 (g)(1) of the Code, which has restricted rents that do not exceed 30% of the applicable imputed income limitation under said Section 42 of the Code, for at least 40% of its units occupied by persons or families having incomes of 60% or less of the median income or for at least 20% of its units occupied by persons or families having incomes of 50% or less of the median income.

Median Income, the area median gross income as such term is used in Section 42 of the Code, and which is determined under United States Department of Housing and Urban Development guidelines and adjusted for family size.

Placed in Service, this term shall have the same meaning as the term is given under Section 42 of the Code and the federal regulations thereunder.

Qualified Massachusetts Project, a low-income project located in the Commonwealth which meets the requirements of M.G.L. c. 23B, s.3, M.G.L. c. 62, s. 61 and M.G.L. c. 63, s. 31H (St. 1999, c. 127, s.s. 34, 82, 90) and whose owner enters into a regulatory agreement.

Regulatory Agreement, an agreement between the owner of a qualified Massachusetts project and the Department recorded as an affordable housing restriction under M.G.L. c. 184 with the registry of deeds or the registry district of the land court in the county where the project is located that requires the project to be operated in accordance with the requirements of 760 CMR 54.00, and M.G.L. c. 23B, s.3, M.G.L. c. 62, s. 61 and M.G.L. c. 63, s. 31H (St. 1999, c. 127, s. s. 34, 82, 90) for not less than 30 years from the expiration date of the compliance period.

Taxpayer any person, firm, or other entity subject to the personal income tax under the provisions of M.G.L. c. 62, or any corporation subject to an excise under the provisions of M.G.L. c. 63.

54.03: Amount of Credit Authorized

(1) Authorized Amount. The amount of Massachusetts low-income housing tax credit authorized to be allocated in each year during the five year period commencing January 1, 2001 and ending December 31, 2005 equals the sum of

- (a) the lesser of 50% of the federal per capita low-income housing tax credit awarded to the Commonwealth in such year or \$4,000,000;
- (b) unused Massachusetts low-income housing tax credit, if any, for all preceding calendar years; and The following text is effective 11/24/2000
- (c) any Massachusetts low-income housing tax credit

returned to the Department. Under M.G.L. c. 62, s. 61(c)(3) and M.G.L. c. 63, s. 31H(c)(3), an amount of Massachusetts low-income housing tax credit equal to the annual credit allocation awarded by the Department to a project is to be claimed each year for five tax years.

(2) Example. Assume the Department allocates \$3 million of 2001 Massachusetts low-income housing tax credit and \$6 million of 2001 federal low-income housing tax credit equally among 40 projects such that each project receives a federal credit award of \$150,000 and a Massachusetts low-income housing tax credit award of \$75,000. Assume further that each project is owned by an individual who retains all rights to claim the credit allocated. If the projects are placed in service on January 1, 2001 and no carryover or recapture provisions apply, each individual owner would be eligible to claim \$150,000 in federal low-income housing tax credit in 2001 and in each of the following nine years and \$75,000 in Massachusetts low-income housing tax credit in 2001 and in each of the following four years.

#### 54.04: Eligible Projects

(1) Project Eligibility. Three types of qualified Massachusetts projects are eligible for an allocation of Massachusetts low-income housing tax credit:

- (a) projects to which the Department has made a prior allocation of federal low-income housing tax credit,
- (b) projects to which the Department makes a simultaneous allocation of federal low-income housing tax credit and
- (c) projects with respect to which the federal low-income housing tax credit is allowable by reason of Section 42(h)(4) of the Code applicable to buildings financed with tax exempt bonds.

(2) Prioritization by the Department. The Department shall amend or supplement its existing qualified allocation plan or its program guidelines, or both, to provide taxpayers guidance on how Massachusetts low-income housing tax credit will be allocated among competing projects. Such guidance shall adhere to the statutory requirements of providing the least amount of combined federal and Massachusetts low-income housing tax credit necessary to ensure financial feasibility of selected projects while allocating the total available Massachusetts low-income housing tax credit among as many qualified Massachusetts projects as fiscally feasible. Subject

to these statutory constraints, the Department may, in its discretion, provide guidance that

- (a) requires owners of projects with more than a designated dollar amount of federal credit to fund a portion of project

equity from funds attributable to the Massachusetts low-income housing tax credit,  
(b) encourages owners of certain projects to raise equity primarily using the Massachusetts low-income housing tax credit while using a minimal amount of the so-called 9% federal low-income housing tax credit,  
(c) encourages the creation of projects funded through a combination of Massachusetts low-income housing tax credit and the so-called 4% federal low-income housing tax credit allowable to buildings financed with tax-exempt bonds, and  
(d) encourages the creation of any other projects that the Department deems to be consistent with the statutory goal of increasing the overall number of low-income housing units.

54.05: Eligible Recipients

Any person or entity (of whatever type) with an ownership interest in a qualified Massachusetts project and who receives an allocation of federal low-income housing tax credit with respect to such project is eligible to receive an allocation of Massachusetts low-income housing tax credit with respect to such project. The following text is effective 11/24/2000.

54.06: Allotment of Credit Among Partners, etc.

Whenever an owner of a qualified Massachusetts project with respect to which Massachusetts low-income housing tax credit has been allocated is an unincorporated flow-through entity, such as a partnership, limited liability company or joint venture, the entity may allot the Massachusetts tax credit available to the entity among persons designated by it as partners or members in such amounts or proportions, as they may agree in the organizational documents governing such entity, provided that the owner certifies to the Commissioner the amount of Massachusetts low-income housing tax credit allotted to each member or partner on a form designated by the Commissioner. The allotment of Massachusetts low-income housing tax credit need not follow or be consistent with the allocation, as the word is used in Section 704(b) of the Code, of other partnership items (e.g., income, loss, deduction or credit, including the federal low-income housing tax credit). Similarly, whenever Massachusetts low-income housing tax credit is allocated with respect to a qualified Massachusetts project that is owned through a joint tenancy or similar ownership arrangement, the owners of such project may allot the right to claim the Massachusetts low-income housing tax credit allocated with respect to such project among themselves

in such amounts as they agree, without regard to their actual ownership interest in the project, provided that the owners certify to the Commissioner the amount of Massachusetts low-income housing tax credit allotted to each owner on a form designated by the Commissioner.

54.07: Transferability of Credit

(1) **Transferors, Transferees.** Any taxpayer with an ownership interest in a qualified Massachusetts project with respect to which there has been allocated Massachusetts low-income housing tax credit and any taxpayer to whom the right to claim Massachusetts low-income housing tax credit has been allotted or transferred may transfer the right to claim unclaimed Massachusetts low-income housing tax credit to any other Massachusetts taxpayer eligible to claim a federal low-income housing tax credit with respect to the original or a different qualified Massachusetts project without the necessity of transferring any ownership interest in the original project or any interest in the entity which owns the original project. The transferor must transfer all credit attributable to periods after the transfer date agreed upon by the parties. For treatment of carry forward credit, see 760 CMR 54.10.

(2) **Transfer Contract Requirements.** A taxpayer, owning an interest in a qualified Massachusetts project or to whom the right to claim Massachusetts low-income housing tax credit has been allotted or transferred, who transfers his, her or its credit such that credit may be claimed by a taxpayer without ownership in the project and without an interest in the entity that owns the project must enter into a transfer contract with the transferee. The transfer contract must specify the following:

- (a) Building Identification Numbers for all buildings in the project;
- (b) the date each building in the project was placed in service;
- (c) the 15-year compliance period for the project;
- (d) the schedule of years during which the credit may be claimed and the amount of credit previously claimed; and
- (e) the taxpayer or taxpayers that are responsible for paying recapture if recapture should occur.

The transferring party shall attach a copy of this contract to the transfer statement required under 760 CMR 54.13(4).

(3) **Transferred Eligibility to Claim Credit.** Any taxpayer who is a transferee of the right to claim a Massachusetts low-income housing tax credit with respect to a qualified Massachusetts project may, provided all transfer

requirements and all other requirements for claiming such credit are met, claim such credit notwithstanding the fact that the credit may initially have been allocated to a taxpayer paying a different income tax (i.e., personal or corporate)

(4) **Sale of Credit is Sale of Capital Asset.** The sale of Massachusetts low-

income housing tax credit will be treated as the sale of a capital asset under the Massachusetts personal income tax or the net income measure of the corporate excise. The following text is effective 11/24/2000

(5) Examples. The following examples illustrate the application of 760 CMR 54.07:

- (a) Example 1. If taxpayer X receives an allotment of Massachusetts low-income housing tax credit as a partner in a partnership that owns a qualified Massachusetts project, taxpayer X may transfer the Massachusetts low-income housing tax credit allotted to it to taxpayer Y, whether or not taxpayer Y is a partner in the partnership, so long as taxpayer Y is entitled to claim a federal low-income housing tax credit with respect to any qualified Massachusetts project.
- (b) Example 2. Credit is allocated with respect to a project owned by a limited liability company and allotted to individuals who are members in the company. One of the members may sell his or her credit to a corporation, whether or not such corporation is a member in the company, so long as the corporation is entitled to claim a federal low-income housing tax credit with respect to any qualified Massachusetts project.

54.08: Prerequisites to Claiming Credit

When Massachusetts low-income housing tax credit is allocated with respect to a qualified Massachusetts project, such credit may not be claimed by any taxpayer with respect to any building in such project unless and until (1) all buildings in such project have been placed in service, and

(2) the project has met the minimum set-aside and occupancy requirements of Section 42(g) of the Code. Before the end of the first taxable year in which credit is claimed, the taxpayer must record a Regulatory Agreement in a form acceptable to the Department with respect to such project.

