

# MSHDA Qualified Allocation Plan



# MSHDA

**MICHIGAN STATE HOUSING  
DEVELOPMENT AUTHORITY**

*Your Affordable Housing Partner*

Low Income Housing Tax Credit Program

Qualified Allocation Plan 2009 [www.michigan.gov/mshda](http://www.michigan.gov/mshda)

2009 QUALIFIED ALLOCATION PLAN  
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# **2009 QUALIFIED ALLOCATION PLAN STATE of MICHIGAN LOW INCOME HOUSING TAX CREDIT PROGRAM**

## **I. Introduction**

The Low Income Housing Tax Credit (LIHTC) program offers a financial incentive to construct, rehabilitate, and operate rental housing for low-income tenants. Under federal law, LIHTC is required to be allocated according to a Qualified Allocation Plan (QAP). The QAP is required to set forth selection criteria to be used to determine housing priorities appropriate to local conditions in Michigan and must give preference in allocating LIHTC dollar amounts that:

- Assures, to the extent economically feasible, that selected properties:
  - Serve the lowest income tenants;
  - Serve qualified tenants for the longest periods;
  - Are located in Qualified Census Tracts (QCT) and contribute to a concerted Community Revitalization Plan; and
- Provides a procedure that the Michigan State Housing Development Authority (MSHDA) will follow in monitoring for noncompliance with IRS requirements including notifying the IRS of such noncompliance.

## **II. Tax-Exempt Financed Developments Not Subject to Housing Credit Ceiling and Other Matters**

In accordance with Section 42 of the IRS Code, tax-exempt bond financed projects are required to satisfy certain basic requirements for allocation of LIHTC and are subject to the QAP. These projects are not, however, subject to the LIHTC allocation limits, other QAP requirements from which they are expressly excepted, or as determined by MSHDA (see applicable Policy Bulletin).

## **III. Approval and Modification of the Qualified Allocation Plan**

### **III. A. QAP Approval**

Pursuant to federal and state law, the QAP (including the Scoring Summary) shall be prepared by MSHDA, submitted to the legislature and approved by the Governor after notice to the public and public hearing. Notice of the public hearing will be published on MSHDA's website and in newspapers of general circulation throughout the state at least fourteen (14) days prior to the public hearing. Comments received shall be taken into consideration and a written summary of such comments shall be provided to the Governor together with the request for approval of the Plan. LIHTCs shall be allocated in accordance with the QAP and any amendment(s) to the QAP.

### **III. B. QAP Modification**

To the extent necessary to facilitate the award of LIHTCs that would not otherwise be awarded, the QAP may be modified by MSHDA from time to time pursuant to State law. Modifications to the QAP shall be prepared by MSHDA, submitted to the Legislature, and approved by the Governor after notice to the public and public hearing.

MSHDA is required to hold one informational hearing prior to publication of proposed changes to the QAP. After proposed changes have been published, MSHDA is required to conduct at least three public hearings. Hearings are required to be held at such time and place as determined by MSHDA; however, MSHDA shall give priority to locations that provide the greatest opportunity for public comment. Additional hearings may be held at MSHDA's discretion. The QAP is valid until it is changed by MSHDA.

### **IV. Authority Disclaimer and Anti-Discrimination Obligation**

The allocation of LIHTCs is made at the sole discretion of MSHDA. MSHDA and its directors, employees, and agents shall not be liable for any matters arising out of or in relation to the allocation or administration of LIHTC.

MSHDA may approve requests for the exchange of credit or waive any requirements and/or conditions that are not mandated by Section 42 of the IRS Code on a case-by-case basis, including project-specific deadlines, as deemed necessary to facilitate the administration of the LIHTC Program, to address unforeseen circumstances, and that it determines are in the best interest of the State of Michigan.

In the event a waiver is granted under any of these or other circumstances, a fee of 5% of the annual credit amount may be charged. MSHDA shall administer the QAP and the allocation of LIHTC in a manner consistent with both federal housing policy governing non-discrimination and MSHDA's statutory non-discrimination requirements.

To the extent that anything contained in this QAP does not meet the minimum requirements of federal law or regulation, or state law or regulation, such law or regulation shall take precedence over the QAP.

### **V. Funding Rounds and Availability of Credit**

#### **V. A. Funding Round Schedule**

5/1/09 Application Due Date for 2009 Credit

7/2009 Anticipated Award Month

Applications must be received in either MSHDA's Lansing office or MSHDA's Detroit office no later than 5:00 pm on the application due date. Applications may be sent via delivery service (e.g., post, overnight, and courier) or personal hand-delivered service. Applications received after the due date and time will not be processed. No waiver of the delivery time will be granted.

#### **V. B. LIHTC Allocation Limits**

1. The maximum award to any one project will be \$1,500,000.

2. The maximum award from the annual tax credit ceiling to any one Principal will be a total of \$3,000,000 in tax credits, including all set-asides. MSHDA may exceed this limitation in order to fund completely a project request. Projects will be counted towards this limitation in the order awarded under the QAP. (Additional LIHTCs described in Section V. C will count towards the maximum limitation applicable in the year they are allocated.)

For this purpose, a "Principal" includes (a) all persons or entities and their affiliates who are or who will become partners or members of the ownership entity or (b) all persons or entities who earn at least \$100,000 of the developer fee. For purposes of determining Principal status, MSHDA may disregard multiple layers of pass-through or corporate entities. Equity investors that have no other role in the ownership entity, and third-party consultants retained to assist in filing an application, do not count as Principals.

3. MSHDA reserves the right to waive or modify these limits if not in the best interest of the State of Michigan.

### **V. C. Additional LIHTC**

Owners of projects awarded credit in prior cycles, and whose projects have not placed in service, will be eligible to apply for additional credits ("Additional LIHTCs") by submitting an application, on or before the 2009 application deadline. MSHDA will determine the appropriate amount of additional credit to be awarded, based on reduced sources of funds and/or increased hard construction costs. Awards will be limited to the lesser of the amount of annual credit required to make the project financially feasible or 10% of the project's current allocation amount (If a project qualifies for additional credit by virtue of receiving a basis boost as described in Section X, the project may receive additional credit of up to 30% of the project's current allocation amount).

Projects applying for additional credit that can demonstrate a hard equity commitment (as defined in the Definitions Policy Statement) will receive consideration for funding before all other projects. All awards of Additional LIHTC are made at the sole discretion of MSHDA on a case-by-case basis.

For additional LIHTC requests, the Applicant must submit:

- An equity commitment from the investor stating their intent to purchase the Additional LIHTC and also specifies the price, or documentation demonstrating a hard equity commitment, if applicable;
- An updated Application;
- A narrative detailing the reasons for the request, specifically identifying the additional cost items, and explaining the project's eligibility for a 30% basis boost, if applicable, based on the criteria in Section X.;
- A letter from an independent, certified public accountant stating that they have reviewed the revised project budget, giving the amounts of the revised total eligible basis and total project cost;
- The appropriate application fee

In determining a project's qualification for additional credit, the Authority will review the revised project budget to ensure that additional tax credits are not used to cover increases in the developer's fee. The portion of the developer's fee deferred at the time of initial approval of a Reservation will not be reduced. Any Reservations that have conditions must be satisfied prior to the Authority granting an increase. Only one approval for additional credit per project will be granted.

Projects must place in service by December 31, 2010, and submit the final Cost Certification on or before March 1, 2011.

## **VI. Set-Asides and Target Percentages**

MSHDA will award tax credits remaining after Additional LIHTCs to meet Set-Asides and Target Percentages of the State's total credit ceiling, privileging applications with hard equity commitments. MSHDA will determine the appropriate Set-Aside and Target Percentage(s) for each application.

