

**STATE OF NEW MEXICO  
HOUSING TAX CREDIT PROGRAM**

**QUALIFIED ALLOCATION  
PLAN**

**Effective as of January 1, 2005**



**NEW MEXICO  
MORTGAGE FINANCE AUTHORITY**

**STATE OF NEW MEXICO  
LOW INCOME HOUSING TAX CREDIT PROGRAM  
QUALIFIED ALLOCATION PLAN**

Effective as of January 1, 2005

**Contents**

<b>I.</b>	<b>BACKGROUND AND PURPOSE OF THE QUALIFIED ALLOCATION PLAN .....</b>	<b>3</b>
A.	GENERAL .....	3
B.	PUBLIC HEARINGS .....	4
<b>II.</b>	<b>LOW INCOME HOUSING TAX CREDIT PROGRAM SUMMARY .....</b>	<b>4</b>
A.	GENERAL .....	4
B.	AMOUNT OF TAX CREDIT AVAILABLE STATEWIDE .....	4
C.	NONPROFIT ALLOCATION SET ASIDE .....	5
D.	MINIMUM APARTMENT UNIT SET ASIDES.....	5
E.	RENT AND INCOME RESTRICTIONS.....	5
F.	ELIGIBLE PROJECTS .....	5
G.	COMPLIANCE PERIOD .....	6
H.	COMPLIANCE MONITORING .....	6
I.	ELIGIBLE BASIS ACCORDING TO TYPE OF PROJECT .....	6
J.	TEN YEAR RULE .....	7
K.	FEDERAL SUBSIDY.....	7
L.	QUALIFIED BASIS ACCORDING TO TYPE OF PROJECT .....	7
M.	PLACED IN SERVICE REQUIREMENT.....	7
N.	BUILDING CLASSIFICATION AND TAX CREDIT APPLICABLE PERCENTAGES .....	8
<b>III.</b>	<b>HOUSING PRIORITIES AND PROJECT SELECTION CRITERIA .....</b>	<b>9</b>
A.	NEEDS ANALYSIS .....	9
B.	HOUSING PRIORITIES.....	9
C.	MINIMUM PROJECT THRESHOLD REQUIREMENTS .....	10
D.	ALLOCATION SET ASIDES.....	11
E.	PROJECT SELECTION CRITERIA TO IMPLEMENT HOUSING PRIORITIES .....	12
F.	ADDITIONAL CREDITS FOR PROJECTS WITH PARTIAL ALLOCATIONS.....	17
G.	ADDITIONAL SUPPLEMENTAL TAX CREDITS FOR COST INCREASES .....	17
H.	NEW ALLOCATIONS TO PROJECTS PREVIOUSLY SUBSIDIZED WITH CREDITS .....	18
I.	PROPERTY STANDARDS.....	18
<b>IV.</b>	<b>ALLOCATION PROCEDURE AND APPLICATION REQUIREMENTS .....</b>	<b>18</b>
A.	ALLOCATION ROUNDS.....	18
B.	MFA FEES AND DIRECT COSTS.....	20
C.	STAFF ANALYSIS AND APPLICATION PROCESSING .....	22
D.	FEASIBILITY ANALYSIS AND FINANCIAL CONSIDERATIONS.....	24
E.	CREDIT CALCULATION METHOD .....	26
F.	FINAL PROCESSING AND AWARDS .....	29
G.	NOTIFICATION OF APPROVAL AND SUBSEQUENT PROJECT REQUIREMENTS .....	30
H.	TERMINATION OF RESERVATIONS OR REJECTION OF APPLICATIONS .....	33
I.	NOTIFICATION TO MFA OF CHANGES TO THE PROJECT .....	34
J.	NOTICE PROVISIONS.....	34
K.	APPLICATIONS ARE PUBLIC RECORDS .....	35
<b>V.</b>	<b>COST CERTIFICATION.....</b>	<b>35</b>
A.	APPLICABILITY OF COST CERTIFICATION .....	35

B.	REQUIREMENTS.....	35
C.	AUTHORITY TO DETERMINE MAXIMUM QUALIFIED BASIS .....	35
<b>VI.</b>	<b>AUXILIARY FUNCTIONS .....</b>	<b>35</b>
A.	SUBSIDY LAYERING REVIEW.....	36
B.	PROCESSING OF TAX EXEMPT BOND FINANCED PROJECTS .....	36
<b>VII.</b>	<b>AMENDMENTS TO THE ALLOCATION PLAN AND WAIVERS OF PLAN PROVISIONS.....</b>	<b>37</b>
<b>VIII.</b>	<b>FUTURE YEAR’S BINDING COMMITMENTS.....</b>	<b>37</b>
<b>IX.</b>	<b>DISASTER RELIEF ALLOCATIONS .....</b>	<b>38</b>
<b>X.</b>	<b>MFA TAX CREDIT MONITORING AND COMPLIANCE PLAN SUMMARY .....</b>	<b>38</b>
A.	GENERAL REQUIREMENTS .....	38
B.	INSPECTIONS.....	38
C.	RECORD KEEPING AND RECORD RETENTION .....	38
D.	ANNUAL CERTIFICATION REVIEW.....	39
E.	COMPLIANCE REVIEW.....	40
<b>XI.</b>	<b>GLOSSARY .....</b>	<b>42</b>

## I. BACKGROUND AND PURPOSE OF THE QUALIFIED ALLOCATION PLAN

### A. General

The Low Income Housing Tax Credit (“HTC”, “Credits”, or “Tax Credit”) Program was created in the Tax Reform Act of 1986 as an incentive for individuals and corporations to invest in the construction or rehabilitation of low income housing. The Tax Credit provides the investor a dollar-for-dollar reduction in personal or corporate federal income tax liability for a 10-year period for projects meeting the Program’s requirements.

New Mexico Mortgage Finance Authority (“MFA”) is the Housing Credit Agency (“HCA”) for the State of New Mexico, responsible for administering the Tax Credit Program and allocating Tax Credits to eligible New Mexico Projects. Consequently MFA awards Tax Credits to Projects meeting its Project Selection Criteria, including an annual population allocation, any subsequent carry-forward, returned and national pool Credits, and monitors existing Projects for compliance with the Internal Revenue Service Code, Section 42, as amended. However, MFA does not make any representation to any party concerning compliance with the Internal Revenue Code, Treasury Regulations or other laws or regulations governing Low Income Housing Tax Credits. Neither MFA, its agents or employees will be liable for any matters arising out of, or in relation to, the allocation of Low Income Housing Tax Credits. All organizations and individuals intending to utilize the HTC Program should consult their own tax advisors concerning the application of Tax Credits to their Projects, and the effect of Tax Credits on their federal income taxes.

Administration of the Housing Tax Credit Program, as outlined in this Qualified Allocation Plan, is consistent with the statutes creating MFA in 1975 [Chapter 303, Laws of New Mexico, 1975, known and cited as the New Mexico Mortgage Finance Authority Act, being Sections 58-18-1 through 58-18-27, inclusive], as supplemented in 1995, as follows:

*The legislature hereby finds and declares that there exists in the state of New Mexico a serious shortage of decent, safe and sanitary residential housing available at prices and rentals within the financial means of persons and families of low income. This shortage is severe in certain urban areas of the state, is especially critical in the rural areas and is inimical to the health, safety, welfare and prosperity of all residents of the state...The legislature hereby further finds and determines that to aid in remedying these conditions and to help alleviate the shortage of adequate housing, a public body politic and corporate, separate and apart from the state, constituting a governmental instrumentality, to be known as the New Mexico Mortgage Finance Authority should be created with power to raise funds from private investors in order to make such private funds available to finance the acquisition, construction, rehabilitation and improvement of residential housing for persons and families of low income within the state. The legislature hereby finds and declares further that in accomplishing this purpose, the New Mexico Mortgage Finance Authority is acting in all respects for the benefit of the people of the state in the performance of essential public functions and is serving a valid public purpose in improving and otherwise promoting their health, welfare and prosperity, and that the enactment of the provisions hereinafter set forth is for a valid public purpose and is hereby so declared to be such as a matter of express legislative determination.*

One of the requirements of the HCA is to prepare a Qualified Allocation Plan for allocating Tax Credits. Code Section 42(m) states that the HCA must make allocations of Tax Credits pursuant to a *Qualified Allocation Plan* which:

1. Sets forth Project Selection Criteria to be used to determine housing priorities of the Housing Credit Agency, which are appropriate to local conditions. These criteria must consider Project location, housing needs characteristics, Project characteristics, sponsor characteristics, participation of local tax-exempt organizations, public housing waiting lists, tenants with special housing needs including individuals with children, and Projects intended for eventual tenant ownership.
2. Gives preference in allocating housing credit dollar amounts among selected projects to those which:
  - a) Serve the lowest income tenants;
  - b) Serve qualified tenants for extended periods of time; and
  - c) Are located in Qualified Census Tracts and the development of which contributes to a Concerted Community Revitalization Plan.
3. Provides a procedure that the agency will use in monitoring for noncompliance.

This document is intended to fulfill the requirements 1 and 2 above for the MFA's Tax Credit allocation activity in the State of New Mexico, commencing on its effective date. The procedure required in item 3 above is summarized in Section X but published under separate cover.

## **B. Public Hearings**

Following public notice, a draft Qualified Allocation Plan will be available to the public for comment for a period of thirty (30) days, during which time public hearing(s) will be held. MFA will accept written comments during this thirty-day period and will consider any comments presented at the public hearing, prior to completion of the plan.

## **II. LOW INCOME HOUSING TAX CREDIT PROGRAM SUMMARY**

### **A. General**

The Tax Reform Act of 1986 established the Low Income Housing Tax Credit (HTC) Program to stimulate private sector investment in low income rental housing. In August of 1993, permanency was granted to the HTC Program after numerous temporary annual extensions.

There are numerous technical rules governing a Project's qualification for Tax Credits. The following is a summary of certain key provisions of Section 42 of the IRS Code and regulation, and the HTC Program. Applicants are advised to review the IRS Code directly for further detail, since this overview does not address all of the provisions.

### **B. Amount of Tax Credit Available Statewide**

The State of New Mexico for the calendar year 2005 will receive a population based Tax Credit allocation equal to \$1.80 (indexed for inflation) per resident. The current year's population estimates, as provided by the Internal Revenue Service, and the estimated Annual Credit Ceiling, including any carry-forward, returned or national pool Credits received by the State may be found on the MFA web site.

### **C. Nonprofit Allocation Set Aside**

A minimum of 10% of the Annual Credit Ceiling must be allocated each year to Projects involving Qualified Nonprofit Organizations. MFA's Allocation Set Asides (see Section III.D) are intended to implement this requirement. However, Qualified Nonprofit Organizations may also apply for Credits in excess of this Set Aside.

For the purposes of identifying applicants eligible for this Set Aside, several requirements must be met, as described in Code Section 42(h)(5). A Qualified Nonprofit Organization is an organization described in Sections 501(c)(3) or 501(c)(4) of the IRS Code and exempt from tax under Section 501(a). The production of decent, safe and affordable housing must be one of the defined goals, objectives, or purposes of the nonprofit organization. The nonprofit organization must materially participate in the Project. This means the organization "must be involved on a regular, continuous and substantial basis" in the development and operation of the Project during the term of the Compliance Period. The nonprofit must own an interest in the Project throughout the Compliance Period and may not be affiliated with or controlled by a for-profit organization.

### **D. Minimum Apartment Unit Set Asides**

In order for a project to qualify for Credits, the owner must rent at least 20% of the units in the Project to households with incomes at or below 50% of the Area Gross Median Income; or at least 40% of the units to households with incomes at or below 60% of the Area Gross Median Income (the "Set Aside Units"). Projects eligible for the Tax Credit may exceed these limitations, but cannot fall below them, and the Set Aside Election must be made at the time the Application is submitted to MFA. Once an Application has been submitted to MFA, the Set Aside Election cannot change. Generally Units must be made available to the general public under an initial lease term of at least 6 months. However, exceptions are made for single room occupancy and transitional homeless facilities.

### **E. Rent and Income Restrictions**

Set-Aside Units must only be rented to households meeting certain income restrictions. Furthermore, rents charged for Set Aside Units may not exceed 30% of the applicable income limit(s) designated by the Applicant (generally 50% or 60% of the Area Gross Median Income). Gross rent limits provided annually by HUD (found on MFA's web site) must be reduced by a utility allowance that accurately reflects the cost of tenant-paid utilities by unit size. MFA's Land Use Restriction Agreement prohibits collection of Section 8 or other rent subsidy payments which, when added to the tenant payments, would exceed the Tax Credit Ceiling Rents, except in projects with project based subsidies. More detail regarding rental assistance payments and qualifying tenants can be found in the MFA Tax Credit Monitoring and Compliance Plan, which is issued under separate cover and summarized in Section X.

### **F. Eligible Projects**

The Tax Credit program is intended for rental projects. These may include transitional housing for the homeless, Single Room Occupancy (SRO) projects, elderly and other special needs projects. Dormitories, "trailer parks" and transient housing are ineligible.

## **G. Compliance Period**

The initial Compliance Period is 15 years. An Extended Use Period also applies to the Project for a minimum 15 years subsequent to the initial Compliance Period, during which time transfers and tenant dislocation are limited. If the owner chooses to transfer or sell the property during the Extended Use Period, the owner must notify MFA in writing thirty (30) days prior to the transfer or closing date. By agreeing to an Extended Use Period, the Owner and its successors and assigns agree to maintain the Project as a Qualified Low Income Housing Project (as defined in Section 42(g) of the Code) for the entire Extended Use Period. The Owner will not have the right to require the MFA to present a "qualified contract" in accordance with Code Section 42(h)(6), the Extended Use Period will not be terminated for any reason other than foreclosure, and existing Low Income Tenants will not be evicted or charged rents in excess of tax credit rents for a period of three years after the Extended Use Period. Failure to comply with Set Asides, or any reduction in the number or floor space of the Set Aside Units during the Compliance Period will result in recapture, with non-deductible interest, of at least a portion of the Tax Credits taken previously. MFA will notify the IRS if it learns of any noncompliance. An owner may not begin to claim the Tax Credit until IRS Form 8609 is filed, and this form is considered to be a certification of initial compliance with the IRS requirements. The Project owner must also make an annual tenant income determination and file an annual compliance statement with MFA.

