

# **NORTH DAKOTA** **housing**

FINANCE AGENCY

## **2018 LOW INCOME HOUSING TAX CREDIT PROGRAM ALLOCATION PLAN**

**CREDIT ISSUING AGENCY:** North Dakota Housing Finance Agency  
2624 Vermont Avenue  
PO Box 1535  
Bismarck, ND 58502-1535

**CONTACT:** Planning and Housing Development Division  
1-800-292-8621 or (701) 328-8066 or  
1-800-366-6888 (TTY)

**THE INFORMATION IN THIS PLAN IS PROVIDED AS A GENERAL OVERVIEW AND SHOULD NOT BE RELIED ON FOR TAX PURPOSES. INDIVIDUAL APPLICANTS ARE SOLELY RESPONSIBLE FOR COMPLIANCE WITH SECTION 42 OF THE TAX REFORM ACT OF 1986, AS AMENDED. EACH APPLICANT WILL BE RESPONSIBLE FOR THE DETERMINATION OF THE AMOUNT OF TAX CREDIT FOR WHICH THEY APPLY. NDHFA RECOMMENDS THAT APPLICANTS SEEK PROFESSIONAL ADVICE PRIOR TO SUBMITTING AN APPLICATION.**



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# NORTH DAKOTA LOW INCOME HOUSING TAX CREDIT PROGRAM 2018 ALLOCATION PLAN

## I. INTRODUCTION

The North Dakota Housing Finance Agency (NDHFA) is responsible for the administration of the Low Income Housing Tax Credit (LIHTC) Program for the State of North Dakota. The program was established by the Tax Reform Act of 1986 for the purpose of encouraging the construction and rehabilitation of housing for low-income individuals and families. The credit offers a reduction in tax liability to owners and investors. Parties interested in pursuing tax credits should reference Section 42 of the Internal Revenue Code (the Code) for more detailed information. It is also advisable to seek competent tax counsel for additional guidance.

Pursuant to the Budget Reconciliation Act of 1989, NDHFA is required to develop a Qualified Allocation Plan (Plan) defining the process by which it will distribute the Low Income Housing Tax Credits to low income housing projects throughout the State of North Dakota.

The NDHFA allocation plan, as herein stated, promotes the selection of those projects which serve to address the most crucial needs of the state, within the guidelines and requirements established by the federal government.

NDHFA holds a public hearing in Bismarck on changes to the Plan and public comments are invited. Testimony and comments are considered from those attending, as well as other information gathered from comments received as the result of a large mailing of the draft allocation plan. These comments are then taken into consideration in the formulation of the final plan.

## II. GENERAL PROVISIONS

The NDHFA reserves the right, at its sole discretion, to modify or waive any condition of this plan, which is not mandated by the Code, on a case-by-case basis for good cause.

For purposes of this Plan, the Developer is defined as the individual or entity to which the developer fees are paid for promoting the project. The Developer may or may not be the Applicant. The Applicant is either the owner of the project, (i.e. partnership, corporation, limited liability company, etc.) or the entity that has controlling interest in the ownership entity, (i.e. the general partner, managing member, individual, etc.).

**A. Credit Rate:** The tax credit is intended to provide, over a 10-year period, a "present value" credit of either of the following:

- (1) 30 percent of the project's Qualified Basis for new buildings with a federal subsidy or for the acquisition costs of eligible existing buildings that are rehabilitated. These are referred to as "4% Tax Credits".

A new building is treated as federally subsidized if there is tax-exempt financing.

- (2) 70 percent of the project's Qualified Basis in the case of new construction or the substantial rehabilitation costs on an acquired building. These are referred to as "9% Tax Credits".

The Internal Revenue Service (IRS) publishes, on a monthly basis, the applicable percentage (credit rate) to be used in calculating the annual credit amount; approximately 4 percent for the 30 percent present value credit and at least 9 percent for the 70 percent present value credit. NDHFA will underwrite 2018 applications at the credit rates in affect at the time of the application submission deadline plus a cushion of 20 basis points on the 4 percent rate. No cushion will be added to the 9 percent rate.

Credit is available each year for 10 years. Credit is based on the percentage of qualified low-income units in a project or the percentage of floor space of qualified low-income units, whichever is less. Allocations are made to each building regardless of the number of buildings comprising a project.

**B. Eligible Basis:** The eligible basis for a new building is arrived at by taking all costs not allowable under the Code, including land, and subtracting them from the total project cost.

The eligible basis for an existing building is the sum of the acquisition cost plus additions and improvements, but only if the building has not been placed-in-service or substantially rehabilitated in the preceding 10 years. For exemptions to this rule, see page 7 (B. Existing Projects).