LIHTC will be awarded in the following order:

1. Projects applying for additional credit that have a hard equity commitment as defined in the Definitions Policy Statement
2. All other projects qualifying for additional credit
3. Statutory Set-Asides, in the order listed in VI.A, to highest-scoring qualified projects using the scoring criteria found in Addendum I
4. Permanent Supportive Housing Set-Aside, listed in VI.B, to highest-scoring qualified projects using the scoring criteria found in Addendum III
5. Projects with hard equity commitments as defined in the Definitions Policy Statement, to highest-scoring qualified projects using the scoring criteria found in Addendum I
6. Target Percentages in the order listed in VI.D, to the highest-scoring qualified projects using the scoring criteria found in Addendum I
7. Highest-scoring qualified projects using the scoring criteria found in Addendum I, not included in the above

### **VI. A. Statutory Set-Asides**

State law creates several statutory set-asides of Michigan's total credit ceiling:

1. Nonprofits, 10% - Projects involving tax exempt organizations (nonprofits) that meet the requirements of Section VII. A.13;
2. Rural housing, 10% - Proposed or existing housing projects that fall into one or more of the following categories: a) financed by a loan guaranteed by Rural Housing Services or a successor agency; b) funded by a federal program for the development of rural housing; or c) is located in an area other than a metropolitan area;
3. Eligible distressed areas, 30% - Housing projects in eligible distressed areas, which include proposed or existing housing projects in distressed areas pursuant to MCL 125.1411(u). A list of Eligible Distressed Areas can be found on MSHDA's website at <http://www.michigan.gov/mshda/0,1607,7-141--181277--,00.html>;
4. Elderly, 10% - Federally assisted projects in which 100% of the units serve tenants that conform to the federal agency(s) definition of elderly or the MSHDA definition of elderly under the MSHDA Act.

By statute, properties can count in only one of the above set-asides. MSHDA will select the highest-scoring projects that qualify within the Set-Asides in the statutory order as listed above.

If needed to fulfill a required Set-Aside, MSHDA will skip over higher-scoring projects to allocate to the next highest scoring application that meets the criteria for the Set-Aside.

### **VI. B. Permanent Supportive Housing Set-Aside**

Twenty-five percent (25%) of the State's total credit ceiling will be set aside for Permanent Supportive Housing projects allocated under Addendum III. The PSH Set-Aside is not statutory. Allocations made within it may be counted toward the statutory Set-Asides and the Target Percentages. If there are insufficient applications meeting the threshold requirements for the PSH Set-Aside, remaining credits will be reallocated to the general pool.

### **VI. C. Hard Equity Commitments**

After allocating credits to the Set-Asides, MSHDA will allocate to properties with hard equity commitments. This will occur before the evaluation of Target Percentages, to ensure that properties with hard equity commitments receive allocations.

If submitting an application with the intent to receive points for a hard equity commitment, see the Definitions Policy Statement for the documentation that is required to be submitted at the time of application. In addition, within 45 days of the award of LIHTC to a project receiving points for a hard equity commitment, updated documentation of the investor buying the credits, the price paid to the owner, the 5% escrow, and an escrow agreement must be submitted. Failure to do so may result in rescinding of the award.

If the total of applications with hard equity commitments exceeds the available credit ceiling after allocation of Additional Credits (that is, if hard equity commitment is not a meaningful differentiator), MSHDA will allocate based on the Target Percentages.

### **VI. D. Target Percentages**

MSHDA will assure that, to the extent possible while meeting statutory requirements, and ensuring hard equity commitments are put to use, credits will be allocated to achieve the Target Percentages. Because categories overlap, projects may be counted more than once in evaluating these percentages. For instance, a preservation project in DHHP that also qualified under Cool Cities would be counted toward three target percentages. Furthermore, allocations made under the set-asides may also be counted toward fulfillment of the Target Percentages. All percentages refer to Michigan's total credit ceiling for 2009. Target Percentages are minimums; they are not caps on allocation.



The Target Percentages will be evaluated and fulfilled in the order and amounts listed below:

<u>Target</u>	<u>Percent</u>	<u>Definition</u>
Underserved Populations	5%	Native American Housing, or Affordable Assisted Living
Cool Cities or Next Detroit Neighborhood	5%	Projects meeting the Cool Cities or Next Detroit Neighborhood criteria found in the applicable Policy Bulletin
Poverty Distressed Cities	15%	Projects located in the seventeen (17) Michigan Cities ranked highest in levels of poverty and unemployment as identified in Table I of the Combined Application.
Detroit, Hamtramck, Highland Park (DHHP)	50%	Projects, including Next Detroit Neighborhood projects, located in Detroit, Hamtramck, or Highland Park as determined by the corporate boundaries of each city
Preservation	30%	Projects meeting the threshold requirements for preservation points as defined in Section VII. B

If needed to fulfill a Target Percentage, MSHDA will skip over higher-scoring projects to allocate to the next highest scoring application that meets the criteria for the Target Percentage. Should the award to a particular higher-scoring project be impossible because it would require more credits than are available, MSHDA may skip over that project to a lower-scoring project that could be fully funded with the remaining credits.

#### **VI. E. Reallocation and national pool**

With the exception of the nonprofit set-aside, if the LIHTC allocated falls below the set-aside threshold by October 1 of the year in which that credit amount is authorized, MSHDA may reapportion unallocated LIHTC amounts thereafter.

In the event that credits are returned/recaptured or the state receives credits from the national pool, MSHDA may carry such credits forward, make an award to any project application (subject only to the nonprofit set aside), or a combination of both (see Policy Bulletin).

#### **VII. Eligibility Requirements**

When an application is received, it will be reviewed for eligibility to be scored and evaluated. In order to be eligible for scoring and evaluation, certain threshold requirements must be met for all projects, unless otherwise stated in any Addenda or Policy Bulletins, or waived.

Determination of eligibility does not entitle an applicant to an allocation of LIHTCs.

The application must be made on a completed form prescribed by MSHDA, including the mandatory exhibits prescribed below and in the Combined Application. Required documents must be tabbed in the order found in Addendum I to the Combined Application. The Combined Application, Addendums, and Policy Bulletins are available for downloading from the Authority's website at [www.michigan.gov/mshda](http://www.michigan.gov/mshda).

MSHDA will evaluate proposals in accordance with Threshold Requirements and Scoring Criteria. Proposals not meeting threshold requirements will not be processed further.

## **VII. A. General Threshold Requirements**

### ***1. Permanent Supportive Housing***

All projects with allocated tax credits (excluding elderly projects and projects using tax-exempt bond financing) will be required to target ten percent (10%) of the total units to Supportive Housing Tenants. Projects not required to include Permanent Supportive Housing may still choose to include it, particularly as a way to secure project-based vouchers or other subsidy. Projects are not required to provide onsite supportive services or a service coordinator. Owners must demonstrate a partnership with a local lead agency and complete an Inclusion Plan; both the agency and Plan must be approved by MSHDA. At a minimum, Inclusion Plans must include:

