

**NEW HAMPSHIRE**  
**2006 QUALIFIED ALLOCATION PLAN**  
**FOR THE LOW INCOME HOUSING TAX CREDIT PROGRAM**

10/27/05

## TABLE OF CONTENTS

		<u>Page</u>
HFA:109.01	Introduction	1
HFA:109.02	LIHTC Program Summary	1
	A. Program Administration	2
	B. Program Overview	2
	C. Project Eligibility Requirements	2
	D. Calculation of Tax Credit Dollar Amount	3
HFA:109.03	Statutory Allocation Requirements	4
HFA:109.04	Application Deadlines	5
HFA:109.05	Program Policies and Fees	5
	A. Non-Profit Set-Aside	5
	B. Supplemental Set-Aside	6
	C. Senior Set Aside	6
	D. Allocation Credit Exchange	7
	E. Application Fees	7
	F. Authority Review of Design, Bidding and Construction	7
	G. Conceptual Level Project Submittal	8
	H. Maximum Tax Credit Restrictions	8
	I. Maximum Number of Applications and Projects	9
	J. Per Unit Cost Standards	9
	K. Construction Period Adjustments	10
	L. Contractor Overhead and Profit	10
	M. Developer Fee	10
	N. Authority Evaluation and Underwriting Standards	10
	O. Professional Reports: Appraisal, Phase I, Market Study	11
	P. Extended Use Agreement	1
	Q. Tenant Anti-Displacement and Relocation Policy	13
	R. Reference and Federal Tax Information Authorization	13
HFA:109.06	Application Processing – Selection and Reservation	13
	A. Supplemental Allocations	13
	B. Evaluation of Applications	15
	C. Conversion to Out-of-Cap Project	16
	D. Tiebreakers	16
	E. Determination of Credit Amount	16
	F. Irrevocable Election	17

	<u>Page</u>
HFA:109.07 Selection Process and Criteria	17
A. Overview	17
B. General Threshold Criteria	17
C. Scoring Criteria	19-26
HFA:109.08 Post Reservation Processing	26
A. Commitment Phase	26
B. Allocation Phase	26
C. Cost Certifications	27
HFA:109.09 Projects Financed by Tax-Exempt Bonds	27
HFA:109.10 Projects Financed by Rural Development (RD)	28
HFA:109.11 Land Use Restriction Agreement (LURA)	28
HFA:109.12 Appeal Process	29
HFA:109.13 Waiver Authority	29
HFA:109.14 Public Records	29
HFA:109.15 Warrant and Liability	29
HFA:109.16 QAP Amendments	30
HFA:109.17 Compliance Monitoring	30

## **LIST OF APPENDICES**

Appendix A	Developer Fee Schedule
Appendix B	Qualified Census Tracts/Difficult Development Areas*
Appendix C	Application Threshold Requirements
Appendix D	Commitment Requirements
Appendix E	Carryover Allocation Requirements
Appendix F	Final Allocation Requirements
Appendix G	Right of First Refusal
Appendix H	Developer's Certification of Development Costs
Appendix I	Developer's Certification of Equity Proceeds
Appendix J	"As-Built" Architect Certification
Appendix K	Election of Gross Rent Floor
Appendix L	Guidelines for Special Needs
Appendix M	Scoring for Location – Community List

\* Please confirm that you have the latest data. These items are revised annually by the federal government.

## **2006 New Hampshire Qualified Allocation Plan**

### **NEW HAMPSHIRE 2006 QUALIFIED ALLOCATION PLAN LOW INCOME HOUSING TAX CREDIT PROGRAM Program Rules (HFA:109)**

#### **HFA:109.01 INTRODUCTION**

The Low Income Housing Tax Credit ("LIHTC" or "tax credit") program was created to encourage development of rental housing for low-income households. The LIHTC program was established under the provisions of the Tax Reform Act of 1986, and made permanent in 1993. By Executive Order of the Governor of New Hampshire, the New Hampshire Housing Finance Authority (the "Authority") is delegated responsibility for program administration through an approved Qualified Allocation Plan ("QAP" or "Allocation Plan"). The Authority is responsible for allocating the state's annual credit amount in accordance with the Allocation Plan and Section 42 of the Internal Revenue Code ("IRC 42").

The 2006 Allocation Plan was presented to the public in an open hearing on September 8, 2005, approved by the Authority's Board of Directors on October 27, 2005, and subsequently signed by the Governor of New Hampshire.

The Allocation Plan provides a summary of the LIHTC program and its major requirements, determines the competitive process for allocating the state's annual credit ceiling using selection criteria designed to address New Hampshire's low income housing priorities, specifies the submission requirements for each phase of the application process, and describes requirements relative to long term compliance with the LIHTC program.

#### **Summary of Important Changes for the 2006 QAP:**

- The investment cost limits and developer fee levels have been increased;
- A separate set-aside for senior projects has been established with an emphasis on tenant services;
- Projects that need to return credit allocations due to certain project delays are eligible for a new reservation outside of the normal application and scoring process.
- The maximum allocation to a project has been increased to \$700,000.

#### **HFA:109.02 LIHTC PROGRAM SUMMARY**

The following summary provides a brief overview of the LIHTC program, major program and project requirements, and calculation of the tax credit amount. Specific program rules and

## **2006 New Hampshire Qualified Allocation Plan**

regulations are described in IRC 42. To the extent this summary or any other information in the Allocation Plan is inconsistent with IRC 42, the provisions of IRC 42 shall govern. This summary is not intended to present all the rules and regulations of the tax credit program. It is strongly recommended that applicants consult with competent legal and tax counsel.

### A. Program Administration

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:109.06B (Evaluation of Applications), HFA:109.12 (Appeals) and HFA:109.13 (Waiver Authority). The Board reviews and approves all reservations (HFA:109.06B). The Board of Directors and the Governor must formally approve the New Hampshire Qualified Allocation Plan.

### B. Program Overview

The LIHTC program is part of the Internal Revenue Code, and is meant to encourage the new construction and rehabilitation of low income rental housing. The program offers a low income housing investment incentive in the form of a tax credit usable against the investor's federal tax liability for a ten year period.

### C. Project Eligibility Requirements

To qualify as a tax credit project, a project must maintain a minimum set-aside of rent restricted units for tenants in a targeted income group. At a minimum, at least 20% of the units must be rented to very low income households, defined as households with incomes at or below 50% of the Median Area Income (MAI), or 40% of the units must be rented to low income households, defined as households with incomes not exceeding 60% of the MAI.<sup>1</sup> Median area income limits are adjusted for household size and vary depending on location. Household size is based on 1.5 persons per bedroom.

The maximum rent for set-aside units is based on 30% of either the 50% MAI or 60% MAI. The maximum rent that can be charged to the tenant is a gross rent and must include all utility expenses. If utilities are paid by the tenant, the maximum rent must be reduced according to the NHHFA Utility Allowance Schedule or other approved alternatives.<sup>2</sup>

Other eligibility standards require that the project be a residential property available for rent on a continuous basis to members of the general public, and is not intended for transient occupancy. The project must comply with the Fair Housing Act (42 USC §3601 et seq).

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<sup>1</sup> Current MAI, maximum rents and Utility Allowance schedules can be obtained from the Authority's website ([www.nhhfa.org](http://www.nhhfa.org)) under the Multi-Family section or from HUD.

<sup>2</sup> See IRS Revenue Ruling 89-6 for a detailed explanation.