Eligible basis is reduced by federal grants, residential rental units which are above the average quality standard of the low-income units, any historical rehabilitation credits, and non-residential rental property.

Eligible basis may be increased by 30 percent for projects meeting any of the following conditions.

- (1) The project is located in a HUD-designated Difficult Development Area (DDA).
- (2) The project is located in a HUD-designated Qualified Census Tract (QCT) and the development of which contributes to a concerted community revitalization plan. For purposes of this Plan, a concerted community revitalization plan is defined as a locally approved revitalization plan targeting specific existing areas or neighborhoods within the community for housing and economic development including the infill new construction or rehabilitation of housing. To qualify, the plan must be officially adopted by the local governing body, identify a specific time period, apply only to a defined geographic area within the community, and specifically call for infill new construction or rehabilitation of affordable housing within the boundaries of the plan. Local housing needs surveys, consolidated housing or economic development plans, short-term work plans, municipal zoning or land use plans, or plans which are so broad as to encompass the entire community or so narrow as to encompass only the project's subject property do not qualify under this definition.
- (3)\* The project meets one of the following NDHFA designations:
  - A. The project is designed to primarily serve special needs populations, (i.e. homeless or those requiring permanent supportive services).
  - B. The project targets 20 percent or more of the units at 30 percent of area median income or less.
  - C. The project is within tribal reservations, including the Trenton Indian Service Area.
  - D. The project entails new construction on in-fill lots a) with existing structures which need to be demolished or b) requiring substantial environmental remediation.
  - E. The project is located in a rural area without sufficient soft financing to be financially feasible in low market-rent areas. Proposed rents (including utility allowance) must be the lesser of a) Fair Market Rents (FMR) or b) a minimum of 20 percent below Housing Tax Credit rent ceilings, either of which will be enforced through a land use restriction agreement (LURA). Developments with a project-based federal rent subsidy are not eligible.

Applicants must provide a narrative explanation justifying the need to increase the eligible basis. Basis boost is not available on 4 percent acquisition credits. **\*The potential basis boost under condition (3) above does not apply to tax-exempt bond financed projects. The potential basis boost under conditions (1) and (2) above does apply to tax-exempt bond financed projects.**

The NDHFA is obligated to allocate only the amount of credit necessary to make the project financially feasible.

**C. Maximum Developer Fee:** Developer's fee will be limited to 15 percent of the eligible basis of the project for those with 50 or fewer units and 12 percent for projects of 51 or more units. Fees paid to consultants will be included in this limitation. The developer fee for the acquisition portion of an acquisition/rehabilitation project cannot exceed 5 percent. The fees of all parties with an Identity of Interest with the Developer in the project will be taken into consideration when calculating the Developer's maximum fees. When the developer and the contractor are the same or related entity, in addition to the fee limits stated above, the combined sum of Developer Fee and Builder/General Contractor Fees may not exceed 20 percent of eligible basis. All developer fees in excess of the established maximums will not be included in the eligible basis. **Developer fees, as defined in this section, are not eligible for any basis boost.**

**D. Maximum Builder/Contractor Fees:** Builder/General Contractor fees may not exceed the following limits:

- Builder/General Contractor's Profit      6 percent of hard construction costs
- Builder/General Contractor's Overhead   2 percent of hard construction costs
- General Requirements                      6 percent of hard construction costs

Fees in one area may exceed the stated percentage if other areas are not at their maximum, so long as they don't exceed 14 percent collectively. Any fees in excess of 14 percent will not be included in the eligible basis.

**E. Qualified Basis:** The qualified basis is the portion of a project's eligible basis multiplied by the applicable fraction. The applicable fraction is the lesser of:

- (1) The unit fraction which is the number of low income units in a building divided by the total number of units; or
- (2) The floor space fraction, which is the overall amount of floor space occupied by low-income units, divided by the total floor space in the building.

The qualified basis and the amount of credit are based upon the amount of low-income housing within the building. An on-site manager's unit is considered common space and should not be included in the applicable fraction unless the manager can qualify under the parameters of low income.

**F. Annual Credit Amount:** The annual credit amount is the amount of tax credits necessary to allow for project feasibility. The maximum allowable credit amount is the project's qualified basis multiplied by the applicable credit rate. However, as part of the initial application review, the actual amount of tax credits reserved could be less than the maximum allowable if NDHFA analysis reveals the project would still be feasible with fewer tax credits.

The final determination of the project's tax credit amount is made when a project is "placed in service". Placed in service is defined, for new construction or rehabilitation, as the date on which the first certificate of occupancy is issued.