## **H. Compliance Monitoring**

As of January 1, 1992 the IRS required each Housing Credit Agency to write and implement a Monitoring and Compliance Plan (summarized in Section X). MFA's monitoring procedure includes a combination of annual certifications and regular site visits (audits and inspections) for all completed Tax Credit Projects. The IRS has provided substantial penalties, including recapture of the Tax Credits plus interest, for non-compliance with the policies and procedures set forth in Section 42 and MFA's Tax Credit Monitoring and Compliance Plan. Annual fees described in Section IV.B will be assessed for each year of the Compliance Period. Fees for monitoring and compliance will be billed annually before December 31 for the subsequent year. Failure to pay these fees within the time frame specified in the invoice will result in MFA's filing of a "Notice of Noncompliance" (IRS Form 8823) with the IRS. Effective March 1, 2004, all Tax Credit Projects must submit their Annual Compliance Reports through the MFA's *Compliance On-Line (COL)* system.

## **I. Eligible Basis According to Type of Project**

The "Eligible Basis" is generally the same as a Project's adjusted depreciable basis for tax purposes. Fees or points charged to obtain long-term financing, syndication costs and fees, and marketing expenses are not included in Eligible Basis. (These include credit enhancement, credit origination fees, bond issuance costs, reserves for replacement, start-up costs and future operating expenses.) Costs related to the acquisition of land, costs attributable to any commercial portion of the property and costs attributable to non-Set Aside Units that are above the average quality of the Set Aside Units in the Project are ineligible. However, Eligible Basis is reduced when determining the Tax Credit amounts by the amount of certain federal grants or below-market-rate federal loans made with respect to the building or its operation; otherwise only 4% Tax Credits can be allowed. For new construction Projects, Eligible Basis includes the cost of construction items, which are part of the Project's depreciable basis.

Rehabilitation expenditures qualify for the 9% Tax Credit when rehabilitation costs incurred during a 24-month period equal or exceed the greater of \$3,000 per Low Income Unit, or 10% of

the unadjusted basis, and may be combined with 4% Credits for acquisition costs on the same project. The Eligible Basis used to calculate Tax Credits for Projects in Difficult Development Areas or Qualified Census Tracts may be increased by up to 30% at MFA's discretion.

#### **J. Ten Year Rule**

In order for the acquisition of an existing building to qualify, the taxpayer must acquire the building from an unrelated person who a) has held the building for at least ten years and b) did not make substantial improvements during that period which were subject to 60-month amortization under Code Section 197(k) or ACRS (as in effect prior to the Tax Reform Act of 1986). The 10-year requirement may be waived in the case of distress sales of certain federally-assisted projects, pre-payment of mortgages that could result in building(s) being converted to market use, buildings acquired from failed depository institutions, and single family residences used for no other purpose than as a principal residence by the previous owner. The Secretary of the Treasury can waive the 10-year "Placed In Service" limitation for a) any distressed property which is federally assisted as defined in Code Section 42, b) federally assisted housing that could lose Set Aside Units as a result of mortgage prepayment, (this applies to properties under the HUD Sections 221(d)(3) and 236 and RD 515 Programs), and c) buildings acquired from a federally insured depository institution that is in default, as defined by Section 3 of the Federal Deposit Insurance Act, or from a receiver or conservator of such an institution.

#### **K. Federal Subsidy**

For the purpose of the HTC, Federal Subsidies include federal grants and below-market-rate federal loans through programs such as those administered by HUD (excluding CDBG and, in certain cases, HOME, and NAHASDA) and Rural Development, tax exempt financing (such as that provided through the MFA's bond programs) and any other locally administered low-interest loans or grants from federal sources. Use of these financing sources may require reductions in Eligible Basis or reductions in a Project's maximum Applicable Credit Percentage from 9% to 4%. (See Code Sections 42(d)(5)(A) and 42(i)).

#### **L. Qualified Basis According to Type of Project**

The "Qualified Basis" is that portion of the Eligible Basis attributable to Low Income Units. It is calculated as the smaller of the percentage of Low Income Units in the building, or the percentage of floor space devoted to Low Income Units in a building.

#### **M. Placed In Service Requirement**

The 10-year Credit Period and 15 year Compliance Period begin with the taxable year in which the building is "Placed In Service" (the time at which a building is "suitable for occupancy," which generally refers to the date of the issuance of the first certificate of occupancy for each building in the Project), or, at the owner's election, the following taxable year. Section 42(h)(1)(E) of the IRS Code allows for the allocation or "Carryover Allocation" of Tax Credits to a building that is part of a new construction or rehabilitation Project if an applicant's qualified expenditures, or actual basis in the Project as of the later of the end of the calendar year in which the allocation is made or 6 months subsequent to the date of allocation is more than 10% of the taxpayer's reasonably expected total basis in the Project. MFA requires evidence of ownership and submission of a complete Carryover Allocation Application by November 15<sup>th</sup> of the year in which the Tax Credit award was made, and evidence of the expenditure of more than 10% of the expected basis in the Project by March 15 of the following year. A Cost Certification



detailing the qualified expenditures, or actual basis, that make up 10% of the reasonably expected basis and a description of the Applicant's method of accounting must be prepared by a Certified Public Accountant and submitted to MFA at that time. If the Carryover Allocation Application, the Certified Public Accountant's Cost Certification, the Attorney's Opinion regarding the qualification of the project for Housing Tax Credits, and any other required materials are not received on the appropriate dates noted above by 5:00 P.M., the Project's Credit Reservation will be canceled. Section 42(h)(1)(E) further allows for a qualified building to be Placed in Service in either of the two calendar years following the calendar year in which the allocation is made.

#### **N. Building Classification and Tax Credit Applicable Percentages**

The Tax Credit's Applicable Credit Percentage (i.e., the "4%" or "9%" Credits for which a Project is eligible) is determined by the type of Project proposed, its use and treatment of "Federal Subsidy," and the amount of Credit necessary to reach feasibility and long-term viability. The rates of 4% and 9% are upper limits of available Credits, which fluctuate based on market conditions. The actual "Applicable Credit Percentages" are based on monthly prevailing interest rates that are calculated and published by the U.S. Treasury Department as the "Applicable Federal Rate" or "AFR". The amount of the annual Credit is calculated to yield a present value of either 30% (4% Credit) or 70% (9% Credit) of eligible costs. The Applicable Credit Percentage may be locked in at the Developer's option, at 1) the month in which the building is Placed In Service or 2) the month in which a Binding Commitment (Carryover Allocation) is made for an allocation or, in the case of Tax Exempt Bond Financed Projects, the month the tax-exempt obligations are issued. Listed below are types of Projects, which could be considered eligible for the HTC and the applicable percentage for each type.

1. New Construction (without Federal Subsidy):

The maximum Applicable Credit Percentage is 9% (70% present value) for a new construction Project.

2. Rehabilitation (without Federal Subsidy):

The maximum Applicable Credit Percentage for rehabilitation is 9%. The greater of the following two tests must be met: 1) total Rehabilitation Costs must equal or exceed 10% of the adjusted Project basis during a 24-month period; or 2) the Qualified Basis of the Rehabilitation Costs must equal or exceed \$3,000 per Low Income Unit.

3. Acquisition/Rehabilitation of an Existing Building:

The maximum Applicable Credit Percentage for acquisition of an existing building is 4%. The greater of the following two tests must be met: 1) total Rehabilitation Costs must equal or exceed 10% of the adjusted Project basis during a 24-month period; or 2) the Qualified Basis of the Rehabilitation Costs must equal or exceed \$3,000 per Low Income Unit. Rehabilitation and related expenditures can qualify for the 9% rehabilitation Tax Credit as long as the rehabilitation expenditures do not receive Federal Subsidies.

4. Federal Subsidy without Reduction in Eligible Basis:

The maximum Applicable Credit Percentage is generally 4% for a federally subsidized, newly constructed or rehabilitated building. However, under certain circumstances, HOME program funding and NAHASDA funding may allow for an Applicable Credit Percentage of 9%.

5. Federal Subsidy with Reduction in Eligible Basis:

In the case of a federally subsidized, newly constructed or rehabilitated building, the taxpayer may elect to exclude the amount of Federal Subsidy from the Eligible Basis. If the taxpayer makes such an election, the maximum Applicable Credit Percentage is 9% for a qualified building.

### **III. HOUSING PRIORITIES AND PROJECT SELECTION CRITERIA**

#### **A. Needs Analysis**

This plan is consistent with the Needs Analysis of the *State of New Mexico Consolidated Plan for Housing and Community Development and 2005 Action Plan*. Housing priorities stated in the Consolidated Plan include increasing the supply of affordable housing, identifying programs and resources for individuals with special needs and rehabilitating or constructing rental housing units, including transitional units for homeless.

#### **B. Housing Priorities**

The following priorities are to be used by MFA in the distribution of Tax Credits, and are reflected in the Allocation Set Asides and Project Selection Criteria used to rank competitive Projects. These priorities include the following:

1. Levels of affordability in excess of the minimum requirements, through one or more of the following:
  - a) Higher numbers of Set Aside Units; and /or
  - b) Rents set to serve lower income tenants, for example, tenants earning no more than 40% or 30% of median income; and/or
  - c) Extended Use Periods longer than the 30-year minimum.
2. Provision of affordable housing to households on public housing waiting lists;
3. Maximizing leverage by obtaining other public or private non-equity program resources;
4. An equitable distribution of Tax Credits throughout all parts of the state where affordable housing is needed and where Concerted Community Revitalization Plans exist;
5. Provision of housing to serve documented Elderly and Special Needs Households, tenant populations of Individuals with Children, projects intended for eventual tenant ownership, and under served urban and rural areas;

6. Nonprofit development;
7. Production of housing with high quality design and construction;
8. Production of projects that are located in Qualified Census Tracts, the development of which contributes to a Concerted Community Revitalization Plan;
9. Production of projects using existing housing as part of a Concerted Community Revitalization Plan; and
10. Efficient use of scarce resources including Tax Credits, measured through lower Development Costs or other means.

### **C. Minimum Project Threshold Requirements**

All Tax Credit Applications must meet each of the following requirements. If they are not met, the Application will be rejected without further review, and no exceptions will be granted unless MFA decides to reduce the minimum score as described in Section E. Furthermore, these requirements are binding through Carryover and Final Allocations. For example MFA will not approve budget changes that cause the proposed Project to exceed the cost limits described below. Similarly, other proposed changes will be analyzed to ensure that the Project's scoring would not deteriorate to a level at which it would not have received an award in the original round.

#### **1. Site Control**

Site control for all of the land needed for the Project must be evidenced by a written governmental commitment to transfer the land to the Applicant, recorded deed or long term leasehold interest, or by a fully executed purchase contract or purchase option. If a contract or option is submitted, the agreement must provide for an initial term lasting at least until July 31<sup>st</sup> of the year in which the allocation is made. **This initial term must not be conditioned upon any extensions requiring seller consent, additional payments, financing approval, tax credit award or other such requirements.** Site control evidence and the Application materials must show exactly the same names, legal description/area and acquisition costs.

#### **2. Zoning**

Evidence of approved zoning of the proposed site must be submitted. This requires that multifamily Projects are not prohibited by the existing zoning of the proposed site. Projects sited on land which is not zoned or which is zoned agricultural, are exempt from this threshold test, but must obtain zoning approval and deliver evidence of it to MFA no later than November 15<sup>th</sup> of the year of the Reservation.

#### **3. Minimum Project Score**

The project must achieve at least the Minimum Score established in the Project Selection Criteria as discussed below.

#### 4. Cost Limits

Total Development Costs for various types of Projects may not exceed the following:

- a) New Construction Projects. The Total Development Cost per Unit must not exceed 130% of the weighted average Total Development Cost per Unit for all new construction Projects submitted in the same round.
- b) Acquisition/Rehabilitation Projects. The Total Development Cost must not exceed 100% of the weighted average Total Development Cost per Unit for all new construction Projects submitted in the same round.
- c) Tax Exempt Bond Financed Projects. Total Development Cost must not exceed the limits established for new construction or acquisition/rehabilitation projects, as appropriate, submitted in the most recent allocation round.
- d) Special Needs and Elderly Housing Projects (see definition in glossary). Developments having at least 10% of their gross square footage devoted to common areas for social and recreational use may not exceed 150% of the weighted average Total Development Cost per Unit for new construction projects or 115% of the limit established for acquisition/rehabilitation projects (as defined above.)
- e) Rehabilitation and New Construction Projects. For Projects that involve both rehabilitation of existing units and construction of new units the costs related to each will be evaluated separately for comparison to the limits established in a) and b) above.

See the Glossary for the definition of the terms “Unit” and “Total Development Cost” as they apply to the cost limit calculations in this section. Additional minimum Project Threshold Requirements apply to Tax Exempt Bond Financed Projects, as described in Section VI.B.

#### **D. Allocation Set Asides**

##### 1. Nonprofit Set Aside

Ten percent (10%) of the annual Tax Credit Ceiling for each calendar year will be reserved for Projects sponsored by Qualified Nonprofit Organizations. For purposes of this set aside, only federal requirements identified in IRS Code Section 42(h)(5) will apply. The aggregate amount of Tax Credit allocated by MFA to nonprofit organizations may exceed this amount.

##### 2. USDA Rural Development Set Aside

Ten percent (10%) of the Tax Credit Ceiling will be set aside for Projects with committed USDA Rural Development funding.

##### 3. Ranking to Meet Set Asides

If the scoring and ranking process without regard to the Nonprofit Set Aside does not result in awards to Qualified Nonprofit Organization sponsored Projects sufficient to fill the Nonprofit Set Aside requirement, the next highest scoring, Qualified Nonprofit Organization Eligible Projects will receive awards sufficient to fulfill the Nonprofit Set Aside requirement ahead of the lowest scoring Projects that would otherwise have received an award. If there are insufficient Qualified Nonprofit Organization Eligible Projects to meet the Nonprofit Set Aside, the unallocated Nonprofit Set Aside Tax Credits can not be allocated to other Eligible Projects. A similar procedure will be used to meet the USDA Rural Development Set Aside; however, if there are insufficient USDA Rural Development Projects to meet the USDA Rural Development Set Aside, any unallocated USDA Rural Development Tax Credits may be used for other Eligible Projects.