- (a) A description of how the project will meet the needs of the targeted tenants including access to supportive services, transportation, proximity to community amenities, etc.
- (b) A description of the experience of the local lead agency and their capacity to provide access to supportive services, and to maintain relationships with the management agent and community service providers for the duration of the compliance period.
- (c) A Memorandum of Understanding (MOU) between the developer(s), management agent and the lead local agency. MSHDA may at its discretion extend the deadline for the MOU. The MOU will include:
  - (i) A commitment from the local lead agency to provide, coordinate and/or act as a referral agent to assure that supportive services will be available to the targeted tenants.
  - (ii) The referral and screening process that will be used to refer tenants to the project, the screening criteria that will be used, and the willingness of all parties to negotiate reasonable accommodations to facilitate the admittance of persons with disabilities into the project.
  - (iii) A communications plan between the project management and the local lead agency that will accommodate staff turnover and assure continuing linkages between the project and the local lead agency for the duration of the compliance period.
  - (iv) Acknowledgment of the property's rent structure and a description of how Supportive Housing tenants may access rental assistance, should they require it, to afford the apartment rents.
- (d) Excluding projects under the Supportive Housing Set-Aside, a certification that participation in supportive services will not be a condition of tenancy.
- (e) Excluding projects under the Supportive Housing Set-Aside, an agreement that for a period of sixty (60) days after certificate of occupancy, the required number of units for persons with disabilities will be held vacant other than for such population(s).
- (f) Agreement to maintain a separate waiting list for persons with disabilities and prioritizing these individuals for any units that may become vacant after the initial rent-up period, up to the required number of units.
- (g) Agreement to affirmatively market to persons with disabilities.
- (h) Agreement to include a section on reasonable accommodation in property management's application for tenancy.
- (i) Agreement to accept Section 8 vouchers or certificates (or other rental assistance) as allowable income as part of property management income requirement guidelines for eligible

tenants and not require total income for persons with rental assistance beyond that which is reasonably available to persons with disabilities currently receiving SSI and SSDI benefits.

(j) A description of how the project will make the targeted units affordable to persons whose incomes are limited to those from a disability-based source.

Additional requirements are listed in the Permanent Supportive Housing Inclusion Plan Requirements (Addendum VI). Owners will agree to complete the requirements of this subsection within 60 days after the award of LIHTC. Notwithstanding this requirement, for preservation projects, the Applicant will not be required to displace any current tenants but shall be required to comply with this requirement as units turn over and become available for occupancy so long as compliance with this requirement does not occasion an event of non-compliance under other applicable federal law or regulations under which a project is operated or is receiving federal subsidy.

Projects will be regularly monitored by MSHDA's Supportive Housing Division to determine the percentage of units occupied by Supportive Housing Tenants.

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

Submission of an Affirmative Fair Housing Marketing Plan, consistent with MSHDA requirements.

## ***3. Site control***

Evidence of site control by the Applicant, as evidenced by an option to purchase, letter of intent or term sheet, land contract, offer to purchase, purchase agreement, long-term lease or other appropriate documentation, and ability to keep same for 120 days from the application due date. If site control is vested in an entity other than the anticipated owner, the control must be unilaterally assignable to the proposed owner. Site control documents must clearly identify the physical location of the property (i.e. property address, full legal description or plat map identifying street names) and be consistent with the rest of the development information provided in the application including the title insurance commitment.

## ***4. Zoning***

Evidence from the municipality of the property's current zoning designation and what, if any, steps are in process to obtain proper zoning for the proposed development.

## ***5. Environmental***

Submission of an environmental review in accordance with the current MSHDA Environmental Review Standards (see tab D of MSHDA's Combined Application) together with a remediation plan, if necessary, with estimated costs outlined in detail and accounted for in the Sources and Uses Statement. Projects may be rejected if the environmental review and/or supporting documentation do not meet MSHDA's standards or if MSHDA determines additional testing or modifications to a remediation plan are necessary.

## ***6. Utilities***

Evidence from the municipality and/or utility companies regarding the availability of all utilities – electricity, gas, water and sewer.

## **7. Debt financing**

Evidence of submission of application(s) to a mortgage lender(s) stating the amount of the loan, terms, and interest rate for all sources of financing. In the case of a Rural Housing Service (RHS) project, an original letter signed by an official of RHS; in the case of conventional financing, original documentation from the lender(s) stating that a formal application for construction and permanent financing has been submitted and is under serious consideration; and in the case of an Authority financed project, evidence that the project has passed initial determination.

## **8. Market study**

A market study completed in accordance with MSHDA's guidelines (see tab C of MSHDA's Combined Application) that indicates the housing needs of low-income individuals in the area to be served.

## **9. Pro-forma**

Pro-forma financial projections for the 15-year compliance period submitted on a form and in the format prescribed by MSHDA (see Section X of MSHDA's Combined Application).

## **10. Sources and Uses**

Statement of Sources and Uses of funds submitted on a form and in a format prescribed by MSHDA (see Section IX of MSHDA's Combined Application). Applicants must list all persons or entities who will receive more than \$100,000 of the developer fee.

## **11. Financial statements**

Financial Statements of the Applicant and Contractor that meet the applicable MSHDA Policy Bulletin and demonstrates adequate professional and financial capacity.

## **12. Title Insurance commitment**

Title Insurance Commitment dated within six months of the application due date. For projects located on federally recognized American Indian reservations, MSHDA may accept, in lieu of the title insurance commitment, an attorney's opinion letter describing chain of title and land control.

Applicants must assure that the name of the entity that owns the property matches with the site control documents, that the entity to be insured is correct, and that all parcels of property under land control exactly match up and are properly identified. The title insurance commitment must contain an original signature of the authorized title insurance company agent or employee, must indicate the availability of a title insurance underwriter, and must otherwise be complete and without defect.

NOTE: For proposed projects that contain multiple buildings, Applicants must submit the Property Identification form found in the Combined Application to accompany the title insurance documentation. The title insurance documentation submitted must be organized in the same order as shown on this form.

### **13. Non-profit certification**

For purposes of qualifying under the nonprofit set aside, at least one nonprofit entity involved in a project (including through a qualified corporation) must:

- (a) be qualified under Section 501(c)(3) or (4) of the IRS Code,
- (b) materially participate, as defined under federal law, in the acquisition, development, ownership, and ongoing operation of the property for the entire compliance period,
- (c) have as one of its exempt purposes the fostering of low-income housing, and
- (d) be a managing member or general partner of the ownership entity.

MSHDA reserves the right to make a determination that the nonprofit owner is not affiliated with or controlled by a for-profit entity (other than a qualified corporation).

### **14. Project narrative**

A detailed and complete narrative description of the project which includes the type of project; location; prior LIHTC status, if any; type of financing; tenants served, bedroom mix; local, federal or state subsidies, if any; and any other relevant descriptive information. Applicants are encouraged to provide as much additional detail and background information about the proposed project as possible.

### **15. Acquisition transfer**

For acquisition/rehabilitation involving properties currently regulated by another government body (including HUD, RHS, or MSHDA), statement of the requirements for such approval, how the Applicant intends to meet them consistent with the LIHTC timetables, and evidence that the transfer application has been submitted.

### **16. High-speed Internet**

Certification from the architect and Applicant that:

- (a) All units will be equipped with high-speed Internet capability, either by connecting each unit to a separate data network using Category 5e wiring, by installing a wireless Local Area Network (LAN) server and providing each unit with at least one wireless LAN card, or by installation of cable service to the project and to each unit, and
- (b) The project will have an active internet connection between the project and a local internet service provider. In the event that there is no local Internet service provider in the area, the Applicant and architect must provide a written certification that states that a local Internet service provider is not available to service the project at this time and the Applicant must agree to provide such service once it becomes available.

An Applicant is not responsible for monthly subscription fees associated with individual service to a tenant in an individual unit.

### **17. LIHTC equity investor pricing letter**

A non-binding letter of interest for LIHTC from one (1) equity investor stating the amount of credit including the price per dollar of credit and the general terms and conditions of investment in the event the equity investor commits to the project. (For an equity requirement relating to tax credit Commitment, see Section XI.)

### **18. Green Community/New Urbanism**

Evidence of incorporation of Green Community/New Urbanism elements in the project as set forth in the Green Community/New Urbanism Criteria Checklist found in the Addenda portion of the Combined Application. Unless otherwise stated in the Checklist, items marked "mandatory" apply to all Applicants.

