

NEW HAMPSHIRE
2016 QUALIFIED ALLOCATION PLAN
FOR THE LOW INCOME HOUSING TAX CREDIT PROGRAM
FINAL – MAY 13, 2015

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**NEW HAMPSHIRE
2016 QUALIFIED ALLOCATION PLAN
LOW INCOME HOUSING TAX CREDIT PROGRAM
Program Rules
(HFA:109)**

HFA:109.01 INTRODUCTION

The Low Income Housing Tax Credit (LIHTC) program is currently the single largest source of federal capital subsidy to create and preserve affordable rental housing. The program was added to Section 42 of the Internal Revenue Code (“IRC 42”) in 1986. Under IRC 42, the Internal Revenue Service allocates LIHTCs to states on a per capita basis. States in turn designate an agency to allocate LIHTCs using competitive criteria established in accordance with IRC 42. The State of New Hampshire has designated New Hampshire Housing Finance Authority, (Authority) as the agency to allocate LIHTCs. The Authority has developed this Qualified Allocation Plan (“QAP”) to establish the criteria and process for allocation of LIHTCs in New Hampshire.

The Authority has addressed most of the Statutory selection criteria and preferences in the scoring criteria (HFA:109.07), with the exception of projects intended for eventual tenant ownership, on which the Authority expresses no preference or emphasis.

HFA:109.02 PRIMARY ALLOCATION PRIORITIES

The Authority uses the U.S. Department of Housing and Urban Development’s Consolidated Plan process to assess New Hampshire’s affordable housing and community development needs and market conditions. The Consolidated Plan is also used as a tool to coordinate several federal housing resources that are administered at the state level. The priorities of this QAP are based on conclusions contained in the 2011-2015 Consolidated Plan, public forums on QAP priorities, and extensive discussions with the affordable housing community. These priorities are:

- New construction (adding new units to housing markets)
- Non-age restricted housing
- Readiness to proceed (i.e. ability to get to construction in a relatively short period)
- Non-profit sponsored housing
- High quality of construction, including energy efficiency
- Projects that achieve broad community development objectives, including “smart growth” and neighborhood revitalization
- Cost containment

HFA:109.03 LIHTC AVAILABILITY AND SET-ASIDES

A. LIHTC Available

New Hampshire’s 2016 LIHTC amount is approximately \$3,043,956.

B. Non-Profit Set-Aside

IRC 42 requires that at least 10% of New Hampshire’s annual LIHTC allocation must be set aside for qualified non-profit organizations that:

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- meet the tax exempt requirements of IRC 501(c)(3) or (c)(4);
- own a controlling interest in a project and materially participate in the development and management of the project throughout the compliance period; and
- have exempt purposes including the fostering of low-income housing.

Wholly owned affiliates of a non-profit are eligible as qualified non-profit organizations.

C. Age Restricted Set-Aside

\$900,000 of the annual LIHTC allocation shall be set-aside exclusively for age restricted projects. For the purposes of the set-aside, age restricted projects must designate all units as restricted to households whose members are all age 62 or over. Age restricted projects shall be scored and ranked separately. Each age restricted project will be limited to a \$450,000 reservation. The Authority reserves the right to exceed the Age-Restricted per project cap in an amount up to \$135,000 in cases where application of the allowable 130% boost to eligible basis results in an increased credit amount above the \$450,000 cap. The allowed increase in LIHTC would have to reduce the level of Authority capital subsidy. The Age-Restricted set-aside will be increased incrementally by that same amount.

D. Supplemental Set-Aside

\$60,000 of the annual LIHTC allocation shall be set aside for projects returning for supplemental LIHTCs after having received a carryover allocation in an earlier year. Allocations made under this set-aside can be up to \$30,000. The decision will be made by the Authority staff, and projects must meet one or more of the following criteria:

- it incurred or faces substantial, unforeseen cost increases.
- it is subject to an unanticipated reduction in equity yield on the sale of the LIHTCs.
- supplemental LIHTCs would reduce the level of Authority capital subsidy funding.
- supplemental LIHTCs would improve the project's financial feasibility but keep it consistent with the Authority's Multi-Family Underwriting Standards.

Any amounts of the supplemental set-aside pool remaining after September 1, 2016, will be made generally available. However, if tax credits are still available after the reservations are approved, Authority staff can make additional supplemental reservations under the same program guidelines.

HFA:109.04 PRIMARY PROGRAM POLICIES

A. Maximum Amount of LIHTC per Project

The maximum LIHTC that any single non age-restricted project may receive in any single funding round is \$800,000. "Out-of-cap" tax exempt bond financed project allocation amounts are not limited.

B. Maximum Number of Applications and Projects

No applicant (defined as a general partner, property owner and/or development agent) may submit more than one 9% project application in a LIHTC round, unless it is a supplemental application for a previously approved project.

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The Authority will not accept a new application if an applicant (including any general partner) has two or more LIHTC projects that have not yet been completed (i.e. Certificate(s) of Occupancy issued for all buildings and construction completion inspection sign off). “Out of cap” tax exempt bond financed projects will not be considered as outstanding LIHTC projects. The Authority reserves the right to limit 4% LIHTC resources based on Authority underwriting criteria.

C. Per Unit Cost Standards/Housing Investment Limits

Project applications will be evaluated for cost reasonableness. Applications which indicate unreasonably high total or specific line item development costs may be rejected. An application will be rejected if the total development cost (residential only) exceeds \$235,000 per unit. For projects using Historic Rehab Tax Credits (HRTCs) in conjunction with LIHTCs or projects with increased costs due to a Brownfield location, the per unit limit is \$245,000. The “investment limit” for all projects of combined Authority capital subsidy funds and equity raised through LIHTCs is \$190,000 per unit. If a supplemental or additional credit allocation is made to a project in this or subsequent years, staff has the authority to use the most recent investment limits in evaluating and allocating tax credits and other Authority resources to the project.

D. Pilot Preservation Project Initiative

The Pilot Preservation Initiative will be a maximum of \$450,000 in LIHTC credits per LIHTC round for Preservation Projects. Preservation Projects are existing housing properties that have been funded with federal subsidies and are currently subject to recorded regulatory documents limiting unit rents and/or tenant incomes. In the case of a scoring tie the project with the most efficient use of LIHTCs (i.e. lowest amount of LIHTCs per rent restricted unit) is favored.

E. Developer Fee

The maximum developer fee allowed is calculated in accordance with the Developer Fee Schedule which may be found in the Authority’s underwriting standards [at http://www.nhhfa.org/rental-housing-developers-policies-standards.cfm](http://www.nhhfa.org/rental-housing-developers-policies-standards.cfm).

F. CDBG Funded Projects

Projects that are proposing to include CDBG monies as a source of funds must have previously been awarded the funds or must have an active application for CDBG funding. For CDBG from entitlement cities, evidence that an application is under consideration by that city must be provided. In addition, the project must be awarded the CDBG monies before the carryover allocation will be approved.