#### **E. Project Selection Criteria to Implement Housing Priorities**

The criteria shown below are the basis for the awarding of points to a particular proposed project during the Application round(s) conducted by MFA. Tax Credit reservations will not be awarded to projects achieving less than 100 points (the "Minimum Score") unless too few Projects score above this level and MFA, in its reasonable judgment, decides to reduce the Minimum Score. Projects scoring 100 or more points will be ranked according to their scores, and subject to Allocation Set Aside requirements Reservations will be made to these Projects, unless they are eliminated under subsequent processing, starting with the highest scoring projects, until all available Credits are used. Tax Exempt Bond Financed Projects will also be scored and must obtain a score of at least 60 points in order to obtain a determination that they are consistent with the QAP.

Although some criteria include scaled point structures, partial points will not be otherwise awarded. If two projects with equal scores would require more than the available Credits, the project with the lower Total Development Cost per Unit will be selected. If too few Credits are available to make a full award to the next lower scoring project, MFA will determine whether or not to award a partial allocation and/or a commitment of future year's Credits to the project, following requirements in Section VIII below. Regardless of strict numerical ranking, the scoring does not operate to vest in an Applicant or Project any right to a Reservation or Tax Credit Allocation in any amount. MFA will in all instances reserve and allocate Tax Credits consistent with its sound and reasonable judgment, prudent business practices, and the exercise of its inherent discretion.

### Project Selection Criteria

1.	<p>Local Nonprofit or Local, State or Tribal Government Instrumentality Participation</p> <p>For private nonprofits this requires that the nonprofit have a board comprised of a majority of New Mexico residents, was incorporated in New Mexico before January 1 of the year in which the Application is submitted, owns at least 51% of the general partner interest, meets the criteria of Code Section 42(h)(5), and has submitted an IRS determination letter. In addition, private nonprofits must also demonstrate financial capacity as evidenced by a minimum net worth/net assets of \$250,000 or be an approved Community Housing Development Organization (“CHDO”).</p> <p>For government or tribal instrumentalities this requires evidence that they own at least 51% of the general partner interest, and organizational documents verifying their governmental status.</p> <p>For any entity to claim points under this criterion, the nonprofit, government or tribal instrumentality must be receiving a minimum of 10% of the Developer Fee as identified in the Project Application.</p>	10 Points
2.	<p>Tax Credit Design Competition Winners</p> <p>MFA will hold a juried competition emphasizing high quality design and construction, for projects passing the Threshold Tests. The competition is optional, and winning projects may receive points under this criterion. See Attachments Checklist in Application Package for additional materials needed to participate in the Design Competition.</p>	15 Points
3.	<p>Projects that benefit communities and the environment through more efficient use of resources, smarter planning and sustainable development. These points will be awarded to up to three projects that demonstrate significant health, economic, environmental, and resource benefits for tenants and communities through healthy, efficient and smart planning, design, development and management principles and practices that increase energy efficiency, improve indoor air quality, maximize resources and enhance accessibility. To obtain points projects should provide narrative and any other documentation, supported by the preliminary plans and outline specifications also provided in the application, which demonstrate the incorporation of green building, energy efficiency, water conservation, healthy materials, sustainability and/or Universal Design methods in the construction or rehabilitation of the Project. Such materials may include lighting plans, appliance lists, water fixture lists, rainwater collection and use plans, lighting fixture lists, HERS scores, and water use baseline calculations.</p>	5 Points

4.	<p>Rehabilitation Projects</p> <p>These points will be awarded to all Projects incurring average rehabilitation hard costs of \$10,000 per Unit or more. In combined new construction and rehabilitation Projects, rehabilitated units must account for at least 20% of the total Units. <b>These points can be awarded in conjunction with points under #5 or #6 below, but not with both.</b></p>	15 Points
5.	<p>Conversion plus Rehabilitation</p> <p>These points will be awarded to projects that meet the rehabilitation requirements of criterion 4 above and convert at least 50% of the existing Market Rate Units to Low Income Units.</p>	15 Points
6.	<p>Preservation of Affordable Housing</p> <p>These points are awarded to previously subsidized projects in which rents for 75% of the Units are currently in excess of HTC Ceiling Rents and will be reduced to HTC Ceiling Rents, or for which use restrictions are to expire on or before December 31<sup>st</sup>, 2007. (See Attachments Checklist for additional materials required to obtain these points.) Rents will be limited to HTC ceilings despite other subsidy rules, except in projects with project-based subsidies.</p>	15 Points
7.	<p>Projects with the following Average Gross Median Income (AGMI) Levels:</p> <p>To calculate the AGMI, calculate a weighted average based on the number of units Set Aside at each income level. Market Rate Units will be treated as if they were Set Aside at 100% of Area Gross Median Income. Round to zero (0) decimal points while calculating, according to the example in the Glossary definition of "AGMI."</p>	<p>51 – 65% 45 Points</p> <p>50% or less, 65 Points</p>
8.	<p>Projects that incorporate Market Rate Units equal to at least 15% of the total Units.</p>	20 Points
9.	<p>Projects located within general local government jurisdictions that are designated as "Participating Jurisdictions" by HUD under the HOME Investment Partnerships Program (which at the time of this publication includes only the City of Albuquerque and the City of Las Cruces), and that have received local government HOME dollar commitments equal to at least 5% of the Project's Total Development Cost.</p>	15 Points
10.	<p>Projects committed to an Extended Use Period of the following:</p> <p>35 Years...5 Points    40 Years...10 Points    45 Years...15 Points This period encompasses the 15 Year IRS Compliance Period.</p>	<p>35 Yrs – 5 Points 40 Yrs - 10 Points 45 Yrs - 15 Points</p>

11.	<p>Projects in which at least 25% of all Units are Reserved for Special Needs Households</p> <p>"Reserved" for Special Needs Households (see definitions of Special Needs Household and Reserved in glossary) will mean that the units may not be rented to other households unless the owner demonstrates a subsequent change in the level of demand for such units and after demonstrating a good faith effort to obtain the originally targeted Special Needs tenants. Social services tailored to the needs of the Special Needs Households to be served must be provided, and a Social Services Plan (see definition) is required to obtain points under this criterion.</p>	15 Points
12.	<p>Projects Reserved for Elderly Households</p> <p>These points benefit Projects specifically designated for exclusive use by elderly residents. The projects should feature independent living, central common areas that can be used for resident activities and serving meals with an adjoining kitchen area, and an appropriate management arrangement. "Elderly Household" is defined as a household including at least one person 62 years of age or older. A Social Services Plan is required (see definition in glossary). <b>These points are not available if points are awarded for Special Needs Households.</b></p>	10 Points
13.	<p>Projects in which at least 25% of the Units are Reserved for Households Comprised of Individuals with Children</p> <p>"Reserved" for Households Comprised of Individuals With Children will have the same meaning as "Reserved" for Special Needs Households as described in criterion 11 above. A Social Services Plan, which meets the needs of individuals with children, is required. In addition the applicant must provide a description of the Project's specific design elements that serve the needs of families with children. In new construction Projects, at least 40% of the Units must have 3 or more bedrooms. <b>Projects receiving points for Special Needs or Elderly Households may not also receive points for this criterion.</b></p>	5 Points
14.	<p>Native American Projects</p> <p>These points are for Projects on Native American Trust Lands, and/or Projects owned by tribal entities or nonprofit organizations whose primary offices are located on trust lands and whose proposed site is on or immediately adjacent to Native American Trust Lands.</p>	15 Points
15.	<p>Projects which include 60 or fewer Set Aside Units</p> <p>For purposes of scoring, Projects to be located on adjacent sites proposed by the same Applicant will be treated as a single Project.</p>	10 Points



16.	<p>Projects in which at least 10% of the Total Development Cost is to be made permanently available to the Project or endowed by formal resolution of a state, local, or tribal government entity.</p> <p>The commitment from a state, local, or tribal government entity may be made in the form of cash, financing guaranties, or land and buildings. Tax Exempt Bond Financing, HOME funds awarded by MFA, non verifiable sources, or sources available to the Project for less than ten years will not be counted in meeting this criterion. Appraisals dated no earlier than six months prior to the Application date and completed by MAIs licensed in New Mexico must be submitted for all Applications in which land or building values are counted toward this 10% figure, unless the land is Native American Trust Land. For Native American Trust Land donations, a certified copy of the tribal resolution will be required.</p>	10 Points
17.	<p>Projects for which Complete Applications have been Submitted</p> <p>Points are awarded to Applications that meet all the standards described in Section IV.A.4 under "Content and Format".</p>	15 Points
18.	<p>Projects providing a commitment to market the Units to households listed on public or Indian housing agency waiting lists.</p> <p>A letter from the PHA or Tribally Designated Housing Entity, which serves the jurisdiction of the proposed site verifying this commitment, will be required to obtain points for this criterion.</p>	5 Points
19.	<p>Projects located in Difficult Development Areas ("DDA's") or Qualified Census Tracts ("QCT's"). A chart of DDA's and QCT's may be found on the MFA web site.</p>	5 Points
20.	<p>Projects located in QCT's, the development of which contributes to a Concerted Community Revitalization Plan.</p>	5 Points
21.	<p>Projects in which at least half of the units are intended for eventual tenant ownership. The Project design must be conducive to this purpose, using single family homes, duplexes, and/or townhomes that have individually metered utilities and public streets. This commitment will be evidenced by submission of a long-range Tenant Conversion Plan, and it will be documented in the LURA. These points may not be awarded in combination with points under criterion 10.</p>	5 Points

22.	<p>Projects in which the Applicant has developed a comprehensive program to facilitate eventual homeownership for tenants. The program should include owner funded incentives to assist tenants in saving for the purchase of a new home, such as establishing individual tenant accounts funded from a portion of tenant's monthly rent payment in which participants earn matching contributions from owner, and/or a program which earns credits toward the purchase of a home through partnerships with area builders. In addition to assisting the participating tenants with saving for a new home, the program should also provide for homeownership training, credit counseling, and other services necessary to help tenants prepare for homeownership. Finally, the program should outline the requirements for tenant participation. In order to obtain points under this criterion, the program must fully outline all terms and conditions of participation, demonstrate a feasible and tangible benefit to the tenants and be funded as part of owner's operating budget for the project. The Applicant must submit a written description of the program that addresses all of the above criteria.</p>	5 Points
23.	<p>Projects located in Priority Geographic Areas or Specifically Designated Target Areas identified by the MFA Board.</p> <p>Priority Geographic Areas Eligible Projects are located in the counties of Catron, Doña Ana, Lincoln, Luna, Mora, San Miguel, Santa Fe, Torrance, McKinley, or Valencia. <b>Subject to change based on final 2005 Action Plan.</b></p> <p>Specifically Designated Board Target Areas The Board designated the following counties for 2005 and 2006: Catron, Colfax, DeBaca, Eddy, Harding, Hidalgo, Mora, Quay, Rio Arriba, Roosevelt, Sierra, Socorro and Torrance.</p>	15 Points

**F. Additional Credits for Projects with Partial Allocations**

If an Applicant receives a partial allocation in a given round, and requests additional Credits in a subsequent round, the Minimum Project Threshold Requirements and the Project Selection Criteria for scoring used in the initial allocation year will be applied to the evaluation of the Project in the subsequent allocation year. The Project's ranking relative to Initial Application year Projects will be determined by calculating the Project Score as a percentage of the highest score in its initial allocation round, and multiplying that percentage by the highest score in the subsequent Application round to derive its subsequent Application year score and ranking among the subsequent round Applications.

**G. Additional Supplemental Tax Credits for Cost Increases**

Projects with increased Eligible Basis as a result of increases in hard construction costs may apply for additional Tax Credits in subsequent allocation rounds prior to issuance of an IRS Form 8609. Full applications will be required for competition within an allocation round, and the Project will compete on the same basis as that of subsequent round Projects. However, Projects for which increased credits have been requested cannot exceed MFA's Minimum

Project Threshold Requirement cost limits for the year of the initial award. Applications that are submitted for additional Tax Credits will be subject to MFA's evaluation process and the availability of Credits, as well as limitations on the time period for allocation of additional Credits under Section 42. Only one additional Tax Credit Allocation will be permitted by MFA for any given Project. The process is intended for hardship cases, and hardship will have to be documented accordingly in any such request.

#### **H. New Allocations to Projects Previously Subsidized with Credits**

Existing Projects that previously received Tax Credit Allocations and are now eligible under Code Section 42(d)(2) for new acquisition tax credits may apply for a current allocation. However, because of prior subsidy investment in the project, the scarcity of the resource, and to insure that the subsidy is not being used primarily for ownership transfer, the Projects must demonstrate a real risk of loss of affordable units and an addition of significant improvements and services to enhance livability for the tenants. These may qualify for standard Tax Credit Applicable Percentages (as described in Section II.N).

However, in a proposed sale transaction when there is an identity of interest between the seller and Principal(s), the Project will be eligible for reduced Credits and Developer Fees as follows:

1. The Applicable Credit Percentage to yield a present value of 30% of eligible costs (maximum 4%) will be used for **both** the Acquisition and Rehabilitation Costs.
2. The Developer Fee percentages described in Section IV.D.2.b) will be calculated on Total Development Cost less Acquisition Costs.

#### **I. Property Standards**

All newly constructed properties must meet applicable state and local building codes, the Uniform Building Code, the National Standard Plumbing Code and the National Electrical Code Handbook. Rehabilitation Projects should meet these codes when reasonable. Projects containing facilities that are available to the general public must meet the Americans with Disabilities Act (ADA) requirements, and projects combining housing Tax Credits with another federal source of funding must comply with HUD Section 504 requirements. Federal fair housing accessibility requirements promulgated through the Fair Housing Accessibility Guidelines {56 FR 9472, 3/6/91} must also be adhered to. Finally, conformance to *MFA Mandatory Design Standards for Multifamily Rental Housing*, in the Application Package, is mandatory for all Projects including Tax Exempt Bond Financed Projects. All of these requirements are to be verified through certifications by project architects.

### **IV. ALLOCATION PROCEDURE AND APPLICATION REQUIREMENTS**

#### **A. Allocation Rounds**

1. Submission Date(s)

MFA intends to conduct one Application round each calendar year. However, MFA reserves the right to conduct additional rounds or to award Credits outside of the rounds. **Applications will be accepted between the hours of 8:00 AM and 5:00 PM Mountain Standard Time on business days from January 17<sup>th</sup> through January 31<sup>st</sup>, 2005.** If

the projects submitted do not use all of the available Credits, or if additional Credits become available later in the year, MFA will consider a second round or make allocations to lower scored, Eligible Projects at MFA's sole discretion.