### **19. Waiver of Qualified Contract**

By submitting an application for LIHTCs, all Applicants waive the right to request a qualified contract under Section 42(h)(6)(E)(i) of the Internal Revenue Code. Thus, MSHDA's required extended use commitment shall not terminate at the end of the compliance period, but is instead a minimum of 30 years.

### **20. Vouchers and Public Housing**

A written statement signed by the Applicant stating:

- it will give priority to persons whose names are on appropriate Public Housing or Housing Choice Voucher waiting lists maintained by a Public Housing Commission (PHC) or Public Housing Authority (PHA) in the area in which the project is located, and
- it will make ongoing efforts to request that the PHC and/or the PHA make referrals to the project, or place the relevant project information on any listing the PHC or PHA makes available to persons on their waiting lists.

A copy of the written statement and documentation of ongoing efforts as evidenced by a referral agreement or other appropriate memorandum of commitment must be kept on file at the development's office and available for compliance inspection and review at all times.

### **21. MSHDA financing signage**

A statement of certification that if the Applicant is awarded LIHTC it shall post signage at the project construction site listing MSHDA as a financing source.

### **22. Development team capacity**

The development team must demonstrate professional and financial capacity to plan, build, market, and operate the proposed development. The performance record of the Applicant, consultant, architect, management agent and contractor will be measured by the quality and quantity of previous development(s); design, construction and property management efforts; and affirmative action records. Each team member is expected to demonstrate satisfactory prior experience on projects of similar scale and complexity; to have satisfactory professional references; and to devote sufficient staffing and resources, including financial resources, to complete the proposed development.

The Applicant and contractor will be evaluated for creditworthiness and financial capacity. The composition of a non-profit Applicant's Board of Directors and the tenure of its respective members will be given significant consideration.

If a development team member does not have satisfactory prior experience or adequate financial capacity, a written plan must be submitted to outline how these deficiencies in experience and financial capacity will be rectified.

## **VII. B. Threshold Requirements – Preservation Projects**

'Preservation' applies to the acquisition and renovation of existing properties. Adaptive reuse projects and entirely vacant residential buildings will be considered new construction. Only Preservation projects that meet these threshold requirements may receive points for preservation.

### **1. Eligible preservation projects**

Eligible preservation projects include those with any of the following elements:

- a. *Government financing* from HUD (including Section 236, Section 8, HOPE VI, and Section 202), USDA Rural Development (including 515), or MSHDA;
- b. *Other below-market financing*, defined as a below market federal loan as defined in Section 42 of the IRS Code;
- c. *Previous government funding* of at least \$100,000;
- d. *Redevelopment of Public Housing Units*; or
- e. *Year 15 LIHTCs*, allocated in 1994 or earlier.

Projects with federal assistance must retain the assistance. Prepayment of a HUD loan and conversion to enhanced vouchers may qualify as retainer of assistance if the applicant demonstrates to MSHDA's satisfaction that such conversion is necessary to enhance the property's long-term affordability and if the property will remain viable even after normal attrition of enhanced vouchers.

The application must indicate a need for at least \$15,000 per unit in rehabilitation hard costs.

### **2. Real estate taxes**

Projects not providing proof of tax abatement must provide a copy of the most recent tax bill.

### **3. Capital Needs Assessment ("CNA")**

If applying for the applicable points found in Section F. Preservation Developments of the Scoring Summary, Applicants must provide a CNA prepared by an architect or engineer approved by the state of Michigan in a form and manner approved by MSHDA. In the event the extent of rehabilitation requires the preparation of architectural plans and specifications, a copy of the cover sheet of such plans signed by the Applicant's Architect, a trade payment breakdown prepared by the General Contractor, the architect's scope of work and specifications, along with a certification from the Applicant's architect's stating the necessity to prepare plans and specifications instead of a CNA will be permitted.

If the applicable points found in Section F. Preservation Developments of the Scoring Summary are not going to be applied for, Applicants may choose to wait to provide a CNA until the time of Tax Credit Commitment. The applicable points found in Section F. Preservation Developments of the Scoring Summary will not be awarded without the submission of a CNA or the alternative documentation discussed in the preceding paragraph.

MSHDA staff or a contracted third party may conduct site reviews of any preservation application in order to review the validity of the CNA or other applicable required documentation. If MSHDA determines the CNA is materially inaccurate, MSHDA may reject the CNA or the entire application.

#### **4. Project must be 'at risk'**

Projects must either:

- a. Be within five years of any permitted prepayment or equivalent loss of low income use restrictions; or
- b. Preserve already existing low income units provided the rehabilitation will repair or replace components that are:
  - i. In immediate need of repair or replacement; or
  - ii. Either substantially functionally obsolete or being improved to provide modifications or betterments consistent with new building code requirements and MSHDA's Design Requirements.

#### **5. Improving the site**

Owners will complete the following as appropriate for their project and if funding permits:

- a. Improve *site amenities and common areas* by upgrading or adding a freestanding community building, making repairs and additions to landscaping, adding new site amenities such as playgrounds, and repairing parking areas.
- b. Improve *building exteriors* by replacing deteriorated siding, replacing aged roofing, adding gutters and downspouts, and adding new architectural features to improve appearance.
- c. Upgrade *unit interiors* by replacing flooring, installing new cabinets and countertops, replacing damaged interior doors, replacing light fixtures, and repainting units.
- d. Replace and upgrade *mechanical systems and appliances* including HVAC systems, water heaters and plumbing fixtures, electrical panels, refrigerators, and ranges.
- e. Improve *energy efficiency* by replacing inefficient doors and windows, adding additional insulation in attics, and upgrading the efficiency of mechanical systems and appliances.
- f. Improve *site and unit accessibility for persons with disabilities* by making necessary alterations at common areas, alterations at single story ground floor units, adding or improving handicapped parking areas, and repairing or replacing sidewalks along accessible routes.

#### **6. Properties ineligible for Preservation**

Preservation projects are ineligible if they:

- a. Are deteriorated to the point of requiring demolition (except HOPE VI or other redevelopment of public housing) , or
- b. Have completed a full debt restructuring under the Mark to Market process within the last five (5) years.

#### **VII. C. Disqualification of Development Team**

Each Applicant shall submit information regarding its entire "Development Team," defined as any of the following (without limitation): (i) the Applicant entity, (ii) the proposed owner, (iii) principal(s) of the owner or Applicant, (iv) the developer, (v) the general contractor, (vi) the property management company, (vii) any related party(ies) or entities in the seller of any land or



property. For this purpose, a related party or entity is considered to be related if one party or entity directly or indirectly has the ability to control the other party or exercise significant influence over the other party in making financial and operating decisions.

Applicants shall submit (a) a list of all tax credit developments the Development Team has participated in as a Principal in the three (3) years preceding the application, and (b) a statement concerning any felony criminal convictions, indictments, and pending criminal investigations of all Development Team members, and details of each circumstance, unless otherwise prohibited by court order, statute or regulation.

Proposals submitted wherein any member of the Development Team (v) has failed to pay any fee or expense due to the Authority in connection with any Authority-sponsored program (w) has been determined to be in default or in major non-compliance with LIHTC or any other MSHDA program, (x) has been debarred or suspended from any MSHDA, HUD, or Rural Housing programs, (y) is in foreclosure or been foreclosed, or (z) is under felony investigation, indicted or been convicted of a felony, will automatically be disqualified until the event or events of default, debarment, suspension, foreclosure, non-compliance, or other legal action are corrected or resolved.

MSHDA has the sole and absolute discretion to determine those parties ineligible for LIHTC due to non-compliance or disqualification status.