**G. Income and Rent Restrictions:** A project must, for at least a 15-year period, have a minimum of either 20 percent qualified low income units occupied by households with incomes under 50 percent of Area Median Income (AMI), or 40 percent qualified low income units occupied by households with incomes under 60 percent of AMI. Once made, the choice between the 20 percent at 50 percent formulation and the 40 percent at 60 percent formulation is irrevocable. AMI figures (household size adjusted) are published periodically by the U.S. Department of Housing and Urban Development (HUD) for North Dakota counties and are available from NDHFA upon request. Current LIHTC income and rent restrictions can be found on [NDHFA's website](http://www.ndhfa.org), [www.ndhfa.org](http://www.ndhfa.org).

Rent, including utilities, cannot exceed the applicable NDHFA-published Maximum LIHTC Rent Limits. To calculate rent, a certain number of occupants are assumed to occupy a unit, depending on

the number of bedrooms in the unit (not actual occupants). The assumed family size is one person in an efficiency (studio) apartment and 1.5 persons per bedroom (i.e., maximum rent in a two-bedroom unit is 30 percent of the three-person qualifying income). This restriction is in effect during the entire compliance period.

The limit applies to the "gross rent" for every set-aside unit, which is defined as the rent paid by the tenant including a utility allowance (tenant-paid utilities). Utility allowances are based on HUD, Rural Housing Service, or utility company standards, depending on the type of project, or an energy consumption model. Please refer to scoring category A in the Project Ratings section of the QAP for additional information.

- H. **Extended Low Income Housing Commitment:** Prior to a final allocation of tax credits, the owner must enter into an Extended Use Agreement which requires the owner and any successors to meet the applicable fraction of low income occupancy for an extended use period of at least 15 years beyond the initial 15-year compliance period. The owner must record this agreement as a restrictive covenant.
- I. **Gross Rent Floor:** The gross rent floor will be established on the date of initial allocation of a housing dollar credit amount (normally the date of issuance of the carryforward agreement) unless the owner informs NDHFA prior to the placed-in-service date that the owner wishes to establish the rent floor at the placed-in-service date.
- J. **Compliance Monitoring:** NDHFA will monitor all projects placed in service for which tax credits are, or have been allocated at any time since the inception of the LIHTC program. A copy of the NDHFA LIHTC Compliance Manual is available upon request and is provided to all project owners.

Applicants or Developers utilizing the LIHTC program must remain in compliance with program guidelines throughout the agreed upon extended use period. An Applicant or Developer involved with an existing project that is determined by NDHFA to be significantly out of compliance, at the sole discretion of NDHFA, will not receive consideration for new tax credit projects until the issues are resolved to the satisfaction of NDHFA. Relevant noncompliance includes both federal and state imposed LIHTC requirements (e.g. improperly funded reserves, unpaid fees, not meeting scoring criteria previously promised), as well as noncompliance within any other NDHFA funded or administered programs.

- (1) All tax credit recipients shall submit an annual certification to NDHFA in a manner, form, and time established by NDHFA. This certification will include such items as number of set-aside units, tenant names, household information, rents, utility allowance or cost, tenant income, sources of income, unit information, and any other information required by NDHFA.

The owner of a tax credit project is required to retain records for each building in the project for each year in the compliance period showing: the total number of residential rental units in the building (including the number of bedrooms and unit size in square feet); the percentage of residential rental units in the building that are tax credit units; the rent charged for each unit (including utility allowance); the number of household members in each unit; notation of any vacant units; tenant's income (i.e., household income); documentation to support each household's income certification; the eligible basis and qualified basis of the building at the end of the first year of the credit period; and the character and use of any nonresidential portion of the building included in the building's eligible basis.

- (2) Each project owner shall allow NDHFA staff or its agent(s) to conduct on-site reviews of tenant files, supporting financial information and a physical inspection for compliance with habitability standards in accordance with the Uniform Physical Conditions Standards established by HUD. All tax credit recipients will maintain records of tenant applications, income certifications and verifications of tenant's income in accordance with the NDHFA LIHTC Compliance Manual.