Applications for Tax Exempt Bond Financed Projects are accepted on a continuous basis, subject to the timing requirements outlined in Section VI.B.

## 2. Place of Submission:

Applications may be delivered by U.S. mail, by courier service, or by hand to the following address:

New Mexico Mortgage Finance Authority  
344 Fourth Street SW  
Albuquerque NM 87102  
(505) 843-6880  
ATTN: Senior Development Program Manager

## 3. Form of Submission

Applications may not be delivered by facsimile transmission. Only one complete, original hard copy is needed, and applicants are encouraged to submit diskette copies of MFA-provided forms in addition to hard copies. The required forms will be provided electronically and may be downloaded from MFA's web site at [www.housingnm.org](http://www.housingnm.org). All Applications should be marked "HTC APPLICATION" in readily visible print. On receipt, MFA will date and time stamp the cover.

## 4. Content and Format: Complete Applications

Complete Applications will meet the following standards when they are initially submitted and without benefit of any subsequent submissions, including the deficiency correction period:

- a) All Application documents that require signatures must be included and bear the original signature of one of the Principals in the Project.
- b) They will include the Application Form, the HTC Application Attachments checklist found in the Initial Package, and all mandatory items listed on the HTC Application Attachments Checklist.
- c) All architectural and design materials submitted must provide enough detail to clearly demonstrate that they are consistent with the MFA Mandatory Design Standards.
- d) They include Application fees as outlined in Section B.
- e) Applications must be bound and submitted in a three ring binder, with all attachments provided in the order listed. Attachments must be separated by cover sheets provided in the Initial Application Package and by tabs numbered as in the Attachments Checklist.

- f) No additional materials may be submitted after the Application is date and time stamped by MFA.
- g) Current year MFA forms must be used when provided, and no substitutions will be accepted.
- h) All information must be current, clearly legible and consistent with all other information provided in the Application.
- i) Forms must be completely filled out and executed as needed. All signatures are to be made in blue ink.
- j) All applications must be self-contained: MFA will not rely on any previously submitted information, written or verbal, to evaluate the Applications in a given round.

In determining whether the Application is complete, MFA will examine the package for both the availability of all required materials and for the content of those materials. Failure to provide or complete any element of the Initial Application Package, including all items on the Initial Application Checklist, may result in immediate rejection of the Application without complete review. When special materials required to obtain points under particular Project Selection Criteria are not provided, the related points will not be awarded.

MFA may request additional information as deemed necessary for a fair and accurate evaluation. MFA may also choose to accept inconsistent information, and if so, may select any of the inconsistent pieces of information over any other piece, in its reasonable judgment. However, MFA is under no obligation to seek further information or clarification, or to accept inconsistent responses.

The Applicant will bear full responsibility for submitting its Application in accordance with the requirements of the Code and the Qualified Allocation Plan and will be deemed to have full knowledge of such requirements regardless of whether or not a member of MFA's staff responds to a request for assistance from the Applicant or otherwise provides the Applicant assistance with respect to all or a portion of the Application.

## 5. Contact for Assistance

Please submit questions concerning the Application requirements by e-mail through MFA's web site at [www.housingnm.org](http://www.housingnm.org), or contact:

Linda Bridge  
Senior Development Program Manager  
(505) 767-2262  
lbridge@housingnm.org

## **B. MFA Fees and Direct Costs**

All fees are non-refundable. They are due at the times and in the amounts shown below and they apply to both allocated and non-allocated Credits:

For Projects receiving HTC Allocations

*Application Fee (For Initial and Supplemental Requests)*

Due at submission of HTC Application

\$500 for nonprofit or government entity Applicant; \$1,000 for a for-profit Applicant

*Market Study Deposit*

Due at submission of HTC Application

\$4,500 deposit to cover cost of commissioned market study. If the market study costs more than the deposit, the difference will be billed. If the cost is less, the difference will be refunded.

*Processing Fee*

Due at Execution of Reservation Contract

7.5% of the MFA-determined HTC Allocation amount

For Projects financed with Tax Exempt Bonds

*Application Fee*

Due at the submission of a request for determination of consistency with the QAP

\$500 for nonprofit or government entity Developer; \$1,000 for a for-profit Developer

*Market Study Deposit*

Due at submission of Tax Exempt Bond request for consistency review

\$4,500 deposit to cover cost of commissioned market study. If the market study costs more than the deposit, the difference will be billed. If the cost is less, the difference will be refunded.

*Processing Fee*

Due Prior to Delivery of Determination Letter

3.5% of the MFA-determined annual Tax Credit amount

All Projects

*Monitoring and Compliance Fees*

Due Annually by January 31<sup>st</sup> for each year of the Extended Use Period

\$35.00/Set-Aside Unit/Per Year

*Appeal Fee*

Due at submission of appeal

\$5,000.00

*Subsidy Layering Review, Request for Increase in Credits, and/or Request for Changes to a Project*

Due at submission of review request

\$500.00

*Direct Cost of Market Study*

Any amount in excess of the \$4,500 deposit is due within ten days of billing by MFA, during the annual allocation round. The cost of the study will be determined by a competitive bid process.

Fees may be adjusted annually, as determined by MFA. Fees may be delivered in the form of personal or business checks, money orders or cashier's checks. Any check returned for insufficient funds will result in rejection of the Application, cancellation of the Reservation, or other actions available to MFA.

### **C. Staff Analysis and Application Processing**

#### **1. Threshold Review**

Following the Application Deadline MFA staff will undertake a Threshold Review to determine whether or not the Application meets the Minimum Project Threshold Requirements shown in Section III.C above. If the application fails the Threshold Review because it does not achieve the Minimum Score, it may be retained until MFA determines whether or not all Credits can be allocated to higher scoring Projects. If it fails to meet any of the other requirements however, the Application will be immediately rejected without further processing.

#### **2. Local Notice**

The Chief Executive Officer of the local jurisdiction where the Project is located will receive a Local Notice from MFA stating that an Application has been received. The Local Jurisdiction and the Chief Executive Officer are to be identified by the Applicant in the Application form. The jurisdiction may be a municipality, town, county or tribal government. Such notification will be issued for all Applications no more than ten (10) business days after MFA's Application Deadline and the recipient will have thirty (30) days to respond. If MFA receives a negative response to this notice, the Application may be rejected with no further review and regardless of its scoring or Threshold results. No response will be interpreted as approval of the project by the local jurisdiction.

#### **3. Site Visits**

On completion of the Threshold Review, MFA will visit the proposed sites for all Applications passing Threshold Review. Sites considered inappropriate due to current or foreseeable adverse health, safety, welfare or marketability risks, in MFA's reasonable judgment, may be cause for rejection of any Application, regardless of threshold or scoring results.

#### **4. Deficiency Correction Period**

MFA may provide a Deficiency Correction Period immediately after the Threshold Review. This process will apply only to Projects that have met all of the Threshold Tests during the initial Threshold Review. It is intended only to clarify ambiguous information or complete forms or make similar minor corrections to the Application. If the Deficiency Correction Period is used, MFA will provide notice to Applicants having shortcomings in their Applications via facsimile and U.S. mail and Applicants will have five (5) business days after the date of the transmission of the facsimile to submit additional materials. All materials must be submitted no later than 5:00 PM MST on the fifth business day, following "Form of Submission" requirements shown in Section A.3 above. Because it delays decisions a deficiency correction period is unlikely when MFA has received adequate numbers of Applications which meet all of the Threshold and Complete Application Requirements. Certain types of deficiencies, including failure to meet one or more of the Minimum Project Threshold Requirements at the Application Deadline, as

well as others determined in MFA's reasonable judgment, cannot be corrected during the Deficiency Correction Period. Materials submitted during the Deficiency Correction Period will not alter the original scoring of the Application: They are only intended to complete the Application for further review. Furthermore, the Deficiency Correction Period may not be used by the Applicant to alter the original structure of the project. This prohibition includes, but is not limited to, all changes listed in the Section I below.

#### 5. Local Jurisdiction Support

Allocations will be limited to Applications which include a local support letter, and which do not produce negative responses to MFA's Local Notice described in Section 1 above. The local support letter to be delivered under this requirement must 1) refer to the specific Project location proposed in the Application, 2) identify the nature of the development as affordable housing, 3) have a date no more than ninety (90) days prior to the Application Deadline, 4) be signed by the Chief Executive Officer or the Chief Administrative Officer of the jurisdiction in which the site is located, and 5) be conditional only on standard zoning and local regulatory process approvals. Signatures by designees of these officials will not be accepted.

#### 6. Supplemental Information Submission

If at any point during the processing, staff determines that supplementary information is needed to complete its review, the Applicant will be notified in writing and will have five (5) calendar days after the date of MFA's notice to deliver a written response. This provision does not apply to incomplete Applications, which may be rejected during the Threshold Review or subject to the Deficiency Correction Period Process.

#### 7. Design Review

All projects including Tax Exempt Bond Financed Projects, will be subject to a design review by an architect hired by MFA to determine compliance with MFA Mandatory Design Standards. For rehabilitation projects, a Capital Needs Assessment will be required subsequent to the initial Application (prior to the issuance of the determination letter for Tax Exempt Bond Finance Projects, and at Carryover Application for all other Projects) and this report may be reviewed by an architect hired by MFA for completeness and compliance with MFA Mandatory Design Standards. All plans and related design materials submitted as part of an Application must provide enough detail for MFA to determine compliance with the Mandatory Design Standards.

#### 8. Design Competition

To improve the quality of the projects funded, MFA may hold a design competition for each allocation round. Participation in the competition is optional, but projects selected by a panel chosen by MFA will receive additional points in the scoring process. The additional materials required are shown in the Exhibits Checklist, and the choice to participate should be noted in the Application. Winners of the Design Competition will be publicly announced by MFA, and participation in the Design Competition constitutes Applicant's concurrence to such publicity.

#### 9. Market Study



For all projects passing the Threshold Review in an allocation round and all Tax Exempt Bond Financed Projects, MFA will commission a standardized market study by outside professionals chosen pursuant to the requirements of MFA's procurement policy and having no financial interest in any of the projects. A deposit of \$4,500 is required with each application. Any additional cost of these studies will be charged to the Applicant, and failure to pay within 10 days of the billing will result in rejection of the Application. A refund of the difference between the deposit and the cost of the study will be made to applicants if the cost is less than the deposit.

#### 10. Other Project Compliance

All Principals (See Glossary), related entities, and affiliates must be in compliance with respect to all other federally subsidized housing or HTC projects that they own or operate throughout the country. Principals of Applicant shall submit a complete list of all projects in which Principals have a financial interest. Each Principal shall also submit an affidavit certifying that Principal is not in default with respect to any material compliance matter with respect to any such property or shall state what defaults exist and what corrective action Principal is taking. If MFA determines either through information provided by Principal or through MFA's investigation that any projects in which Principal has a financial interest is in default of any material compliance matter, MFA may reject the Application.

#### 11. Development Team Review

Staff will review the qualifications of each Development Team member to determine capacity to perform in the role proposed. Considerations may include related experience, financial capacity, performance history, references, management and staff, among others. An Application may be rejected or substitutions requested if the Development Team or any member thereof is unsuitable as determined by MFA.

### **D. Feasibility Analysis and Financial Considerations**

All Projects successfully completing the Threshold Review and ranking among the highest scoring Projects for which Credit Ceiling is available in a given year, as well as Tax Exempt Bond Financed Projects, will undergo financial analysis by MFA staff to determine whether or not the Projects are financially feasible. Such determinations will rely on both the financial data submitted by the Applicant and on staff judgments with respect to feasibility matters. Projects that do not appear financially feasible in MFA's judgment will be rejected without further processing. Although Financing Commitments will not be required at Initial Application, all sources must be clearly identified and their terms specified. Financing Commitments will be required as a "Subsequent Requirement" after the initial Reservations are made.

#### 1. Development Costs

Development Costs will be evaluated against industry cost standards and the average costs of competing Projects. In the case of rehabilitation projects an appraisal and Capital Needs Assessment of the existing Project will be required (prior to the issuance of the determination letter for Tax Exempt Bond Finance Projects, and at the time of the Carryover Application for all other Projects), and used by MFA to evaluate Development Costs. The acquisition cost on which Tax Credits are calculated, for rehabilitation projects, will be held to the lesser of sale price or appraised value. Applicants submitting costs exceeding these cost standards or submitting costs substantially below costs

typical in the marketplace must provide information acceptable to MFA, which justifies such costs. Projects with excessive costs will be subject to adjustments to the amount of Credits requested.

## 2. Developer and Other Fees

Fees are limited to the following standards:

### a) Builder's Profit, Overhead and General Requirements

Builder's profit may not exceed 6% of Construction Costs: Builder's overhead may not exceed 2% of Construction Costs: And general requirements may not exceed 6% of Construction Costs. For purposes of these calculations, see definition of Construction Costs in the Glossary.

### b) Sponsor's Profit/Developer's Fee

These fees may not exceed 15% of Total Development Cost for Projects of 30 or fewer units; 14% for Projects of 31 to 60 units; 13% for Projects of 61 to 74 units; 12% for Projects of 75 to 99 units; and 10% for Projects of 100 or more units. This fee includes all consulting costs. Any reserve, excluding the MFA required Project Reserve (see below), may be considered as part of the Developer Fee, if it is not held for the benefit of the Project for a minimum of 10 years. Where an identity of interest exists between the Developer and the builder, the above-mentioned fees may be further reduced at MFA's discretion, if deemed to be excessive. For purposes of these calculations, Total Development Cost is adjusted to exclude developer's fees, consultant fees, and all reserves. If an identity of interest exists between a seller and a Principal, the above-mentioned fees may be further reduced at MFA's discretion, and as described in Section III.H for Projects previously subsidized with Credits.

Exceptions to these rules may be granted in MFA's sole discretion. Although the same standards will apply for Projects subject to Subsidy Layering Review, they will require Board approval for Subsidy Layering purposes whenever they exceed the federally defined "Ceiling Standard" limits, and only five such excess fee amounts can be approved in any given year.