## 2006 New Hampshire Qualified Allocation Plan

### D. Calculation of Tax Credit Dollar Amount

The maximum amount of tax credits available to a project is the product of the appropriate tax credit percentage (credit rate) and the qualified basis of the project. Qualified basis is the product of certain eligible costs (eligible basis) and the low income portion of the project (applicable fraction). Certain development costs are not included in the project's eligible basis. Land costs, permanent financing costs, syndication costs, and reserves are examples of costs not included in eligible basis.

The maximum credit rate is determined by the Internal Revenue Service (IRS) for the month in which the project is placed in service or, if elected by the developer, the month in which an irrevocable election to lock in the credit rate is made (see HFA:109.06 F). The Authority also reserves the right to adjust the tax credit rate below the maximum allowed at its sole discretion. The credit rate may vary, but will be approximately as follows:

- 4% of the qualified basis for the cost of acquisition of existing buildings (provided that rehabilitation costs equal the greater of an average of \$3,000 per unit or 10% of the depreciable basis of the building).
- 4% of the qualified basis for the cost of construction of a new building or rehabilitation of an existing building financed with federal subsidies.
- % of the qualified basis for the cost of construction of a new building or rehabilitation of an existing building financed without federal subsidies.

Projects located in a U.S. Department of Housing and Urban Development (HUD) designated Difficult Development Area (“DDA”) or Qualified Census Tract (“QCT”) may be eligible for additional tax credits. Eligible basis for the new construction or substantial rehabilitation portion of the project can be increased by up to 30% in these areas. Please see the attached list of current DDA’s and QCT’s in Appendix B.

The calculation of tax credits as described in this section of the QAP represents the maximum amount of tax credits available to a project. The Authority is mandated by the federal statute to limit every project’s tax credit allocation to the amount necessary for the financial feasibility of the project and its long term viability as affordable housing. The Authority’s allocation to a project may be further reduced by the policies and procedures set forth in this QAP (e.g. cost limits in HFA:109.05J).

The Authority does not represent at any time that a particular project is feasible, or that there is no risk to the applicant who is undertaking the project. Please refer to IRC 42 or consult a tax specialist for more detail on the extensive requirements and restrictions associated with use of the tax credits.

## **2006 New Hampshire Qualified Allocation Plan HFA:109.03 STATUTORY ALLOCATION REQUIREMENTS**

The state is awarded a limited amount of tax credits per year, based on a per capita formula, referred to as the annual tax credit ceiling. The annual tax credit ceiling for the State of New Hampshire is approximately \$2,400,000.<sup>3</sup> Additional tax credits may be available from prior years if unused tax credits are carried forward, or if previously allocated tax credits are returned or rescinded. If the state uses all of the annual tax credits and tax credits from prior years by the end of the calendar year, the state qualifies to apply for tax credits from the National Pool. Tax credits from the annual tax credit ceiling, credits returned or carried forward from a previous year, and tax credits awarded from the National Pool comprise the total amount of tax credit available for the year.

### Allocation Plan Requirements

Each state Allocation Plan must meet certain minimal requirements. The selection criteria must include:

- project location
- housing needs characteristics
- project characteristics, including whether the project involves the use of existing housing as part of a community revitalization plan
- projects intended for eventual tenant ownership;
- tenant populations with special housing needs-
- sponsor characteristics;
- tenant populations of individuals with children
- public housing waiting lists

States must give preference among selected projects to:

- those serving the lowest income tenants,
- those serving qualified tenants for the longest period,
- projects located in Qualified Census Tracts, the development of which contributes to a concerted community revitalization plan .

States may include such other criteria as they deem appropriate, and except for the specified preference items, there are no requirements as to the relative weight of the various factors.

Additional LIHTC responsibilities of the Authority include:

- Assurance that the amount of tax credits allocated does not exceed the amount “necessary for the financial feasibility of the project and its viability as a qualified low income housing project throughout the credit period.”<sup>4</sup>

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<sup>3</sup> This figure is adjusted annually for inflation, in accordance with the Consumer Price Index.

<sup>4</sup> IRC 42

**2006 New Hampshire Qualified Allocation Plan**

- Evaluation of all projects for consistency with the Allocation Plan and for credit need, including projects using tax exempt bond financing.
- Execution of an agreement for “an extended low income housing commitment” for every project. This agreement must be recorded as a restrictive covenant binding on all successor owners, and must allow low income individuals the right to enforce the commitment in state court.<sup>5</sup>
- Monitoring of compliance with the provisions of Section 42 and notifying the Internal Revenue Service of any noncompliance.

**109:04 APPLICATION DEADLINES**

The Authority’s schedule for annual tax credit reservations is as follows:

<u>ROUND</u>	<u>APPLICATION DEADLINE</u>	<u>CREDIT ALLOCATED</u>
1	Feb. 3	Up to 60% of the available allocation (including the senior set aside)
2	June 30	All remaining allocation, plus unused, returned, and National Pool credits

The Authority reserves the right to allocate more than 60% in the first round in order to fully fund a project reservation which has scored sufficiently to receive a portion of the credit amount needed for feasibility, but would otherwise have to wait until the 2<sup>nd</sup> round for a complete reservation. The Authority also reserves the right to re-allocate credits between rounds (based on the existing project scoring from the previous application round), if a project from the previous round withdraws or otherwise is rejected. The Authority may consider making a reservation of tax credits for an application received after the Round 2 deadline provided there are tax credits available and there are no otherwise eligible and/or appropriately sized projects remaining from that round. The Authority may at its discretion elect to reserve less tax credits than are otherwise available in any given application round. See also HFA:109.06B.

**HFA:109.05 PROGRAM POLICIES AND FEES**

A. Non-Profit Set-Aside

The Authority shall set aside 10% of the State’s annual tax credit allocation for qualified non-profit organizations that:

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<sup>5</sup> See also HFA:109.05P - Extended Use Agreement, and HFA: 109.11- Land Use Restriction Agreement.

## **2006 New Hampshire Qualified Allocation Plan**

- meet 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;
- have exempt purposes including the fostering of low income housing;

Wholly owned affiliates of a nonprofit are eligible. In order to qualify for the non-profit set-aside, the organization must provide sufficient documentation to verify its status as a qualified non-profit organization in accordance with the requirements of IRC 42 (h)(5)(C). Non-profits may also compete for all other tax credits.

### B. Supplemental Set-Aside

The Authority shall set aside \$100,000 of the State's annual tax credit allocation for projects returning for supplemental credits after having received a carryover allocation in an earlier year. Allocations made under this set-aside can be up to \$25,000 for any one project, and shall be made outside of the competitive process and funding rounds. Requests for more than this amount shall be handled through the competitive rounds and process. Supplemental allocations must meet the General Threshold Criteria (HFA 109.07B). Requests under this set-aside will be granted at the sole discretion of the Authority staff only for projects which meet one or more of the following criteria:

- have incurred or face substantial unforeseen cost increases;
- would reduce their level of other Authority capital subsidy funding;
- would improve their financial feasibility but still be consistent with the Authority's underwriting and/or subsidy layering review process.

Any remaining amounts of the supplemental set-aside pool will be included in the tax credit amounts available for Round 2. However, if tax credits are still available after the Round 2 reservations have been made, Authority staff can make additional supplemental reservations under the same program guidelines.

### C. Senior Set-Aside

\$450,000 of the annual tax credit allocation shall be set aside during Round 1 exclusively for senior projects. Senior projects are defined as having all units designated 62 and over age restricted. Senior projects shall be scored and ranked separately, and up to \$450,000 in senior project reservations shall be recommended to the Board. The Authority may reserve/allocate up to 5% more than that which is set aside for senior projects if necessary to fully and adequately fund an application. With the exception of supplemental awards (see HFA:109.05B), no other reservations/allocations will be made to senior projects during the year. Any amount of the \$450,000 remaining unreserved after Round 1 will be added to Round 2 and be available strictly for family/non-senior projects.