- (3) Upon reasonable notice, NDHFA shall have access to all project development records, including IRS reporting forms.
- (4) NDHFA will promptly notify the IRS of any project noncompliance in relation to its responsibilities under the Code.
- (5) Each project owner, general partner, and management agent shall be required to complete and submit IRS Form 8821 Tax Information Authorization, if requested by NDHFA, and provide NDHFA with copies of all correspondence from and to the IRS related to the project during the compliance period.
- (6) As part of the compliance monitoring reporting requirements, each project owner will be required to submit annual operating statements showing project income and expenses.
- (7) NDHFA will charge each project an annual fee to carry out the required monitoring. The fee is currently set at \$50 per project, plus \$35 per low-income unit. Projects with multiple buildings located in different towns (scattered sites projects) will be assessed a \$50 per building fee, plus \$35 per low-income unit. (Multiple buildings within the same town will be subject to a single \$50 fee for all buildings in that town. Normal per unit fees will apply.) NDHFA reserves the right to adjust the annual fee. Additional fees may be assessed to a project determined to be in substantial noncompliance, to cover added costs of monitoring.
- (8) Approximately 120 days before placing a project in service, a meeting to include the owner; individual(s) responsible for processing tenant income certifications and/or approving tenant files or management company; NDHFA compliance and development staff; and other providers of project funding which impose income or other restrictions on the project must be requested by the owner. The purpose of the meeting is to ensure all parties are aware of all applicable restrictions before lease up begins.
- (9) Prior to issuance of the IRS Form 8609, which certifies an allocation of Credits, the owner and on-site managers will be required to attend or document that they have recently attended industry recognized training on management and compliance. In addition, if significant or repeated noncompliance events are discovered during the on-going compliance monitoring activities, further follow-up training will be required.

**K. Restriction:** No one project will be eligible to receive Conditional Reservations for more than an aggregate 25 percent of the NDHFA annual per capita allocation unless 100 percent of the project's units are dedicated to serving homeless individuals and families, has received points under scoring category D. Permanent Supportive Housing, and has at least 50 percent plus one of the total units income and rent restricted at 30 percent AMI. Such a project would then be eligible for 30 percent of the NDHFA per capita allocation.

An exception to this limitation will be made to ensure maximum distribution of the tax credits:

- (1) If during the regular allocation cycles, the only requests remaining are from applicants that have reached the 25 percent limit, or
- (2) If, after the regular cycles, there are recaptured or unallocated tax credits, they may be allocated without regard to the 25 percent limitation.

**L. Discrimination:** All housing receiving tax credits must be open to all persons regardless of race, color, national origin, religion, creed, sex, disability, or familial status.

**M. ADA and 504:** Properties containing facilities that are available to the general public must meet the Americans with Disabilities Act (ADA) requirements and, if federal assistance is involved, must also comply with Section 504 of the Rehabilitation Act of 1973. The property must also comply with the Fair Housing Amendments Act of 1988.



- N. VAWA:** All housing receiving tax credits must comply with the provisions of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). Additional information about VAWA 2013 can be found in a document on the LIHTC page of NDHFA's website entitled, "The Violence Against Women Act of 2013", published by the National Housing Law Project.
- O. Limit on Volume:** The amount of credit authority that will be available for the forward commitment of 2018 Credits will be unknown until sometime after the September 29, 2017 cycle application deadline. Therefore the 2018 authority limit will be assumed until updated information is available. However, for informational purposes only, please note that North Dakota's tax credit authority for 2017 was \$2,710,000. Only the first year of the 10-year credit period is counted against the limit. Projects with tax-exempt financing, which are subject to a separate volume limitation, are not counted against the state credit limit. **Update: ND's tax credit authority for 2018 is \$2,765,000 per Rev. Proc. 2017-58.**
- P. Recapture:** Part of the credit will be subject to IRS recapture provisions, if the qualified basis at the close of any year is less than the amount of such basis at the close of the preceding taxable year, or if the minimum percentage of qualified low income units is not maintained for the full extended use period.
- Q. Reserve Accounts:** All projects will be required to maintain a replacement reserve account for the term of the compliance period through the extended use period. The replacement reserve requirement for new construction projects and substantial rehabilitation projects (rehab exceeding \$30,000 per unit) designed for seniors will be no less than \$350 per unit per year, inflated at 3 percent per year. The requirement for all projects designed for families as well as rehabilitation developments with rehabilitation costs of \$30,000 per unit or less will be no less than \$400 per unit per year, inflated at 3 percent annually. This account shall not be used for routine maintenance and upkeep expenses. Project owners shall be required to provide NDHFA with a record of all activity in the replacement reserve account during the prior fiscal year in conjunction with submission of the project's annual compliance monitoring materials. Furthermore, the Limited Partnership Agreement must require that the replacement reserves may only be used for the intended purpose of funding capital improvements and replacement of long-lived capital assets, and may not be distributed to owners or partners for at least until the end of the extended use period.

All projects will also be required to establish and maintain, until the project has achieved a minimum of five years of stabilized operations, an operating reserve equal to a minimum of six months of projected operating expenses plus must-pay debt service payments and annual replacement reserve payments. This requirement can be met with an up-front cash reserve; a personal guarantee from the developer/general partner with a surety bond to stand behind the personal guarantee; or partnership documents specifying satisfactory establishment of an operating reserve.

If applicable, a tax escrow account must be maintained in a federally insured financial institution or the Bank of North Dakota.