Increases in Project costs subsequent to the Application Deadline will not result in an increase in any of the fees calculated above for Tax Credit Allocation purposes. These fees will be held to the same dollar amount as approved by MFA during the initial underwriting of the Project.

## 3. Reserves (Escrows) Included In Development Costs

The development budget must include an operating reserve equal to four months of projected operating expenses, debt service payments, and replacement reserve payments. Replacement reserve levels must be shown in the operating budget at the minimum of \$250 per unit per year for Elderly Housing (new construction projects only) and \$300 per unit per year for all other new construction and rehabilitation projects. Project reserves of any kind in the development budget will not be included in MFA's calculation of Eligible Basis for Tax Credit purposes.

#### 4. Operating Expenses, Replacement Reserves and Debt Service Coverage

MFA will review the projected operating expenses, replacement reserves and loan terms and may, in its determination of economic feasibility, make adjustments based upon industry standards, its own underwriting parameters, the Capital Needs Assessment, or facts obtained from other appropriate sources. Applicants are urged to carefully review operating cost pro formas and include only achievable loan terms in their Applications. Applicants must include real estate taxes in their operating expenses, unless evidence of a perpetual real estate tax waiver (throughout the term of permanent financing) is submitted with the Application.

#### 5. Debt Service Coverage and Subordinate Debt

Applicants who are proposing subordinate debt must include the terms of the loan, and pro formas must reflect the ability to repay the senior and subordinate debt with an aggregate minimum debt service ratio of 1.15. Projects that have debt service ratios higher than 1.30 may receive smaller Tax Credit awards, smaller subsidized loans, or higher loan rates than requested in the application. MFA will consider total annual cash flow as well as debt service ratio when making this determination. MFA will generally not consider the repayment of deferred developer fee when underwriting for feasibility but may consider a project infeasible if the deferred fee represents a financial burden to the project.

#### 6. Rent Considerations and Unit Distributions

For Projects with more than one income and rent Set Aside, all unit types must be distributed proportionately among each of the multiple Set Asides. That is, if 30% of the units are to be set aside for tenants earning no more than 50% of median income, then the units used for this income group must include 30% of all one-bedroom units, 30% of all two-bedroom units, etc. This is intended to prevent allocation of all of the high rent units to the higher income groups, thereby maximizing income while potentially violating the intent of fair housing law.

Although the Federal Tax Credit regulation allows tenant rents plus federal rent subsidies in excess of the Tax Credit Ceiling Rents as long as the tenant pays no more than 30% of household income toward rent, the practice is prohibited by MFA except in projects with project based subsidies.

### **E. Credit Calculation Method**

#### 1. Tax Credit Calculations

During each evaluation, MFA will determine the amount of Tax Credits to be reserved, committed, or allocated by considering the following components of each Project:

- a) Development Cost;
- b) Funding sources available to the Project for construction and permanent financing:
  - (1) First mortgage loans;
  - (2) Grants;
  - (3) Tax Credit proceeds;
  - (4) Owner equity; and
  - (5) Subordinate debt.
- c) Projected operating income and expenses, cash flow and tax benefits;
- d) Maximum Tax Credit eligibility;
- e) Debt service coverage ratio compared to lender requirements or commercial lending practices, as applicable;
- f) Project reserves; and
- g) Developer fees and builder overhead and profit.

## 2. Amount of Tax Credits for Reservation or Carryover Allocation

To estimate the amount of the Tax Credit Allocation for a project at Application or at Carryover MFA will use the lesser of 9% (4% if appropriate) of the Qualified Basis or the amount needed to fill the financing gap. The procedure to determine the amount to fill the financing gap is outlined in 3 below.

## 3. Tax Credit Proceeds

At the time of Application MFA will use current market conditions in selecting a single equity-pricing factor for all projects. The prior twelve months' average of Applicable Credit Percentage will be used, along with the equity-pricing factor to estimate the Tax Credit Proceeds. At the time of the Carryover Allocation, the owner must deliver a written letter of intent from a syndicator or equity provider that clearly states the equity factor. That equity factor along with the prior twelve months average Applicable Credit Percentage will be used to estimate the Tax Credit proceeds for the Carryover Allocation. The equity factor to be used at Final Allocation will be the actual equity factor contained in the Project's syndication agreement, and the Applicable Credit Percentage will have been determined at either Carryover or Placed in Service date.

## 4. Limitation on Tax Credit Awards to a single Project or Principal

No Project will receive an award in excess of 25% of the annual population-based Credit Ceiling amount for the year in which the allocation is made, and no single Principal or related entities will receive allocations in excess of 25% of the annual population-based Credit Ceiling amount (see Annual Credit Ceiling). For purposes of this calculation the 30% increase in Eligible Basis for Projects in Difficult Development Areas or Qualified Census Tracts will not be taken into account. Additionally, no single Principal or related entities will receive allocations for more than two projects in a given round. At MFA's discretion, exceptions to this limit may be made for projects that would use only 4% credits, and/or when inadequate numbers of lower scoring Eligible Projects are available to use all of the Tax Credits available in a given round.

## 5. Other Factors Limiting the Credit Reservation

The amount of Credit reserved, committed and finally allocated to a Project will be the lesser of:

- a) The maximum Tax Credit eligibility of the Project;

Maximum Tax Credit eligibility is the maximum amount of Credit justified by a Project's qualified basis taking into consideration any increase in Eligible Basis approved by MFA and the Applicable Credit Percentage as described in Section 2 above or the Applicable Credit Percentage that was locked-in at Carryover or was in effect when the building was Placed in Service or;

- b) The amount requested in the Application; or
- c) The amount necessary to fill the funding gap.

The funding gap is the difference between Total Development Cost (exclusive of syndication related costs) and all available funding sources, including HOME funds awarded in conjunction with the HTC allocations. The terms of all proposed sources must be within reasonable industry norms and financing for the Project has to be maximized when evaluating rate, term, debt service coverage, loan-to-value, etc. The maximum Tax Credit amount allowed based on the funding gap, will be determined by the MFA limits stated in Section 3 above.

#### 6. Increased Basis for High Cost Areas:

Additional Eligible Basis (up to 30% of the initial calculation) will be considered for Projects located in HUD-designated "Difficult Development Areas" (DDA) and "Qualified Census Tracts" (QCT) if deemed necessary for viability of the Project by MFA. Applicants requesting such increases must deliver evidence in the Initial Application Package that the Project is located in a DDA or QCT.

#### 7. Adjustments to Credit Allocations

When actual Tax Credit proceeds are confirmed and final financial feasibility analysis is performed during review of Final Allocation Packages, there may be adjustments to the Tax Credit Allocation. Adjustments may also be made at Carryover when the 12-month average Applicable Credit Percentage has changed, and for rehabilitation projects when the Capital Needs Assessment and appraisal are provided. If actual Project costs or funding sources differ substantially from the projections submitted in the Application, MFA may reduce the final Tax Credit Allocation or the owner may establish project reserves to offset the deficit if the project has sufficient Credit eligibility in MFA's reasonable judgment. The conditions for such reserve accounts will be determined on a case-by-case basis.

#### 8. Federally Required Subsequent Financial Analyses

Regulations require that Housing Credit Agencies conduct evaluations at three specific times to determine the amount of applicable Credits:

- a) Upon receipt of an Application for Low Income Housing Tax Credit Reservation; and
- b) Prior to granting a Tax Credit Allocation; and
- c) No earlier than thirty (30) days prior to awarding the Tax Credit Certification, IRS Form 8609.

## **F. Final Processing and Awards**

### **1. Additional Considerations**

All remaining processing will then be completed for submissions meeting the Threshold and Feasibility requirements described above. In this step all remaining determinations will be made with respect to development team capability, design, readiness to proceed, and other factors in MFA's reasonable judgment. Projects must meet MFA Mandatory Design Standards for Multifamily Housing available from MFA on the website. Debarment from HUD or other Federal programs, bankruptcy, criminal indictments or convictions, poor performance on prior MFA or HUD financed Projects (for example, late payments within the 18 month period prior to the Application deadline, misuse of reserves and/or other project funds, default, fair housing violations, non-compliance, or failure to meet development deadlines or documentation requirements) on the part of any proposed development team member or owner or other Principal may result in rejection of an Application by MFA. When scoring and ranking generates multiple projects that would draw tenants from a single market area (as determined by the MFA market studies for the Projects in question), MFA may choose to eliminate the lower scoring or higher cost project to avoid overbuilding and distribute Credits more evenly throughout the state. In addition MFA reserves the right to reject any Project, which the MFA in its reasonable judgment determines, is inconsistent with prudent business practices or with the intent and purpose of the Plan. MFA may also make awards conditional on specific modifications to the Project that MFA in its sound judgment considers necessary to enhance the feasibility or safety of the project.

### **2. Selection of Projects for Awards**

After final processing, Projects will be ranked according to scores established in the Threshold Review. Awards will be made to the highest-ranking Projects following procedures and Set Aside adjustments described in Section III.D and III.E, as well as adjustments made consistent with limits established in Section E.4. Staff will then prepare a summary of the Projects to be recommended for allocations. Eligible and ineligible Projects will be distinguished for purposes of subsequent awards if additional Credits become available.

### **3. Allocation Review Committee (ARC)**

The Chairman of the Board of MFA will appoint an Allocation Review Committee. The functions of this committee will be to 1) review the Project rating and ranking results in the staff's proposed award summary, 2) determine whether or not the proposed awards have been made consistent with the criteria and other aspects of this Qualified Allocation Plan, 3) conduct the appeals process, and 4) make final award recommendations to the Board. MFA will notify successful Applicants of the preliminary status of their Projects with the use of a Preliminary Reservation Letter or rejection letter, after the committee's approval of the staff's proposed awards and before the appeal process begins. Such letters will be scheduled to be issued approximately ninety (90) days after the

Application Deadline. These letters will also be used to initiate the appeals process. When appeals or other matters cannot be decided by the ARC, they will be referred to the Board of Directors.

#### 4. Appeal Process

Applicants wishing to appeal a rejection of their Application or the amount of MFA's allocation may do so in writing delivered to MFA no later than 5:00 PM local time on the fifteenth day after the date of the Preliminary Reservation Letter or rejection letter. Appeal requests must be specific as to the decision being appealed, and they must be accompanied by a fee payment in the amount shown in Section B. Appeals for a given Project can only be appealed by that Project's Applicant. The rejection or allocation amount will stand unless the Applicant can prove or justify why the decision should be changed. The Allocation Review Committee will review the appeal and take whatever action it deems appropriate. The decision by the Committee or the Board, if the matter is referred to the Board, will be final; no further appeals will be entertained. Appeals may result in re-ranking of the Projects, in rejection of previously approved Projects and/or in approval of previously rejected Projects. Once the appeals process is completed, and the resulting recommendations are approved by MFA's Board of Directors, final Reservation Letters and rejection letters will be issued.

#### 5. Board of Directors

The Board will make final awards for each round, although for logistical reasons the Preliminary Reservation Letters and rejection letters may be issued prior to the appeals process and the Board's final decisions. Final Reservation Letters and rejection letters will be issued following the Board decision. The Board will approve projects considered to be Eligible Projects, and these may include Projects for which Tax Credit Allocations are not immediately available. If any Projects receiving Reservations fail to meet subsequent requirements, Credits may be revoked and then awarded by staff to the next highest scoring Eligible Project(s) on the waiting list. Any conflicts of interest of Board members are to be disclosed and Board members having such conflicts will abstain from votes approving or disapproving Tax Credit Projects.

### **G. Notification of Approval and Subsequent Project Requirements**

The Applicant will be notified of MFA's allocation decision in the form of a Reservation Letter.

**Affirmative actions after Reservation.** From the date of the Reservation, the applicant must meet each of the deadlines specified below for follow up activity in order to maintain its Reservation or Carryover Allocation. **MFA has no obligation to provide any further notice to applicants of these requirements, and failure to submit any one or more of the items may cause the Reservation to be terminated or the Carryover Allocation to be cancelled.** Applicants must further agree to voluntarily return their Reservations or Tax Credit Allocations for reallocation to other projects by MFA if any of the deadlines below are not met.

#### 1. At Reservation

The Processing fee must be paid at this time, and any other conditions noted in the Reservation Letter, which may include evidence of continued site control, must be satisfied.

2. By November 15<sup>th</sup> (See Glossary) of the allocation year
  - a) Threshold Requirement #2

Applicants whose Projects were not required to meet Threshold Requirement #2 (zoning) at the Application Deadline must submit evidence that all required zoning approvals for the proposed Project have been obtained; and

- b) All Applicants must deliver:

- (1) The Contractor's Resume, if it was not included in the Application; and

- (2) Financing Commitment(s) (See definition) for construction and permanent financing and any other rental or other subsidy, as applicable. Commitments must be submitted from all funding and subsidy sources including construction and first mortgage lender(s) and all secondary financing sources (i.e., grants, loans, in kind contributions).

- (3) For a Project to be financed by HUD, evidence that the Applicant has submitted a SAMA Application to HUD.

- (4) For a Project to be financed by MFA's 542(c) Risk Sharing or 538 Loan Guaranty Programs, submission of the complete loan application including fee payments and all required materials, and construction financing commitments, if from other institutions.

- c) Carryover Allocation Requirements. If the Project will not be Placed In Service during the calendar year in which the reservation is made, the Applicant must request a Carryover Allocation, which allows for twenty-four (24) additional months to complete the Project. The complete Carryover Allocation Package must be delivered to MFA by November 15<sup>th</sup> of the year in which the Reservation was made. It must contain all items on the Carryover Allocation Requirements Checklist, which include, among others, an updated Application Form, and recorded deed or lease to the site. The Applicant must own or hold long-term lease rights to the land or depreciable real property that is expected to be part of the Project. All Tax Credit fees must be paid to date.

- d) Rehabilitation Projects. In addition, rehabilitation Projects must provide with the Carryover Application an appraisal and a Capital Needs Assessment of the existing Project.

3. March 1 of the Year following Carryover

If applicable, the MFA 542(c) Risk Sharing or 538 Guaranty Loan commitment is to be fully executed.

4. March 15 of the year following Carryover



The Applicant must submit evidence that the basis in the Project exceeds 10% of the reasonably expected total basis in the Project, an Independent Auditor's Report and Cost Certification, and an Owner's Attorney's Opinion and any other documentation required by MFA.