54.09: Placed in Service Requirement; Time for Claiming Credit

(1) Placed in Service Requirement. All buildings in a project must generally be placed in service in the year in which the allocation of Massachusetts low-income housing tax credit is made. Notwithstanding the foregoing sentence:

- (a) whenever a project qualifies for a federal carryover allocation under Section 42(h)(1)(E) or (F) of the Code and the federal regulations thereunder, such project may continue to be a qualified Massachusetts project if the owner of the project enters into a satisfactory carryover allocation agreement with the Department prior to the end of the year in which the allocation of credit is made; and

(b) with respect to a project described in 760 CMR 54.04(1)(c), such project may continue to be a qualified Massachusetts project if, in the judgment of the Department, the project would otherwise meet all of the requirements for a federal carryover allocation under Section 42(h)(1)(E) or (F) of the Code and the federal regulations thereunder and the owner of the project enters into a satisfactory carryover allocation agreement with the Department prior to the end of the year in which the allocation of credit is made.

The Department shall provide a form of Massachusetts carryover allocation agreement for the Massachusetts low-income housing tax credit.

(2) Timing of Claiming Credit. Any taxpayer holding the right to claim Massachusetts low-income housing tax credit with respect to a qualified Massachusetts project may claim a pro rata portion of the annual amount of Massachusetts low-income housing tax credit allocated with respect to such project for the calendar year in which such project first meets the conditions described in 760 CMR 54.08, with proration based on the portion of such calendar year during which the project meets those conditions. Any amount of annual credit deferred on account of proration may be claimed in the sixth tax year, assuming the project remains qualified.

(3) Early Credit Election. Notwithstanding the generally applicable timing for claiming Massachusetts low-income housing tax credit described in 760 CMR 54.09(2), an owner of a qualified Massachusetts project may elect to accelerate the time for claiming the credit. Provided that the project first meets the conditions described in 760 CMR 54.08, an owner of such qualified Massachusetts project may file a notice with the Commissioner in a form to be determined by the Commissioner that the owner has elected to accelerate the credit. The following text is effective 11/24/2000.

(4) Effect of Early Credit Election. When an owner of a qualified Massachusetts project makes an early credit election in the first year of the credit period and such project meets the requirements for making such an election, then notwithstanding 760 CMR 54.09(2), any taxpayer holding the right to claim Massachusetts low-income housing tax credit with respect to

such project shall claim the taxpayer's share of the project's entire annual allocation of Massachusetts low-income housing tax credit for the taxable year in which such election is validly made, without proration or adjustment on account of the date during such year on which the project is placed in service or on which such election is made, subject to any other applicable limitations.

(5) Examples. The following examples illustrate the application of 760 CMR 54.09.

(a) Example 1. Assume \$100,000 of Massachusetts low income housing tax credit is allocated with respect to a project in 2001. The project is owned by one individual who retains the right to claim such credit. No Massachusetts carryover allocation agreement under 760 CMR.54.09 (1) has been entered into. The individual's tax year coincides with the calendar year. If the project meets the conditions described in 760 CMR 54.08 and is placed in service on October 1, 2001, then the individual holding the right to claim such credit may claim \$25,000 in Massachusetts low-income housing tax credit on his or her Massachusetts tax return for the year 2001 subject to any other applicable limitations. The individual would be expected to claim \$100,000 on his or her Massachusetts tax returns for each of the years 2002, 2004, 2004, and 2005, and to claim \$75,000 on his or her Massachusetts tax return for the year 2007, assuming the project remains qualified and the individual retains the right to claim all of the credit.

(b) Example 2. The same individual elects to take the early credit option instead of the pro rata approach. The individual may claim \$ 100,000 in Massachusetts low income housing tax credit on his or her tax return for 2001, and \$ 100,000 per year for each of the subsequent four years.

(c) Example 3. The same individual has a tax year that runs from July 1 to June 30. The individual elects to take the early credit option. The individual takes the \$100,000 credit available on October 1, 2001 in his tax year that ends on June 30, 2002 and \$ 100,000 per year for each of the taxpayer's subsequent four tax years.

#### 54.10: Carryforward of Credit

(1) Carryforward Period. Any amount of the credit that exceeds the claimant's tax due may be carried forward to any of the five subsequent taxable years.

(2) Transfer of Carryforward. A taxpayer who transfers an unclaimed

portion of the credit pursuant to 760 CMR 54.07(1) may choose whether or not to include carryforward credit from prior years in the transfer.

(3) Transferee Treated Like Original Owner. For the purpose of determining the carryforward period, the transferee shall be bound by the same schedule for claiming a credit as the taxpayer originally entitled to the credit as an

owner of a qualified Massachusetts project, regardless of how often the credit has been transferred.

54.11: Limitations on Credit; Ordering of Credit

(1) Limitations on Credit. The credit may not be applied to increase the maximum amount of credit allowed under M.G.L. c. 63, or to reduce the minimum corporate excise imposed under M.G.L. c. 63.

(2) Ordering of Credit. The credit may be applied in combination with other credits allowed under M.G.L. c. 63 in any order. Similarly, the credit may be applied in combination with other credits allowed under M.G.L. c. 62 in any order.

(3) Credit Nonrefundable. The credit is not refundable to the taxpayer. The following text is effective 11/24/2000.

54.12: Recapture

(1) Recapture; Disallowance. Whenever an event or circumstance occurs with respect to a qualified Massachusetts project that results in any recapture of federal low-income housing tax credit, any Massachusetts low-income housing tax credit claimed with respect to the project shall also be subject to recapture in the amount described below, and any Massachusetts low-income housing tax credit allocated to such project and not yet claimed as of the date of the recapture event shall be disallowed. Notwithstanding any agreement between transferor and transferee, each taxpayer who has claimed any portion of the Massachusetts low-income housing tax credit allocated to the project in question shall be liable for payment of his, her or its respective recapture amount as specified in 760 CMR 54.12(3).

(2) Recapture Period. Massachusetts low-income housing tax credit allocated with respect to a project is subject to recapture (and disallowance to the extent not yet claimed) at any time during the 15-year compliance period if the project is subject to recapture of federal low-income housing tax credit.

(3) Amount of Recapture. The amount of Massachusetts low-income housing tax credit to be recaptured from any taxpayer upon the occurrence of a recapture event equals the product of

(a) the Massachusetts low-income housing tax credit claimed by such taxpayer prior to the recapture event times

(b) the recapture fraction. The recapture fraction is a fraction in which the numerator is the amount of all federal low-income housing tax credit recaptured with respect to the project and the denominator is the amount of all federal low-income housing tax credit previously claimed with respect to the project.

(4) **Timing of Recapture.** The amount of recapture of the Massachusetts low-income housing tax credit shall be reported and shall be subject to tax in the taxable year during which the federal recapture event takes place.

(5) **Example.** The following example illustrates the application of 760 CMR 54.12. Assume, the owner of a qualified Massachusetts project is a calendar year taxpayer. The annual credit amount allocated to the project is \$20,000. The project meets the requirements of 760 CMR 54.08 on October 1, 2001. Taxpayer makes an early credit election and takes a \$20,000 credit for tax year 2001. Taxpayer takes a second \$20,000 credit for tax year 2002. On April 1, 2004, the project goes out of compliance and becomes subject to federal recapture. No credit is available to taxpayer for tax years 2004, 2004 and 2005. The \$40,000 credit previously taken by the taxpayer is subject to recapture according to the formula in 760 CMR 54.12(3).

#### 54.13: Reporting and Recordkeeping Requirements

(1) **Taxpayer Requirements.** In order to claim the credit, a taxpayer must provide to the Commissioner the following:

- (a) eligibility statement as provided in 760 CMR 54.13(2);
- (b) allotment certification, if applicable, as provided in 760 CMR 54.13(3);
- (c) transfer statement, if applicable, as provided in 760 CMR 54.13(4) (with a copy of transfer contract, if applicable, as provided in 760 CMR 54.07(2)); and
- (d) Massachusetts carryover allocation agreement, if applicable, as provided in 760 CMR 54.09(1).

(2) **Eligibility Statement.** The Department shall adopt a form of eligibility statement to be issued by the Department evidencing a qualified Massachusetts project's eligibility for Massachusetts low-income housing tax credit. Each taxpayer claiming any Massachusetts low-income housing tax credit with respect to a project shall file a copy of the eligibility statement with each Massachusetts tax return on which any Massachusetts

low-income housing tax credit is claimed.

(3) **Allotment Certification.** The Commissioner, in consultation with the Department, shall provide a form of allotment certification to be filed by any unincorporated flow-through entity

- (a) that is the owner of a project with respect to which Massachusetts low-income housing tax credit has been allocated or The following text is effective 11/24/2000

(b) to which the right to claim a Massachusetts low-income housing tax credit has been allotted or transferred. The entity shall file such certification with the Commissioner following the close of the first taxable year in the credit period or the first taxable year the entity holds the right to claim credit, whichever is later. Such certification shall provide the name and federal taxpayer identification number of each taxpayer with an interest in the entity on the date the project met all of the requirements of 760 CMR 54.08, and shall also indicate the amount of Massachusetts low-income housing tax credit allotted to each such taxpayer. The certification shall also contain such other information as the Commissioner may from time to time require. Each taxpayer claiming any Massachusetts low-income housing tax credit by way of a flow-through entity shall file a copy of such certification with each Massachusetts tax return on which any Massachusetts low-income housing tax credit is claimed.