Each reserve account identified in this section (replacement, operating, and tax escrow) must be maintained in separate accounts maintained in a federally insured financial institution or the Bank of North Dakota. Reserve accounts must also be separate from the project's ordinary operating account.

- R. Tax-Exempt Financed Projects:** Project applications in which tax-exempt bond financing is proposed in conjunction with 4% tax credits do not fall under the state's credit volume cap. Such project proposals are subject to all requirements of this Plan except for the minimum score requirement listed in Section VII of this Plan.
- S. Identity of Interest:** The Applicant must disclose any and all relationships (generally based on financial interests or family ties) with others involved in the project. This disclosure is required for all parties which:

- (1) Have an ownership, development, or financial interest in the project (excluding limited partners with less than a 15 percent ownership interest);
- (2) Have current or future management control of the project;
- (3) Have any current or contingent financial or management liability for the project, including guarantees, letters of credit, take out agreements or support agreements; and
- (4) Are involved in the project and have been debarred from any North Dakota program, other state program or any federal program.

This disclosure requires the names and addresses of all parties, including corporate officials, if applicable. Forfeiture of the reserved tax credits may result if this information is not adequately disclosed, or if the information changes. Applicants may apply for a waiver of this procedure.

The intent of this section is not to limit passive ownership, but to properly identify all parties that have a significant involvement in the development of the project.

- T. Disclosure of Interest:** The Applicant must also disclose the names and addresses, including corporate officials where applicable, of all parties that have a significant role in the project. These parties include, but are not limited to: the general contractor, all subcontractors whose aggregate contract will exceed ten percent of the cost of project (this cost shall be calculated excluding the acquisition of land), accountants, architects, engineers, financial consultants, and any other consultants.
- U. Notice to Local Jurisdiction:** In accordance with Section 42(m)(1)(A)(ii) of the Code, the chief executive officer (or equivalent) of the jurisdiction where the project will be located must be given notice of, and a reasonable opportunity to comment on, LIHTC development proposed within their jurisdiction. NDHFA will notify the affected jurisdiction immediately after an application is received and deemed complete. The jurisdiction will then be given an adequate opportunity to comment on the proposed project. NDHFA will consider the comments and may contact the local jurisdiction for additional information. While tax credits will not be granted or denied to a development based solely on such comments, NDHFA will consider this information and, in its sole discretion, may utilize such comments in its decision making process.

### III. TYPES OF DEVELOPMENTS

- A. New Construction:** For new construction projects, an allocation of 9% Tax Credits can be issued for low income units in buildings that are not "federally subsidized", and an allocation of 4% Tax Credits can be issued for units in projects that are federally subsidized.

A federal subsidy is any type of tax-exempt financing provided by state or local governments, the interest on which is exempt from federal taxation under the Internal Revenue Code.

Assistance derived from federal grants will not be treated as a federal subsidy if subtracted from the project's basis to determine the qualified basis.

- B. Existing Projects:** Existing projects qualify for a credit based upon 30 percent of present value of low-income units, including acquisition cost, when used in conjunction with a substantial rehabilitation project. Credits allocated for acquisition will take into account the appraised value of the property. In order for the acquisition cost to be part of the eligible basis, the building must be newly acquired by the owner and a period of at least 10 years must have elapsed between the date of acquisition and the date the building was last placed-in-service. The ten-year period may be waived in certain instances by the Secretary of the Treasury with respect to any building acquired from an insured depository institution or from a conservator or receiver of such an institution. Certain situations are exempted from the 10-year rule, including:

- (1) A person who inherits a property through the death of another person;
- (2) A governmental unit or qualified nonprofit group if income from the property is exempt from federal tax;
- (3) A person by foreclosure (or instrument in lieu of foreclosure) of any purchase money security interest, provided the person resells the building within 12 months after placing the building in service following foreclosure; or
- (4) A project substantially assisted, financed, or operated under HUD or RHS housing programs.

Interested parties are urged to reference Section 42(d) of the Code and to seek competent tax counsel for guidance.

**C. Substantial Rehabilitation:** Code requires that rehabilitation expenditures, which exceed the greater of an average of \$6,700 per low-income unit or 20 percent of the depreciable acquisition basis, are treated "as a separate new building". To assure meaningful rather than cosmetic rehabilitation, NDHFA has chosen to exceed the requirement set forth in the Code and has established a minimum average rehabilitation threshold of \$15,000 per unit in hard construction costs. Effectively, this means that for substantial rehabilitation carried out by a new owner, 4% tax credits are available on the acquisition cost and 9% credits are available on the rehabilitation cost, assuming that no tax-exempt financing is used. If the property does not change hands, the current owner can receive the substantial rehabilitation credit (4% or 9% tax credits, as applicable) only on the rehabilitation work, so long as the costs are the greater of \$15,000 on average per unit or 20 percent of the basis.