5. April 1 of the second year after Allocation

- a) No Later than April 1<sup>st</sup> of the year in which the Project must be completed, the owner must deliver evidence acceptable to MFA that construction of the Project has begun. This will include, at a minimum, building permits and site photographs.
- b) At the same time the Applicant must deliver an executed syndication commitment.

6. November 15<sup>th</sup> of the Second Year following the initial allocation

Final Allocation and Placed in Service Requirements. On or before November 15<sup>th</sup> of the second year following the initial allocation, a Placed in Service Application or a Final Allocation Application must be submitted for each project. **Failure to meet this requirement will result in the loss of Tax Credits.** If the project is to be Placed in Service but the Applicant is not yet ready to request 8609's, the Placed in Service portion of the Final Allocation Package must still be submitted. Prior to the issuance of 8609's for the Project, the owner must submit a complete Final Allocation Package, containing all items on the Final Allocation Checklist, which include, among other items, the following:

- a) Cost Certification: A Cost Certification, prepared by a Certified Public Accountant, must be delivered by the owner prior to the issuance of the Low Income Housing Tax Credit Allocation Certification (IRS Form 8609). This form and required documentation must be completed within sixty (60) days after the Project is Placed In Service. MFA is under no obligation to issue 8609's for the current year if the package is received after November 15<sup>th</sup>.
- b) Architects Certification: A certification from the Project architect that the Project has been built in conformance with MFA Mandatory Design Standards and all applicable codes.
- c) Owner's Attorney's Opinion: An owner's attorney opinion submitted on firm's letterhead with required text.
- d) Land Use Restriction Agreement (LURA): Prior to December 31 of the year in which the buildings are placed in service, the owner must submit an executed and recorded LURA, satisfactory to MFA in form and content.

7. Other Developer Responsibilities and Elections

The developer has several options concerning the month in which the Applicable Credit Percentage is locked in, for both taxable and tax exempt Projects. Additionally, the Developer must place the buildings in service and claim Credits

within certain time periods. MFA must be notified of these dates to ensure that all necessary administrative actions are taken in a timely manner. Otherwise Credits may not be able to be claimed as desired.

#### 8. Land Use Restriction Agreement (“LURA”) or Extended Use Agreement

Section 42(h)(6) of the Code requires imposition of “an extended low-income housing commitment”. MFA complies with this requirement with a LURA filed at the time of Placement in Service or Final Allocation. The LURA sets forth, as covenants running with the land for a minimum of 30 years (or longer if the developer commits to a longer restriction period), the compliance fees, the low income Set Asides, the percentages of median income to be served, the special housing needs to be served (if any) and any other such requirements that obtain as a scoring matter or that may be imposed through this QAP and Code Section 42. The LURA may not be terminated prior to its term for any reason other than foreclosure and the Owner will not have the right to require the MFA to present a “qualified contract” in accordance with Code Section 42(h)(6). The developer will also have to deliver subordination agreements from all lenders, giving lien priority to the Tax Credit restrictions.

### **H. Termination of Reservations or Rejection of Applications**

Any of the following events or actions on the part of the Applicant at any time subsequent to the Application Deadline may cause the Application to be rejected, or the Reservation to be terminated in MFA’s sole discretion:

1. Loss of Site Control or Site Change;
2. Submission of any false or fraudulent information in the Application or in other submissions;
3. Failure to meet the conditions in Section C and G above or in the Reservation Letter;
4. Subsequent regulations issued by U.S. Treasury or the IRS pertaining to Section 42;
5. Failure to promptly notify MFA of any material or adverse changes in the facts of the original Application pursuant to Section I below.
6. Instances of non-compliance continuing beyond the specified cure period on Applicant’s or Principals other projects.
7. Any other change which would alter the original scoring of the Application, or which was not approved in advance by MFA.
8. Debarment from HUD or other Federal programs, bankruptcy, criminal indictments or convictions, poor performance on prior MFA or HUD financed Projects (including but not limited to late payments within the 18 month period prior to the Application Deadline, misuse of reserves and/or other project funds, default, fair housing violations, non-compliance, failure to meet development

deadlines, or documentation requirements) on the part of any development team member or owner or other Principal.

9. Change in the Federal Set Aside Election or other set aside proposed in the Initial Application, subsequent to the Application Deadline.

#### **I. Notification to MFA of Changes to the Project**

It is the Applicant's responsibility to notify MFA immediately, in writing, of any changes to the Project subsequent to submission of an Application, including the changes listed below and any other material changes. If any proposed change results in adjustments to the Project's original scoring, regardless of the Project's ranking, or if the proposed changes would have prevented the project from achieving one or more of the original Minimum Project Threshold Requirements at Initial Application, MFA may reject the proposal and/or revoke the Reservation or Tax Credit Allocation. Failure to notify MFA may result in the rejection of an Application or loss of a Reservation or Tax Credit Allocation. Approval of such changes will be made in MFA's sole discretion, and the change may result in a change in the Tax Credit amount or other action by MFA. A \$500 fee payment is required at the time of the request.

1. Site control or rights of way are lost;
2. Project costs change in excess of five percent (5%) of the Total Development Cost shown in the Initial Application;
3. Applicant obtains additional subsidies or financing other than those disclosed in the Application; loses subsidies or financing included in the Application; or the amount of any such financing or subsidy changes by 10% or more from the amount shown in the Application;
4. Development Cost Contributions made by a state, local or tribal government entity are reduced, increased, withdrawn or substituted with other types of contributions than the ones originally proposed in the Application;
5. The syndication payment timing and/or net proceeds change from those stated in the Application;
6. The parties (other than the Limited Partner(s)) involved in the ownership entity as represented in the Application change;
7. The unit design, square footage, unit mix, number of units, or number of buildings changes (fee will be waived when changes are required by local regulatory codes). Substantial changes of this sort may result in a requirement to produce a new Market Study;
8. The general contractor or other member of the original development team changes; and/or
9. Any other factor deemed material by MFA in its reasonable judgment.

#### **J. Notice Provisions**

MFA will typically provide notice to Applicants through either certified mail or courier service, and facsimile or email transmission. Consequently street addresses, email addresses and fax numbers must be provided clearly in the Application Form. **Such notices will be provided only to the single contact person shown in the Application Form. MFA will not be liable if unable to give notice due to a change in contact person information that was not reported to MFA.**

#### **K. Applications are Public Records**

All information contained in Applications for Tax Credits are public records subject to inspection under state and federal open records laws. In addition, MFA may share information and details obtained from Applications with other public agencies.

### **V. COST CERTIFICATION**

#### **A. Applicability of Cost Certification**

Prior to the issuance of a Carryover Allocation or a Low Income Housing Tax Credit Allocation Certification (IRS form 8609), MFA will require a Cost Certification, prepared by an independent Certified Public Accountant, which meets the MFA requirements for all Projects.

#### **B. Requirements**

The Cost Certification must meet the following requirements:

1. The accountant preparing the Cost Certification must certify that all costs are related to the development and do not include costs for organization, syndication, professional or consultant fees related to syndication.
2. All fees, including the developer fee, which are paid to the Developer or to an entity with an identity of interest with the Developer, must be clearly identified. If all or a portion of the developer fee is deferred, copies of the promissory note or other substantiation of the validity of the fee must be provided.
3. If the land is purchased from a related party, the owner must submit an appraisal to substantiate fair market value.
4. Legal fees related to land acquisition must be clearly identified.
5. Interest expense related to land must be clearly identified.
6. The sources of all funding including loans, Tax Credit proceeds, developer equity and all other sources must be certified.

#### **C. Authority to Determine Maximum Qualified Basis**

MFA may challenge the costs provided in the certification, impose the limitations set forth in this Plan and at its sole discretion, determine the maximum Qualified Basis against which Credit is allocated.

### **VI. AUXILIARY FUNCTIONS**

As HCA, MFA conducts certain Tax Credit related functions which are separate from the regular allocation and monitoring process, including the following;

### **A. Subsidy Layering Review**

Pursuant to Section 911 of the Housing and Community Development Act of 1992, HUD is required to determine that Projects receiving both Tax Credits, and federal, state, or local assistance do not obtain subsidies in excess of that which is necessary to produce affordable housing. This responsibility has been delegated to MFA, and MFA's review process will follow the Administrative Guidelines issued December 15, 1994. An essential component of this review is an analysis of the reasonableness of fees paid to sponsors, developers, and builders. Consequently for purposes of Section 911 Reviews, fees used to calculate Tax Credit amounts will not exceed the limits stated in Section IV.D, "Developer and Other Fees", above. Some of these maximum fees allowed by MFA exceed the "Safe Harbor" fee amounts, which apply to Section 911 reviews. Special factors that justify these published higher fees (which do exceed "ceiling" amounts) include, but are not limited to: The relatively high cost of construction and land within the State of New Mexico; the lack of state or local funded soft second financing or operating subsidies; and the general inability of local governments to donate land and/or other services to worthy Projects due to the state's "Anti-Donation" clause.

The MFA reserves the right to include, or consider, other criteria to justify exceeding Safe Harbor limits for fees associated with projects requiring Subsidy Layering Reviews. The MFA also reserves the right to limit Projects to Safe Harbor limitations for any reason that it deems reasonable. This paragraph applies to all Projects that require Subsidy Layering Reviews.

Requests for Subsidy Layering Reviews may be made at any time by a developer/sponsor, and must include a \$500 review fee along with the full HTC Application Form as well as HUD Form 2880 (as applicable), among other materials. More detailed Application Packages may be obtained from MFA. Responses will be provided no later than thirty (30) business days subsequent to receipt of the request by MFA, unless the request is submitted less than ninety (90) days subsequent to an allocation round deadline.

### **B. Processing of Tax Exempt Bond Financed Projects**

Projects financed with Tax Exempt Bond volume cap allocated by the state may receive 4% Tax Credits without participating in the HTC allocation process described in this Plan. However, under IRS Code Section 42(m)(1)(D), such Projects must receive a determination that they "satisfy the requirements for allocation under the qualified Allocation Plan..." MFA's determination that a Project satisfies the requirements of the Qualified Allocation Plan will be based on the Project's meeting all Minimum Project Threshold Requirements, Staff Analysis, Application Processing, Feasibility Analysis, and Property Standards described in the Qualified Allocation Plan in effect when the determination is made, with one exception. That is, the Minimum Score for Tax Exempt Bond Financed Projects will be only 60% of the Minimum Score stated in Section III.E. MFA will also undertake an analysis to determine the Credit amount necessary for financial feasibility.

Requests for these determinations must be made by a Developer/Sponsor no more than 60 days after an award of bond volume cap is made by the State Board of Finance, and no less than 60 days prior to the anticipated bond issuance date. Requests must include a Review Fee as listed in Section IV.B, a \$4,500 deposit toward the cost of a market study to be ordered by MFA, and the Development Project Application Form with needed schedules, the Bond and Tax Credit Checklist, and any other material specified by MFA. For these PABVC financed projects

only, MFA may accept the Applicant's market study and waive the \$4,500 deposit if the Applicant's study meets all of the requirements of MFA's studies, in MFA's determination, and is dated no more than 180 days prior to the date on which a complete Application is received by MFA. Prior to the release of the determination letter by MFA a processing fee in the amount of three and one half percent (3.5%) of the approved annual Credit amount will be due. Responses will be provided no later than sixty (60) business days subsequent to receipt of the complete request by MFA.

Tax Exempt Bond Financed Projects may receive Credits on the full amount of their Eligible Basis only if at least 50% of the development's "aggregate basis" is financed with Tax Exempt Bonds. Additionally, numerous bond-financing rules apply and many Tax Credit requirements are different for bond-financed projects. MFA recommends that developers undertaking these projects obtain advice from qualified tax professionals to ensure that such requirements are met.

To ensure that these Credits are used to leverage the greatest possible amount of resources, the following additional Minimum Project Threshold Requirements will apply:

1. Percent of Total Sources Limit:

The private activity bond volume cap allocation by the State Board of Finance must not exceed seventy percent (70%) of the Project's total permanent sources of funds; and

2. Dollar Limit:

The private activity bond volume cap allocation to the proposed Project must not exceed \$8 million; however, limited waivers will be considered when adequate availability of private activity bond volume cap exists, the Applicant has demonstrated the need for additional tax exempt debt for project feasibility, and is warranted based on project size; and

3. Costs of Issuance Limit:

Costs of issuance may not exceed five percent (5%) of the bond issue for projects with total financing sources of \$2,000,000 or more, and seven percent (7%) for projects with total financing sources of less than \$2,000,000.

## **VII. AMENDMENTS TO THE ALLOCATION PLAN AND WAIVERS OF PLAN PROVISIONS**

MFA reserves the right to modify this Qualified Allocation Plan, including its compliance and monitoring provisions, as required by the promulgation or amendment of IRS Code Section 42, from time to time, or for other reasons as determined by MFA. MFA will, however, make available to the general public a written explanation of any allocation of Housing Tax Credits that is not made in accordance with established priorities and selection criteria of the agency.

## **VIII. FUTURE YEAR'S BINDING COMMITMENTS**

MFA staff shall have the authority to advance allocate up to \$300,000 in future year's Tax Credits to Board-approved Eligible Projects. However, advance allocations are made solely at MFA's discretion and no advance allocation may be made to any project whose Credit amount is not at least 50% funded by the current year's Credit Ceiling. Future year commitments in excess of \$300,000 in any given year must be approved by the Board.

## **IX. DISASTER RELIEF ALLOCATIONS**

The Board will retain the authority to allocate current or future year's Credits at any time and in any amount to Projects approved by the Board that are intended to alleviate housing shortages in communities affected by natural disasters.

## **X. MFA TAX CREDIT MONITORING AND COMPLIANCE PLAN SUMMARY**

### **A. General Requirements**

Federal Law requires MFA to develop and implement a compliance-monitoring program for completed Projects that have received Low Income Housing Tax Credits. A compliance plan contained in a manual has been developed and is available to the Project owners at MFA's website [www.housingnm.org](http://www.housingnm.org). Compliance monitoring is required for a minimum of 15 years after receipt of an allocation. Each owner has chosen to utilize Low Income Housing Tax Credits to take advantage of the tax benefits provided. In exchange for these tax benefits, certain requirements must be met so that the Project will benefit Low Income Tenants.