G. Basis Boost

The Authority will restrict the 130% basis boost to projects located in the official Difficult to Develop area (DDA)/Qualified Census Tract (QCT) districts, or to projects which require the 130% basis boost to be financially feasible as part of a qualified low-income housing project. The list of areas eligible for the basis boost may be found at <http://www.huduser.org/portal/datasets/qct.html>.

HFA:109.05 APPLICATION PROCESS

A. Preliminary Applications

The Authority requires the submittal of a preliminary application. The preliminary application requires submittal of a complete application using the Online Data Manager (ODM) system. For

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additional information, please refer to <http://www.nhhfa.org/rental-housing-developers-financing-application.cfm>. Preliminary applications are due June 1, 2015, and are mandatory for all projects, regardless if they were submitted in a previous round.

B. Application Deadline

The application deadline for 2016 LIHTC is August 28, 2015.

C. Application Submittals

Submittal of all preliminary and final application materials (except fees and signed certification page <Part 3, Section 2>) must be done using the Online Data Manager (ODM) (www.ctkodem.com/nhhfa). Contact Laurel Treamer at ltreamer@nhhfa.org for ODM set-up information.

HFA:109.06 THRESHOLD CRITERIA

Projects must meet the threshold criteria listed below to qualify for a reservation and allocation of LIHTC. Projects may be rejected at any time during the allocation process for failure to meet threshold criteria.

A. Feasibility and Appropriateness

The proposed project's characteristics or location must be considered feasible from a financial and regulatory standpoint.

B. Demand

Potential market demand must be proven, and the proposed project must not negatively affect an existing publicly-assisted affordable rental property. All applicants applying for LIHTC are required to submit a market study at the time of application prepared by a disinterested party (i.e. someone who does not have any interest in the development or have a relationship with the owner of the development) approved by NHHFA.

C. Capacity

The project's general partner or management agent must:

- Have the experience or ability to successfully complete the project;
- Have started construction within six months from the date of the carryover allocation on a current project;
- Be compliant or otherwise not in default with this or any other Authority program as determined by the Authority;
- Not have a history of noncompliance in LIHTC or other Authority programs;
- Have met the specific requirements of the Land Use Restriction Agreement (LURA) for previous projects; or
- Not have any significant negative LIHTC history with other state allocating agencies.

D. Completion of Prior Phase

If a phased project, the earlier phase(s) of the project must be complete and rent-up must be substantially completed (meaning at least 50% of units have been leased).

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E. Site Control

Applicant must have secure site control.

F. Cost Reasonableness

Proposed development or operating budget must not be unreasonably costly or otherwise unsatisfactory. The project application must meet the QAP's investment limit or overall per unit development cost limit. (HFA:109:04(c)).

G. Readiness

The project must be able to satisfy the criteria of the Progress Phase Requirements (Appendix A) in a timely manner.

H. Services

Service Coordination is a threshold requirement for all projects to provide residents the opportunity to access appropriate services which promote self-sufficiency and maintain independent living. Service Coordinators connect residents to needed services; develop and implement strategies to build community among diverse residents; and develop partnerships to bring programs and services onsite to meet the needs of groups of residents. Incorporating Service Coordination into the ongoing management of the project assists in maintaining the fiscal and physical viability of the project. See Appendix I for Service Coordination specifications.

HFA:109.07 SCORING

A. Scoring Criteria

Each project will be scored using the criteria listed below. Provide documentation where applicable. Any supportive documentation is subject to verification, and the Authority may require additional information as a condition of awarding points. The Authority may reject any documentation deemed to be insufficient, unsupported, or inadequate for the particular scoring criteria.

1. Non-Age Restricted Units

Projects cannot have "senior" or other age restricted designation.

- a. Non-age restricted projects with greater than or equal to 25% of the units having 2 or more bedrooms. A project that has occupancy restrictions or preferences that favor tenants with special needs and can demonstrate the need for one bedroom units exclusively will be given the fifteen (15) points. 15 points

2. Income Targeting

Greater than or equal to 20% of the total number of units are reserved for very low income ($\leq 50\%$ MAI). 5 points

3. Supportive Housing Serving Homeless – Non-age Restricted or Veterans

Each household must be homeless or at imminent risk of homelessness immediately prior to tenancy and be identified as needing services to maintain housing. Certification of status must be obtained from the household. See Appendix J for sample. Eligible projects may be either transitional or permanent supportive housing and may use the

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single room occupancy (SRO) model. Services may be provided for residents through a third party or the project, but must include at a minimum:

- An initial assessment of each resident’s needs prior to or within one week of move-in and a written plan developed to address each need.
- Regular case management, including ongoing assessments of residents’ needs and the efficacy of the services being provided in meeting the identified needs.
- Coordination of benefits and services to assist residents in becoming permanently housed. 15 points

4. Community Based Supported Housing/Existing Rental Housing Properties. Developer/owners willing to commit, through a formal memorandum of understanding with the State of New Hampshire and NHHFA, to make units available for community based housing for persons with disabilities, as defined in the Settlement Agreement approved 2/12/14 (<http://www.drcnh.org/proposedSettlementAgreementMH.pdf>), will receive points towards new projects being proposed in the 2016 Rental Production Program. The points will be allotted as follows:

<u>Units Committed</u>	
1-5	1 points
6-10	3 points
11-20	5 points
21-30	7 points
31 plus	10 points

Developers agreeing to enter into a Section 811 Project Assistance Contract for the units committed above may double the points awarded under this section.

All qualifying units must meet the criteria set forth in the Settlement Agreement and shall be evidenced by a MOU between the owner, the State of New Hampshire and NHHFA. Units shall be committed on as available basis subject to the “next available unit” requirement.

5. Community Based Supported Housing/Proposed Projects. Projects committing 10% of new units for individuals with disabilities as defined in the Settlement Agreement. 5 points

All qualifying units must meet the criteria set forth in the Settlement Agreement approved 2/12/14 and shall be evidenced by a MOU between the owner, the State of New Hampshire and NHHFA. Units shall be committed on as available basis subject to the “next available unit” requirement.

Developers who have “banked” points from the 2015 LIHTC round will have the points applied under this scoring category. Points can only be used in one LIHTC round.