## **2006 New Hampshire Qualified Allocation Plan**

### **D. Allocation Credit Exchange**

The Authority will permit exchanges of tax credits, to be granted at the discretion of staff, under the following conditions:

- The Authority has the appropriate amount of unreserved credit available;
- The project sponsor provides evidence of an inability to meet the placed-in-service or 10% expenditure deadline for the subject building(s);
- The situation results from either unanticipated litigation, municipal approval delays, or other unforeseeable circumstances beyond the sponsor's control;
- The project continues to be financially feasible and meets the QAP threshold and eligibility requirements in effect at the time the tax credits were originally awarded.

Once staff agrees that the conditions above have been met and the sponsor surrenders the previously allocated credits, staff has the authority to re-issue a reservation letter for credits in the same amount without further Board action. The new credit reservation amount cannot exceed the exchanged credit amount.

### **E. Application Fees**

The LIHTC application fee is 7% of the final allocation amount for all applicants paid in accordance with the schedule below. There is also a compliance monitoring fee of \$500 per LIHTC unit, which must be paid prior to issuance of the IRS Form 8609. Applications will not be processed without the required fees.

- Application for Reservation: 1% of the annual tax credit request or \$500, whichever is greater, due with submission of Application Threshold Requirements.
- Application for Final Allocation: 6% (of the annual tax credit, due with the request for Final Allocation - IRS Form 8609 (plus the compliance monitoring fee).

The initial application fees may be refunded, less \$500, if a project is withdrawn or otherwise fails to secure a reservation for the round in which an Application is submitted. No fees are refundable after a reservation has been approved. Refunds must be requested in writing within 30 days of notification from the Authority. Unsuccessful applicants wishing to apply in future rounds within the same year must submit a non-refundable re-application fee of \$100 for that new round by the next application deadline.

### **F. Authority Review of Design, Bidding and Construction Standards**

All projects receiving LIHTC allocations (including tax exempt bond projects with "out of cap" allocations) must comply with the Authority's Design and Construction Standards. A complete copy of the Design and Construction Standards can be obtained from the Authority, or viewed at the Authority's website <[www.nhhfa.org](http://www.nhhfa.org)> under the Multi-Family Development section.

## **2006 New Hampshire Qualified Allocation Plan**

In addition to meeting standard national and state building code requirements, projects must meet the federal Uniform Physical Condition Standards (UPCS at CFR Parts 5 et al.), federal Fair Housing Act, and Section 504 Accessibility requirements.

Sponsors are generally free to use any reasonable method for selection of contractors. Authority approval of the construction contract is contingent upon the per unit cost standards (HFA:109:05J) and contractor overhead and profit limitation (HFA 109:05L). Alternate proposals may be required should the Authority consider the construction manager, general contractor or any subcontractor costs excessive.

### G. Conceptual Level Project Submittal

The Authority encourages submittal of a conceptual level pre-application site design, building layout, floor plans and construction budget early in the development process. There is a significant scoring incentive for projects which submit satisfactory conceptual plans within a certain timetable (see HFA:109.07.C.9). The pre-application includes:

- spreadsheet application form (i.e., draft development and operating budget)
- conceptual site design
- building layout and floor plans
- unit counts
- proposed management
- tenant service package (if any)
- ownership structure
- development team
- provision of utilities
- project timetable (including permits and zoning)
- external issues (e.g., environmental)

It is the goal of the Authority to provide a multi-disciplinary review of the project prior to formal application, and to provide the sponsor with a set of written issues and comments.

### H. Maximum Tax Credit Restrictions

The maximum amount of tax credits that any single project (unphased) may receive is \$700,000 of the annual allocation.<sup>6</sup> This limit will apply even over multiple years.<sup>7</sup>

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<sup>6</sup> “Out-of-cap” tax exempt bond financed project allocations for both projects and applicants are not limited, and such projects are not included toward these limits.

<sup>7</sup> This does not relate to later phases of phased projects, even if the ownership entity is the same for multiple phases. The limit will apply if less than 20% more units are added in a later year.

**2006 New Hampshire Qualified Allocation Plan**

The maximum amount of “in-cap” tax credits that any one applicant (as one of the general partners or as a development agent for a for-profit entity) can secure in any single calendar year for all projects is \$700,000 of the annual State allocation.

I. Maximum Number of Applications and Projects

The Authority will not accept a new application if an applicant (including any general partner) has:

- three or more New Hampshire LIHTC projects that have not yet been completed (i.e., IRS Form 8609's issued), including “out-of-cap” tax exempt bond financed projects; or
- two approved project reservations in the same calendar year as the proposed new application.

Exceptions are allowed if it is a supplemental application for a previously approved project, or if it is an application for Phase Two (or subsequent) of a previously approved project.

J. Per Unit Cost Standards

Project applications will be carefully evaluated for cost reasonableness. The applicant shall submit professionally prepared cost estimates with the initial application, and proposals or bids with the Commitment Phase Requirements, or earlier upon request by the Authority. Project applications which indicate unreasonably high total development costs, or have unreasonably high specific line item costs may be rejected at the application stage at the sole discretion of the Authority. This is considered an important threshold issue (see HFA:109.07B).

The Authority will review costs in relation to comparable recent projects in New Hampshire and New England, and in relation to the HUD 221(d)(3) limits, which are published annually in January.

The Authority’s per unit housing investment limitations (see definitions below) are as follows:

0 Bedroom	\$ 140,800
1 Bedroom	\$ 149,600
2 Bedroom	\$ 158,400
3 Bedroom	\$ 167,200
4 Bedroom	\$ 176,000

The Board of Directors may, at its discretion, revise these housing investment limits at any time due to extraordinary cost increases resulting from national emergencies or severe economic disruptions. Any such revision would apply to all 2006 applications.

For projects with various bedroom sizes, the appropriate limit will be determined based on a

## **2006 New Hampshire Qualified Allocation Plan**

weighted average. The per unit amounts represent the maximum amount of Authority resources (plus first mortgage loan funds from any source) that will be allowed.<sup>8</sup> Authority resources include all amortizing and non-amortizing funds from the Authority as well as the equity amount generated from the sale of Low Income Housing Tax Credits. Subsidized (i.e., below 6% interest) first mortgage financing (from non-Authority sources only) shall be adjusted, for the purpose of this analysis, reducing it to that amount which would yield the same monthly payment given a 6% interest rate (same term).

If a supplemental or additional credit allocation is made to a project in 2006 or a subsequent year, staff has the authority to use the most recent housing investment limits in evaluating and allocating tax credits and other Authority resources to the project.

### K. Construction Period Adjustments

After construction has started, Authority staff has the discretion to waive the housing investment limits for a particular project due to unforeseen cost increases beyond the reasonable control of the developer.

### L. Contractor Overhead and Profit

The following limits on general contractor overhead, profit, and general requirements shall apply to all projects:

- Profit: 6 percent of construction costs
- Overhead: 2 percent of construction costs
- General Requirements: 6 percent of construction costs

The construction contract must specify the costs for these line items (e.g. in the schedule of values). For purposes of calculating these limits, construction costs shall exclude contractor overhead, profit, and general requirements. In cases where there is an advertised public or selective contractor bid and the Authority monitors the bidding process, these limits shall be considered to have been implicitly met. The Authority staff reserves the right to exceed these limits at its sole discretion based on market conditions and/or project variables.