(4) Transfer Statement. The Commissioner, in consultation with the Department, shall promulgate a form of transfer statement to be filed by any person who transfers the right to claim Massachusetts low-income housing tax credit with respect to a qualified Massachusetts project. The transfer statement shall be required in addition to the transfer contract required in 760 CMR 54.07(2). The transferor shall file a transfer statement with the Commissioner within 30 days after transfer. The transferor shall also provide a copy of such statement to the owner of the project with respect to which the transferred credit was allocated within 30 days after transfer. The transfer statement shall provide the name and federal taxpayer identification number of each taxpayer to whom the filing transferor transferred the right to claim any Massachusetts low-income housing tax credit with respect to the project and shall also indicate the amount of Massachusetts low-income housing tax credit, including any carry forward credit, transferred to each such person or entity. The statement shall also contain such other information as the Commissioner may from time to time require. A copy of the transfer contract, if required under 760 CMR 54.07(2), shall be attached

to the transfer statement. Each taxpayer claiming any Massachusetts low-income housing tax credit shall file with each Massachusetts tax return on which any Massachusetts low-income housing tax credit is claimed copies of all transfer statements and transfer contracts necessary to enable the Commissioner to trace the claimed credit to the credit that was initially allocated with respect to the project. Each project owner shall file copies of all transfer statements and transfer contracts received regarding a project with such owner's annual Massachusetts tax or informational return.

(5) Record keeping Requirements. Owners of qualified Massachusetts projects and taxpayers that transfer or claim credit with respect to such projects shall be required to keep all records pertaining to credit until the expiration of the regulatory agreement; if a Massachusetts carryover allocation agreement is entered into with the Department under 760 CMR 54.09(1), the records must include a copy of the Massachusetts carryover allocation agreement and documents relevant thereto.

54.14: Application Process and Administrative Fees

(1) Application. Project applicants seeking an allocation of Massachusetts low-income housing tax credit shall include a request for such credit allocation in the same application to be filed with the Department through which such proponent requests an allocation of federal low-income housing tax credit. With respect to projects described in 760 CMR 54.04(1)(c), the request for Massachusetts low-income housing tax credit shall be made in the form of a letter to the Department accompanied by:

- (a) a copy of the applicant's submission to the agency providing the tax-exempt bond financing for the project; and
- (b) such additional information as would be included in an application to the Department for a federal low-income housing tax credit allocation. The Department shall issue guidance describing any additional information to be included with credit requests. The Department may require that the applicant provide analyses of alternative funding scenarios that allow the Department to evaluate the comparative efficiency of allocating varying levels of federal and Massachusetts low-income housing tax credit to such proposed project.

The following text is effective 11/24/2000

(2) Filing Fee. Each application seeking an allocation of Massachusetts low-income housing tax credit shall be accompanied by a filing fee set by the Department which shall be payable to the Commonwealth of Massachusetts.

54.15: Reference to Federal Credit Rules

Unless otherwise provided in M.G.L. c. 23B, s.3, M.G.L. c. 62, s. 61 and M.G.L. c. 63, s. 31H (St. 1999, c. 127, s.s. 34, 82, 90) or 760 CMR 54.00 or unless the context clearly requires otherwise, the Massachusetts low-income housing tax credit shall be administered and allocated in accordance with the standards and requirements applicable to the federal low-income housing tax credit as set forth in Section 42 of the Code and the federal regulations adopted there under.

54.16: Authorization of Department to Take Further Actions

Nothing in 760 CMR 54.00 shall be deemed to limit the authority of the Department to take all actions deemed by the Department in its discretion to be consistent with the authority granted the Department under M.G.L. c. 23B, s.3, M.G.L. c.62, s. 61 and M.G.L. c. 63, s. 31H (St. 1999, c. 127, s.s. 34, 82, 90).

**REGULATORY AUTHORITY**

760 CMR 54.00: M.G.L. c. 23B, s.s. 3, 6; c. 62, s.s. 61 (a), (c)(7), (e), (f)(4), (g); M.G.L. c. 63, s. s. 31H (a), (c)(7), (e), (f)(4), (g).

## Appendix E: Glossary of Terms

Tax credit applicants should note that the federal rules governing Low Income Housing Tax Credits are complex. All developers should consult a qualified tax attorney or accountant to determine eligibility for the credit. The terms defined below are not meant to substitute for a reading of Section 42 but are only meant to provide prospective applicants with a general understanding of commonly used terms.

**4% Credit** The term “4% credit” refers to the 30% tax credit, which has a present value equal to 30% of the project’s qualified development costs, or approximately 4% per year over a 10-year period. The “4% credit” is available in two situations: 1) Development costs of new building or substantial rehabilitation developed with a federal subsidy, including tax-exempt financing; and 2) Acquisition cost of an existing building, which must also be substantially rehabilitated (the greater of \$3,000 per low income unit or 10 % of the depreciable basis of the building) in order to qualify for the credit for the acquisition cost.

**9% Credit** The term “9% credit” refers to the 70% tax credit, which has a present value equal to 70% of the project’s qualified development costs, or approximately 9% per year over a 10-year period. The “9% credit” is available for the development costs of a new building or substantial rehabilitation of an existing building without a federal subsidy.

**Applicable Fraction** The smaller of the “unit fraction” or the “floor space fraction” (see Section 42(c)(1) of the Internal Revenue Code. The “unit fraction” is the fraction of qualified low income units in the building. The “floor space fraction” is the fraction of total floor space contained in the qualified low income units in the building.

**Carryover Allocation** An exception to the general rule that a credit allocation is valid only if the allocation occurs within the calendar year in which the building is placed in service. Under this type of allocation, 1) more than 10 percent of the project’s reasonably anticipated basis (costs) must be incurred by the end of the calendar year in which the allocation is made; and 2) the building(s) in the project must be placed in service by the end of the second calendar year following the year of the allocation. “However, projects which receive reservations in the second half of any calendar year will have six months from the date of allocation (or until the following June 30, if later) to incur more than 10 percent of the project’s reasonably anticipated basis as of the end of the second calendar year following allocation”.

**Compliance Monitoring** DHCD must actively monitor all tax credit projects to determine if they are complying with the various requirements of the tax credit

program, which include, but are not limited to, determining whether the rents charged on tax credit units exceed maximum allowable rents and whether the incomes of tenant households at initial occupancy and during subsequent reviews exceed maximum allowable income limits.

**Department of Housing  
& Community Development**

The Department of Housing and Community Development (DHCD) is the designated tax credit allocating agency for the Commonwealth of Massachusetts. DHCD administers federal community development programs, administers the state's public housing programs, coordinates its anti-poverty efforts, and provides a variety of services to local government officials. The focus of DHCD is to make state and federal funds and technical assistance available to strengthen communities and help them plan new developments, encourage economic development, revitalize older areas, improve local government management, build and manage public housing, stimulate affordable housing through the private sector and respond to the needs of low- income people.

**Eligible Basis**

The sum of the eligible cost elements that are subject to depreciation, such as expenditures for new construction, rehabilitation, building acquisition, and other costs used to determine the cost basis of the building(s) (see IRC Section 42 for a more detailed definition). The eligible basis is increased by 30 percent if the building(s) in the project are located in a difficult development area or qualified census tract.

**EUR**

Title VI subtitle A of the Cranston-Gonzalez National Affordable Housing Act contains the Low Income Housing Preservation and Resident Homeownership Act of 1990 (“LIHPRHA” or Expiring-Use Restriction (“EUR”) program). Contracts under low-interest loan programs of the 1960's & 1970's permitted certain owners to prepay federally assisted mortgages after the twentieth year of the forty year mortgage term. The statute's basic objectives are to assure that most of the “prepayment” inventory of HUD-assisted housing remains affordable to low income households and to provide opportunities for tenants to become homeowners

**HOPE VI**

In 1992, Congress created the Urban Revitalization Demonstration Program (otherwise known as HOPE VI) for the purpose of revitalizing severely distressed public housing developments. HOPE VI is funded by the U.S. Department of Housing and Urban Development to provide localities with funds and flexibility to reshape existing public housing neighborhoods. It can supply up to

\$50 million to transform an entire public housing development.

**Internal Revenue Code**

The Low Income Housing Tax Credit Program (LIHTC) is a housing program contained within Section 42 of the Internal Revenue Code of 1986, as amended, governs tax credits for owners or investors in low income housing projects.

**Massachusetts Development  
Finance Agency**

The Massachusetts Development Finance Agency (MDFA) was created by the Massachusetts legislature to expand economic development opportunities. MDFA funds its programs through the sale of taxable and tax-exempt bonds to private investors.

**Massachusetts Housing  
Finance Agency**

The Massachusetts Housing Finance Agency (MHFA) was created by the Massachusetts legislature to expand rental and homeownership opportunities for low and moderate income households. MHFA funds its programs through the sale of taxable and tax-exempt bonds to private investors.

**Qualified Basis**

The portion or percentage of the eligible basis that qualifies for the tax credit. A building's qualified basis equals its eligible basis multiplied by its applicable fraction.

**Section 42**

Section 42 of the Internal Revenue Code of 1986, as amended, governs tax credits for owners or investors in low income housing projects, which has received an allocation under the terms of this plan.

**TDC**

Total Development Costs. Costs incurred for the purchase and/or rehabilitation of existing buildings or new construction. Development costs may include planning, oversight, relocation, demolition, construction or rehabilitation, reserves and all other costs necessary to develop the affordable housing project.

**Ten Percent (10%) Test**

In order to qualify for a carryover allocation, the developer's basis in the property at the end of the year in which the allocation is received must be more than ten percent of the amount that the project's basis is reasonably expected to be at the end of the second year following the allocation year. Basis consists of the project's depreciable costs and land that is reasonably expected to be part of the project. However, projects which receive reservations in the second half of the calendar year will have six months from the date of allocation to meet the ten percent test.

## **Appendix F. National Council of Affordable Housing Market Analysts Model Content Standards for Market Studies For Rental Housing**

### **I. Purpose.**

The purpose of these standards is to provide standardized terminology and content for Market Studies of affordable rental housing prepared for developers, governmental agencies, lenders, or investors, of rental housing which is to be financed in whole or in part by State Housing Finance Agencies and other public funding or regulatory agencies. The standards outline the content, data, analysis and conclusions to be included in Market Studies for rental housing. These standards do not establish the format or presentation for the report. The terminology attached as Exhibit A is an integral part of these standards. Defined terms are capitalized.