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6. Public Housing Waiting List
Projects where the managing general partner is a Public Housing Authority (or affiliate) that owns and manages public housing or housing with project-based Section 8 vouchers. 3 points
7. Location
Non-Age Restricted Projects
Projects in towns with no other previously approved affordable non-age restricted housing.¹ 10 points
8. Project Grants and Assistance
An applicant can score points in any of the sections in this category, a and/or b.
- a. Projects which have a new rental assistance subsidy for at least 66% of the units for at least five years. Public Housing Authority project-based Section 8 units are not eligible, unless the rent subsidies are a new allocation to the PHA specifically for the proposed project.
- This point category is not available to existing projects requiring minimal rehabilitation. 15 points
- b. Projects which have a proposed and likely contribution of non-Authority sources of funds, including subsidies, loans and land donations. Authority resources, developer fee loans, and LIHTC equity are specifically not eligible for consideration. All units are counted.
- | | |
|-----------------------------|-----------|
| (one category only) | |
| Greater than \$ 29,999/unit | 20 points |
| \$20,000 to \$29,999/unit | 15 points |
| \$10,000 to \$19,999/unit | 10 points |
| \$5,000 to \$9,999/unit | 5 points |
| Less than \$5,000/unit | 0 points |
9. Advanced Projects
Additional points may be awarded at the discretion of the Authority for advanced progress of the development as per the following schedule:
- | | |
|--|----------|
| Phase 1 Environmental Completed | 3 points |
| HUD/RD Environmental Checklist Completed ² (can score both) | 2 points |
| Submittal of Historic Project Review materials to State | 3 points |
| State Historic Review completed ³ (can score both) | 5 points |

¹ Project funded with public financing sources that must have at least 20% of the units affordable to low-income households, with no “senior” or “over age 55” designation, and subject to a recorded long-term use restriction regarding affordability. Burden is on applicant to provide documentation.

² Checklist must be completed by a third party professional.

³ Projects which can demonstrate no need to submit to Historic Review will receive eight points. A review completed with an “adverse impact” will need resolution (e.g. Signed Memorandum of Understanding (MOU)) before points will be awarded.

Funding commitments: Projects which have a firm commitment for a significant amount of CDBG, Neighborhood Housing Services, Rural Development, or other subsidized loans or grants, including the Federal Home Loan Bank Affordable Housing Program (AHP), at a rate below the Applicable Federal Rate (AFR) and/or are non-amortizing. Donated land value will be determined by an Authority commissioned appraisal that must be arranged with Authority staff no later than 60 days prior to the application deadline. Authority-administered funds and developer fee loans are not eligible for this point category and all units are counted.

(one category only)

Greater than \$29,999/unit	5 points
\$20,000 to \$29,999/unit	4 points
\$10,000 to \$19,999/unit	3 points
\$5,000 to \$9,999/unit	2 points
Less than \$5,000/unit	0 points

Prior phase of project was approved for LIHTC and rent-up must be substantially complete (meaning at least 50% of units have been leased)⁴ 5 points

All necessary local planning and zoning permits are in hand, including site plan approval as evidenced by a permit status letter from the sponsor's attorney, project engineer, or town planning official.⁵ 15 points

10. Community Development Component

- a. Projects in existing downtown or neighborhood infill site (defined as 75% bordered by existing development or is a ¼ mile walking distance from five diverse uses, one of which must sell food; Any fraction of the perimeter that borders waterfront other than a stream is excluded from the calculation), or adaptive reuse of existing buildings.

- or -

Projects which are located in formally designated community revitalization areas (e.g. HUD Enterprise Zones, Main Street Programs, historic districts, designated blighted areas or otherwise targeted areas). The minimum size improvement zone for this scoring category is generally a one block area, but cannot have been specifically created for the benefit of the proposed project. The formal designation must come from an official act by a government agency, such as a city council or town board.⁶

10 points

⁴ Assumes Authority knows of multiple phasing during first phase, and first phase developer is the same sponsor/ entity.

⁵ A site plan approval that requires additional planning board approvals will not be given these points. The status letter need not be a formal legal opinion.

⁶ Federal new market tax credit designations are eligible. A zoning change or special zoning district (e.g. workforce housing zone) does not qualify for scoring in this section.

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- b. Projects approved for points in part a. that are also in Qualified Census Tracts. 3 points
- c. Projects approved for points in part a. that preserve and renovate existing housing. 1 point
- d. Preservation or restoration of a historic building. The building must be on or eligible for the State or National Register of Historic Places, or officially designated as a local historic property by town, state and/or federal agencies, with rehabilitation to be completed so as to be eligible for and use federal historic rehabilitation tax credits. 5 points
11. Project Cost
Projects that have a projected total development cost per unit (counting all residential units) of 5% over the average of all non-preservation applicants' development cost per unit (grouped by age restricted and non-age restricted). -2 points
- or -
- Projects that have a projected total development cost per unit (counting all residential units) of 10% over the average of all non-preservation applicants' development cost per unit (grouped by age restricted and non-age restricted). -5 points
12. Sponsor is a Community Housing Development Organization (CHDO)
The project sponsor is a NHHFA-approved Community Housing Development Organization (CHDO) and is the sole or managing general partner. CHDO designation is defined in 24 CFR Part 92 of the HOME Investment Partnerships Program. 3 points
13. Management Experience
To receive points for this category, the proposed management agent must submit a letter of interest and the Management Questionnaire (sheet with this title is in spreadsheet application). Applications are scored based on specific point scoring shown on the Management Questionnaire. The scoring gives preference to management agents based on experience, performance, and satisfaction of LIHTC training requirements. 0 to 10 points
14. Developer Experience with the Authority
The developer or associated entity that is part of the development team:
- has any outstanding obligations (including compliance fees) on any Authority-financed or Authority tax credit project that is more than 30 days in arrears;
 - is involved in or has had other tax credit or Authority-financed projects which have non-compliance issues;
 - is or has been non-compliant or otherwise in default with this or any other Authority Program (as determined by the Authority) or with another state housing finance agency; and/or

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- has been awarded credits in the past that were subsequently returned or otherwise unused (unless for good cause).

Such determination will be made by the Authority at its sole discretion. 0 to -20 points

B. Tiebreakers

In the case of a scoring tie, the tiebreakers shall be:

1. The project with the highest percentage of LIHTC eligible units, compared to total units, is favored.
2. The project providing the highest percentage of new housing units to total housing units is favored.
3. If still tied, the most efficient use of LIHTCs (i.e. lowest amount of LIHTCs per rent restricted unit) is favored.

HFA:109.08 ALLOCATION PROCESS

A. Reservation of LIHTC

All applications are reviewed for completeness. Incomplete applications will be rejected, though minor variances may be deemed acceptable. The Authority may reject any documentation deemed to be insufficient, unsupported, or inadequate for the particular scoring criteria. The Authority is not required to notify the applicant of inconsistencies or missing information.

Applications are scored and ranked in accordance with the Scoring Criteria (HFA: 109.07). Projects are recommended for a reservation of LIHTCs based on the competitive scoring results. However, a project must receive a minimum of 80 points (60 points for age restricted projects) to be eligible to receive a LIHTC reservation.