### M. Developer Fee

The maximum developer fee allowed is generally calculated in accordance with the Authority's Developer Fee Schedule. The developer fee is not a guaranteed or automatic budgetary figure, and must be approved by the Authority within the context of each project. The fee will be strictly limited, with any violations of the developer certification of development cost forwarded to the

IRS using IRS Form 8823. For purposes of calculating the maximum developer fee allowed, the Authority does not distinguish between the developer fee and fees for consultants doing those

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<sup>8</sup> Subordinate amortizing loan funds from the same lender as the first mortgage loan will also be included in the investment limit calculation.

## **2006 New Hampshire Qualified Allocation Plan**

tasks typically done by a developer, regardless of whether the applicant is a for-profit or non-profit entity. “Consultant fees” for professional services such as architectural, engineering, appraisal fees or other highly specialized services are not counted as Developer Fee.

### N. Authority Evaluation and Underwriting Standards

Project applications will be evaluated using the Authority’s Underwriting Standards for Multi-Family Finance, and all applications must meet the minimum standards for debt coverage ratio, income and expense trending, operating and replacement reserves etc. A copy of these standards can be obtained from the Authority, or viewed at the Authority’s website <[www.nhhfa.org](http://www.nhhfa.org)> under the Multi-Family Development section. Applications not meeting the underwriting standards may be rejected at the sole discretion of the Authority.

### O. Professional Reports: Appraisal, Phase I, Market Study

Professional studies, if required by the Authority, must be completed by the Commitment phase of the Allocation process (see HFA:109.08A). Certain incentive points are given in the competitive scoring process if various reports are completed at the time of initial application (see HFA:109.07C8.). Consultants for appraisals and market studies are generally chosen through a selective bid to pre-qualified contractors. The Authority will request payment for third party services from the Applicant prior to the bid being awarded.

1. **Appraisal:** Acquisitions costs which exceed the appraised value are generally not acceptable except under extenuating circumstances, which must be stated in writing as part of the application process. The appraiser must be licensed as a New Hampshire Certified General Appraiser.

2. **Phase I Environmental Report:** A satisfactory Phase I environmental report is a requirement for the allocation of tax credits. The report must meet ASTM Standard E 1527-97 for Environmental Site Assessments. Older buildings planned for renovation should have asbestos and lead testing completed and buildings planned for demolition should have suspect materials tested for asbestos. Issues raised by the Phase I report should be resolved to the extent possible (e.g. further testing of suspect materials). Phase I reports can be contracted directly by the sponsor in all cases.<sup>9</sup>

3. **Market Study:** As required by statute, a market study of the housing needs of low income individuals in the area served must be completed by a third party professional,

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<sup>9</sup> Projects also applying for Authority capital subsidy financing may need to comply with HUD environmental protocols, so please check with your development officer before proceeding with the Phase I.

## 2006 New Hampshire Qualified Allocation Plan

approved by the Authority, and done at the expense of the developer. Exceptions may be allowed in situations where relevant market studies were recently completed for the same market area and same developer.

### P. Extended Use Agreement

IRC Section 42 [Sec. 42(h)(6)(D)] provides a requirement for an Extended Use period of at least 15 years beyond the initial 15 year compliance period. Section 42 (h)(6)(E)(II) provides an exception:

...if the housing credit agency is unable to present during such period a qualified contract for the acquisition of the low income portion of the building by any person who will continue to operate such portion as a qualified low income building. Subclause (II) shall not apply to the extent more stringent requirements are provided in the agreement or in State law. (Emphasis added.)

The Authority has more stringent requirements:

1. All Owners (or successors and assigns in interest pursuant to Paragraph 4, below) of the property shall be bound to the LIHTC rent and income limits to be set forth in the Land Use Restriction Agreement (LURA) for 99 years beginning on the date which begins the compliance period, as defined in the LURA. The LIHTC income and rent restrictions set forth in the LURA will not be allowed to terminate at the end of the 14<sup>th</sup> year for any reason. Owners wishing to be relieved of the LURA's income and rent restrictions must follow the process described in Paragraph 2, below.
2. Prior to issuance of IRS Form 8609 Low Income Housing Credit Allocation Certification by the Authority, all Owners (or successors and assigns in interest pursuant to Paragraph 3, below) must sign a right of first refusal (ROFR – For Sample, See Appendix). The ROFR shall provide that if the Owner wishes to be relieved of the LURA's income and rent restrictions after the 30 year compliance period, the Owner must use the following procedure:
  - a) The Owner may make a bona fide offer to sell the property to a qualified nonprofit entity for a price equal to or below the minimum set forth as per formula at IRC Section 42(i)(7)(B). If the qualified nonprofit entity purchases the property pursuant to the offer, the original LURA shall be terminated and no rent or income limitations shall apply. However, the goal is to maintain long-term low income residency and affordability to the extent possible.
  - b) If the nonprofit entity (or its successors and assigns) declines the opportunity to purchase the property or otherwise declines to exercise its right under ROFR, then the Owner shall offer to sell the property to the Authority (or its designee) for the

## **2006 New Hampshire Qualified Allocation Plan**

same price at which it offered to sell the Property to the qualified nonprofit entity. If the Authority purchases the property pursuant to the offer, either for its own purposes or on behalf of another qualified nonprofit entity, the Authority may discharge the original LURA, renegotiate a new LURA to maintain low income residency and affordability, or use the derived resources to produce an appropriate affordable housing benefit.

- c) If the Authority declines to accept the offer to purchase the property or otherwise declines to exercise its rights under the ROFR, either for its own purposes or on behalf of another qualified non profit entity, the LURA shall be discharged 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)).
3. The Owner may sell or transfer the Project during the low income compliance period with the prior written consent of the Authority, which consent approves the proposed buyer and the terms of any proposed sale, and which consent shall not be unreasonably withheld provided the Owner and proposed transferee comply with all the requirements of the LURA.<sup>10</sup> The Authority's interest in reviewing the proposed buyer and the terms of any proposed sale of a tax credit property (including the non-LIHTC units) is in maintaining and not jeopardizing the affordability, condition of housing and quality of management of the low income units during the compliance period. The Authority must be satisfied in all respects that the proposed new owner can effectively manage and operate the project (including projected financial viability) as quality affordable housing for the remainder of the low income compliance period.  
The Authority shall be under no obligation to approve any sale or transfer, except for ownership transfers using the Right of First Refusal process with a qualified non-profit entity as described above.

### Q. Tenant Anti-Displacement and Relocation Policy

Permanent displacement of tenants is strongly discouraged. The Authority reserves the right to reject any applications that fail to minimize permanent displacement of tenants. Any proposed

temporary and permanent relocation of tenants should generally meet standards equivalent to the federal Uniform Relocation Act (URA).<sup>11</sup>

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<sup>10</sup> Any sale or transfer of the Project by foreclosure or by transfer of title by deed in lieu of foreclosure is exempt from Authority review as per Section 42.

<sup>11</sup> LIHTC projects are not covered by the federal URA unless other qualified federal funding is

## 2006 New Hampshire Qualified Allocation Plan

### R. Reference and Federal Tax Information Authorization

IRS Federal Revenue Procedure 98-9 established a process for the Authority to check the LIHTC related background of tax credit applicants. Data available to the Authority from the IRS includes a review of the Business Master File, revenue agent reports and other sources of account data. The Authority needs to sign a Memorandum of Understanding with the Internal Revenue Service in order to begin implementing this policy, and has not yet done so at this time. Applicants may be required to submit IRS Form 8821 with their tax credit applications, including separate forms for all general partners.<sup>12</sup>

Developers new to New Hampshire may be required to provide reference authorization so that references can be checked with lenders and housing officials in other states.