### **II. Content**

#### **A. Executive Summary.**

Each market study should include a concise summary of the data, analysis and conclusions, including the following:

1. A concise description of the site and the immediately surrounding area.
2. A brief summary of the project including the proposed population to be served.
3. Precise statement of key conclusions reached by the analyst.
4. Precise statement of analyst's opinion of Market Feasibility including the prospect for long term performance of the property given housing and demographic trends and economic factors.
5. Provide recommendations and/or suggest modifications to the proposed project.
6. Provide a summary of market related strengths and/or weaknesses which may influence the subject development's Marketability, including compatibility with surrounding uses, the appropriateness of the subject property's location, unit sizes and configuration, and number of units.
7. A summary of positive and negative attributes and issues that will affect the property's performance and lease-up and points that will mitigate or reduce any negative attributes.

#### **B. Project Description.**

The market study should include a project description to show the analyst's understanding of the project at the point in time the market study is undertaken. The project description should include:

1. Proposed number of units by: number of bedrooms and baths, income limit as a percent of AMI, unit size in square feet, and utility allowances for Tenant Paid Utilities, proposed rents, and Target Population, including income restrictions and any special needs set-asides.
2. The utilities expected to be paid by tenants and energy sources for tenant paid hot water, heat, cooking;

3. For rehabilitation projects, identification of any existing assisted housing program at the property such as Section 8, Section 202, Section 811, BMIR, Section 236, etc, as well as current occupancy levels, current rents and proposed rents.
4. Developer's projected dates for construction start and completion, and start of pre-leasing.
5. Description of: the number of buildings, design (walk-up, elevator, etc.), and number of stories, unit and common amenities, site amenities and parking. For rehabilitation projects provide a description of the methodology for the rehabilitation and the scope of work. The status or date of architectural plans and name of the architect should be referenced. A copy of the floor plans and elevations should be included as an attachment to the report.

### **C. Location and Market Area Definition**

1. Define the Primary (PMA) and Secondary (SMA) Market Areas including a map that clearly delineates the areas and an explanation of the basis for the boundaries of the PMA and SMA. Identify PMA and SMA boundaries by census tracts, jurisdictions, street names, or other geography forming the boundaries. Also define the larger geographic area in which the PMA is located (i.e. city, county, MSA, etc.).
2. Provide a description of the site characteristics including its size, shape, general topography and vegetation and proximity to adverse conditions.
3. Provide photographs of the site and neighborhood, and a map clearly identifying the location of the project and the closest transportation linkages, shopping, schools, medical services, public transportation, places of worship, and other services such as libraries, community centers, banks, etc. In situations where it is not feasible to show all the categories on a map, the categories may be addressed in the narrative.
4. Describe the Marketability of the proposed development.
5. Describe and evaluate the visibility and accessibility of the site.
6. Provide information or statistics on crime in the Primary Market Area relative to data for the overall area. Address any local perceptions of crime or problems in the Primary Market Area.

### **D. Population and Households**

1. Provide total population, age and income target data for the Primary Market Area using the 1990 Census, 2000 Census, current year estimates, and a five year projection. Data from other legitimate studies, such as Claritas, CACI and similar demographic information companies, with detail on Household size, tenure, age and other relevant categories may be provided. Provide the same information for the Secondary Market Area, if one has been defined. Indicate the source for all data, provide a methodology for estimates and provide an analysis of trends indicated by the data.
2. Provide a breakdown of Households by tenure for 1990 Census, 2000 Census, current year and five year projection.
3. Provide an analysis of trends indicated by the data and include reference sources for the data and methodology for analyzing the data.
4. Provide a breakdown of households by incomes in \$5,000-\$10,000 increments, by household size and by tenure for 1990 and 2000 Census, current year, and five year projection.

### **E. Employment and Economy.**

Provide data and analysis on the employment and economy of the Primary Market Area to give an understanding of the overall economic health of the community in which the Primary Market Area is located. List sources for the data and methodology for the analysis.

1. Provide a description of employment by industry sector for the Primary Market Area or smallest geographic area available that includes the Primary Market Area and compare the data to the larger geographic area, e.g. the city, county, labor market area, or MSA.
2. List major employers in the PMA, the type of business and the number employed and compare the data to the larger geographic area (i.e. MSA, County, Secondary Market Area, etc.).
3. Show the historical unemployment rate for the last ten years (or other appropriate period) for the PMA and compare to the larger geographic area (i.e. MSA, County, Secondary Market Area, etc.).
4. Show employment growth over the same period or a more recent, shorter period (last 5 years). Compare to the larger geographic area.
5. Comment on trends for employment in the PMA in relation to the subject.
6. If relevant, comment on the availability of affordable housing for employees of businesses and industries that draw from the Primary Market Area.
7. Provide a breakdown of typical wages by occupation.
8. Provide commuting patterns for workers such as how many workers in the PMA commute from surrounding areas outside the PMA.

#### **F. Existing Rental Housing Stock.**

Provide information on other multifamily rental housing in the Primary Market Area and any rental housing proposed to be developed in the Primary Market Area. This section of the Market Study should include:

1. If relevant in the market, a 10-year, or other appropriate period, history of building permits, if available, by housing type and comments on building trends in relation to household trends.
2. Identify a list of existing Comparable Properties, including: name, location, population served, type of design, age and condition, number of units by bedroom type, rent levels, number of bedrooms and baths for each unit type, size in square footage of units, kitchen equipment, type of utilities (state whether paid by tenant or owner and energy sources for hot water, heat and cooking), unit and site amenities included, site staffing, occupancy rate, absorption history (if recently completed), name, address and phone number of property contact. Attach photos of each Comparable Property. Include a map identifying the location of each Comparable Property in relation to the subject.
3. Describe the size of the overall rental market in the PMA, including the percentage of Market Rate and Affordable Housing properties.
4. Provide a narrative evaluation of the subject property in relation to the Comparable Properties, and identify the Competitive Properties, which are most similar to the proposed development.

The analyst should state why the comparables referenced have been selected, which are the most directly comparable, and explain why certain projects have not been referenced.

5. For each Comparable Property comparisons to the subject rents based on the Comparable Property Amenities, Tenant Paid Utilities, location, parking, concessions and rent increase or decrease trends.
6. Discuss the availability of affordable housing options, including purchase or sale of homes.
7. When relevant, include a list of LIHTC projects with allocations in or near the market area that are not placed in service, giving as much known detail as possible on estimated Placed-In-Service dates, unit mix and Income Levels to be served. As noted in Section III the Housing Finance Agency is expected to provide this information to the analyst.
8. Discuss the impact of the subject development on the existing housing stock.
9. The Market Vacancy Rate for the Primary Market Area rental housing stock by population served (i.e. market rate, Low Income Housing Tax Credit, and Project Based Rent Assistance) and type of occupancy (i.e. family, seniors, special populations) and unit size.
10. Identify the number of people on waiting lists for each project.

### **G. Local Perspective of Rental Housing Market and Housing Alternatives.**

The Market Study should include a summary of the perspective on the rental market, need for the proposed housing and Unmet Housing Need in the market. The local perspective should consider:

1. Interviews with local planners, housing and community development officials and market participants to estimate proposed additions to the supply of housing that would compete with the subject and to evaluate the local perception of need for additional housing.
2. Interview local Public Housing Authority (PHA) officials and seek comment on need for housing and possible impact of the proposed development on their housing inventory and waiting lists for assisted housing. Include a statement on the number and availability of Housing Choice Vouchers and the number and types of households on the waiting lists for Housing Choice Vouchers. Compare subject's proposed rents to local payments standards or median rents.
3. The cost and availability of home ownership and mobile home living, if applicable.

### **H. Analysis.**

1. Provide a detailed analysis of the income levels of the potential tenants for the proposed units. State and support the minimum household income used for total housing expenses to set the lower limit of the targeted household income range. If required, provide an analysis based on the regulating agency's requirements.
2. Derive a Market Rent and an achievable rent and then compare them to the developer's proposed rent. Quantify and discuss Market Advantage of the subject and impact on Marketability.
3. Calculate the Capture Rate for each Income Limit in the subject property incorporating any Housing Finance Agency or other regulating agency restrictions such as age, income, living in Substandard Conditions, renters versus home owners, household sizes, etc.
4. Calculate the Penetration Rate.
5. Define and justify the Absorption Period and Absorption Rate for the subject property.
6. Project and explain any future changes in the housing stock within the market area.

7. Identify risks (i.e. Competitive Properties which may come on line at the same time as the subject property; declining population in the PMA, etc.), unusual conditions and mitigating circumstances. Evaluate need for voucher support or HUD contracts.
8. Provide documentation and descriptions that show the methodology for calculations in the analysis section and relate the conclusions to the data.

### **I. Other Requirements**

Date report was prepared, date of inspection and name and telephone number of analyst preparing study;

1. Certification of no identity of interest between the analyst and the entity for whom the report is prepared;
2. Certification that recommendations and conclusions are based solely on professional opinion and best efforts;
3. Statement of qualifications;
4. List of sources for data in the Market Study;
5. Append current utility allowance schedule (or utility company provider letters).

### **III. Information to be Provided by Housing Finance Agency or Other Regulatory Agency**

The Housing Finance Agency or other regulatory agency to which the Market Study will be provided will be expected to cooperate in the completion of the Market Study and provide the documentation listed below. If data relative to the Housing Finance Agency or other regulatory agency financed properties is not provided by the agency, then the analysts should not be required to include this data in the Market Study.