The non-profit set-aside is generally satisfied through the QAP scoring system. However, since the state's entire allocation authority is predicated by IRC 42 on meeting the minimum 10% non-profit allocation, one or more non-profit projects may be selected over higher scoring applicants until the 10% allocation requirement is met.

When only partial LIHTCs are available for the next highest scoring project, the Authority retains the right to bypass that project, and either give LIHTCs to other projects lower in the scoring ranking which can effectively use the remaining LIHTC amount, or use the LIHTCs in a future year.

If a partial allocation is offered, the Authority must be convinced that a project can be appropriately phased or restructured, that the project's feasibility is not conditioned upon receipt of a future reservation, and that the project can retain its scoring criteria ranking. The Applicant must demonstrate the ability to meet these criteria within 21 days of notification.

B. Appeal Process

Applicants may appeal the Authority's decision, solely with regard to their application. Applicants must submit a formal request for an appeal within 5 business days from the date of receipt of written notification that LIHTCs will not be awarded. The Authority will send denial letters to the Developer/Sponsor via email the day of Board action. The appeal request is considered by the

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Authority's Multi-Family Housing Committee, which makes a recommendation to the Board of Directors.

C. Conversion to Out-of-Cap Project

In the interest of making the most efficient use of New Hampshire's housing related resources, the Authority reserves the right to remove a project from the competitive process, regardless of potential score, and convert the project to an "out-of-cap" bond financed project. This would be premised on project feasibility under a tax-exempt bond financed scenario (construction and/or permanent) as determined by the Authority. However, once removed from the application round, the Authority cannot guarantee successful bond financing for the project.

D. Post Reservation Processing

1. Progress Phase

Within 120 days of notification of a reservation of LIHTCs the Applicant must complete all requirements listed in Appendix A; Progress Phase Requirements. Extensions to the deadline may be granted.

2. Allocation Phase

Projects that will not be placed in service by December 31, 2016, must complete the items listed in Appendix B; Carryover Allocation Requirements by October 1, 2016. At project completion, the Applicant must submit the items listed in Appendix C; Final Allocation Requirements.

3. Cost Certifications

Cost certifications are required for both the carryover allocation (i.e. the 10% expenditure certification) and for a final allocation. The cost certifications must incorporate a professional CPA audit in accordance with generally accepted auditing standards and IRC 42. The line items used in the certification must correspond with the Authority's application spreadsheet. The certification must include sources as well as uses of funds.

E. LIHTC Exchange

The Authority will permit exchanges of LIHTCs to be granted at the discretion of staff when all of the following apply:

- the appropriate amount of LIHTCs are available;
- the sponsor provides evidence of an inability to meet the placed-in-service, 10% expenditure, or other funding deadline;
- the situation results from litigation, municipal approval delays, or other unforeseeable circumstances beyond the sponsor's control; and
- the project continues to be financially feasible and meets the threshold criteria and other eligibility requirements in effect at the time the LIHTCs were originally awarded.

Staff has the authority to re-issue a reservation letter for LIHTCs in the same (or lesser) amount without further Board action.

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F. Project Representations

Representations made about the project relating to ownership or management, or factors that are used in the selection and scoring criteria may not be changed without the express written permission of the Authority. LIHTC reservations may be rescinded if the project changes in a way that reduces the competitive score.

HFA:109.09 FEES TO THE AUTHORITY

A. Program Fees

The LIHTC fee is 7% of the final allocation amount for all applicants, with 1% paid with the initial application. The initial application fees may be refunded, less \$1,000, if a project is withdrawn or otherwise fails to secure a reservation. No fees are refundable after a reservation has been approved.

B. Compliance Monitoring Fees

The monitoring fee is \$600 per LIHTC unit, which is paid at the final allocation stage. The Authority reserves the right to make adjustments to annual monitoring fees due to increased monitoring requirements and/or costs.

HFA:109.10 LONG-TERM AFFORDABILITY COMPLIANCE

A. Recorded Affordability Commitment

Prior to issuance of final allocation, the owner of the LIHTC project must execute and record a Land Use Regulatory Agreement (LURA). The LURA sets forth the conditions wherein the owner and the project must comply with IRC 42. The Applicant must show that the LURA has been recorded and has precedence over any permanent financing or other liens. The LURA shall remain in effect for a 99 year compliance period.

B. Right of First Refusal

Owners (except ownership entities ultimately controlled by a qualified non-profit or local housing authority) must sign a Right of First Refusal (ROFR) in favor of a qualified non-profit, local housing authority, or the Authority. The ROFR - a sample of which can be found in Appendix D - shall be executed prior to final allocation.

C. Compliance Monitoring

In accordance with Treasury Regulation §1.42-5 the Authority is required to monitor project compliance with IRC 42 and the LURA, and to notify the IRS when it becomes aware of any noncompliance. The Authority's monitoring responsibilities begin at the time the first building is placed in service. Additional information regarding compliance monitoring can be found in Appendix K

HFA:109.11 MISCELLANEOUS AUTHORITY PROVISIONS

A. Waiver Authority

The Authority reserves the right to waive any of these Rules (HFA:109) within the constraints of IRC 42. Applicants or potential applicants must submit a written request for a waiver. A hearing will be scheduled within 45 days of the request by the Authority's Multi-Family Housing

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Committee. Upon a finding of good cause, a waiver may be granted on a case-by-case basis by the Board of Directors. A waiver of the rules can be initiated by the Board, in which case no hearing is necessary.

B. Authority to Amend Regulatory Documents

The Multi-Family Committee is authorized to approve amended project regulatory documents relative to the scope and delivery of services, age, and income targeting, including matters that may have been part of the original scoring evaluation of the project, in circumstances in which the staff determines that market conditions and or changes in public funding policies warrant such changes. The Multi-Family Housing Committee will report quarterly to the Board on all such amendments.

C. Compliance with Federal, State and Authority Regulations

All projects receiving LIHTC allocations (including “out-of-cap” allocations) must comply with all relevant Authority, state and federal regulations, including but not limited to:

- IRC 42
- Federal Uniform Physical Condition Standards (UPCS at CFR 5 et al.)
- Federal Fair Housing Act 42 USC §3601 et seq.
- Federal Section 504 Accessibility requirements
- Authority Design and Construction Standards (HFA:111)
- Authority Underwriting and Development Policies for Multi-Family Finance

D. References

Applicants are required to provide authorization so that references and credit can be checked. Applicants may be required to submit IRS Form 8821 with their LIHTC applications, including separate forms for all general partners, to allow Authority access to IRS data on applicants and partners.

E. Warrant and Liability

The Authority is charged with allocating no more LIHTCs to any given project than are required to make the project economically feasible. This decision is made solely at the discretion of the Authority but does not represent or warrant to any applicant, developer, partner, investor, lender, or others that the project is feasible or risk free.