### **HFA:109.06 APPLICATION PROCESSING - SELECTION AND RESERVATION**

There are three phases of application processing - the **Reservation Phase**, **Commitment Phase** and the **Allocation Phase**. All applications shall be submitted on the application form provided by the Authority.<sup>13</sup> All applications must be submitted by the appropriate deadline (See HFA:109.04). Applicants are encouraged to submit applications early and/or discuss preliminary

proposals with LIHTC program staff in order to facilitate the development and tax credit process. Incomplete applications will be rejected without further processing, though minor variances may

be waived at the discretion of the Authority. The Authority reserves the right to seek clarification of applications for purposes of establishing scoring.

### A. Supplemental Allocations and Credit Exchanges

Applications for supplemental credits (after having received a carryover allocation in a previous year) and credit exchanges may be made at any time, and will be evaluated outside of the competitive scoring process. Reservations of supplemental credits and credit exchanges meeting the requirements of HFA:109.05D can be approved by Authority staff without further Board or Multi-Family Housing Committee approval. See section HFA:109.05B for further information.

### B. Evaluation of Applications

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involved in the project such as CDBG, HOME or project based Section 8 vouchers.

<sup>12</sup> IRS documents can be secured on the internet at [www.irs.ustreas.gov](http://www.irs.ustreas.gov)

<sup>13</sup> The application can be secured from the Authority's website [www.nhhfa.org](http://www.nhhfa.org) under the Multifamily section. Applications must be e-mailed to [mkoppelkam@nhhfa.org](mailto:mkoppelkam@nhhfa.org).

## **2006 New Hampshire Qualified Allocation Plan**

All applications are checked against the General Threshold Criteria (HFA:109.07) and checklist (Appendix C). Contacts may be made with local municipal officials, cited funding sources, management companies, equity investors, etc. **Projects may be rejected at any time during the allocation process at the sole discretion of the Authority for failure to meet the General Threshold Criteria.**

Upon satisfactory completion of the Application Threshold Requirements, the project will be scored and ranked in accordance with the Scoring Criteria described in HFA:109.07C of the Allocation Plan. Projects shall be recommended for a Reservation of tax credits based on the competitive scoring results. Projects must receive a minimum of 60 points to be eligible to receive a tax credit reservation in Round 1, and a minimum of 40 points in Round 2 and thereafter.

In a situation where only partial credits are available for the next highest scoring project, the Authority will retain the right to bypass that project, and either give credits to other projects lower in the scoring ranking which can more reasonably use the remaining credit amount, or use the credits in a future round.

If a partial allocation is offered, the Authority must be convinced that a project can be appropriately phased or down-scaled, that the project's feasibility is not conditioned upon receipt of a future additional 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 by the Authority. If the project fails to show it can work with the credits available, the Authority may proceed to reserve credits for lower scoring projects, or use the credits in a future round.

The Reservation (or rejection) of tax credits shall be made by the Authority's Board of Directors (except for supplemental credits and credit exchanges, as described above). Applicants not receiving a Tax Credit Reservation will be considered rejected for that application round, but can be considered in subsequent rounds. These Applicants may be placed on a waiting list until the end of the calendar year in which the application was received. Applicants must submit a request to be placed on a waiting list within 30 days of notification that tax credits have not been awarded during that round and pay the appropriate fee (HFA:109.05E) , or the application will be considered withdrawn. Applicants on the waiting list will not receive any ranking priority and will compete equally with all other applicants in any subsequent rounds in that same calendar year. The Authority may require the Applicant to submit amendments to the application and the Applicant will be required to meet any changes in the IRC 42 or the Allocation Plan.

The Authority may consider making a reservation of tax credits for an application received after the Round 2 deadline provided there are tax credits available and there are no otherwise eligible and/or appropriately sized projects remaining from that round. The Authority may at its

## **2006 New Hampshire Qualified Allocation Plan**

discretion elect to reserve less tax credits than are otherwise available in any given application round.

### 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. Tiebreakers - In the case of a scoring tie between two or more projects where only a subset can be awarded a credit reservation, the tiebreakers shall be:

1. The project with the highest percentage of tax credit eligible family units, compared to total units.
2. If still tied, location in town with the lowest percentage of family units as reflected in the table shown as Appendix M(Location Points), e.g., location in Column A beats Column B, etc. For purposes of this tiebreaker, towns not shown shall be considered to be in Column C.
3. If still tied, the most efficient use of tax credits (i.e., lowest amount of tax credit dollars per rent restricted unit).

### E. Determination of Credit Amount

The Authority performs a comprehensive financial analysis of the proposed project at three separate stages: the Reservation Phase, Application for Carryover Allocation, and Application for Final Allocation. Based on the Authority's analysis, the project will receive no more than the tax credit amount required for the project's feasibility, assuming the project qualifies for at least that much credit.

To determine the tax credit dollar amount, the project application will be underwritten using the Authority's underwriting criteria (see HFA:109.05N). The development and operating budgets will be reviewed for reasonableness, and line items may be adjusted up or down by the Authority based on this review. Projects will be underwritten based on an equity investment rate that corresponds to prevailing syndication market rates. Projects will generally be underwritten assuming the maximum debt based on a debt coverage ratio (annual net operating income before debt service divided by annual debt service) of no greater than 1.2, with prevailing loan terms for commercial properties. A higher debt coverage ratio may be used in cases of small or special use projects where there is a higher than normal risk.

## **2006 New Hampshire Qualified Allocation Plan**

The amount of tax credits reserved will establish the maximum tax credit amount that can be allocated to the project without applying for additional credit. Depending on availability, the amount of the Reservation may be calculated using a tax credit rate slightly higher than the prevailing “4%” credit rate for acquisition or new construction or substantial rehabilitation costs financed with federal subsidies, or the prevailing “9%” credit rate for new building or substantial rehabilitation costs not financed with federal subsidies.

### F. Irrevocable Election

After a Reservation is made, the sponsor may irrevocably elect to lock in the applicable percentage, using the Authority's Binding Agreement and Irrevocable Election document to be executed in the month in which the applicable percentage is elected. Requests for an irrevocable election must be made at least 14 days prior to this deadline. This option is available to the sponsor up until the date the Carryover Allocation Agreement is signed. After that time the rate is set at the date the project is placed in service. For tax exempt bond financed projects using “out of cap” tax credits, the Irrevocable Election must be made in the month the bonds are issued; otherwise the project must wait until the placed in service date.

## **HFA:109.07 SELECTION PROCESS AND CRITERIA**

### A. Overview

In order to meet the State of New Hampshire's housing needs and priorities, as well as make the most efficient use of the tax credits available to the state, this project selection system was created to encourage projects that address specific objectives. These objectives are largely based on conclusions contained in the 2001-2005 Consolidated Plan for the State of New Hampshire.

Applications for Reservation meeting the general program requirements, Application Threshold Requirements listed in Appendix C, and which score competitively, will be recommended to the Authority's Board of Directors for a reservation of credits. Applications should be complete and the required supporting documentation included. Inconsistencies in the application or missing supporting documentation may reduce the project's score or cause it to be rejected. The Authority is not required to notify the applicant of inconsistencies or missing information.

### B. General Threshold Criteria

Projects may be rejected at any time during the allocation process (from application up to completion and issuance of the IRS Form 8609) at the sole discretion of the Authority for failure to meet the General Criteria listed below:

- The project location is considered infeasible or inappropriate. For example, proposed sites with severe topographical impediments that would make development abnormally expensive or risky (either from a construction/engineering perspective or from a property management perspective), or a location that is not conducive for senior or family residential use.