1. Average operating costs for other agency financed housing similar in size, design, and target population in the Primary Market Area or region
2. Average and maximum management fees permitted based on type and size of project or a statement that the agency does not have the data or does not limit management fees
3. Data on rental housing inventory in the Primary Market Area financed or assisted by the agency or which has received preliminary approval or reservations of funding of Low Income Housing Tax Credits and is expected to become available in the market. This data should include property address, number and type of units, rents by unit type, Income Limits, and other relevant information.

### **IV. Additional Work**

The documentation and analysis outlined previously in Section II constitutes the entire content for a Market Study. A Housing Finance Agency, other regulatory agency or developer may desire a market analyst to provide additional information beyond the basic scope of the Market Study. Any additional documentation or analysis beyond the scope of the Market Study will be performed for additional compensation above the cost of the Market Study. Such additional work may include:

1. Preparation of estimates of the annual operating expenses for the operation of the subject property, upon achieving a Stabilized Level of Occupancy;
2. Report on the zoning designation of the property and comments on conformance of the subject property's conformance with zoning. This additional work also may include a zoning map, zoning ordinance or letter from the local zoning official;
3. Report on the flood zone for the property and a copy of the flood zone map;
4. Census of all rental property in an area.
5. Evaluation of special needs set aside, including:
  - demands for target population, and its
  - Impact on the rents the property can attain.

## Appendix G. Design Self Evaluations (Accessibility)

### *Part A: Access Code Summary*

#### *Code Applicability*

Sponsors are required to answer the following questions regarding applicability of state, federal, and local accessibility regulations.

**1. Are Section 504, Title II of the ADA, or the ABA applicable to the project based on the sources of funding? Explain.**

**2. If the project is existing, show calculations indicating the cost of the work relative to the value of the building or replacement cost (per MAAB's CMR 521 3.3, or Section 504 8.23 (a) if applicable).**

**3. Describe any variances from MAAB's requirements that are anticipated, and the status of the variance process.**

*(Access code summary continued on next page)*

*Part A: Access code summary (cont.)*

*Code Requirements*

Provide summary information regarding accessibility requirements in the table below. Include the most stringent applicable requirements of MAAB, the FHA, Section 504, the ADA, and any other local requirements.

*1. Site Access – Accessible Route*

<b>Requirement:</b>	<b>Proposed:</b>
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*2. Accessible Parking*

<b>Requirement:</b>	<b>Proposed: (Indicate total number of spaces provided.)</b>
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*3. Building Entrances and Accessible Routes Within Buildings*

<b>Requirement:</b>	<b>Proposed:</b>
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*4. Common Areas & Facilities (offices, laundry rooms, community rooms, etc.)*

<b>Requirement:</b>	<b>Proposed:</b>
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*5. Group 1 Units (MAAB)*

<b>Requirement: (Include units covered by the FHA.)</b>	<b>Proposed:</b>
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*6. Group 2 Units (MAAB)*

<b>Requirement:</b>	<b>Proposed:</b>
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**Part B: Universal Design Checklist**

**DHCD Requirements for all units**

In addition to the requirements of MAAB, FHA, ADA, & 504

\*Requirements with an asterisk may be waived for moderate rehab projects.

Feature	DHCD Req'd		Check if included	Comment (explain all items that are not included)
	Rehab	New		

**Exterior**

Provide wayfinding signage at large or challenging sites	Y	Y		
Provide effective exterior lighting at walkways, accessible routes, and exterior spaces, esp. hazards	Y	Y		
Provide handrails at all exterior steps and stairs subject to snow or ice accumulation in order to reduce slipping hazard	Y	Y		

**Common Areas**

Laundry rooms - provide a table for folding accessible to the handicapped	Y	Y		
Laundry Room Door to have 1/2 height vision panel	Y	Y		
Color contrast between tread & risers on stairs, more lighting to facilitate recognition of steps by vision-impaired persons	Y	Y		
Corridors in common areas of Elderly or Assisted Living projects to have a continuous handrail mounted on one side, 34" AFF	Y	Y		
All washers & dryers to be front loading with front controls, mounted on platforms to reduce bending	Y	Y		
Motion detector light switches at laundry rooms, other common areas	Y	Y		

**Entrances**

Provide exterior lighting at each entry door, switched by photocell/motion detector.	Y	Y		
Overhead weather protection at entrances	N	Y		
Rough in wiring for power operated doors	Y*	Y		
Threshold height at exterior doors to be adaptable to comply with the requirement for accessible route	N	Y		
Provide power operated doors at exterior entries of Elderly or Assisted Living projects	Y*	Y		
No steps at entrances	N	N		

Site grading provides accessible route up to first floor level (1:20 slope maximum)	N	N		
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**Unit Interiors**

Rocker-type electrical switches	Y	Y		
Switches no higher than 48" AFF, Thermostats at 54"	Y*	Y		
Lever hardware on all doors	Y	Y		
Receptacles, phone & cable jacks 18" AFF minimum	Y*	Y		
Max threshold or floor transition height at interior doors to be 1/2"	Y	Y		
Recommend contrasting colors between floor surfaces and trim to facilitate recognition of steps by vision-impaired persons	Y	Y		
Overhead light fixtures to be able to accommodate a 2700 lumen lamp minimum, where provided.	Y	Y		
Receptacles next to phone jacks for TTY devices	Y*	Y		
If provided, Bi-fold, by-pass, and Pocket doors to have premium hardware, easy-grip handle, and 32" clear when closed	N	Y		
All doors leading to habitable rooms to have min. 32" clearance	N	N		
Elec panel within standard reach range & with clear floor space	Y*	Y		
Rough wire all units to allow strobe lights to be installed in every bedroom and living area	Y*	Y		
Additional electrical outlets at bed locations & desks: fourplex outlet for computers, electronic equipment, personal use equipment such as oxygen	N	N		
Adjustable height closet rods & shelves	Y	Y		
At double hung windows, use block & tackle balances	Y	Y		

**Baths**

All tub/shower control knobs to be single lever handled	Y	Y		
Lever faucet controls at lavatory sinks, not paddle handles	Y	Y		
Provide min. 12" grab bar in all tub/shower units at wall opposite controls, 48" AFF	Y	Y		
Tubs and showers must have slip resistant floors (conform to ASTM F-462)	N	Y		
Mirrors in baths low enough to reach counter backsplashes	Y	Y		
Provide solid blocking at all waterclosets and tub/showers for grab bars installation	Y	Y		
Handheld showers at short wall of all baths, adjustable height mounting.	N	N		

**Kitchens**

Min. clear floor space between cabinets & appliances 48"	N	Y		
Loop handles on cabinet doors & drawers	Y	Y		
Lever faucet controls at kitchen sinks	Y	Y		
Contrast colors at border treatment of countertop vs cabinets to facilitate recognition of edge of counter by vision impaired persons	Y	Y		
Adjustable height shelves in wall cabinets	Y	Y		
Controls on appliances mounted to avoid reaching over burners in Elderly or Assisted Living projects	Y	Y		
Range hoods wired to remote switch near the range in Elderly or Assisted Living projects	Y	Y		
Pull-out shelves in base cabinets and pantry in Elderly or Assisted Living projects	Y	Y		

**DHCD Requirements for CBH units**  
For CBH units the following additional requirements apply.

\*Requirements with an asterisk may be waived for moderate rehab projects.

Feature	DHCD Req'd		Check if included	Comment (explain all items that are not included)
	Rehab	New		

**Exterior**

Dedicated accessible parking space for each CBH unit (if parking is provided)	Y	Y		
If covered parking is available, provide direct covered access from parking to CBH units	Y	Y		

**Entrances**

All building entrances are on accessible routes	N	Y		
Automatic door openers at building entrances on accessible routes	Y	Y		
All doorbells and intercoms must be accessible	Y	Y		

**CBH Unit Interiors**

Electrical power for automatic door openers at unit entries	Y	Y		
Shelf for packages at inside and outside of all unit entrances	N	Y		
42" clear width in hallways	Y*	Y		
Space to allow wheelchair approaches at both sides of bed	Y*	Y		
Wide, shallow closets (depth 24" max) with bifold doors	Y	Y		
Flush transition to exterior patios or decks	Y	Y		
Intercom systems usable by vision or hearing impaired persons	Y	Y		

**Baths**

66" turning radius in bathroom	Y*	Y		
Curbless shower or tub with 48" wide parallel clear area	Y*	Y		
Grab bars at all showers and tubs	Y	Y		

**Kitchens**

66" turning radius in kitchen	Y*	Y		
Side-by-side refrigerator/freezer	Y	Y		
Cabinets with sliding shelves and 'lazy susan' corner cabinets	Y	Y		

## Appendix H. Design Self Evaluation (Green Building)

In order to enable DHCD to evaluate the sustainable design provisions of each project, sponsors are to provide summary information regarding green building techniques and sustainable design using the following checklist.