## **VIII. Selection Criteria**

### **VIII. A. Administrative review**

MSHDA may reject applications with material errors in documentation, incomplete information, or inconsistency.

If an otherwise eligible project faces possible rejection because of an administrative or technical oversight by the Applicant, MSHDA may request additional material for clarification purposes for any items not related to a project's score. Determinations of correctable, administrative, or technical errors are at the sole discretion of MSHDA. Requested materials must be submitted within 5 business days of the date of notification by MSHDA.

MSHDA will promptly notify administratively rejected applicants.

### **VIII. B. MSHDA's selection**

MSHDA will evaluate applications for LIHTC in accordance with the requirements of federal and state law and the QAP based on a competitive scoring process. Under no circumstances will any application subject to a competitive scoring process give rise to an entitlement or legal right to an allocation of LIHTCs. The allocation of LIHTCs shall be entirely at the discretion of MSHDA. MSHDA may rescind a reservation of LIHTC if a change occurs to a project that, when re-evaluated, causes the project's score to fall below its original position in the ranking.

For specific point amounts, refer to the Scoring Summary.

### **VIII. C. Tiebreakers**

If two projects have identical scores, MSHDA will select between them according to this order of priority: greater readiness to proceed; greater number of Permanent Supportive Housing units; lowest amount of LIHTC per unit.

### **IX. Underwriting Standards**

MSHDA will perform an evaluation of the project costs to determine reasonableness as compared to other projects in similar areas. Generally, costs in excess of 110% of the Department of Housing and Urban Development's 221(d)(3) Mortgage Limit for the area will not be permitted to be included in eligible basis (although such costs are not prohibited). However, in unusual and well-documented cases, costs in excess of these limits may be included in eligible basis, at the sole discretion of MSHDA. Such waiver requests must be submitted prior to application due date. (See the applicable Policy Bulletin for what items to include with these requests.)

In making its determination of the LIHTC dollar amount necessary for the financial feasibility of a project and its viability as a qualified low income housing project throughout the credit period, MSHDA will consider the sources and uses of funds and the total financing planned for the project, and any proceeds or receipts expected to be generated by reason of tax benefits.

MSHDA has altered its underwriting criteria for the 2009 round in recognition of the deterioration in LIHTC equity and debt financing markets as well as general economic conditions. To be considered feasible, projects will have to meet tougher conditions which may well require greater subsidy per project. MSHDA has made this change to ensure that projects awarded LIHTC will successfully close and fulfill their affordability commitments in this more difficult environment. (See the Combined Application for the new underwriting standards.)

HOWEVER, SUCH A DETERMINATION OF FEASIBILITY BY MSHDA SHALL NOT BE CONSTRUED TO BE A REPRESENTATION OR WARRANTY AS TO THE FEASIBILITY OR VIABILITY OF THE PROJECT.

### **IX. A. Development fees**

Development fees for projects will be the lesser of (i) \$1,000,000 (\$2,000,000 for projects using tax-exempt bond financing), or (ii) the amount calculated as follows:

- For acquisition/rehabilitation or preservation projects:
  - Of 49 units or fewer, 15% of the total development cost minus its developer fee, developer overhead, and developer consultant fee (collectively, "Exclusions"). If an allocation of credit was received by virtue of being financed with tax-exempt bonds (acq/rehab, preservation or new construction), the developer fee will be 20% of total development cost minus Exclusions.
  - Of 50 units or more, (x) 10% of the total acquisition cost of land and building(s), plus (y) 15% of the total development costs less total acquisition cost of land and building(s) and Exclusions.
- For new construction projects, 15% of total development costs minus Exclusions.

If an existing project is split into two or more projects, the aggregate developer fee for all projects cannot exceed \$1,000,000.

For projects involving acquisition and rehabilitation, an amount equal to at least 5% of the acquisition cost of the land and building(s) must be allocated to acquisition for purposes of attribution to the developer fee.

Developer fees can be deferred to cover a gap in funding sources as long as the entire amount will be paid within fifteen (15) years. If the Pro Forma in the application indicates that cash flow is insufficient to repay the deferred developer fee within 15 years, the Applicant must provide an explanation in the narrative as to how the deferred developer fee will be repaid. No more than fifty percent (50%) of the total developer fee may be deferred.

### **IX. B. Development Team encompassed by development fee**

The total amount of any (i) developer fees, (ii) developer guaranty fees, and (iii) consulting fees (excluding fees to a third party, non-related construction manager), will be no more than the maximum development fee allowed to that project.

### **IX. C. Construction Contract Items**

- General Requirements - 6% of construction contract, exclusive of builder profit, builder overhead and general requirements.
- Builder Overhead - 2% of construction contract, exclusive of builder profit and builder overhead.
- Builder Profit - 6% of construction contract, exclusive of builder profit.

Projects of 49 units or fewer may aggregate general requirements, builder overhead, and builder profit to a maximum of 20% of the construction contract.

### **IX. D. Construction management**

If a construction manager is not included in the construction contract, then any construction management consulting fee must be included in and paid from the developer's fee at a maximum limit of \$50,000. Excess fees will be deducted from total development costs when performing the gap calculation.

### **IX. E. Rent increases**

Rent increases on the tenant-paid portion of rent, for occupied units will be limited to no more than 5% per year for the first three years. This limitation does not apply to occupied units protected by project-based rental assistance or enhanced vouchers.

### **IX. F. Identity of Interest**

If an identity of interest exists between the Applicant and the General Contractor, incentive fees may only be paid to the extent that they are included in the above mentioned fee limitations. A general contractor may act as a subcontractor and may be entitled to additional overhead and profit otherwise payable to an independent subcontractor. However, the general contractor's overhead, profit, and general requirements that may be included as allowable project costs are limited to the percentages noted above.

## **IX. G. Project feasibility**

In determining the feasibility of a project over the compliance period, MSHDA has established minimum standards for operating expenses, vacancy rates, increases in operating costs and expenses, project income, debt service coverage ratio, operating reserves, and replacement reserves. Requests for use of alternative standards other than those established by MSHDA must be supported by written explanation and appropriate documentation. The use of the MSHDA minimum standards or any alternative standards for determining financial feasibility of a project is at the sole discretion of MSHDA. If MSHDA determines that the project is not financially feasible using MSHDA's minimum standards or the alternative standards, the project will not be eligible for allocation of LIHTC.

At any evaluation stage, MSHDA will consider the project's economic feasibility and financial viability over the 15-year compliance period and will consider project cost and expenses. If the project is determined not to be feasible over the 15-year compliance period, the project will be rejected.

For projects relying upon project-based rental assistance for financial feasibility – If the project-based rental assistance ends due to events outside the owner's control, any rent and income restrictions on the property, that the owner agreed to for points as part of a competitive funding round, will revert to the 50% or 60% AMI level as selected by the owner.

## **X. First Evaluation and Award of Reservations**

Project applications that include all required information and documentation in a form and manner acceptable to MSHDA, and that meet or exceed the QAP's threshold requirements will be eligible to be evaluated for receipt of a Reservation of LIHTC.

An equity gap calculation will also be performed to ensure that only the amount of LIHTC necessary to make the project feasible will be awarded. The equity gap is determined by subtracting the syndication costs, all permanent financing amounts, and any other applicable amounts from the total development cost (after deductions are made for excess fees). This total is then compared to the value of the credit based on using either a 4% or a 9% credit rate, the credit dollar identified in the Applicant's equity investor letter, and on its qualified basis. If MSHDA, in its sole discretion, determines that the equity dollar amount shown in the Applicant's equity investor letter is unreasonable based on current market conditions, MSHDA may use an alternative equity dollar amount that is more indicative of current market conditions. The 4% rate is used for acquisition costs and for tax-exempt bond financed projects, and the 9% rate is used for rehabilitation or new construction costs. The amount of credit awarded will be that for which the value is the lesser of the two, but in no event greater than the amount of LIHTC requested by the Applicant.