## **2006 New Hampshire Qualified Allocation Plan**

- Project or housing characteristics (e.g. style, density, undue concentration of income targeting or large family units) are inappropriate for the neighborhood, do not appear to satisfy market need, or there is undocumented /unsupported market demand.
- The project's developer or any party affiliated with the development team does not have the experience or ability to successfully complete the project or has failed to meet the objectives of the program on past proposals.
- The project's management agent or general partner has a history of chronic noncompliance in accordance with HFA:109.16, has failed to meet the requirements of the LURA for previous projects, or has any significant negative tax credit history with other state tax credit allocating agencies as documented in IRS records (see HFA: 109.05R).
- The project's developer, management agent, or anyone affiliated with the general partner is or has been noncompliant or otherwise in default with this or any other Authority program as determined by the Authority.
- The developer or general partner(s) has another tax credit project that has not started construction within six months from the LIHTC commitment date.
- Development costs in total or in part, including but not limited to developer fees, intermediary costs, and syndication expenses are judged to be unreasonable.
- The project is determined to be financially infeasible due to high costs and/or lack of adequate financing sources. The Authority concludes that the project will not be able to satisfy the criteria of the Commitment Requirements (listed in Appendix D) in a timely manner. For example, serious issues need resolution, such as planning, zoning, permits or land use requirements, environmental issues, the ability of the sponsor to apply for or obtain grant or debt financing, problems with statutory requirements, etc.

Note that representations made about the project relating to factors that are used in the selection and scoring criteria may not be changed without the approval of the Authority, and will be enforced by the LURA (See HFA:109.11). Tax credit reservations may be rescinded if the project changes in a way that reduces the initial score at the sole discretion of the Authority (see HFA109.08A Commitment Phase).

A change in the project ownership or the management agent from that represented in the application may subject the project to re-evaluation in accordance with the Allocation Plan.

## **2006 New Hampshire Qualified Allocation Plan**

Under no circumstances will changes to the project ownership or management agent be allowed without the express written permission of the Authority.

### C. 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.

Note for the “family units” definition in category 2 (Family Units) and 6 (Location), more than 90% of the units must have 2 or more bedrooms, and there can be no “senior housing” designation.

#### **1. Project Impact**

Applicant can score points in only one section in this category:

- a. 60% net new units in existing downtown or urban locations, infill sites and/or adaptive reuse project. Property must be served by public water and sewer  
25 points
- b. 60% net new units  
20 points
- c. New construction and/or substantial rehabilitation with construction costs equal to or exceeding 50% of total development cost (including contingency, but not including the cost of land)  
5 points
- d. Other projects  
0 points

#### **2. Family Units**

An applicant can score points in either section in this category: a and/or b. Projects cannot have “senior” or over-55 designation.

- a. Family projects with greater than or equal to 90% of the units having 2 or more bedrooms.  
15 points
- b. Family projects with >10% of the units having 3 bedroom units.  
5 points

## 2006 New Hampshire Qualified Allocation Plan

### 3. Income Targeting

Greater than 20% of the total number of units reserved for very low income ( $\leq 50\%$  MAI)

5 points

### 4. Service Enriched Housing

Applicants can secure funding in only one section in this category. To receive points, services must be actively linked to the project, not simply provided to the community at-large and the applicant must submit documentation at application, including a service plan, commitment of financial support, letters of intent to partner/contract from service providers (when services are to be contracted), a marketing plan describing outreach to potential tenants to whom the services are targeted, a description of how the services will be managed and by whom, and other such items as defined and required in Appendix L.

Projects receiving scores in this section must continue in this use for the full compliance period, which will be enforced through the LURA. Projects can score in only one section.

#### Family Projects

- a. Service Coordination – Service coordination provided on-site to tenants on a regular basis with toll-free telephone availability between on-site visits **and** a commitment of financial support for at least three years. Service coordination must include, at a minimum: service needs assessments of all tenants on move in and annually thereafter; linking tenants to the services/resources they need to remain in independent housing; and community building to assist the residents in meeting their social and emotional needs.

3 points

- b. Service Coordination Plus – Service Coordination and at least one additional service designed to help residents attain economic self-sufficiency (ex: computer training, job coaching) regularly provided on-site and a commitment of on-going financial support for at least three years. A minimum of 20% of the tenants selected for occupancy must be families who are identified as needing the services being provided.

5 points

- c. Permanent Supportive Housing 1 – A minimum of 20% of the tenants selected for occupancy must be families who are identified as needing the services to maintain permanent housing. The services provided must include, at a minimum: case management and counseling/coaching, job search assistance and support, financial management training and children/youth programs. **Operational and financial support must be provided by the owner.**

7 points

- d. Permanent Supportive Housing 2 – A minimum of 50% of the tenants selected for

## 2006 New Hampshire Qualified Allocation Plan

occupancy must be families who are identified as needing the services to maintain permanent housing. The services provided must include, at a minimum: case management and counseling/coaching, job search assistance and support, financial management training and children/youth programs. **Operational and financial support must be provided by the owner.**

10 points

- e. Supportive Housing Serving Homeless – A minimum of at least one member of each household must be homeless or at imminent risk of homelessness immediately prior to tenancy and be identified as needing services to maintain housing. Types of projects eligible for points in this category include, but are not limited to, transitional housing and permanent supportive housing and can include the single room occupancy (SRO) model. Any project scoring in this section must have a design and service package that comprehensively addressed the needs of homeless or at risk clientele.

20 points

### Senior Projects

- a. Service Coordination –Service coordination provided on-site to tenants on a regular basis with toll-free telephone availability between on-site visits **and** a commitment of financial support for at least three years. Service coordination must include, at a minimum: service needs assessments of all tenants on move in and annually thereafter; linking tenants to the services/resources they need to remain in independent housing; and community building to assist the residents in meeting their social and emotional needs.

5 points

- b. Service Coordination Plus – Service Coordination and at least one additional service (ex: meals, transportation) regularly provided on-site **and** a commitment of financial support for at least three years. A minimum of 20% of the tenants selected for occupancy must be elderly who are identified as needing the services being provided.

10 points

- c. Congregate Care – Substantial level and range of services are integrated into the housing to support tenant needs. Services must include, at a minimum, service coordination (see above), one congregate meal a day and weekly homemaking. A minimum of 20% of the tenants selected for occupancy must be elderly who are identified as needing the services being provided. **Operational and financial support must be provided by the owner.**

15 points

- d. Congregate Care Plus – Congregate care and a personal care service package that provides for tenants' intermittent care needs 24-hours a day. The bundled personal care

**2006 New Hampshire Qualified Allocation Plan**

services are encouraged to increase affordability. A minimum of 20% of the tenants selected for occupancy must be elderly who are identified as needing the services being provided. **Operational and financial support must be provided by the owner.**

20 points

**5. Public Housing Waiting Lists**

Projects that can demonstrably provide housing to persons on waiting lists for public housing will be eligible for points in this category. To meet this requirement the local public housing authority must be a general or co-general partner .

3 points

**6. Location**

Scoring for location is by the community in which the project is located. The ranking is based on U.S. Census data regarding the number of rental housing units compared to the number of total

housing units. Applicants can present data regarding college student populations and units as they may affect a community’s percentage of rental housing units. Units applied toward this population will not count as “rental housing units” for the purpose of the Location scoring category (but will count as part of the total housing stock). Staff may adjust a community’s Location scoring from that shown on Appendix M based on this information. Family and other non-senior projects must score in category 1 (Project Impact) under 1a- or 1b in order to be scored higher than zero in this category. See Appendix M for the community lists. Projects located in:

Family and other non-senior projects:

Communities with <15% rental housing units (Column A, Appendix M)	20 points
Communities with >=15% up to 25% rental housing (Column B, Appendix M)	15 points
Communities with >= 25% up to 35% rental housing (Column C, Appendix M)	10 points
Communities with less than 700 total housing units	5 points

Senior projects are not scored on the community lists, but just a or b below.