Feature	Verification Requirement	Check if included	Comment (explain all items that are not included)
<b>Site Design:</b>			
1. Minimize light pollution of the night sky by avoiding over-lighting outdoor spaces and by directing lighting toward the ground plane.	Include in outline specification. Submit site lighting plan and fixture information with commitment documents.		
2. Use native landscape plants that are drought tolerant. Avoid plants that are on the Massachusetts Invasive species list. Use ground-cover plants where grass is not appropriate. Preserve existing trees where possible.	Include in outline specification. Submit landscape plan with commitment documents.		
3. Install systems for the recharge of roof rainwater runoff into the groundwater. This may include downspouts to previous landscape surfaces ample for percolation.	Include in outline specification. Submit plans with commitment documents.		
4. Plant deciduous trees along the south side of building and paved surfaces to provide summer shade.	Indicate on site plan.		
5. Install covered bike racks.	Indicate on site plan.		
<b>Building Design:</b>			
6. Manage water at the building envelope to exclude water. Install flashing at horizontal exterior joints.	Submit flashing details with commitment documents.		
7. Seal the building envelope against air infiltration. Use spray foam around windows and doors, and sealant beneath plates. Provide complete air infiltration barrier including lapped and taped joints.	Submit results from blower door test at randomly selected units at completion of construction. (10% of total units minimum).		
8. At slab-on-grade construction for conditioned spaces, provide a thermal break and insulation at slab edge and underside.	Indicate on wall section.		
9. Insulate the building to a standard 15% better than code requirements. Include attic/ roof insulation of R-40 minimum.	Include in outline specification a list of insulation values, including walls, foundation, band joists, windows, and roof.		
10. Install boilers or furnaces that exceed 90% efficiency. Size heating systems to take into account air sealing and insulation. Do not oversize equipment.	Include in outline specification.		
11. Install Energy Star labeled appliances.	Include in outline specification.		
12. Install only fluorescent light fixtures within units. Install all LED emergency exit signs.	Include in outline specification.		

13. Install multi-speed bathroom fans at each bathroom with energy efficient motor rated for continuous duty with a minimum rating of 50 cfm. Control fan with timer.	Include in outline specification.		
14. Use no-VOC interior paints. Use low VOC carpets, flooring, and adhesives.	Include in outline specification.		
15. Provide mandatory CO detector system	Include in outline specification.		
16. Install non-paper-faced mold-resistant wallboard or cement board at areas susceptible to moisture, including kitchens, bathrooms, and laundry rooms.	Include in outline specification.		
17. Install ceramic tile or water-impervious sheet flooring with all edges sealed to the baseboard, tub, and threshold to form a water-tight floor in bathrooms.	Include in outline specification.		
18. Install FSC Certified wood for at least 60% of total wood used.	Include in outline specification.		
19. Install passive and active systems to harness renewable energy.	Submit outline specification as well as statement of expected energy saved and funding strategy.		
20. Specify that demolition procedures recycle at least 50% of all removed materials by volume, including site materials, appliances, structure, and finishes.	Include in outline specification.		
21. Specify that construction procedures use materials efficiently, and that at least 75% of construction waste be recycled. Recycle all cardboard and foam packaging materials.	Include in outline specification.		
22. Ventilate new or renovated wood construction fully after exposure to water so that wood dries completely (10 days). Also ventilate the interior spaces after substantial completion and before occupancy to dry construction and remove any accumulated VOCs.	Include in outline specification.		
<b><i>Building Management and Operations:</i></b>			
23. Provide designated spaces for recycling containers for use by residents. Include recycling instructions to resident households. Provide management-monitored recycling program and weekly collections.	Indicate space on floor plan(s). Include in management plan.		
24. Provide tenants with educational materials about recycling procedures, and efficient building systems operations and maintenance.	Include in management plan.		
25. Have all building systems inspected by a qualified independent commissioning agent immediately after construction, including verification that the systems achieve the efficiencies specified.	Include in outline specification.		



## **Appendix I. Fair Housing Principles and Affirmative Fair Marketing Plan Guidelines**

1. **Encourage Equity.** Support public and private housing and community investment proposals that promote equality and opportunity for all residents of the Commonwealth. Increase diversity and bridge differences among residents regardless of race, disability, social, economic, educational, or cultural background, and provide integrated social, educational, and recreational experiences.
2. **Be Affirmative.** Direct resources to promote the goals of fair housing. Educate all housing partners of their responsibilities under the law and how to meet this important state and federal mandate.
3. **Promote Housing Choice.** Create quality affordable housing opportunities that are geographically and architecturally accessible to all residents of the commonwealth. Establish policies and mechanisms to ensure fair housing practices in all aspects of marketing.
4. **Enhance Mobility.** Enable all residents to make informed choices about the range of communities in which to live. Target high-poverty areas and provide information and assistance to residents with respect to availability of affordable homeownership and rental opportunities throughout Massachusetts and how to access them.
5. **Promote Greater Opportunity.** Utilize resources to stimulate private investment that will create diverse communities that are positive, desirable destinations. Foster neighborhoods that will improve the quality of life for existing residents. Make each community a place where any resident could choose to live, regardless of income.
6. **Reduce Concentrations of Poverty.** Ensure an equitable geographic distribution of housing and community development resources. Coordinate allocation of housing resources with employment opportunities, as well as availability of public transportation and services.
7. **Preserve and Produce Affordable Housing Choices.** Encourage and support rehabilitation of existing affordable housing while ensuring that investment in new housing promotes diversity, and economic, educational, and social opportunity. Make housing preservation and production investments that will create a path to social and economic mobility.
8. **Balance Housing Needs.** Coordinate the allocation of resources to address local and regional housing need, as identified by state and community stakeholders. Ensure that affordable housing preservation and production initiatives and investment of other housing resources promote diversity and social equity and improve neighborhoods while limiting displacement of current residents.
9. **Measure Outcomes.** Collect and analyze data on households throughout the housing delivery system, including the number of applicants and households served. Utilize data to assess the fair housing impact of housing policies and their effect over time, and to guide future housing development policies.
10. **Rigorously Enforce All Fair Housing and Anti-Discrimination Laws and Policies.** Direct resources only to projects that adhere to the spirit, intent, and letter of applicable fair housing laws, civil rights laws, disability laws, and architectural accessibility laws. Ensure that policies allow resources to be invested only in projects that are wholly compliant with such laws.

### **III. Affirmative Fair Housing Marketing Plan (Including Resident Selection)**

The Commonwealth of Massachusetts has a compelling interest in creating fair and open access to affordable housing and promoting compliance with state and federal civil rights obligations. Therefore, all privately assisted housing or housing for inclusion on the Subsidized Housing Inventory (SHI) shall have an Affirmative Fair Housing Marketing Plan (AFHMP). *The affordable Use Restriction documents of said housing must require that the AFHMP, subject to the approval of the subsidizing or funding agency, shall be implemented for the term of the Use Restriction.* Affirmative Fair Housing requirements apply to the full spectrum of activities that culminate with occupancy, including but not limited to means and methods of outreach and marketing through to the qualification and selection of residents. All AFHMP plans must, at a minimum, meet the standards set forth by the Department of Housing and Community Development (DHCD). In the case of M.G.L. c.40B projects, the AFHMP must be approved by the Subsidizing Agency.

The developer (Developer) is responsible for resident selection, including but not limited to drafting the resident selection plan, marketing, administering the initial lottery process, and determining the qualification of potential buyers and/or tenants. The Developer is responsible for paying for all of the costs of affirmative fair marketing and administering the lottery and may use in-house staff, provided that such staff meets the qualifications described below. The Developer may contract for such services provided that any such contractor must be experienced and qualified under the following standards.

Note: As used in these AFHMP Guidelines, “Developer” refers to the Project Developer and/or the entity with which the Developer has contracted to carry out any or all of the tasks associated with an AFHMP.

#### **A. Developer Staff and Contractor Qualifications**

The entity as well as the individual with primary responsibility for resident selection, whether in-house staff or a third-party contractor, must have substantial, successful prior experience in each component of the AFHMP for which the party will be responsible, e.g. drafting the plan, marketing and outreach activities, administering the lottery process and/or determining eligibility under applicable subsidy programs and/or qualifying buyers with mortgage lenders.

Subsidizing Agencies reserve the right to reject the qualifications of any Developer or contractor. However, generally, Developers or contractors that meet the following criteria *for each component*, as applicable, will be considered to be qualified to carry out the component(s) for which they are responsible:

- The entity has successfully carried out similar AFHMP responsibilities for a minimum of three (3) projects in Massachusetts *or* the individual with primary responsibility for the resident selection

process has successfully carried out similar AFHMP responsibilities for a minimum of five (5) projects in Massachusetts.

- The entity has the capacity to address matters relating to English language proficiency.
- “Successfully” for the purposes of these Guidelines means that, with respect to both the entity and the relevant staff, (a) the prior experience has not required intervention by a Subsidizing Agency to address fair housing complaints or concerns; and (b) that within the past five (5) years, there has not been a finding or final determination against the entity or staff for violation of any state or federal fair housing law.

#### **B. Affirmative Fair Housing Marketing Plan**

The Developer shall prepare the following materials which shall comprise an AFHMP:

- Informational materials for applicants including a general description of the overall project that provides key information such as the number of market/affordable units, amenities, number of parking/garage spaces per unit, distribution of bedrooms by market and affordable units, accessibility, etc.
- A description of the eligibility requirements.
- Lottery and resident selection procedures.
- A clear description of the preference system being used (if applicable).
- A description of the measures that will be used to ensure affirmative fair marketing will be achieved including a description of the affirmative fair marketing and outreach methods that will be used, sample advertisements to be used, and a list of publications where ads will be placed.
- Application materials including:
  - The application form.
  - A statement regarding the housing provider’s obligation not to discriminate in the selection of applicants, and such a statement must also be included in the application materials.
  - Information indicating that disabled persons are entitled to request a reasonable accommodation of rules, policies, practices, or services, or to request a reasonable

modification of the housing, when such accommodations or modifications are necessary to afford the disabled person equal opportunity to use and enjoy the housing.<sup>1</sup>

- An authorization for consent to release information.
  
- For homeownership transactions, a description of the use restriction and/or deed rider.

The Subsidizing Agency must approve the AFHMP before the marketing process commences. In the case of a Local Action Unit (LAU), DHCD and the municipality must approve the AFHMP.

The AFHMP shall be applied to affordable units<sup>2</sup> upon availability for the term of affordability and must consist of actions that provide information, maximum opportunity, and otherwise attract eligible persons protected under state and federal civil rights laws that are *less likely to apply*.