Owners will be required to submit a quarterly report to MFA for each of the first four calendar quarters after a Project is Placed In Service. At that time, if the Project is determined to be in compliance with the Tax Reform Act, reports may be filed on an annual basis. Owners will be required to submit to MFA a copy of all federal form 8609's, including schedule A, filed with the IRS in the first year that credits are claimed, and at any subsequent time as requested by MFA.

### **B. Inspections**

MFA will conduct on-site inspections of at least thirty-three percent (33%) of the Projects under the MFA's jurisdiction. Each inspection will include a review of the Project's low income certifications, supporting income documentation, leases, rent records (including utility documentation) and unit inspections in at least twenty percent (20%) of the Project's Set Aside units and a physical inspection of the entire Project (interior and exterior). In mixed-use properties, one hundred percent (100%) of the units may be monitored. If Projects are determined to be in noncompliance, site visits may occur more often. MFA may conduct inspections upon thirty- (30) day's notice.

During the Compliance Period, MFA reserves the right, under the provisions of Section 42 of the Internal Revenue Code, to perform an audit of any Project that has received an allocation of Tax Credits. This audit will include an on-site inspection of all buildings, and a review of all tenant records and certifications and other documents supporting criteria for which the owner received points in the Application for an allocation of Credits.

### **C. Record Keeping and Record Retention**

Under the provisions of the Tax Credits, the owner of the project will be required to keep records as defined below for each building within a particular development. These records must be retained by the owner for a minimum of six (6) years beyond the owner's income tax filing date for that year. However, first year Project records must be maintained for six (6) years beyond the tax filing date of the final year of the Project's eligibility for Tax Credits. The owner must

annually report to MFA, through MFA's *Compliance On-Line* system, and maintain records for each qualified Low Income building in the Project showing:

1. the total number of residential units in the building (including the number of bedrooms and size in square feet of each residential unit);
2. the percentage of residential units in the building that are Set Aside Units;
3. the rent charged on each residential unit in the building (including utility allowances);
4. the number of occupants in each residential unit in the building;
5. the low income unit vacancies in the building and documentation of when and to whom the "next available units" were rented;
6. the income certification of each Low Income Tenant;
7. the documentation to support each Low Income Tenant's income certification;
8. the Eligible Basis and Qualified Basis for each building; and
9. the character and use of any nonresidential portion of the building included in the building's Eligible Basis (this includes separate facilities such as clubhouses or swimming pools whose Eligible Basis is allocated to each building).

Failure to annually report is deemed as noncompliance and is reportable to the IRS.

#### **D. Annual Certification Review**

It is the responsibility of the Project owner to annually certify to MFA that the Project meets the requirements of Section 42 of the Internal Revenue Code, whichever Set Aside is applicable to the Project. Failure to certify is deemed as noncompliance and is reportable to the IRS. This annual certification requires the Project owner to certify that:

1. there has been no change in the applicable fraction;
2. an annual Low Income certification has been received from each Low Income Tenant and documentation is available to support that certification;
3. each Low Income Unit is rent restricted under Section 42 of the Internal Revenue Code;
4. subject to the income restrictions on the Project all units in the Project are for use by the general public and are used on a non-transient basis;
5. there has been no finding of discrimination under the Fair Housing Act;
6. each building within the Project is suitable for occupancy taking into account local health, safety, and building codes;



7. there has been no change in any building's Eligible Basis under Section 42 of the Internal Revenue Code, or if there has been a change, adequate explanation of the nature of the change has been given;
8. all tenant facilities included in the Eligible Basis of any building in the Project are provided on a comparable basis, without a separate fee, to all tenants in the building;
9. if a Low Income Unit in the Project becomes vacant during the year, reasonable attempts are made to rent that Unit to tenants having a qualifying income, and while the Unit is vacant no Units of comparable or smaller size are rented to tenants not having a qualifying income;
10. if the income of Low Income Tenants of Units increases above one hundred forty percent (140%) of the applicable income limit allowed in Section 42, the next available unit of comparable or smaller size will be leased to tenants having qualifying income.
11. owner has not refused to lease a Unit to an applicant based exclusively on their status as a holder of a Section 8 voucher and the Project otherwise meets the provisions outlined in the extended low-income housing commitment;
12. if the owner received its Tax Credit Allocation from the state ceiling set aside for projects involving "qualified non-profit organizations", the non-profit entity materially participated in the operation of the development;
13. there has been no change in ownership or management of the project.

As an exception, only for RD Projects, MFA may accept a certification from RD that income is based upon annual tenant certifications/re-certifications, and that third party verification has been obtained. This certification will be in a form that is acceptable to both RD and MFA. Owners must furnish RD certifications annually, verifying that Projects are in compliance with Section 42 of the Code.

Tax Exempt Bond Financed Projects in which fifty percent (50%) or more of the aggregate basis is funded with the proceeds of bond financing may also be exempt, in MFA's discretion, from many of the certification and review provisions outlined within this document. The monitoring and certification guidelines for these Projects will be in a form that will satisfy those agencies issuing the bonds and MFA. The monitoring procedures must, at a minimum, satisfy the compliance guidelines set forth by Section 42 of the Code.

The owner of any exempted Project must certify to MFA on an annual basis that the Project is in compliance with the requirements for RD assistance or the Tax Exempt Bond Financing guidelines, as applicable, and that all requirements of Section 42 are also being met. The owner must inform MFA of any noncompliance or if the owner is unable to make one or more of the required certifications.

#### **E. Compliance Review**

MFA may elect to subcontract the monitoring procedure to other agents. In doing so, MFA would designate the subcontractor as the compliance-monitoring agent who would perform MFA's function.

In the event that any noncompliance with Section 42 is identified, a discrepancy letter entitled "Notice of Non-Compliance", detailing the noncompliance will be forwarded promptly to the owner and management company of the Project. The owner must then respond in writing to MFA within thirty (30) days after receipt of the discrepancy letter. The response must address all discrepancies individually and must indicate the manner in which corrections will be made. The owner will then have a cure period of thirty (30) days from the date of the discrepancy letter to correct the noncompliance detected and to provide MFA with any documentation or certification found to be missing during the annual management review. The cure period may be extended for periods of up to six (6) months. Extensions will be based on a determination by MFA that there is good cause for granting the extension.

MFA will notify the Internal Revenue Service within forty five (45) days after the expiration of the cure period of any non-compliance that has been detected. All corrections made by the owner within the cure period will be acknowledged within this notice. A copy of the owner's response to the noncompliance will accompany the notice to the IRS.

If potential noncompliance is discovered during a compliance monitoring review, the owner will be required to have his managing agent attend a compliance training session within two (2) months following the compliance monitoring review.

In order to offset the cost of monitoring procedures, an annual fee of \$35.00/Set-Aside Unit/Per Year will be assessed for each year of the Extended Use Restriction Period. Annual certifications and reports are due in the MFA office by January 31<sup>st</sup> of each year (for the past reporting year). Annual Compliance Reports are due by January 31<sup>st</sup> of each year, through MFA's *Compliance On-Line* System. A notice will be mailed to each property owner or a designated representative to remind them that the certification, reports and fees are due.

## XI. GLOSSARY

“**Agency**” means New Mexico Mortgage Finance Authority (MFA).

“**Allocation Review Committee**” means a committee appointed by the Chairman of the MFA Board to review Projects’ rating and ranking results, to determine if the proposed allocations have been made consistent with the Project Selection Criteria and the Qualified Allocation Plan, and to hear appeals and decide their outcome.

“**Allocation Set Asides**” means the federally mandated Tax Credit allocation set aside requirement for Projects involving Qualified Nonprofit Organizations, as well as other Tax Credit allocation Set Asides designated by MFA from time to time and incorporated into the Qualified Allocation Plan.

“**Annual Credit Ceiling**” means the total dollar volume of Tax Credits available for distribution by the Agency and authorized pursuant to Section 42 of the Code, in a given year. The Population-based Ceiling Amount is the amount of Tax Credits allocated to the state each year based on the state population.

“**Applicable Credit Percentage**” means the monthly interest rate issued by the Treasury Department and used to discount the present value of the 70% Tax Credit (approximately 9% yearly) and the 30% Tax Credit (approximately 4% yearly).

“**Applicable Fraction**” means the fraction, the numerator of which is the number of Tax Credit Units and the denominator of which is the total number of residential rental units less any unit exempted by Revenue Ruling 92-61; or the fraction, the numerator of which is the floor space of the Tax Credit Units and the denominator of which is the total floor space of the residential rental units less any unit exempted by Revenue Ruling 92-61, whichever is less. The Eligible Basis of a building is multiplied by the Applicable Fraction to determine the Qualified Basis of a building for Tax Credit purposes.

“**Applicant**” means any person or public entity; public or private, for-profit or not-for-profit, proposing to build or rehabilitate affordable rental housing with the use of the HTC program as defined in Section 42 of the Code.

“**Application**” means the completed forms, schedules, checklists, exhibits, computer disks and any additional documentation requested in the Initial Application Package, Carryover Allocation Package, and Final Allocation Package, as well as any supplemental materials requested by MFA. They must be submitted to MFA in accordance with the Qualified Allocation Plan in order to apply for the HTC Program.

“**Application Deadline**” means 5:00 p.m., Mountain Standard Time on the final day of the Application Period, except for Tax Exempt Bond Financed Projects, for which the submission date is specified in Section VI.B.

“**Application Package**” means the forms, schedules, checklists, exhibits, computer disks and instructions thereto obtained from the Agency, which shall be completed and submitted to the Agency in accordance with all regulations in order to apply for the HTC Program.

**“Application Period”** means the period during which Applications will be accepted by MFA as described in the Qualified Allocation Plan.

**“Area Gross Median Income”** means the median income level, issued annually by HUD for each metropolitan area and for each county outside a metropolitan are, which is adjusted for family size and used to calculate maximum income of eligible persons and rents for rent restricted units.

**“Average Gross Median Income”** or **“AGMI”** means, for a Project, the average area gross median income level(s) at which units are set aside, weighted by the number of units set aside at each income level. AGMI calculations are rounded to the nearest whole number. Market Rate Units will be treated as if they were set aside at 100% of Area Gross Median Income.

An example of the calculation of AGMI in a 60-unit project with no management employee units is as follows:

- 50% of the units are set aside at 50% of Area Gross Median Income; and
- 25% of the units are set aside at 60% of Area Gross Median Income; and
- 25% of the units are Market Rate.

The AGMI calculation would be as follows:

Percent of Total Units		Set Aside Income Level (As a % of Median)		Weighted Average
50%	X	50%	=	25%
25%	X	60%	=	15%
25%	X	100%	=	25%
<b>Total AGMI: AGMI for Scoring</b>				<b>65%</b>

Units to be provided for management or maintenance staff should not be included in the calculation.

**“Binding Commitment”** means an agreement between MFA and an Applicant by which MFA allocates and the Applicant accepts Tax Credits in accordance with Section 42(h)(1)(C) of the Code. MFA’s Carryover Allocation is its Binding Commitment.

**“Board of Directors”** or **“Board”** means the New Mexico Mortgage Finance Authority Board of Directors.

**“Capital Needs Assessment”** means a report prepared by a competent third party licensed architect or engineer that addresses the following:

1. Site visit and physical inspection of the interior and exterior of units and structures.
2. Interview with available on-site property management and maintenance personnel regarding past and pending repairs/improvements and physical deficiencies.
3. Identification of the presence of any visible environmental hazards on the site.
4. Opinion as to the adequacy of the proposed budget for recommended improvements.

5. Identification of critical building systems or components that have reached or exceeded their expected useful lives.
6. Projection of recurring probable expenditures for significant systems and components over 15 years.
7. Determination of the appropriate upfront and ongoing replacement reserve deposits.

**“Carryover Allocation”** means the provision under Section 42 of the Code which allows a Project, under certain conditions allowed by Section 42 of the Code, to receive a Tax Credit allocation in a given calendar year and to be Placed In Service within a period of two calendar years after the calendar year in which the Applicant qualifies for a Carryover Allocation. The Carryover Allocation is MFA’s Binding Commitment for Tax Credits.

**“Code”** means the Internal Revenue Code of 1986, as in effect on the date of the Qualified Allocation Plan, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued with respect thereto by the Treasury or the Internal Revenue Service of the United States.

**“Complete Application”** is an Initial Application meeting all of the requirements in “Content and Format” in Section IV.A.4.

**“Compliance Monitoring”** means the Agency’s procedure, as required by Section 42 of the Code and detailed in MFA’s Tax Credit Monitoring and Compliance Plan, of auditing and inspecting all completed Tax Credit Projects.

**“Compliance Period”** means, with respect to any building that is included in a Tax Credit Project, a minimum period of 15 years beginning on the first day of the first taxable year of the Tax Credit period with respect thereto in which a Tax Credit Project shall continue to maintain the Low Income Units as Low Income Units pursuant to the Applicant’s Set Aside Election in the Application, pursuant to Section 42 of the Code.

**“Concerted Community Revitalization Plan”** means a written plan, prepared and enacted by a local, county or tribal government at least six months prior to the application deadline, which identifies various revitalization activities within an area having distinct geographic boundaries.

**“Consolidated Plan”** means the plan prepared in accordance with HUD Regulations, 24 C.F.R. 91 (1994), which describes needs, resources, priorities and proposed activities to be undertaken with respect to certain HUD programs.

**“Construction Costs”** means, for purposes of calculating builder profit, overhead and general requirements, the on-site and construction costs in the construction contract, before profit, overhead and general requirements, and at Initial Application and Carryover a reasonable construction contingency.

**“Contact Person”** means a person identified in the Initial Application with decision-making authority for the Applicant, Developer or the owner of the Project, with whom MFA will correspond concerning the Application and /or the Project.

**“Cost Certification”** A certification prepared by a Certified Public Accountant on forms provided by MFA, indicating the method of certification, all identities of interest, and certification that all Project costs included are related to the Project.

**“Credit Period”** means with respect to any building that is included in a Tax Credit Project, the period of 10 years beginning with (i) the taxable year in which the building is Placed In Service, or (ii) at the election of the Developer, the succeeding taxable year.

**“Developer”** means any individual, association, corporation, joint venture, or partnership, which possesses the requisite skill, experience, and credit worthiness to successfully produce affordable multifamily housing.