NDHFA may waive the \$15,000 minimum average rehabilitation threshold requirement if a capital needs assessment supports a lower rehabilitation requirement. See Section V (Threshold Requirements) for information on completing a capital needs assessment.

**D. Ineligible Projects:** Most residential projects qualify for the tax credits. Ineligible projects include transient housing (housing leased for less than 6 months); projects of 4 units or less which are occupied by the owner or a relative of the owner; nursing homes; life care facilities; and mobile home communities.

NDHFA may reject an application for detrimental characteristics on or adjacent to the proposed project site unless a satisfactory remediation plan and budget are provided. Unsuitable sites include, but are not limited to, those that:

- (1) Are within ½ mile of airports, industrial properties, pipelines, hazardous waste disposal or storage sites, sewage treatment plants, sanitary landfills, commercial junk or salvage yards, waste water treatment facilities;
- (2) Are within 500 feet of frequently used railroad tracks, electrical substation, power transmission lines or towers;
- (3) Have unsuitable slope, terrain or physical barriers;
- (4) Are in a flood hazard area or wetlands.

Applications will be accepted for existing projects containing units that are subsidized by state or federal resources providing that "gross rents" are capped at the Housing Credit ceiling rent levels. For purposes of this paragraph, "gross rents" are defined to include tenant paid rent and utilities. Minimum rehabilitation thresholds will also apply, as described in Section III C.

#### IV. APPLICATION PROCESS

Applicants must apply (using NDHFA forms) to receive a tax credit allocation. The complete application, including all fees, must be received by 5:00 p.m. (Central Time) on the closing date to be eligible for consideration. The following application cycles have been set for 2018 credits:

<u>Application Cycle</u>	<u>Closing Date for Applications</u>	<u>Maximum Amount of Total Credits to be Allocated</u>
1	September 29, 2017	\$2,710,000 plus any additional amounts
2	January 31, 2018	Balance of available credits

If, after the second funding cycle, credits remain unallocated or additional credits become available, at NDHFA's discretion, applications may be accepted and considered for funding on a first-come, first-serve basis during what is considered to be an open funding round. Applications submitted during the open funding round must meet both the threshold requirements as well as the requirements for a formal reservation of credits.

Applications selected will be given a conditional reservation subject to meeting additional requirements. Applicants will be notified of the status of their application.

Proposals with tax-exempt financing must comply with the provisions of the NDHFA Allocation Plan. These proposals will be processed as soon as practical. The Applicant is advised to seek competent bond and tax counsel prior to application.

#### V. THRESHOLD REQUIREMENTS

When an application is received, it shall first be reviewed for eligibility to be scored and ranked. In order to be eligible for scoring and ranking, the application must be complete and include the following information, unless waived by NDHFA for good cause:

- A. Demonstrated Site Control:** Evidence that the Applicant has, and will maintain from the start of the application review process until the land is acquired, direct site control. This will also include a sketch plan of the site.
- B. Zoning Availability:** Evidence that the appropriate zoning will be available must be provided (i.e. a letter from a city official stating that appropriate zoning is in place or forthcoming).
- C. Infrastructure and Utility Availability:** Evidence must be provided that appropriate infrastructure (roads, curb, gutter, etc.) and utilities (water, sewer, electricity, natural gas) are in place at the time of LIHTC application and have adequate capacity to absorb the proposed project. Examples of evidence include letters from the applicable utility companies and the city official stating appropriate utilities and infrastructure are in place.

If infrastructure is not in place to the proposed site at the time of LIHTC application, a letter from the local jurisdiction must accompany the application indicating that no adequate infill opportunities currently exist in the community.

- D. Applicant Characteristics:** NDHFA must be satisfied that those who will own and operate the project are familiar with, and prepared to comply with, the requirements of the program. This is evaluated in terms of:
  - Project ownership and development;
  - Management experience; and,

- Level of knowledge of the program demonstrated through preparation of the tax credit application.

Applicants new to the Low Income Housing Tax Credit program are required to partner with an experienced developer, sponsor or consultant i.e. someone with projects completed and operating successfully.

An applicant who has not yet placed a Housing Credit project in service in North Dakota will be ineligible to submit a subsequent application for an additional project until the initial development is, at a minimum, under construction and proceeding on schedule.

Applicants who have been convicted of, enter an agreement for immunity from prosecution for, or plead guilty, including a plea of nolo contendere, to: a crime of dishonesty, moral turpitude, fraud, bribery, payment of illegal gratuities, perjury, false statement, racketeering, blackmail, extortion, falsification or destruction of records are ineligible. Applicants who have been debarred from any North Dakota program, other state program or any federal program are ineligible. Applicants having an Identity of Interest with any debarred entity may not be eligible at the sole discretion of NDHFA.