The Housing and Economic Recovery Act of 2008 (H.R. 3221, HERA) provides that State housing credit agencies may award up to a 30 percent "basis boost" to buildings that states determine need the boost to be economically feasible, effective for buildings placed in service after date of enactment (July 30, 2008). Any building designated by the State housing credit agency as requiring the increase in credit, in order for such building to be financially feasible as part of a qualified low-income housing project, shall be treated as located in a difficult development area. This additional increase is not available to buildings located in a Qualified Census Tract, HUD-designated Difficult Development Areas, or tax-exempt bond financed projects.

The Authority will use the following criteria in awarding the 30% basis boost. Properties meeting any of the below criteria are eligible for a 30% basis boost, although they are still subject to the usual evaluation of minimum credits needed to achieve feasibility. Criteria:

1. High Cost Areas – Projects where the eligible basis (without the boost) would be a low percentage of the total development costs due to either high land costs or the necessity of extensive site preparation and/or off-site costs, may apply for a boost of their eligible basis.
2. Permanent Supportive Housing – Projects that meet the requirements of the Permanent Supportive Housing set-aside may apply for a boost of up to 30% of their eligible basis.
3. Financial Feasibility – Projects that demonstrate, to the Authority's satisfaction, that they are financially infeasible without a boost may be granted a boost. The amount of the boost required to make the project financially feasible will be determined by the Authority. The Authority will make its determination on such factors, but not limited to: market conditions that make it difficult in obtaining debt financing and equity commitments, income and expense expectations affected by economic conditions, and other subsidy resources already committed to the project.
4. Historic tax credits – Projects receiving an award of state or federal historic tax credits.
5. Green Community/New Urbanism – Projects that achieve a score of 10 points or greater in the Green Community/New Urbanism Criteria.
6. Deep income targeting – Projects serving very low income tenants (50% AMGI or less).
7. Preservation projects – Projects meeting the threshold requirements for preservation.

The boost may be awarded by the Authority to a project placed in service after July 30, 2008 and prior to issuance of the 8609, and subject to tax credit ceiling being available.

Site visits may be conducted for each application submitted. MSHDA reserves the right to ask for clarification and deny an application or rescind an award because of site location. Site acceptability is the sole and absolute determination of MSHDA.

Once MSHDA has conducted the evaluation and determined the amount of LIHTC to be reserved, it will issue a Reservation to the Applicant.

Reservations shall be valid for 120 days from the date of issuance by MSHDA, at which time all documentation required for a Commitment will be submitted to MSHDA.

MSHDA, at the time it issues the Reservation, shall notify the chief executive officer of the municipality in which the project is to be located of the proposal, and shall give reasonable opportunity for comments by the chief executive officer.

Reservations, Commitments, and/or Carryover Allocations are non-transferable either to another entity or within the same entity where there is a change in control or general partner interests, except with the express written consent of MSHDA, it being the explicit intention of the QAP to prevent one party from obtaining such a Reservation, Commitment, and/or Carryover Allocation in order to sell or broker its interest in the proposal (except for syndication purposes). Because all representations made with respect to the owner, Applicant, developer or related party or entity, or any member of the development team, their experience and previous participation are material to the evaluation made by MSHDA, it is not expected that MSHDA's

consent will be granted for such transfers unless a new application is submitted and scores no less than the original application.

## **XI. Second Evaluation and Commitment**

Prior to the expiration of the Reservation, the Applicant must submit to MSHDA acceptable evidence of the following:

### **XI. A. Subsidy firm commitment**

Firm commitment(s) of all federal, state, and local subsidies that will apply to the project.

### **XI. B. Debt financing firm commitment**

Firm commitment(s) for construction and permanent financing (for RHS projects, a letter signed by an official of RHS which commits funds to the project; for conventional construction and permanent financing, letters of commitment from the lender which are accepted by the Applicant, or signed mortgage documents; for Authority financing, a copy of the Mortgage Loan Feasibility Resolution).

### **XI. C. Equity investor documentation**

Owners must submit a letter of intent from an equity provider stating that review of the project has begun and the amount of equity to be paid. The letter must be executed by both the project sponsor and equity provider. Failure to provide such documentation may result in the allocation being rescinded.

If points were awarded at the time of application for having a hard equity commitment and/or readiness to proceed points, owner must submit:

- a Partnership Agreement,
- documentation of the investor buying the credits (not just the syndicator) if not identified in the Partnership Agreement,
- documentation of the price to be paid to the owner, if not identified in the Partnership Agreement.

### **XI. D. Necessary local approvals**

Dated within one year of the application due date, including zoning (for preservation projects a letter from the municipality must be submitted, stating that the zoning is compatible with the proposed use of the buildings), the project specific tax abatement ordinance or an area-wide tax abatement ordinance with a qualifying resolution which meets Authority requirements, and final site plan approval. (For preservation projects, a letter from the municipality indicating that the relevant and authorized department, board or commission of the municipality has reviewed the proposal, including the level of rehabilitation work to be completed, the site, and that no further plan approvals are necessary.)

### **XI. E. Updated project information**

Updated project schedule, pro-forma financial information and sources and uses Statement.

### **XI. F. Ownership entity formed**

Formation of ownership entity (documentation received by the Department of Labor and Economic Growth's Bureau of Commercial Services, where applicable). Out-of-state entities must submit a copy of an endorsed application for certificate of authority to transact business or conduct affairs in Michigan, along with the supporting documentation submitted with the application.

### **XI. G. Appraisal of property or land**

An appraisal for all preservation projects; and for all new construction projects where there is an identity of interest between the seller and purchaser, an appraisal of the land.

All appraisals must be less than one year old. The appraisal shall be prepared consistent with the applicable Policy Bulletin to assure the most effective and efficient use of LIHTC.

### **XI. H. Capital Needs Assessment**

Preservation projects not submitting a CNA at the time of initial application must provide a CNA prepared by an architect or engineer approved by the state of Michigan in a form and manner approved by MSHDA. In the event the extent of rehabilitation requires the preparation of architectural plans and specifications, a copy of the cover sheet of such plans signed by the Applicant's Architect, a trade payment breakdown prepared by the General Contractor, architect's scope of work and specifications, along with a certification from the Applicant's architect's stating the necessity to prepare plans and specifications instead of a CNA will be permitted.

MSHDA staff or a contracted third party may conduct site reviews of any preservation project in order to review the validity of the CNA or other applicable required documentation. If MSHDA determines the CNA is materially inaccurate, MSHDA may reject the CNA or the entire application.

### **XI. I. Program changes**

If changes to the LIHTC Program as enacted by Congress in any given calendar year so dictate, Reservations and/or Commitments of such Authority may be subject to different expiration dates depending on the nature of any changes in the federal program.

## **XII. Carryover Allocations**

### **XII. A. The 10% test**

Awarded projects must provide evidence, acceptable to MSHDA and in accordance with any applicable federal regulations, from a Certified Public Accountant that more than 10% of the taxpayer's reasonably anticipated basis in the project (as of the close of the second calendar year following the calendar year of the allocation) is incurred within 12 months of the allocation date.

A second financial evaluation of the project based on updated information will be conducted at the time this certification is submitted.

## **XII. B. Rescission**

In the event that a Commitment has not been issued prior to issuance of a Carryover Allocation, all requirements for the Commitment must be fulfilled within 120 days of the issuance of the Reservation or the Carryover Allocation shall become null and void.