The Authority’s review of application documents in connection with this QAP is for its own purposes. The Authority makes no representations to the applicant or anyone else as to compliance with the IRC 42, Treasury Regulations, or any other laws or regulations governing the LIHTC Program. To the extent any information in the QAP is inconsistent with IRC 42, the provisions of IRC 42 shall govern.

No Board member, officer or employee of the Authority shall be personally liable concerning any matters arising out of or in relation to the allocation of LIHTCs or compliance monitoring.

The Authority’s obligation to monitor for compliance does not make the Authority liable for an owner’s noncompliance.

F. Amendments to the QAP

The Authority reserves the right to modify the QAP periodically, with the consent of the Governor. The Authority may make technical clarifications or revisions to comply with changes in federal law at its sole discretion.

G. Board Role

Unless otherwise specified, the Authority's Board of Directors delegates LIHTC program administration to staff. The responsibilities of the Board's Multi-Family Housing Committee are delineated in Sections HFA:109.11A (Waiver Authority) and HFA:109.08B (Appeals). The Reservation (or rejection) of LIHTCs shall be made by the Authority's Board of Directors (except for supplemental LIHTCs (HFA:109.03D) and LIHTC exchanges (HFA:109.08E)).

H. Consistency with IRC 42

To the extent any information in the QAP is inconsistent with IRC 42, the provisions of IRC 42 shall govern. This QAP is not intended to present all the rules and regulations of the LIHTC program. It is strongly recommended that applicants consult with competent legal and tax counsel.

I. New Hampshire Right to Know Law

The Authority is subject to RSA Chapter 91-A, which is known as the "Right-to-Know Law." Under the Right-to-Know Law, certain records are considered "governmental records" that are open to public inspection. Documents and data created under this Program by the Authority or by the Grantee may be subject to public inspection. Other documents and data, such as confidential financial information, may be considered nonpublic records and thus would not be subject to public inspection. The Authority and the Grantee shall comply with the Right-to-Know Law. The Grantee shall provide the Authority with all Right-to-Know requests, and the Authority will determine how to comply with the Right-to-Know Law. Nevertheless, a court may disagree with the Authority's decision, in which case the court's decision would prevail. The Authority shall not be liable to the Grantee or to any party for the Authority's decisions or a court's decisions related to the Right-to-Know Law.

HFA:109.12 PROJECTS FINANCED BY TAX-EXEMPT BONDS

Projects financed with tax-exempt bonds may apply for "out-of-cap" LIHTCs at any time. "Out-of-cap" applicants must satisfy the requirements for allocation in accordance with the QAP. Carryover allocations are not required for projects financed with tax-exempt bonds. The Authority issues a "determination letter" stating the estimated amount of tax credits that the project is eligible for just prior to the bond closing transactions, assuming all other LIHTC Program requirements have been or will be met.

Fees for tax-exempt bond funded projects are the same as 9% allocations (HFA:109.09), except that 1% of the application fee is due at the time the determination letter is requested.

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APPENDIX A PROGRESS PHASE REQUIREMENTS

The documents listed below must be submitted to the Authority via the ODM website within 120 days of notification of a reservation of LIHTCs or 30 days prior to the deadline for carryover allocation (i.e. December 1st), whichever is sooner.

Projects must meet the requirements of the progress phase to be eligible for an allocation of tax credits. Progress requirement extensions may be granted at the sole discretion of the Authority. The tax credit reservation may be rescinded at the sole discretion of the Authority for not meeting the progress phase requirements or for a failure to meet the general criteria in HFA:109.07B.

1. Letter requesting commitment of tax credits and inclusion of any pages from the application form related to changes in the project scope or cost, including complete updated budget
2. Exhibit 2 – Environmental site assessment and related reports (lead, asbestos, historic, archeological, etc.) if required by the Authority*
3. Exhibit 16 – Appraisal (if required by the Authority)
4. Exhibit 19 – Evidence of zoning/local approvals*
5. Exhibit 20 – Permanent financing letter of commitment
6. Exhibit 21 – Construction financing letter of commitment
7. Exhibit 22 – Equity investment letter of commitment
8. Exhibit 24 – Construction period sources and uses (monthly)
9. Exhibit 27 – Final plans and specifications
10. Evidence of continued site control
11. Soils and/or structural engineering report (if applicable)
12. Copy of the architect contract
13. For projects providing tenant services, an executed agreement binding on both parties
14. Cost estimates (or bids if available) by schedule of value. Must comply with 6-2-6 rule for contractor overhead and profit

15. Copy of contract for consultant services (if applicable)

*Exhibit numbers refer to the ODM website list of exhibits. Certain exhibits may not be applicable – see application.

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APPENDIX B CARRYOVER ALLOCATION REQUIREMENTS

1. Update of the Excel application form using ODM
2. Evidence of limited partnership existence, including federal tax identification number, Certificate of Good Standing for Limited Partnership from New Hampshire Secretary of State or copy of the Certificate of Limited Partnership stamped by Secretary of State
3. Copy of partnership agreement or offering summary (draft acceptable)
4. Evidence of continued site control
5. Copy of construction proposals (or bids) and executed construction contract. Include a copy of schedule of values showing contractor overhead and profit breakdown (i.e. 6-2-6 rule)
6. Election of gross rent floor (if applicable) (see Appendix H)

The carryover cost certification must be completed within 12 months of the “date of allocation,” and must be forwarded to the Authority.

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APPENDIX C FINAL ALLOCATION REQUIREMENTS

1. Updated application form into ODM with sources and uses corresponding to final cost certification
2. Final cost certification
3. Developer Certification of Costs (see Appendix E for required format)
4. Developer Certification of Equity Proceeds (see Appendix F for required format)
5. “As-Built” Architect Certification (see Appendix G for required format)
6. Recorded Land Use Restriction Agreement (LURA) and evidence of its precedence in the land records (e.g. title search)
7. Executed partnership agreement with equity pay-in schedule
8. Final allocation fee
9. Copy of Certificates of Occupancy
10. Copy of deed including legal description of property
11. Tax credit monitoring fee
12. Certification of tax credit management designation and training
13. Placed in service date for each building
14. Construction contract meets 6-2-6 limits
15. Sign-off by the Authority construction analyst (responsibility of Authority)
16. 10% cost certification completed within one year of carryover allocation
17. Right of First Refusal to Nonprofit (required for for profit developers only, see Appendix D for example)
18. Election of gross rent floor (if applicable) (see Appendix H)

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APPENDIX D SAMPLE - RIGHT OF FIRST REFUSAL

This Agreement is entered into this ____ day of _____, 201_, between _____ (the “Owner”), having an address of _____, County of _____, and State of _____ and the New Hampshire Housing Finance Authority, having an address of 32 Constitution Drive, Bedford, County of Hillsborough and State of New Hampshire (hereinafter referred to as the “Authority”), and _____ (hereinafter referred to as the “QUALIFIED NON-PROFIT ENTITY”), having an address of _____, County of _____ and State of _____ and the parties agree as follows:

1. The Owner owns _____ (hereinafter referred to as the “Property”). See attachment for legal description.
2. A Qualified Non-Profit is defined as meeting the requirements of the Internal Revenue Code (IRC) Section 42(h)(5)(C)).
3. The Owner and its successors and assigns in interest (as may be approved by the Authority as per HFA:109.08F of the 2014 Qualified Allocation Plan) are bound to the Low Income Housing Tax Credit (LIHTC) rent and income limits set forth in the Land Use Restriction Agreement (hereinafter referred to as the “LURA”) for 99 years from the beginning of the compliance period as defined in the LURA, unless the Owner uses the following procedure:
 - (i) The Owner may make a bona fide offer to sell the Property to the Qualified Non-Profit Entity or its successor and assigns, subsequent to the initial 30 year compliance period for a price equal to the minimum set forth in IRC Section 42(i)(7)(B). The offer shall be in writing delivered to the Qualified Non-Profit Entity, with a copy to the Authority. The Qualified Non-Profit Entity may accept the offer to sell by notifying the Owner in writing within ninety (90) days of its receipt of the offer. If the Qualified Non-Profit Entity accepts the offer, then the Owner and the Qualified Non-Profit Entity shall close the sale of the Property at the offices of the Authority within 180 days after the acceptance of the offer. If the Qualified Non-Profit Entity decides to purchase the Property, the original LURA will be discharged and no rent or income limits shall apply.
 - (ii) If the Qualified Non-Profit Entity does not accept the offer to purchase the Property or exercise its right under this Right of First Refusal (“ROFR”) to purchase the Property as set forth in Paragraph 2 above, then the Owner shall offer to sell the Property to the Authority for the same price at which it offered to sell the Property to the Qualified Non-Profit Entity. The offer shall be in writing and delivered to the Authority. The Authority may accept the offer by notifying the Owner in writing within ninety (90) days of its receipt of the

same. If the Authority gives written notice of its intent to accept this offer, the Authority and the Owner shall close the sale of this Property at the offices of the Authority within 180 days after receipt of the Authority's written notice of acceptance of this offer. The Authority may purchase this Property for its own purposes or on behalf of another Qualified Non-Profit Entity. If the Authority purchases the Property, either for its own purposes or on behalf of another Qualified Non-Profit Entity, the Authority may discharge the original LURA or negotiate a new LURA. In the event that the Authority negotiates a new LURA, it shall use its best efforts to maintain low income residency and affordability substantially the same as the existing LURA to the extent reasonably possible.

(iii) If the Authority declines the offer to sell the Property or to otherwise exercise its right under this ROFR, either for its own purposes or on behalf of another Qualified Non-Profit Entity, the LURA will be discharged by the Authority and the Owner is free to sell and/or convert the Property to market rents or other uses after adequate notice to existing tenants and compliance with existing law (including the 3 year tenant protection period cited at Section 42(h)(6)(e)(ii)).

4. This Agreement may be assigned by the Owner, subject to the written approval of the Authority, which approval shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties have caused this Right of First Refusal to be executed by their duly authorized representatives, as of the day and year first written above.

(the "Owner")

Witness

By: _____

Name: _____

Title: _____

(Non-Profit)

Witness

By: _____

Name: _____

Title: _____

NEW HAMPSHIRE HOUSING FINANCE
AUTHORITY

Witness

By: _____
Name: Christopher R. Miller
Title: Managing Director, Management and Development

THE STATE OF NEW HAMPSHIRE
COUNTY OF _____

On this ____ day of _____, 201_, before me the undersigned officer, personally appeared _____, who acknowledged himself/herself to be _____, of _____ a New Hampshire _____, and that he/she being authorized so to do, executed the foregoing instrument on behalf of said _____.

Justice of the Peace/Notary Public
My Commission Expires:

THE STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On this ____ day of _____, 201_, before me the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____ of _____, a New Hampshire _____, and that he/she being authorized so to do, executed the foregoing instrument on behalf of said _____.

Justice of the Peace/Notary Public
My Commission Expires:

THE STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On this ____ day of _____, 201_, before me the undersigned officer, personally appeared Christopher R. Miller, who acknowledged himself to be the Managing Director, Management and Development of New Hampshire Housing Finance Authority, a public instrumentality and body politic and corporate duly created, organized and existing under the laws of the State of New Hampshire, and

that he being authorized so to do, executed the foregoing instrument on behalf of said instrumentality and body politic and corporate.

Justice of the Peace/Notary Public
My Commission Expires:

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**APPENDIX E
DEVELOPER'S CERTIFICATION OF DEVELOPMENT COSTS**

I _____ (“Developer”), developer of
_____ (the “Project”) located at
_____ in _____, New
Hampshire, hereby certify that the accompanying Sources and Uses of Funds with the Total
Development Cost totaling \$_____, dated _____, Accountant’s
Certification of Costs (including developer fee), Qualified Basis and Applicable Fraction are a
true and accurate representation of the Project **funding and total** costs. **I certify that all
current financing terms have been disclosed, and I will further inform the Authority of any
future changes to project financing.** I further state that the Qualified Basis and Applicable
Percentage were calculated in a manner consistent with the regulations set forth in IRC 42. I
recognize that any changes or misrepresentations from this certification may warrant notification
to the IRS of a LIHTC Program violation via IRS Form 8823.

Date: _____

Duly Authorized: _____

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**APPENDIX F
DEVELOPER'S CERTIFICATION OF EQUITY PROCEEDS**

I _____ (“Developer”), developer of
_____ (the “Project”) located at
_____ in _____, New
Hampshire, hereby certify that the gross equity investment in the Project gained from the sale of
_____% interest in the Limited Partnership entitled _____ Limited
Partnership Agreement dated _____ totaled \$_____. This gross equity
investment is based on a final allocation of Low Income Housing Tax Credits of
\$_____ annually for a period of ten years.

Date: _____

Duly Authorized: _____

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**APPENDIX G
“AS-BUILT” ARCHITECT CERTIFICATION**

I have inspected the development know as _____ (Project name) located in _____ (city, state) and hereby certify that the development has been built in accordance with the drawings and specifications dated _____ prepared by _____.

Based upon this inspection, to the best of my knowledge and belief, the development has been constructed in conformance with all local, state and federal laws designated as the development standard for the project, including, but not limited to, the ADA, Section 504 and Fair Housing Laws as they pertain to handicapped accessibility and adaptability; all state and local health, safety and building codes; and those requirements as set forth in the Authority’s Design and Construction Standards.