Senior projects:

Senior project in a city or town that has a completed or approved (i.e., LIHTC reservation) family LIHTC project 5 points

All other senior projects anywhere in the state 0 points

**7. Neighborhood or Community Improvement**

## 2006 New Hampshire Qualified Allocation Plan

Applications can secure up to 15 points in this category (a, b, and c).

- a. Points may be awarded for projects which are located in formally designated community revitalization areas, such as HUD Enterprise Zones, Main Street programs, designated blighted areas, or otherwise targeted areas. The minimum size improvement zone for this scoring category is generally a one block area. The formal designation must come from an official act by a government agency, such as a City Council or Town Board.<sup>14</sup> 10 points
- b. Points will be awarded for projects approved for points in 7a which are also in QCT's. 3 points
- c. Points will be awarded for projects approved for points in 7a which preserve and renovate existing housing. 2 points

### 8. Advanced Projects

Additional points may be awarded at the discretion of the Authority for advanced progress of the development, as per the following schedule:

Site Control or	1 point
Partial Ownership or	2 points
Site Ownership	3 points
Phase I Environmental completed	2 points
Market Study completed - must be commissioned by the Authority	2 points
Grant/Soft Loan Commitment <sup>15</sup> (significant dollar amount)	3 points
Preliminary Plans OR	1 point
Comprehensive Plans and Specs	3 points
Appropriate zoning with no variances or special exceptions needed	3 points
Prior phase of project approved for LIHTC and underway <sup>16</sup>	10 points
All necessary local planning and zoning permits in hand	
including site plan approval except local building permit –	
Project must also secure points under scoring category 9. <sup>17</sup>	

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<sup>14</sup> Federal new market tax credit designations are eligible.

<sup>15</sup> This category can include commitments of Authority funds.

<sup>16</sup> Assumes Authority knew of multiple phasing during first phase.

<sup>17</sup> As evidenced by permit status letter (not an “opinion letter”) from sponsor’s attorney or

**2006 New Hampshire Qualified Allocation Plan**

10 points

Maximum for Category

36 points

**9. Conceptual Plan Submission** - Submission of satisfactory conceptual plans to Authority 60 days prior to application deadline (see HFA:109.05G - Conceptual Level Submittal for detail)<sup>18</sup>

10 points

**10. Project Grants and Assistance**

An applicant can score points in either of the two sections in this category: a and/or b.

- a. Projects which have a new rental assistance subsidy for at least 80% of the units, for at least 15 years. Authority project based Section 8 units are not eligible.

10 points

or

Projects which have a significant rental assistance subsidy for 25% of the units, for a minimum of 5 years. Authority or local PHA project based or special voucher program Section 8 units are eligible.

7 points

- b. Projects which have a contribution of 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. Authority administered funds are not eligible for this point category.

5

points

**11. Tenant Ownership**

Project proposal has a specific and credible plan (including funds for organization of the tenants and professional representation) to establish tenant ownership of the project (or all of the individual units) after the initial 15 year compliance period.

2 points

**12. Participation of Local Tax-Exempt Organizations**

(Applicant can score in a or b but not both)

- a. New Hampshire nonprofit corporation (or a wholly owned subsidiary) or a local housing authority is project sponsor and sole general partner.

5 points

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project engineer.

<sup>18</sup> Submission of a complete Round 1 or previous year application for essentially the same project will suffice as a conceptual plan submission for Round 2.

**2006 New Hampshire Qualified Allocation Plan**

- b. Nonprofit is an official CHDO<sup>19</sup>. 10 points

**13. Local Support**

Project is supported by local elected public officials, local housing authority, local community development organizations, with written documentation. Scoring correlates with the perceived level of local support.

0 to 5 points

**14. Management Experience**

To receive points for this category, the proposed management agent must complete and submit the Management Questionnaire (Appendix F of the application). In addition, the developer must have a letter of interest from the proposed management agent, to be included in the application. Applicant can score points for either a, b or c.

- a. Developer's proposed management agent has demonstrated experience defined as having managed a tax credit property which has had at least one compliance monitoring review, has met the Annual Training requirements and does not have a history of non-compliance (see HFA:109.16), or 10 points

- b. Developer's management agent meets the experience requirements as defined in the Management Questionnaire, or 8 points

- c. Limited or insufficient property management experience 0-5 points

**15. Developer Experience With the Authority**

The developer or any individual that is part of the development team:

- has any outstanding obligations (including compliance fees) on any Authority financed or tax credit project owed to the Authority of more than 30 days in arrears;
- is involved in or has had other tax credit projects which have non-compliance issues(as defined by HFA:109:16);
- the project's developer, management agent, or anyone affiliated with the general partner is or has been noncompliant or otherwise in default with this or any other Authority program as determined by the Authority;

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19 CHDO – Community Housing Development Organization approved by the Authority and meeting HUD’s criteria per CFR 24 Part 92.

## 2006 New Hampshire Qualified Allocation Plan

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

Such determination will be made by the Authority in its sole discretion.

Minus 1 to Minus 20 points

### **HFA:109.08 POST RESERVATION PROCESSING**

#### A. Commitment Phase

Within **120** days of notification of a Reservation of tax credits, or 30 days preceding the Allocation Phase deadline, whichever is sooner, the Applicant must complete all requirements listed in Appendix D, **Commitment Phase Requirements**.

The Authority may require additional information from third parties for this Phase, such as a market study or appraisal.<sup>20</sup> Any third-party reports required by the Authority must generally be contracted by the Authority directly. Contractors for appraisals and market studies are chosen through a selective bid to pre-qualified contractors. The Authority will request payment from the

Applicant prior to the bid being awarded. Prompt payment is required and failure to do so may jeopardize successful completion by the deadline for Commitment Phase requirements.

Projects that meet the requirements of the Commitment Phase will be eligible to apply for an allocation of tax credits. Commitment Phase requirement extensions will be granted at the sole discretion of the Authority. Project reconfigurations which result in reductions in project scoring are not permitted without the express written permission of the Authority. The tax credit Reservation may be rescinded at the sole discretion of the Authority for not meeting the Commitment Phase Requirements, or if the project scoring has been reduced.

Once a project has met the Commitment Phase requirements, a (LURA) will be prepared. The Applicant must provide proof that the signed document has been recorded at the County Registry of Deeds, and evidence that the LURA has precedence in the Land Records over any permanent financing or other liens (e.g. via title update) prior to receiving a Carryover or Final Allocation.

#### B. Allocation Phase

The **Allocation Phase** may consist of two parts, depending on when the project is placed in service. Projects not placed in service by the end of the calendar year in which the tax credits were reserved, must complete an Application for a Carryover Allocation and the requirements listed in Appendix E, **Carryover Allocation Requirements** by October 31<sup>st</sup> for first round

reservations, and December 1<sup>st</sup> for second round (or later) reservations. Projects that satisfactorily complete the Carryover Allocation Requirements will be eligible to be issued a Carryover

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<sup>20</sup> See also HFA:109.050 Professional Reports: Appraisal, Phase I, Market Study.