### Outreach and Marketing

Marketing should attract residents outside the community by extending to the regional statistical area as well as the state.

- Advertisements should be placed in local and regional newspapers, and newspapers that serve minority groups and other groups protected under fair housing laws. Notices should also be sent to local fair housing commissions, area churches, local and regional housing agencies, local housing authorities, civic groups, lending institutions, social service agencies, and other non-profit organizations.
- Affordable units in the Boston Metro Area (Boston-Cambridge-Quincy MSA) must be reported to the Boston Fair Housing Commission's Metrolist (Metropolitan Housing Opportunity Clearing House). Such units shall be reported whenever they become available (including upon turnover).
- Affordable and/or accessible<sup>3</sup> rental units must be listed with the Massachusetts Accessible Housing Registry whenever they become available (including upon turnover). See <http://www.chapa.org>.

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<sup>1</sup> It is important to remember that legal obligations with respect to accessibility and modifications in housing extend beyond the Massachusetts Architectural Access Board requirements, including federal requirements imposed by the Fair Housing Act, the Americans with Disabilities Act, and the Rehabilitation Act. Under state law, in the case of publicly assisted housing, multiple dwelling housing consisting of ten or more units, or contiguously located housing consisting of ten or more units (see M.G.L. c. 151B, § 1 for definitions), reasonable modification of existing premises shall *be at the expense of the owner* or other person having the right of ownership if necessary for the disabled person to fully enjoy the premises. M.G.L. c. 151B, § 4(7A). See also 24 C.F.R. part 8 for Rehabilitation Act requirements of housing providers that receive federal financial assistance.

<sup>2</sup> The advertising component of the AFHMP applies to all units.

<sup>3</sup> Note: The owner or other person having the right of ownership shall, in accordance with M.G.L. c. 151B, §4(7A), give at least fifteen days notice of the vacancy of a wheelchair accessible unit to the Massachusetts Rehabilitation Commission. Said statute also requires the owner or

- Available affordable ownership units must also be listed with CHAPA’s lottery website (see <http://www.chapa.org> ) and with the Massachusetts Affordable Housing Alliance (MAHA) website (see <http://www.mahahome.org> ).
- Marketing should also be included in non-English publications based on the prevalence of particular language groups in the regional area. To determine the prevalence of a particular language by geographical area, see for example [http://www.doleta.gov/reports/CensusData/LWIA\\_by\\_State.cfm?state=MA](http://www.doleta.gov/reports/CensusData/LWIA_by_State.cfm?state=MA) .

All marketing should be comparable in terms of the description of the opportunity available, regardless of the marketing type (e.g., local newspaper vs. minority newspaper). The size of the advertisements, including the content of the advertisement, should be comparable across regional, local, and minority newspapers.

Advertisements should run a minimum of two times over a sixty day period and be designed to attract attention. Marketing of ownership units should begin approximately six months before the expected date of project occupancy.

Pursuant to fair housing laws,<sup>4</sup> advertising must not indicate any preference or limitation, or otherwise discriminate based on race, color, disability, religion, sex, familial status, sexual orientation, national origin, genetic information, ancestry, children, marital status, or public assistance reciprocity. Exceptions may apply if the preference or limitation is pursuant to a lawful eligibility requirement. All advertising depicting persons should depict members of classes of persons protected under fair housing laws, including majority and minority groups.

The Fair Housing logo () and slogan (“Equal Housing Opportunity”) should be included in all marketing materials. The logo may be obtained at HUD’s website at: <http://www.hud.gov/library/bookshelf11/hudgraphics/fheologo.cfm> .

#### Availability of Applications

Advertising and outreach efforts shall identify locations where the application can be obtained.

**Applications shall be available at public locations including one that has some night hours; usually, a public library will meet this need.** The advertisement shall include a telephone number an applicant can call to request an application via mail.

#### Informational Meeting

In addition, the lottery administrator must offer one or more informational meetings for potential applicants to educate them about the lottery process and the housing development. These meetings may include local officials, developers, and local bankers. The date, time, and location of these meetings shall

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other person having the right of ownership to give timely notice that a wheelchair accessible unit is vacant or will become vacant to a person who has, within the past 12 months, notified the owner or person or person having the right of ownership that such person is in need of a wheelchair accessible unit.

<sup>4</sup> 42 U.S.C. § 3604(c); M.G.L. c. 151B, § 4(7B).

be published in ads and flyers that publicize the availability of lottery applications. The workshops shall be held in a municipal building, school, library, public meeting room or other accessible space. Meetings shall be held in the evening or on weekend days in order to reach as many potential applicants as possible. However, attendance at a meeting shall not be mandatory for participation in a lottery.

The purpose of the meeting is to answer questions that are commonly asked by lottery applicants. Usually a municipal official will welcome the participants and describe the municipality's role in the affordable housing development. The lottery administrator will then explain the information requested on the application and answer questions about the lottery drawing process. The Developer should be present to describe the development and to answer specific questions about the affordable units. It is helpful to have representatives of local banks present to answer questions about qualifications for the financing of affordable units. At the meeting, the lottery administrator should provide complete application materials to potential applicants.

#### Homeownership – Establishing Sales Prices

Sale prices shall be established at the time of the initial marketing of the affordable units. Thereafter, the prices of homes can not be increased for lottery winners, even if interest rates and HUD income guidelines change.

For large, phased developments maximum sale prices of units sold in subsequent phases will be calculated prior to the start of marketing for each phase, or approximately 6 months prior to expected occupancy of the units. In such cases, each phase will require its own affirmative fair marketing efforts and lottery.

### **C. Local Preference**

If a community wishes to implement a local selection preference, it must:

- Demonstrate in the AFHMP the need for the local preference (e.g., the community may have a disproportionately low rental or ownership affordable housing stock relative to need in comparison to the regional area); and
- Demonstrate that the proposed local preference will not have a disparate impact on protected classes.

In no event may a local preference exceed more than 70% of the (affordable) units in a Project.

The Subsidizing Agency, and in the case of LAUs, DHCD as well as the municipality, must approve a local preference scheme as part of the AFHMP. Therefore, the nature and extent of local preferences should be approved by the Subsidizing Agency (or DHCD in the case of LAUs) prior to including such language in the comprehensive permit or other zoning mechanism.

### Allowable Preference Categories

1. Current residents: A household in which one or more members is living in the city or town at the time of application. Documentation of residency should be provided, such as rent receipts, utility bills, street listing or voter registration listing.
2. Municipal Employees: Employees of the municipality, such as teachers, janitors, firefighters, police officers, librarians, or town hall employees.
3. Employees of Local Businesses: Employees of businesses located in the municipality.
4. Households with children attending the locality's schools, such as METCO students.

When determining the preference categories, the geographic boundaries of the local resident preference area should not be smaller than municipal boundaries.

**Durational requirements related to local preferences, that is, how long an applicant has lived in or worked in the residency preference area, are not permitted in any case.**

Preferences extended to local residents should also be made available not only to applicants who work in the preference area, but also to applicants who have been hired to work in the preference area, applicants who demonstrate that they expect to live in the preference area because of a bona fide offer of employment, and applicant households with children attending the locality's schools, such as METCO students.

A preference for households that work in the community must not discriminate (including have a disproportionate effect of exclusion) against disabled and elderly households in violation of fair housing laws.

**Advertising should not have a discouraging effect on eligible applicants. As such, local residency preferences must not be advertised as they may discourage non-local potential applicants.**

### Avoiding Potential Discriminatory Effects

The local selection preferences must not disproportionately delay or otherwise deny admission of non-local residents that are protected under state and federal civil rights laws. The AFHMP should demonstrate what efforts will be taken to prevent a disparate impact or discriminatory effect. For example, the community may move minority applicants into the local selection pool to ensure it reflects the racial/ethnic balance of the HUD defined Metropolitan Statistical Area as described below.<sup>5</sup>

However, such a protective measure may not be sufficient as it is race/ethnicity specific; the AFHMP must address other classes of persons protected under fair housing laws who may be negatively affected by the local preference.

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<sup>5</sup> Note: This protective measure may not be dispositive with respect to discriminatory effects. For example, the non-local applicant pool may contain a disproportionately large percentage of minorities, and therefore adjusting the local preference pool to reflect demographics of the regional area may not sufficiently address the discriminatory effect that the local preference has on minority applicants. Therefore, characteristics of the non-local applicant pool should continually be evaluated.

To avoid discriminatory effects in violation of applicable fair housing laws, the following procedure should be followed unless an alternative method for avoiding disparate impact (such as lowering the original percentage for local preference as needed to reflect demographic statistics of the MSA) is approved by the Subsidizing Agency. If the project receives HUD financing, HUD standards must be followed.

A lottery for projects including a local preference should have two applicant pools: a local preference pool and an open pool. After the application deadline has passed, the Developer should determine the number of local resident minority households there are in the municipality and the percentage of minorities in the local preference pool. If the percentage of minority local resident households in the local preference pool is less than the percentage of minorities in the surrounding HUD-defined area, the Developer should make the following adjustments to the local preference pool:

- The Developer should hold a preliminary lottery comprised of all minority applicants who did not qualify for the local preference pool, and rank the applicants in order of drawing.
- Minority applicants should then be added to the local preference pool in order of their rankings until the percentage of minority applicants in the local preference pool is equal to the percentage of minorities in the surrounding HUD-defined area.
- Applicants should be entered into all pools for which they qualify. For example, a local resident should be included in both pools.
- Minorities should be identified in accordance with the classifications established by HUD and the U.S. Census Bureau, which are the racial classifications: Black or African American; Asian; Native American or Alaska Native; Native Hawaiian or Pacific Islander; or other (not White); and the ethnic classification Hispanic or Latino.