Date

Architect

(Seal)

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APPENDIX H ELECTION OF GROSS RENT FLOOR

Pursuant to Internal Revenue Service (IRS) Regulations, an Owner of a Low Income Housing Tax Credit project may designate the date that the Gross Rent Floor takes effect prior to the date the building is placed in service. The Gross Rent Floor establishes the initial permitted maximum rents for the Project. The Gross Rent Floor also limits potential future rent reductions due to decreases in the applicable median area income limits. The IRS will treat the Gross Rent Floor as taking effect on the date the New Hampshire Housing Finance Authority (the Authority) initially allocates tax credits to the building. However, the IRS will treat the Gross Rent Floor as taking effect on a building's placed in service date if the Owner designates that date as the date the Gross Rent Floor takes effect for the building. The Owner must make this designation to use the placed in service date and inform the IRS no later than when the building is placed in service.

Please make the following designation:

- If this box is checked, the Owner hereby elects, pursuant to IRS Revenue Ruling 94-57, to fix the applicable Gross Rent Floor in accordance with Section 42(g)(2)(A) at the date the building is placed in service. This document must be submitted to the Authority prior to the Project's placed in service date.
- If this box is checked, the Owner has made no election pursuant to IRS Revenue Ruling 94-57, and the applicable Gross Rent Floor for a building shall be set at the date the Authority initially allocates Low Income Housing Tax Credits, which shall be earlier of 1) the date of the Carryover Allocation, or 2) the date of the Final Allocation (IRS Form 8609).

A decrease in the median area income limits will not require a reduction in rents below the Gross Rent Floor.

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APPENDIX I SERVICE COORDINATION

Specifications

1. A minimum of four (4) hours per week of onsite Service Coordination for properties up to 20 units with an additional one hour for every five (5) units over 20. Properties without an onsite office may provide service coordination remotely with quarterly onsite visits.
2. Adequate space to meet with residents that provides for confidential conversations and maintenance of secure records. Meeting with residents in their homes is acceptable.
3. Access to a telephone and the internet when meeting with residents for the purpose of coordinating services. Use of a smart phone or tablet is acceptable.
4. An assessment of every resident's service needs within 60 days of move-in and annually thereafter.
5. Provide follow up as needed to address residents' needs as identified in their service plans.
6. Coordination of a minimum of two services/programs to be offered onsite, online, or in close proximity (within a ½ mile or with free transportation provided) to the project with one service provided no less than quarterly. Services must be appropriate to meet the needs of the resident population served, such as by increasing resident knowledge of and access to available services, helping residents maintain stability and prevent eviction, building life skills, increasing household income and assets, increasing health and well being, or improving the educational success of children and youth. The services listed below meet this requirement when offered at no cost to the residents or at a nominal or discounted fee; however any service that meets residents' documented needs is acceptable.
 - a. Wellness education or clinic
 - b. Literacy/language training
 - c. Personal safety (fire, identity theft, scams, self-defense, drug awareness)
 - d. Financial fitness (budgeting, money management, credit counseling)
 - e. Income and asset building (job coaching, IDAs, homebuyer education)
 - f. Community building (gardening, resident meetings, community meals and activities)
 - g. Business center or wireless internet access*
 - h. Transportation*
 - i. Meals*
 - j. Childcare*
 - k. After school program*
7. Conduct an annual survey of all residents regarding need for and satisfaction with the service coordination, including coordinated services.

* A nominal or discounted fee is allowed for these services.

SERVICE COORDINATION PLAN AND BUDGET

Project name: _____ Number of units: _____

Contact person for service coordination plan: _____

Email: _____ Phone: _____

Service Coordination

of hours/week? _____ Contracted? _____ Yes (attach letter of intent) _____ No

Onsite? "Yes" "No" – Reason: _____

Coordinated Service #1: _____

Frequency of Service: _____ Cost to Resident: _____

Onsite? _____ Yes _____ No – Location: _____

Brief Description:

Coordinated Service #2: _____

Frequency of Service: _____ Cost to Resident: _____

Onsite? _____ Yes _____ No – Location: _____

Brief Description:

The Service Coordination Plan may be amended at any time with written notification to NHHFA as long as it continues to meet the requirements of this section.

Reporting Requirements

Project Owners will be required to submit an annual certification of: 1) the number of hours of onsite Service Coordination and coordinated services provided; 2) the number of residents served by each; and, 3) the results of the annual resident satisfaction survey. Additionally, project owners will be responsible for ensuring that property managers maintain agreements (if any) for services on file and evidence that the services are being provided (e.g. sign-in sheets, letters/memos to tenants advertising the event/service, service log book and/or activity reports).

Budget

Revenue Sources	\$ Amount					
	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Property operating budget						
Management company budget						
Owner contribution						
Grant:						
Other:						
Other:						
Total						
Expense	Annual \$					
	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Personnel (salary/fringe)						
Training						
Office Supplies						
Transportation						
Total						

Budget Narrative (include detail on expenses and sources of funds other than operating funds):

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**APPENDIX J
SAMPLE
HOMELESS OR AT RISK OF BECOMING HOMELESS CERTIFICATION**

Head of Household Name

Please check the appropriate box below.

Homeless Family: (does not include an individual imprisoned/detained pursuant to an Act of Congress or State law.)

I am currently homeless, meaning that:

- I/We live in a shelter and lack a fixed, regular and adequate nighttime residence and also have a primary night time residence that is supervised publicly/private operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters and transitional housing), or
- I/We live in a hospital or institution that provides a temporary residence for individuals intended to be institutionalized, or
- I/We live in a public/private place not designed for, or ordinarily used for sleeping by human beings.

Please provide the following if you have checked one of the above choices:

Name of Shelter or institution

Contact Person

Phone Number

At Risk of Becoming Homeless: Check the one that applies:

I am at risk of becoming homeless because:

- I pay more than half of my gross income towards rent or
- I/we live with friends or relatives due to an emergency or homeless situation. This is a temporary living arrangement. My name is not on the lease. If I were not in this current living arrangement I would otherwise be homeless, or
- I am temporarily living in a substandard living situation, i.e. a campground or other temporary placement.

Tenant Certification and Release of the Information.

The head of household and spouse or other adult must sign and date this certification. Your signature means that you agree with the above certification and allow release of verification from the individuals named. I/We certify that the above information I/We have provided is true and complete to the best of my/our knowledge and belief.

Head of Household

Date

Spouse/Other Adult

Date

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APPENDIX K LIHTC COMPLIANCE MONITORING REQUIREMENTS

Section 42 of the Internal Revenue Code requires LIHTC-allocating agencies to monitor for noncompliance with the provisions of that section, to notify the Internal Revenue Service of such noncompliance when such agencies becomes aware of it, and to monitor for noncompliance with habitability standards through regular site visits.