## **2006 New Hampshire Qualified Allocation Plan**

Allocation Agreement. Projects that receive a Carryover Allocation must be placed in service by the end of the second calendar year following the year of the Carryover Allocation.

For projects placed in service by the end of the calendar year in which the tax credits were reserved or in which a Carryover Allocation was received in a previous year, the Applicant must complete an Application for Final Allocation with the required documentation listed in Appendix F, **Final Allocation Requirements** within 90 days of the placed in service date or December 1, whichever is earlier. Projects that satisfactorily complete the Final Allocation Requirements will be eligible to be issued the IRS Form 8609. Any Applicant with a tax credit Reservation that does not submit an Application for Carryover Allocation or Final Allocation by the appropriate date may lose its tax credit Reservation, at the sole discretion of the Authority.

At the time of application for allocation, the Applicant may make an election to establish the Gross Rent Floor. This election sets the minimum rents for the entire compliance period. Please see Appendix K for further explanation.

### C. 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 auditing standards generally accepted in the United States of America, and meeting the standards of the Internal Revenue Code and Section 42 relating to a LIHTC cost certification. The line items used in the certification should correspond with the Authority's application spreadsheet. The certification must include sources as well as uses of funds. The 10% expenditure certification must be filed with the Authority by December 1<sup>st</sup> for projects receiving allocations prior to July 1st, or within 60 days after the 6 month statutory deadline for projects receiving allocations after June 30<sup>th</sup>.

### **HFA:109.09 PROJECTS FINANCED BY TAX-EXEMPT BONDS**

Projects financed with tax-exempt bonds may apply for "out-of-cap" tax credits apart from the state's annual tax credit ceiling and application/scoring process. In order to qualify, 50% of the eligible project basis must be financed with tax exempt bond proceeds. "Out-of-cap" project applicants must meet two general requirements in order to receive tax credits.

- The project must satisfy the requirements for allocation in accordance with the QAP, including the threshold requirements (HFA:109.07B), construction standards (HFA:109.05F), cost and fee limits (HFA:109.05J-L), the Extended Use Agreement (HFA:109.05P) and LURA (HFA:109.11).
- The issuer of the tax-exempt bonds must make a formal determination that the amount of tax credits allocated is no more than necessary to make the project feasible.

## **2006 New Hampshire Qualified Allocation Plan**

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 transaction, assuming all other LIHTC program requirements have been or will be met.

Fees for tax exempt bond tax credits will be 7% of the anticipated tax credit dollar amount (regardless of sponsor type), with 2% payable prior to issuance of the Determination Letter, and 5% payable at application for IRS Form 8609. These fees are non-refundable.

Tax exempt bond funded projects must also pay the one-time compliance monitoring fee of \$500 per LIHTC unit prior to issuance of the IRS Form 8609. Tax exempt bond properties will be monitored for compliance (and pay any annual compliance monitoring fees) in the same manner as all other "in cap" LIHTC projects (see HFA:109.16).

### **HFA:109.10 PROJECTS FINANCED BY RURAL DEVELOPMENT (RD)**

Projects financed by Rural Development (RD, formerly the Farmers Home Administration, or FmHA) through the FmHA 515 program may have separate cost certification requirements imposed by the RD. Information regarding the project, including cost certifications, is shared in accordance with a signed Memorandum of Understanding between the RD and the Authority.

### **HFA:109.11 LAND USE RESTRICTION AGREEMENT**

Prior to issuance of the Carryover Allocation or at Final Allocation, whichever is earlier, the owner of the tax credit project must execute and record the Land Use Restriction Agreement (LURA). The LURA will be prepared by the Authority and may be modified periodically. Please contact the Authority if you do not have a prepared document at least 14 days prior to the deadline for Carryover or Final Allocation.

The LURA, at a minimum, will require conditions wherein the owner and the project must continually comply with IRC 42 and other applicable sections of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder or under the Internal Revenue Code of 1954 as in effect on the date of enactment of the Code. The LURA shall remain in effect for the 99 year compliance period (unless the ROFR procedure is used –see HFA:109.05P Extended Use Agreement). Please consult IRC 42 or a tax specialist for more information.

The responsibility for complying with the requirements of the LURA, as well as complying with all other applicable requirements, rests solely with the owner of the project. Compliance with special election provisions represented in the initial application for tax credits, especially

provisions used as Scoring Criteria, will be included in the LURA and will be monitored on an annual basis. Owners who fail to maintain compliance with any provision of the LURA will be reported to the IRS by the Authority using the IRS Form 8823. In addition, the Authority

### **2006 New Hampshire Qualified Allocation Plan**

reserves the right to replace the management company for chronic noncompliance as defined in HFA:109.16, including but not limited to an IRS 8823 filed three consecutive years for the management agent's direct failure to adhere to serious non-compliance with IRC 42 and/or failure to adhere to NHHFA's recommendation for correction or improvement.

### **HFA:109.12 APPEAL PROCESS**

Applicants may appeal the Authority's decision, solely with regard to their application, in any area covered by these program rules. Applicants must submit a written request for an appeal within 10 business days of notification that tax credits will not be awarded. Within another 10 business days the appellant must provide a copy of any written materials relevant to the appeal which are to be presented, if any, stating the specific reasons for the appeal, related evidence and the requested remedy. A hearing will be scheduled within 45 days of the initial appeal request by the Authority's Multi-Family Housing Committee, which will make a recommendation to the full Board.

### **HFA:109.13 WAIVER AUTHORITY**

The Authority reserves the right to waive each and any of these Program Rules (HFA:109) within the constraints of Section 42 and related federal rules and regulations. Applicants or potential applicants must submit a written request for a waiver. A hearing will be scheduled within 45 days of the initial waiver request by the Authority's Multi-Family Housing Committee. Upon a finding of good cause, these waivers may be granted on a case-by-case basis at the discretion of the Authority's Board of Directors. A waiver of the rules can be initiated by the Board (i.e., not by an applicant). In this case, no hearing is necessary.

### **HFA:109.14 PUBLIC RECORDS**

Applicants should be aware that any information submitted as part of an LIHTC application will likely be considered public information under the New Hampshire Public Records law as soon as a reservation decision has been made by the Authority.

### **HFA:109.15 WARRANT AND LIABILITY**

The Authority is charged with allocating no more tax credits 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 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

Internal Revenue Code, Treasury regulations, or any other laws or regulations governing the LIHTC program.

## **2006 New Hampshire Qualified Allocation Plan**

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

### **HFA:109.16 AMENDMENTS TO THE QAP**

The Authority reserves the right to modify the QAP periodically as the Authority shall determine in its discretion, with the advice and consent of the Governor. The Authority may make technical clarifications (e.g. to correct typographic errors, inconsistencies etc.) or revisions to comply with changes in federal law regarding the LIHTC program at its sole discretion.

### **HFA:109.17 COMPLIANCE MONITORING**

The 1990 Omnibus Reconciliation Act requires tax credit allocating agencies to monitor project compliance with Low Income Housing Tax Credit regulations. This requirement became effective January 1, 1992 and applies to all projects which have received a tax credit allocation since the inception of the tax credit program.

Specifically, IRC 42 requires the tax credit allocating agency to monitor compliance with the tax credit program on a project by project basis. The Authority may contract with a private vendor to act as its agent in monitoring the tax credit program. The Authority's compliance monitoring responsibilities begin at the time the first building is placed in service. The procedures the Authority will follow in conducting compliance monitoring of tax credit projects in New Hampshire are set forth in the LIHTC Compliance Manual. The Authority or its agent will notify owners of projects scheduled for review and will examine record keeping and record retention provisions in accordance with the following Compliance Monitoring Procedures.