## **XIII. Final Evaluations**

MSHDA will further evaluate the project at the time of making a Carryover Allocation and again at the date each building is placed in service, including a site visit if deemed necessary by MSHDA, to ensure that all requirements outlined in the Combined Application, applicable Addenda, Policy Bulletins and QAP have been met. In the event that an initial visit warrants subsequent visits, MSHDA will charge a fee of \$500 per subsequent visit.

Projects with multiple buildings must place all buildings in service prior to the issuance of IRS Form(s) 8609. At its sole discretion, and the determination of extenuating circumstances, the Authority may suspend this policy. Owners must submit a copy of the executed first year's filing of IRS Form(s) 8609 for inclusion in the Authority's permanent Project records.

In accordance with Section 42 of the IRS Code, no credit shall be allowed with respect to any building for the taxable year unless an extended LIHTC commitment is in effect as of the end of such taxable year. MSHDA uses a LIHTC Regulatory Agreement to meet this requirement. Requests for a LIHTC Regulatory Agreement must be submitted to MSHDA no later than November 1st of the year in which the project is placed in service, or the following November 1st of the following year if the owner elects to begin the LIHTC period the first year after the building is placed in service.

The placed in service application must be submitted to MSHDA on or before February 2nd of the year after the project is placed in service.

When the project/building is placed in service and prior to the issuance of a Form 8609, the owner must submit to MSHDA acceptable evidence of the following:

1. Updated application.
2. Independent, third party final owner's and contractor's cost certifications for all projects.
3. Certificates of occupancy (or their equivalent for rehabilitation work).
4. Executed limited partnership agreement and all attachments.
5. Copy of executed and recorded permanent mortgage and other permanent financing sources.
6. Copy of executed and recorded deed to property showing partnership as owner (or long-term lease showing partnership as lessee if on tribal land), including correct property description.
7. Copy of ownership entity formation records approved by the Department of Labor and Economic Growth's Bureau of Commercial Services
8. Color photograph of project.
9. Form 8821, Tax Information Authorization naming MSHDA as the appointee to receive tax information.



10. A copy of the owner's final title insurance policy evidencing that the Extended Use Agreement has been recorded as first priority over all other encumbrances evidencing or securing the financing of the project.
11. A check for Compliance Monitoring Fees.
12. Assignment or transfer agreement of the rental subsidy that has been approved by the appropriate agency, if applicable.

## **XIV. Evaluation of Developments Subject to Subsidy Layering**

MSHDA, as Michigan's sole housing credit agency for administration of the LIHTC, and HUD, have entered into a Memorandum Of Understanding which outlines MSHDA's Section 911 subsidy layering review of projects receiving LIHTC and "assistance" from HUD'S Office of Housing. Until such time as guidelines are published and MSHDA accepts such delegation, MSHDA will not be performing subsidy-layering reviews for projects receiving assistance under HUD'S Offices of Public and Indian Housing and Office of Special Needs Assistance Programs.

In connection with the subsidy layering evaluations performed by MSHDA as the housing credit agency, the following standards will be applied.

### **XIV. A. Profit and Fees**

Projects with layered subsidies will be subject to the provisions outlined in Section IX, Underwriting Standards, regarding the developer fee and the builder's profit, overhead, and general requirements.

### **XIV. B. Syndication Expenses**

The total expenses, excluding bridge loan costs, incurred by the Applicant in obtaining cash from the sale of project interest to investors through public offerings will generally be evaluated as not exceeding 15% of gross syndication proceeds but may, in the event that MSHDA determines special market or risk factors to be involved, be evaluated up to 24% of gross syndication proceeds. Similarly, MSHDA will generally evaluate private offering expenses at 10% of gross syndication proceeds, excluding bridge loan costs, but may use a figure of up to 15%.

### **XIV. C. Syndication price**

MSHDA will, in its evaluation, apply an applicable market rate, expressed in cents netted per dollar of credit as of the project's placed in service date, in calculating maximum LIHTC, and valuing all payments, whether by installment or in one lump sum. This applicable market rate will be based upon factors including the project's market value, comparable, contemporary syndications, and MSHDA's judgment regarding market trends. Where a higher than usual ownership percentage is retained, the following will apply: if an owner retains an ownership interest between 5% and 50%, an additional \$0.10 will be added to the applicable market rate, and if ownership of over 50% is retained, an additional \$0.20 will be added to the market rate used for the evaluation.

MSHDA may choose to evaluate using less than the standards set forth herein.

## **XV. Housing Choice Vouchers**

Applicants proposing to convert or obtain tenant-based Housing Choice Vouchers to a project-based subsidy must submit a letter from the issuing authority in a form approved by MSHDA as part of the Applicant's application. Projects must comply with the issuing authority's PHA and Administrative Plans in order to receive and convert vouchers to a project-based subsidy. To the extent administratively feasible and consistent with its PHA and Administrative Plan, MSHDA will endeavor to make housing choice vouchers available subject to the requirements of the PHA and Administrative Plans and this QAP.

Housing Choice Vouchers for conversion to project-based subsidy will not be made available by MSHDA for preservation projects that already receive project-based assistance.

This QAP awards LIHTC through a competitive process that can also serve as a form of competitive selection for purposes of applications for project-based vouchers and other forms of assistance.

## **XVI. Project Reconfiguration and Exchange of Credit**

Project evaluations are performed on the information that is provided in the initial application for reservation. This information is material to the determination of project score, the amount of credit reserved, and the feasibility of the project during the compliance period. Any changes to a project that require a re-scoring or re-evaluation which causes the projects position to fall below its original position will cause the reservation of LIHTC to be rescinded.

In certain unusual circumstances, delays may occur which will prevent the project from being placed in service at the end of the second calendar year from the date of the Carryover Allocation. MSHDA may allow the credit to be returned and may issue a Carryover Allocation in the year in which the credit is returned without the necessity of competing for funding provided certain conditions, including an assessment of facts by MSHDA, are met. Requests for an exchange of credit may not be applied for prior to October 1<sup>st</sup> of the year in which the project was required to place in service, unless the Authority determines that extenuating circumstances warrant an earlier exchange of credit.

Developers will not be penalized for voluntarily returning credits. MSHDA encourages developers to make a realistic assessment of their ability to use allocations and return credits rather than delaying the use of a scarce federal resource.

At no time will any project be allowed more than three calendar years from the date of initial application to project completion unless approved by MSHDA.

## **XVII. Fees**

All applications must be accompanied by a check or money order in an amount equal to \$40 for each proposed low-income unit, with a \$2,000 maximum limit. This fee is non-refundable and must be paid in each funding round in which a project is seeking to be scored and/or evaluated. A fee of \$100 will be assessed each time a check is returned to MSHDA for non-sufficient funds.

MSHDA will charge a fee equal to 6% of the annual LIHTC dollar amount reserved for a project. A sum equal to 3% of the annual LIHTC dollar amount shall be submitted to MSHDA at the time of Reservation. Should a project that has received a Reservation return that Reservation to MSHDA within 90 days of its receipt, 50% of the fee shall be refundable; however, after 90 days, 0% shall be refundable. The remaining 3% shall be paid at Commitment. Projects in

which the sole general partner or sole managing member is a nonprofit entity or a wholly owned for-profit subsidiary of a nonprofit entity may defer all but the initial application fee, until such time as closing on the equity contribution occurs.

In addition to the fees listed above, MSHDA may establish such other fees as may be necessary to effectively administer the program. Such fees may include, but are not limited to, charges to process waiver requests, changes in ownership, subsidy layering reviews and site visits. MSHDA shall publish a schedule of such fees 60 days prior to implementation (see Fee Schedule Policy Bulletin).