#### **D. Household Size/Larger Households Preference**

##### General

Household size should be appropriate for the number of bedrooms in the home. It is appropriate to set a minimum. A maximum household size for the units may be established provided that:

- Maximum allowable household size may not be more restrictive than the State Sanitary Code or applicable local bylaws, and may not violate state and federal civil rights laws.
- Maximum allowable household size may not be more restrictive than the Large Household Preference established below.

##### Larger Household Preference

Within an applicant pool first preference shall be given to households requiring the total number of bedrooms in the unit based on the following criteria:

- a. There is at least one occupant per bedroom.<sup>6</sup>
- b. A husband and wife, or those in a similar living arrangement, shall be required to share a bedroom. Other household members may share but shall not be required to share a bedroom.
- c. A person described in the first sentence of (b) shall not be required to share a bedroom if a consequence of sharing would be a severe adverse impact on his or her mental or physical health and the lottery agent receives reliable medical documentation as to such impact of sharing.

Within an applicant pool second preference shall be given to households requiring the number of bedrooms in the unit minus one, based on the above criteria. Third preference shall be given to households requiring the number of bedrooms in the unit minus, two, based on the above criteria.

A “household” shall mean two or more persons who will live regularly in the unit as their principal residence and who are related by blood, marriage, law or who have otherwise evidenced a stable inter-dependent relationship, or an individual.

Lottery drawings shall result in each applicant being given a ranking among other applicants with households receiving preference for units based on the above criteria. Household size shall not exceed State Sanitary Code requirements for occupancy of a unit (See 105 CMR 400).<sup>7</sup>

## **E. Lotteries**

### The Lottery Application

Resident selection must generally be based on a lottery, although in some cases it may be based on another fair and equitable procedure approved by the Subsidizing Agency.<sup>8</sup> A lottery procedure is preferred over a “first-come, first-serve procedure,” as the latter procedure may disadvantage non-local applicants.

The application period should be at least 60 days. To ensure the fairness of the application process, applicants should not be required to deliver application materials and instead should be permitted to mail them.

The lottery application must address a household’s:

- income
- assets
- size and composition
- minority status (optional disclosure by the household)
- eligibility as a first-time buyer (for ownership units)

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<sup>6</sup> Disabled households must not be excluded from a preference for a larger unit based on household size if such larger unit is needed as a reasonable accommodation.

<sup>7</sup> Note, however, that fair housing exceptions may apply: see HUD Fair Housing Enforcement—Occupancy Standard; Notice of Statement of Policy, Docket No. FR-4405-01 (1998).

<sup>8</sup> In the case of project based Section 8 properties where resident selection is to be performed by the housing authority pursuant to a Section 8 waiting list, a lottery procedure is not required.

- eligibility for local preference

The lottery administrator shall request verification (e.g., three prior year tax returns with the W2 form; 5 most recent pay stubs for all members of the household who are working, three most recent bank statements and other materials necessary to verify income or assets).

**Applicants cannot be required to use a specific lender for their pre-approval letter or their mortgage.**

Only applicants who meet qualification requirements should be included in the lottery.

#### Lottery Procedure

Once all required information has been received, qualified applicants should be assigned a registration number. **Only applicants who meet the eligibility requirements shall be entered into a lottery. The lottery shall be conducted after any appeals related to the project have been completed and all permits or approvals related to the project have received final action.**

Ballots with the registration number for applicant households are placed in all lottery pools for which they qualify. The ballots are randomly drawn and listed in the order drawn, by pool. If a project has units with different numbers of bedrooms, units are then awarded (largest units first) by proceeding down the list to the first household on the list that is of appropriate size for the largest unit available according to the appropriate-unit-size criteria established for the lottery. Once all larger units have been assigned to appropriately sized households in this manner, the lottery administrator returns to the top of the list and selects appropriately sized households for smaller units. This process continues until all available units have been assigned to appropriately sized applicant households.

If the project includes units accessible or adaptable for occupancy by disabled persons, first preference (regardless of applicant pool) for those units shall be given to such disabled persons, including single person households, in conformity with state and federal civil rights laws.

The lottery administrator should retain a list of households who are not awarded a unit, in the order that they were drawn. If any of the initial renters/buyers do not rent/purchase a unit, the unit shall be offered to the highest ranked household on that retained list. This list may generally be retained and used to fill units for up to one year. However, other factors such as the number of households remaining on the list, the likelihood of the continuing eligibility of such households, and the demographic diversity of such households may inform the retention time of the list, subject to the approval of the Subsidizing Agency.

After the initial lottery, waiting lists should be analyzed, maintained, and updated (through additional marketing) so that they remain consistent with the objectives of the housing program and are adequately representative of the racial, ethnic, and other characteristics of potential applicants in the housing market region.

#### Lottery Example

This theoretical lottery has an OPEN pool that includes all applicants and a LOCAL PREFERENCE pool with only applicants from the local area.

- Total applicants in lottery: 100
- Total minority applicants: 20
- The community in which the lottery takes place falls within the HUD Boston Metropolitan Statistical Area which has a minority population of 20.7%.

1. Determine the number of applicants who claim a LOCAL preference according to approved criteria.
2. Determine the number of minority applicants in the LOCAL preference pool.
3. Determine the percentage of minority applicants in the LOCAL preference pool.

Total Applicants in Local Preference Pool	Total Minority Applicants in Local Preference Pool	% Minority Applicants in Local Preference Pool
60	10	16.7%

Since the percentage of minority applicants in the LOCAL preference pool is below the percentage of minority residents in the HUD defined statistical area (16.7% as opposed to 20.7%), a preliminary lottery is required.

4. The 10 minority applicants who do not have LOCAL preference are entered into a preliminary drawing and assigned a rank based on the order of their draw. Minority applicants are added to the LOCAL preference pool in order of their rank until the LOCAL preference pool has at least as great a percentage of minority applicants as the larger statistical area. In this example, 4 applicants will be added to the LOCAL preference pool to bring the percentage of minority applicants up to 21.8%.

Applicants in Supplemented Local Preference Pool	Total Minority Applicants in Supplemented Local Preference Pool	% Minority Applicants in Supplemented Local Preference Pool
64	14	21.8%

5. Draw all ballots from the adjusted LOCAL pool and assign rankings to each household. Preference for appropriately sized households will still apply and all efforts should be made to match the size of the affordable units to the legitimate need for bedrooms of each household.
6. Once all units for LOCAL residents have been allocated, the OPEN pool should proceed in a similar manner. All LOCAL residents should have ballots in both pools, and all minority applicants that were put in the LOCAL pool should remain in the OPEN pool as well.

## **F. Homeownership**

### 1. Household Eligibility

A Subsidizing Agency housing program may establish eligibility requirements for homebuyers. In the absence of such provisions, the following requirements shall apply.

In addition to meeting the requirements for qualifying a Project or dwelling unit for the SHI (see Section II.A), the household shall not have owned a home within three years preceding the application, with the exception of:

- a. displaced homemakers, where the displaced homemaker (an adult who has not worked full-time, full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family), while a homemaker, owned a home with his or her partner or resided in a home owned by the partner;
- b. single parents, where the individual owned a home with his or her partner or resided in a home owned by the partner and is a single parent (is unmarried or legally separated from a spouse and either has 1 or more children of whom the individual has custody or joint custody, or is pregnant);
- c. households where at least one household member is 55 or over;
- d. households that owned a principal residence not permanently affixed to a permanent foundation in accordance with applicable regulations; and
- e. households that owned a property that was not in compliance with State, local or model building codes and that cannot be brought into compliance for less than the cost of constructing a permanent structure.

**Individuals who have a financial interest in the development and their families shall not be eligible.**

### 2. Final Qualification and Closing

Once the lottery has been completed, applicants selected to purchase units must be given a reasonable pre-specified time period in which they must secure financing. The Developer should invite the lottery winners to a loan application workshop. The Developer should make prior arrangements with local financial institutions with respect to financing qualified purchasers. Often such institutions will give preliminary approvals of loans, which make the remainder of the process more efficient for all parties.

Before a Purchase and Sale Agreement is signed, the lottery agent should submit income and asset documentation of the applicant to the Subsidizing Agency (to DHCD and the municipality in the case of a LAU). Income verification should include tax returns and W-2s from the past three years, five most recent pay stubs, three months recent bank statements and 401 K reports, reliable documentation as to other sources of income and assets. The Subsidizing Agency (to DHCD and the municipality in the case of a LAU) will then verify that the household's annual income does not exceed 80% of the area median income, or such lower income limit as may have been established for the particular project. The Subsidizing Agency (to DHCD and the municipality in the case of a LAU) also will verify that household assets do not exceed

the maximum allowed. Closing of the sale will also be contingent on the Subsidizing Agency's (to DHCD and the municipality in the case of a LAU) approval of the buyer's financing.

**Non-household members should not be permitted as co-signers of the mortgage.**

3. Resales

AFHMP requirements apply to the housing for its duration. The AFHMP must include a plan, satisfactory to the Subsidizing Agency (to DHCD and the municipality in the case of a LAU), to address AFHMP requirements upon resale. The proposal must, at a minimum, require that units for re-sale to eligible purchasers be listed with CHAPA and MAHA's homeownership lottery sites as described above and establish minimum public advertising requirements. The proposal cannot impose the AFHMP requirements upon a homeowner other than requiring compliance with requirements of a Use Restriction, reasonable public advertising, and listing with CHAPA and MAHA.

A "ready-buyer" list of eligible buyers maintained by the municipality or other local entity is encouraged. This list may be created through local, regional, and statewide lists and resources. As stated above, the list should continually be analyzed, maintained, and updated (through additional marketing) so that it remains consistent with the objectives of the housing program and is adequately representative of the racial, ethnic, and other characteristics of potential applicants in the housing market region.