An applicant that has not received an allocation of LIHTC in North Dakota must provide affirmative reference letters from all allocating agencies in all states where their existing projects are located. NDHFA may inquire to other state allocating agencies relative to the Applicant's or Developer's performance history. Negative performance may result in the application being deemed ineligible at the sole discretion of NDHFA.

- E. Financial Projections:** A 15-year pro forma financial projection for the project shall accompany the application using the income, expenses, and debt service as represented in the application. The rental income should reflect the vacancy rate as stated in the application.

The reasonableness of development and operating costs in relation to other similar developments will be assessed in evaluating the financial feasibility of credit applications.

Proposals will be underwritten to achieve a target debt service coverage ratio of 1.20. NDHFA reserves the right to reject an application if, during underwriting, the project is determined to have a debt service coverage ratio less than 1.1. Credit adjustments may be made on any proposals with ratios over 1.30.

- F. Ownership:** The Applicant must be either the owner or Developer of the project. If the Applicant intends to sell or transfer the project within five years from the application date, the Applicant must disclose the intent to sell or transfer the project and, if known, the names and backgrounds of those who will purchase or receive the project. Failure to provide this information may result in forfeiture of tax credits previously reserved.

Credits are reserved for the ownership entity identified in the initial application. A sale or transfer of a controlling ownership interest prior to issuance of the final allocation document requires an amended application and NDHFA approval. A nonrefundable transfer fee of \$2,500 or three percent of the annual credit amount reserved for the project, whichever is greater, must accompany the amended application. The payment of this fee does not obligate NDHFA to approve the transfer. If the transfer is denied, the credit reservation will remain with the original Applicant.

- G. Subsidies:** The application package must include a signed certification as to the full extent of all federal, state and local subsidies that are expected to apply to the project.

- H. Compliance with Fair Housing Act:** The application package must include a completed and signed Fair Housing Act Accessibility Checklist (Exhibit D in Application).

- I. Public Housing Waiting List:** The application package must include a signed written commitment from the Applicant to inform the public housing authority (PHA) of vacancies and to give priority to

households on PHA waiting lists who apply for occupancy.

- J. Broadband Infrastructure:** Projects receiving an allocation of tax credits must install broadband infrastructure to all units and community rooms. Broadband infrastructure is defined as cables, fiber optics, wiring, or other permanent (integral to the structure) infrastructure – including wireless infrastructure – resulting in broadband capability meeting the Federal Communication Commission's (FCC) definition in effect at the time the pre-construction estimates are generated. Currently, the FCC defines broadband speeds as 25 Megabits per second (Mbps) download, and 3 Mbps upload.
- K. Housing Need:** Completion of a comprehensive market study of the housing needs of low-income individuals in the area to be served by the project, at the Developer's expense, by a disinterested party who is acceptable to the NDHFA, is required. The Market Study must document sufficient demand in the market area to support the proposed development. The Market Study must have been completed within six months of application for credits and must contain the National Council of Housing Market Analysts' (NCHMA) model content standards (see [www.housingonline.com/wp-content/uploads/2014/09/Final-Model-Content-V3.0.pdf](http://www.housingonline.com/wp-content/uploads/2014/09/Final-Model-Content-V3.0.pdf)) unless authorization to deviate from these standards is granted by NDHFA. The applicant is advised to reference the market study requirements of other funding sources, such as USDA Rural Development, as may be applicable and ensure that the market study meets NDHFA requirements as well as those of other funding providers. If NDHFA has cause to question the conclusions reached in the study, we reserve the right to order a new market study at the expense of the Applicant.
- L. Capital Needs Assessment:** A Capital Needs Assessment (CNA) must be submitted with the application package involving rehabilitation or adaptive reuse. The CNA must be completed by a competent, independent third party acceptable to the NDHFA, such as a licensed architect or engineer. The assessment will include a site visit and a physical inspection of the interior and exterior of all units and structures, as well as an interview with available on-site property management and maintenance personnel to inquire about past repairs and improvements, pending repairs, and existing or chronic physical deficiencies. The assessment will consider the presence of environmental hazards such as asbestos, lead paint and mold on the site. The assessment will include an opinion as to the proposed budget for recommended improvements and should identify critical building systems or components that have reached or exceeded their expected useful lives. If the remaining useful life of any component is less than 50 percent of the expected useful life, immediate rehabilitation will be required unless capitalized. If the remaining useful life is less than the affordability period of 30 years, the application package must provide for a practical way to finance the future replacement. The assessment will also include a projection of recurring probable expenditures for significant systems and components impacting use and tenancy, which are not considered operation or maintenance expenses, to determine the appropriate replacement reserve deposits on a per unit per year basis. The assessment will examine and analyze the following:
- Site, including topography, drainage, pavement, curbing, sidewalks, parking, landscaping, amenities, water, sewer, storm drainage, and gas and electric utilities and lines;
  - Structural systems, both substructure and superstructure, including exterior walls and balconies, exterior doors and windows, roofing system, and drainage;
  - Interiors, including unit and common area finishes (carpeting, tile, plaster walls, paint condition, etc.), unit kitchen finishes, cabinets and appliances, unit bathroom finishes and fixtures, and common area lobbies and corridors; and
  - Mechanical systems, including plumbing and domestic hot water; HVAC, electrical, lighting fixtures, fire protection, and elevators.