**“Development Costs”** means the sum total of all costs incurred in the development of a Project all of which shall be subject to approval, and are approved by MFA as reasonable and necessary. Such costs may include, but are not limited to:

- (a) The cost of acquiring real property and any building thereon, including payment for options, deposits, or contracts to purchase properties.
- (b) The cost of site preparation, and development.
- (c) Any expenses relating to the issuance of Tax Exempt Bonds or taxable bonds by the Agency, if any, related to the Project.
- (d) Fees in connection with the planning, execution, and financing of the Project, such as those of architects, engineers, attorneys, accountants, and the Agency.
- (e) The cost of studies, surveys, plans, permits, insurance, interest, financing, tax and assessment costs, and other operating and carrying costs incurred during construction, rehabilitation, or reconstruction of the Project.
- (f) The cost of the construction, rehabilitation, and equipping of the Project.
- (g) The cost of land improvements, such as landscaping and off-site improvements related to the project, whether such costs are paid in cash, property, or services.
- (h) Expenses in connection with initial occupancy of the Project.
- (i) Allowances established by the Agency for working capital, contingency reserves, and reserves for any anticipated operating deficits during the first 2 years after completion of the Project.
- (j) The cost of such other items, including relocation cost, indemnity and surety bonds, premium on insurance, and fees and expenses of trustees, depositories, and paying agents for bonds.

**“Difficult Development Area”** means any area designated by the Secretary of Housing and Urban Development as having high construction, land, and utility costs relative to Area Gross Median Income in accordance with Section 42(d)(5) of the Code.

**“Elderly Households”** means households that include at least one person 62 years of age or older.

**“Elderly Housing”** means Projects specifically designed for exclusive use by elderly tenants. Elderly is defined as those persons 62 years of age or older.

**“Eligible Application” or “Eligible Project”** means an Application or Project which has met all Minimum Project Threshold Requirements.

**“Eligible Basis”** means the sum of the eligible cost elements that are subject to depreciation, such as expenditures for new construction, rehabilitation and building acquisition.

**“Eligible Persons” or “Eligible Households”** means one or more natural persons or a family, irrespective of race, creed, national origin or sex, determined by the Agency to be of low or very

low income. In determining the income standards of eligible persons for its various programs, the Agency shall take into account the following factors:

- (a) Requirements mandated by federal law;
- (b) Variations in circumstances in the different areas of the state;
- (c) Whether the determination is for rental housing; and
- (d) The need for family size adjustments.

**“Executive Director”** means the Executive Director of the New Mexico Mortgage Finance Authority.

**“Extended Use Period”** means, with respect to any building that is included in a Tax Credit Project, the period that begins on the first day of the Compliance Period and ends on the later of (i) the ending date of the term specified by the Applicant in the Initial Application Package and recorded in the Land Use Restriction Agreement or (ii) the date that is the fifteenth anniversary of the last day of the Compliance Period, unless earlier terminated as provided in Section 42(h)(6) of the Code or more stringent requirements of the HCA as reflected in the LURA.

**“Feasibility Analysis”** means a financial analysis based on rules established by the IRS and MFA to determine a Project’s financial feasibility, which is completed to ascertain a Tax Credit amount, the adequacy of financing sources, the income required to support operation of the project, etc.

**“Federal Subsidy”** means other project funding to include federal grants and below market rate federal loans through programs such as those administered by HUD (excluding CDBG) and Rural Development, tax exempt financing and any other locally administered low interest loan or grants from federal sources.

**“Federally Assisted Units”** means any housing receiving project based rental assistance, operating subsidies, mortgage interest reduction payments or other forms of Federal Subsidy. The universe includes public housing, USDA financed properties, Section 235 and Section 221(d) interest reduction payments, and project based Section 8, rent supplement, or rental assistance payments contracts.

**“Final Allocation”** means a determination by MFA that a Project is complete and that a certain amount of Tax Credits is warranted. The Final Allocation must be requested by the owner, and culminates in delivery of IRS Form 8609 by MFA.

**“Financing Commitment”** means a commitment for permanent or construction financing which 1) is not subject to further approval by any loan committee or board of directors or other entity of the creditor making the commitment, 2) contains specific terms of funding and repayment, and 3) contains language stating that the loan will be subordinated to the LURA.

**“Government Entity”** means any agency or other government created entity of the State of New Mexico, the counties or municipalities of New Mexico, or the tribal governments of New Mexican tribes and pueblos.

**“Homeless”** means a) an individual or family which lacks a fixed, regular, and adequate nighttime residence; or b) an individual or family which has a primary nighttime residence that: 1) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelter, and transitional housing for persons with mental illness); 2) an institution that provides a temporary residence for individuals

intended to be institutionalized; or 3) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or State law.

**“Households Comprised of Individuals With Children”** means households that include one or more persons under the age of 18 years.

**“HUD”** means the U.S. Department of Housing and Urban Development.

**“Initial Application”** means the Application first provided to MFA on or before an Application Deadline to request an allocation of Tax Credits.

**“Land Use Restriction Agreement”** or **“LURA”** means the agreement submitted to the Agency restricting the property to affordable housing use during the Compliance Period and Extended Use Period.

**“Local Government”** means any county, municipality, tribe or other general-purpose political subdivision in the State of New Mexico.

**“Local Notice”** means MFA’s letter to the Chief Executive Office (or the equivalent) of the local jurisdiction within which the Project is located, which provides a thirty (30) day period to comment on the Project pursuant to Code Section 42(m)(1)(A)(ii).

**“Low Income Housing Tax Credit Program”** or **“HTC Program”** means the rental housing program administered by MFA pursuant to Section 42 of the Code and by the State of New Mexico Executive Order 97-01.

**“Low Income Tenants”** are households that occupy Set Aside Units.

**“Low Income Units”** or **“Set Aside Units”** shall mean units which are rent restricted and set aside for tenants whose income does not exceed 50%, 60% or some lower percentage, whichever is elected, of Area Gross Median Income.

**“Market Rate Units”** means residential rental Units that are not Low Income Units.

**“Minimum Score”** means the lowest score with which an Application will be considered to have passed the Minimum Project Threshold Requirement related to scoring.

**“Mortgage Revenue Bonds (MRB)”** or **“Tax Exempt Bonds”** means bonds issued by state designated issuers, including MFA, which may be used to finance HTC Projects subject to project allocations made by the State Board of Finance.

**“November 15<sup>th</sup>”** means November 15<sup>th</sup>, unless this date falls on a weekend or a holiday, in which case it means the first business day following November 15<sup>th</sup>.

**“Ownership of Land”** means holding fee title or a qualified leasehold interest.

**“Participating Title Company”** means a New Mexico title company that maintains pooled, interest-bearing transaction account(s) pursuant to the Land Title Trust Fund Act of 1997.



**“Placed in Service”** means the date on which the first Unit of a new construction Project is certified or otherwise officially declared as available for occupancy. For acquisitions of existing Projects, it is the date of transfer to a new owner.

**“Principal”** means an Applicant, any general partner of an Applicant, and any officer, director, or any shareholder, general partner, managing member, or affiliate of an Applicant. It also includes any entity receiving any part of a developer fee for a project.

**“Program”** means the HTC Program as administered by MFA.

**“Project”** means any work or improvement located or to be located in the state, including real property, buildings, and any other real and personal property, designed and intended for the primary purpose of providing decent, safe, and sanitary residential housing for individuals, whether new construction, acquisition of existing residential housing, or the remodeling, improvement, rehabilitation, or reconstruction of existing housing, together with such related non-housing facilities as the Agency determines to be necessary, convenient, or desirable.

**“Project Expenses”** means usual and customary operating and financial costs. The term does not include extraordinary capital expenses, development fees and other non-operating expenses.

**“Project Selection Criteria”** means the criteria used to score a project for Tax Credit allocation purposes.

**“Qualified Allocation Plan”** or **“QAP”** means this Qualified Allocation Plan, which was adopted by Board Action on October 27, 2004 and made effective as of January 1, 2005, and which was approved by the Governor of the State of New Mexico pursuant to Section 42(m)(1)(B) of the Code and sets forth the Project Selection Criteria and the preferences for Projects which will receive Tax Credits.

**“Qualified Basis”** means the portion or percentage of the Eligible Basis that qualifies for the Tax Credit. It is calculated by multiplying the Eligible Basis by the Applicable Fraction.

**“Qualified Census Tract”** means any Census tract which is designated by the Secretary of Housing and Urban Development as having 50% or more of the households at an income level which is less than 60% of the Area Gross Median Income in accordance with Section 42(d)(5) of the Code.

**“Qualified Leasehold Interest”** means a leasehold interest running at least as long as the Extended Use Period.

**“Qualified Nonprofit Organization”** means a nonprofit entity as defined for the purposes of the federal nonprofit Set Aside in Code Section 42(h)(5)(c). The organization must meet the requirements of Code Section 501(c)(3) or 501(c)(4), and have the fostering of low income housing as one of its purposes. Additional requirements, including delivery of an IRS designation letter, must be met for scoring purposes.

**“Rehabilitation Costs”** means, as stated in Code Section 42(e)(2), the amounts chargeable to capital accounts and incurred for property in connection with the rehabilitation of a building. For the purposes of the calculation in scoring Criterion #4, only rehabilitation “hard” costs will be considered, which are those costs that would be included in a construction contract.

**“Rent Restricted Unit”** means, with respect to a Tax Credit Project, a unit for which the gross rent does not exceed 30% of the imputed Area Gross Median Income limitation applicable to such unit as chosen by the Applicant in the Application and in accordance with the Code. Gross rent must be determined from the rent charts included in the Application Package and must correspond to the percentage of Area Gross Median Income selected by the Applicant in the Application. It includes the cost of utilities, and must be reduced by the amount of tenant-paid utilities. Gross rent includes all income for the unit, including tenant and any subsidy payments. See also “Unit”.

**“Reservation” or “Reservation Contract”** means the contract executed by MFA and the Applicant with respect to an allocation of Tax Credits, which states the conditions to be met by the Applicant prior to issuance of a Carryover Allocation.

**“Reservation Letter” or “Reservation”** means a document issued by MFA which describes the amount of Credits provisionally awarded to a Project and the conditions which the owner must meet in order to obtain a Binding Commitment for Tax Credits.

**“Reserved”** means that the units may not be rented to other categories of households unless the owner demonstrates a subsequent change in the level of demand for such units and a good faith effort to obtain the originally targeted tenant category. Any such change in tenant characteristics must be approved in advance by MFA.

**“Rural Development” or “RD” or “USDA”** (previously called “Farmer’s Home Administration” or “FmHA” of the United States Department of Agriculture) means Rural Development or other agency or instrumentality created or chartered by the United States to which the powers of the RD have been transferred.

**“Set Aside”** means all or a portion of a Project’s Units that are Rent Restricted and/or limited to use by a specified tenant income category, or a particular special needs tenant group. Set Asides will be described in the LURA.

**“Set Aside Election”** means the federally imposed minimum proportion of total Project Units set aside as Low Income Units at one or more Area Gross Median Income level(s). This election is made by the Applicant, and meets the minimum requirements of Code Section 42: larger proportions of units are generally set aside by the Applicant and restricted in the LURA.

**“Set Aside Units”** means “Low Income Units”.

**“Single Room Occupancy” (SRO)** means housing consisting of single room dwelling units. The unit must contain either food preparation and/or sanitary facilities.

**“Social Services Plan”** means a plan prepared for the provision of social and other services to Special Needs Households and Elderly Housing Tenants. This plan 1) identifies all services to be provided to tenants, 2) specifies annual costs of all services, 3) identifies all entities providing such services, and 4) identifies sources of payments for such services and isolates all expenditures planned from Project cash flow. All service providers sign this plan. Services included must be long-term, significant and meaningful as determined by MFA, and they must be appropriate to the specific needs of the given tenant population. The delivery of social services to the residents of the Project will be enforced through a provision in the Land Use Restriction Agreement.

**“Special Needs Households”** means Homeless people and/or people with physical or developmental disabilities or chronic mental illnesses as defined in HUD’s Handbook 4571.2, Section 1-5, Parts A.2. and A.3., attached to the Initial Application Package. Special Needs Households will also include households qualifying for “Farm Worker Housing” as defined by USDA for purposes of its Section 514 program, also attached to the Initial Application Package.

**“Subsidy Layering Review”** or **“911 Review”** means the review conducted under subsidy layering guidelines adopted by HUD in order to assure that excessive subsidies are not provided to Projects which receive both Tax Credits and other governmental assistance.

**“Tax Credit Allocation”** means Tax Credits approved for a Project by MFA in an amount determined by MFA as necessary to make a Project financially feasible and viable throughout the Project’s Compliance Period pursuant to Section 42(m)(2)(A) of the Code.

**“Tax Credit Project”** means the proposed or existing rental housing development(s) for which Tax Credits have been applied for or received.

**“Tax Exempt Bond Financed Project”** means a Project, which is being financed by the issuance of tax exempt bonds subject to applicable volume cap pursuant to Section 42(h)(4) of the Code.

**“Tenant Conversion Plan”** means a written plan acceptable to MFA, describing the method to be used to enable tenants to acquire ownership of their units at such time as conversion to owner occupancy is allowed under Code Section 42. The Owner must provide and describe the type of homeownership, financial, and maintenance counseling to be offered. The Owner must describe in detail how the unit will be converted from a rental unit to homeownership. Other items the plan must contain, include:

1. How the unit will be offered for sale and remain affordable.
2. How the value and sales price of the home will be determined at the time of purchase.
3. Any favorable financing or down payment assistance.
4. Formation of any neighborhood associations, and if so the benefits and responsibilities outlined within the proposal.
5. Copy of the plot plan for ultimate subdivision, or proposed condominium declaration.

**“Threshold Review”** means the assessment of a Project with respect to Minimum Project Threshold Requirements as defined in the Qualified Allocation Plan.

**“Threshold Tests”** are the Minimum Project Threshold Requirements described in Section 3.3 that must be achieved for a Project to be considered further for an allocation.

**“Total Development Cost”** means the total of all costs incurred or to be incurred by the Project in acquiring, constructing, rehabilitating, and financing the Project. For purposes of calculating developer fees, Total Development Cost will be adjusted to exclude developer fees, consultant fees, and all reserves. For purposes of calculating Threshold Test Cost Limits, number 6 (cost limits), the purchase price attributed to the land and any costs related to commercial space (not eligible for tax credits) will be excluded.

**“Unit”** means all residential rental housing units in a project, including manager and employee units.