A. Recordkeeping and Record Retention

Under the recordkeeping provision of Treasury Regulation § 1.42-5 (b), the owner must keep records for each building of the project for each year of the compliance period. Such records include the following:

- (i) The 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);
- (ii) The percentage of residential rental units in the building that are low-income units;
- (iii) The rent charged on each residential rental unit in the building (including any utility allowances);
- (iv) The number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under section 42(g)(2) (as in effect before the amendments made by the Omnibus Budget Reconciliation Act of 1989);
- (v) The low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented;
- (vi) The annual income certification of each low-income tenant per unit. For an exception to this requirement, see section 42(g)(8)(B) (which provides a special rule for a 100 percent low-income building);
- (vii) Documentation to support each low-income tenant's income certification (for example, a copy of the tenant's federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation). For an exception to this requirement, see section 42(g)(8)(B) (which provides a special rule for a 100 percent low-income building). Tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 ("Section 8"), not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under Section 8, the documentation requirement of this paragraph (b)(1)(vii) is satisfied if the public housing authority provides a

statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under section 42(g);

(viii) The eligible basis and qualified basis of the building at the end of the first year of the credit period; and

(ix) The character and use of the nonresidential portion of the building included in the building's eligible basis under section 42(d) (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).

Under the record retention provision, §1.42-5 (b)(2), owners are required to keep all records for each building for a minimum of six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building, bringing the total retention for the first to 21 years.

Under the inspection record retention provision, §1.42-5 (b)(3), the owner of a low-income housing project must be required to retain the original health, safety, or building code violation reports or notices that were issued by the State or local government unit for the Agency's inspection.

B. Certification and Review Provisions

The owner of the LIHTC project must certify at least annually to the Authority that for the preceding 12 month period the project met the requirements outlined in Treasury Regulation §1.42-5(c)(1). In addition, the Authority requires owners to submit annually the Certificate of Compliance with Special Conditions and the Management Agent Certification of Training. The required reports, certifications, and forms can be found on the Authority's website, www.nhhfa.org. Annual reports are due March 1 of each year and must be submitted throughout the Extended Use Period of the project.

In accordance with Treasury Regulation §1.42-5(c)(2), the Authority must conduct on-site inspections of all buildings in the project by the end of the second calendar year following the year the last building in the project is placed in service and, for at least 20% of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units. At least once every 3 years, the Agency must conduct on-site inspections of all buildings in the project and, for at least 20% of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.

The Authority will randomly select which low-income units and tenant records are to be inspected and reviewed. The review of tenant records may be undertaken wherever the owner maintains or stores the records (either on-site or offsite). The units and tenant **records to be**

inspected and reviewed must be chosen in a manner that will not give owners of low-income housing projects advance notice that a unit and tenant records for a particular year will or will not be inspected and reviewed. However, the Authority will give an owner reasonable notice that an inspection of the building and low-income units or tenant record review will occur so that the owner may notify tenants of the inspection or assemble tenant records for review. Such notice will typically be provided at least 30 days in advance.

C. Inspection Provision

As the allocating agency, the Authority has the right to perform on-site inspections throughout the term of the Land Use Restriction Agreement. For the on-site inspections of buildings and low-income units required by Treasury Regulation §1.42-5(c)(2)(ii), the Authority must review any local health, safety, or building code violation reports or notices retained by the owner under paragraph (b)(3) of Treasury Regulation §1.42-5 and must determine:

(i) Whether the buildings and units are suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards); or

(ii) Whether the buildings and units satisfy, as determined by the Authority, the uniform physical condition standards for public housing established by HUD (24 CFR 5.703). The HUD physical condition standards do not supersede or preempt local health, safety, and building codes. A low-income housing project under Section 42 must continue to satisfy these codes and, if the Authority becomes aware of any violation of these codes, the Authority must report the violation to the Internal Revenue Service. However, provided the Authority determines by inspection that the HUD standards are met, the Authority is not required to determine by inspection whether the project meets local health, safety, and building codes.

D. Notification of Noncompliance

The Authority will provide prompt written notice to the owner when the Authority does not receive the required certifications and other forms; does not receive or is not permitted to inspect the tenant income certifications, supporting documentation and rent records; or discovers by inspection, review or in some other manner that the project is not in compliance with the provisions of Section 42. The correction period established by the Authority is 30 days from the date of the notice. The Authority may extend the correction period for up to 6 months, but only if the Authority determines there is good cause for granting the extension. All requests for an extension must be made in writing.

The Authority is required to file Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the Internal Revenue Service no later than 45 days after the end of the correction period (as noted above, including extensions) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The Authority must explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis that results in a decrease in the qualified basis of

the project under section 42(c)(1)(A) is noncompliance that must be reported to the Internal Revenue Service. If the Authority reports on Form 8823 that a building is entirely out of compliance and will not be in compliance at any time in the future, the Authority need not file Form 8823 in subsequent years to report that building's noncompliance. If the noncompliance or failure to certify is corrected within three years after the end of the correction period, the Authority is required to file Form 8823 with the Internal Revenue Service reporting the correction of the noncompliance or failure to certify.

The Authority must retain records of noncompliance or failure to certify for six years beyond the Authority's filing of the respective Form 8823. In all other cases, the Authority must retain the certifications and records described above for three years from the end of the calendar year the Agency receives the certifications and records.

E. Delegation of Authority

Treasury Regulation §1.42-5(f) permits the Authority to retain an agent or other private contractor ("Authorized Delegate") to perform compliance monitoring. The Authorized Delegate must be unrelated to the owner of any building that the Authorized Delegate monitors. The Authorized Delegate may be delegated all of the functions of the Authority, except for the responsibility of notifying the Internal Revenue Service under Section D above. For example, the Authorized Delegate may be delegated the responsibility of reviewing tenant certifications and documentation, the right to inspect buildings and records, and the responsibility of notifying building owners of lack of certification or noncompliance. The Authorized Delegate must notify the Agency of any noncompliance or failure to certify.

Should the Authority delegate compliance monitoring to an Authorized Delegate, the Authority must use reasonable diligence to ensure that the Authorized Delegate properly performs the delegated monitoring functions. Delegation by the Authority of compliance monitoring functions to an Authorized Delegate does not relieve the Authority of its obligation to notify the Internal Revenue Service of any noncompliance of which the Authority becomes aware.

The Authority may delegate all or some of its compliance monitoring responsibilities for a building to another Agency within the State. This delegation may include the responsibility of notifying the Internal Revenue Service under Section D above.

F. Liability

Compliance with the requirements of Section 42 of the Internal Revenue Code is the responsibility of the owner of the qualified low-income building for which the credit is allowable. The Authority's obligation to monitor for compliance with the requirements of Section 42 of the Code does not make the Authority liable for an owner's noncompliance.

G. Other

The Authority reserves the right to revise compliance monitoring policies and procedures as required by Section 42, including other guidance published by the IRS.

Please refer to <http://www.nhhfa.org/rental-housing-mf-asset-mgmt-lihtc-compliance.cfm> for further information and required documents.