Compliance monitoring fees will be charged for the credit period as follows:

- All units for which an allocation of credit was not made by December 31, 2007 must pay the sum of \$450 per low income unit, which amount will cover the entire 15 year compliance monitoring period and the extended use period and is payable prior to issuance of Form 8609.
- All units for which an allocation of credit was not made by December 31, 2000 must pay the sum of \$300 per low income unit, which amount will cover the entire monitoring period and is payable prior to issuance of Form 8609.
- All units that received an allocation of credit prior to January 1, 1993, and all projects financed by MSHDA that received an allocation of credit before January 1, 1997, may elect to submit a sum equal to \$15 per low income unit on an annual basis for the remainder of the compliance period, or may opt to make one payment similar to that described above.
- With the exception of projects financed by Rural Development, all projects that received an allocation of credit prior to January 1, 2001 must pay an additional inspection fee of \$30 for each unit to be inspected once every three years. Projects financed by Rural Development must pay an additional fee of \$20 per each unit to be inspected once every three years. This fee shall be paid at the time of submission of the annual owner certifications.

Failure to submit any compliance or inspection fee will be considered non-compliance.

Compliance monitoring fees are subject to change based on changes in costs associated with administration of the compliance monitoring function by MSHDA and other changes in MSHDA and/or IRS mandated monitoring requirements.

## **XVIII. Compliance Monitoring and Notification of Noncompliance**

Owners (Applicants) receiving a LIHTC allocation shall be required to follow the requirements outlined in MSHDA's Rental Housing Programs Compliance Manual (Manual), which includes LIHTC compliance requirements (available on MSHDA's website).

### **XVIII. A. Owner Responsibilities**

Within thirty (30) days of your completion of Part II of the Form 8609 and filing same with the Internal Revenue Service, a completed copy must be sent to MSHDA for its records. Failure to return the completed form to MSHDA within the required timeframe is a form of noncompliance that will be reported by MSHDA to the IRS.

The records for the first year of the credit period must be kept for six years after the due date (with extensions) for filing the federal income tax return for the last year of the compliance period. Owners must keep subsequent records on file for six years after the due date (with extensions) for filing the federal income tax return for that year. These records must include:

- The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each unit);
- The percentage of residential rental units in the buildings that are low-income units;
- The rent charged on each residential rental unit in the building;
- The number of occupants in each low-income unit if rent is determined by the number of occupants in each unit;
- The low-income unit vacancies in the building and information that shows when and to whom the next available units were rented;
- Income certifications of each low-income tenant and the documentation to support the certification;
- The eligible basis and qualified basis of the building at the end of the first year of the credit period; and
- The character and use of the nonresidential portion of any building included in the project's eligible basis.

Owners must keep, for inspection by MSHDA, the original local health, safety or building code violation reports or notices that are issued by the state or local government unit. These reports may be destroyed following an inspection by MSHDA and notification to the owner that the violations have been corrected. Code violation reports must be retained for uncorrected violations.

Owners must submit to MSHDA on an annual basis the following:

- An Owner Certification Form certifying that for the preceding twelve month period the project met certain conditions outlined in Section 42;
- Information on the low-income units, the number of bedrooms in each unit, the rent charged for each unit, the utility allowance for the units and buildings in the project and any other information as set forth on the form.

Owners must submit to MSHDA on an on-going basis tenant income and rent data stating the number of qualifying units, information on each low-income tenant, the rent charged for each unit, and any other information as set forth on the MSHDA website and in the Manual. The tenant income and rent information must be provided in the format required by MSHDA, which includes electronic submission via a web-based reporting system.

Owners must submit to MSHDA a copy of the certificate of occupancy (or certificate of substantial completion for preservation projects) for each building in the development within five (5) business days after each certificate becomes available.

Owners must notify MSHDA, in writing, within five (5) business days of any changes in the management of the project, including changes in the company managing the project or in the address or telephone number of the management agent.

Owners must notify MSHDA, in writing, within five (5) business days of any changes in the ownership of the project, including a foreclosure, deed in lieu of foreclosure, or any other sale or disposition of the project or any portion of the project and any changes in the ownership entity,

including any changes in the name of the entity, address and telephone number of the entity, percent of ownership changes, and changes in the principals comprising the ownership entity.

Owner must notify MSHDA immediately, in writing, of any unit(s) or building(s) in the project that are anticipated to be unavailable for occupancy either permanently or temporarily for a period of time anticipated to exceed 30 calendar days due to casualty loss, damage, or any other reason.

### **XVIII. B. MSHDA Responsibilities**

MSHDA will review the Owner Certification Forms and tenant Income and rent reporting for compliance with program requirements.

MSHDA, or its authorized agent, will physically inspect 20% of the low-income units in a project and will inspect the low-income certification, the documentation the owner has received to support that certification, and the rent record for 20% of the low-income units no later than the end of the second calendar year following the year the last building in the project is placed in service.

MSHDA, or its authorized agent, will conduct a physical inspection of all buildings and 20% of the low-income units in a project, and will inspect the low-income certification, the documentation the owner has received to support that certification, and the rent record for 20% of the low-income units at least once every 3 years. Inspections may be more frequent for projects receiving assistance through other state or federal programs in addition to the LIHTC.

MSHDA retains the right to perform an on-site inspection of any low-income building at any time during the compliance period for low-income housing LIHTC and any extended use period as well.

MSHDA shall retain records of noncompliance or failure to certify for six years after the filing of a Form 8823. MSHDA shall retain all certifications and records for not less than three years from the end of the calendar year in which they are received.

Any monitoring of continuing compliance is being done by MSHDA to assure that public purpose goals are being achieved and any failure to receive notice of noncompliance should not be relied upon by any owners or their investors as a warranty or representation by MSHDA that the project is in compliance with application requirements.

### **XVIII. C. Notification of Noncompliance**

If any of the submissions required in Section A, including the Owner Certification, the Tenant Income and Rent Report, income certifications, supporting documentation, and rent records are not submitted in a timely fashion, or should there be omissions, MSHDA shall request such information from the owner within 45 working days. If not provided within 20 working days following the request, MSHDA shall notify the Internal Revenue Service of the owner's failure to provide the required information.

Should MSHDA discover, as a result of an inspection or review, or in any other manner, that the project is not in compliance with Section 42, or that credit has been claimed or will be claimed for units that are ineligible, MSHDA shall notify the owner within 45 working days of the inspection. The owner shall then have 20 working days in which to commence appropriate action to cure such noncompliance. The owner shall have a maximum of 90 days from the date of notice to the owner to cure the noncompliance. MSHDA shall notify the Internal Revenue Service, utilizing Form 8823, no later than 45 days after the end of the correction period, and no earlier than the end of the correction period, of the nature of the noncompliance and will indicate to the Service whether or not the owner has made appropriate corrections. In extraordinary

circumstances, and only if MSHDA determines that there is good cause, an extension of up to six months to complete a cure for noncompliance may be granted.

While MSHDA will notify the owner of compliance issues, neither a finding of noncompliance nor a determination that noncompliance has been cured is binding on the Internal Revenue Service. Owners who have received a notification from MSHDA that a project is in compliance may still be subject to an IRS audit and the possibility of loss or recapture of Housing Credits. Please refer to the Internal Revenue Code for all federal compliance issues.

### **XIX. Combined Application, Policy Bulletins and Addenda**

The Policy Bulletins set forth additional requirements for LIHTC Applicants. The additional criteria of the Combined Application, including all applicable Addenda are also additional requirements for LIHTC Applicants. MSHDA reserves the right to modify the Combined Application, Policy Bulletins, and Addenda at its discretion following notice to the public.

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