Applicants are advised to also consider the requirements of other funding sources, such as USDA Rural Development, when ordering a capital needs assessment.

- M. Ability:** The Applicant must demonstrate that all members of the development team have the ability and financial capacity, in their respective roles, to undertake, comply, maintain and manage the property. NDHFA may require the Applicant to provide financial statements as deemed necessary.

Misrepresentation of any information about the experience or financial capacity of any project team member, or failure to disclose team members or any "Identity of Interest", will be grounds for denial or loss of the credits, and may affect future participation in the program.

- N. Appraisal:** An application package involving acquisition costs, which exceed 15 percent of the total project costs, must include an appraisal of the subject property, completed within 6 months of the date of the application by a state Certified General Real Property Appraiser, that supports the amount of acquisition. Applicant is advised to also consider the requirements of other funding sources, such as USDA Rural Development, before ordering the appraisal.
- O. USDA Financing:** An application package involving existing USDA debt must include a letter from USDA stating what progress has been made on an "Initial Transfer Request".
- P. Self-Scoring:** The applicant must provide a self-scoring of the project proposal as part of the application package. The self-scoring assessment should indicate the number of points being sought in each scoring category as well as a brief explanation of the project proposal's eligibility for those points.

**Application packages will be reviewed for completeness upon receipt. If the 2018 application package is received by September 1, 2017, for pre-review, any missing threshold information will be requested; pre-review will not include scoring. Application packages missing any of the above listed items after the September 29, 2017 application deadline will be deemed incomplete and will be given reasonable time to submit the missing information; however, a negative 5 points for each missing item will be assessed in the scoring and ranking process.**

**NDHFA reserves the right to reject an application if:**

- **the qualified basis per square foot exceeds 110 percent of the median qualified basis per square foot (not including basis boost) of selected projects in the previous two years. The median qualified basis per square foot of selected projects during the 2016 and 2017 funding years was \$152.04; or**
- **unit size exceeds the square feet of living space (excluding garages and, in townhome-style units, interior stairwells) per unit. Consideration may be given on a case-by-case basis for special circumstances such as, for example, adaptive reuse projects limited by existing architecture of the building.**

	<u>Multi-level Townhome</u>	<u>All Other Types</u>
1 bedroom	1000	712
2 bedroom	1100	886
3 bedroom	1364	1185
4 bedroom	1536	1310

## **VI. APPLICATION FEES**

A non-refundable processing fee of \$500 is due with all applications for tax credits. This fee will not count toward satisfaction of the 10 percent allocation fee.

Successful LIHTC applications are subject to the following fee schedules:

- A. For-Profit Applicants:** All for-profit Applicants will be required to pay a total allocation fee of the greater of \$1,000 or 10 percent of the first year's LIHTC allocation as follows:
  - (1) **Reservation:** A reservation fee of 3 percent of the annual credit amount reserved is due upon issuance by the NDHFA of formal reservation of tax credits. This fee is non-refundable.

- (2) Carryover Allocation: Projects will be charged a fee of 1 percent of the carryover amount of credits. This is due at the time a carryover agreement is executed. This fee is non-refundable.
- (3) Allocation: The balance of the allocation fee is payable at the time the allocation is finalized (prior to issuance of IRS Form 8609).

**B. Non-Profit Applicants:** All non-profit Applicants will be required to pay a total allocation fee of the greater of \$1,000 or 10 percent of the first year's LIHTC allocation.

- (1) Reservation: A reservation fee of 1 percent of the annual credit amount reserved is due upon issuance by the NDHFA of formal reservation of tax credits. This fee is non-refundable.
- (2) Carryover Allocation: Projects will be charged a fee of 1 percent of the carryover amount of credits. This is due at the time a carryover agreement is executed. This fee is non-refundable.
- (3) Allocation: The balance of the allocation fee is payable at the time the allocation is finalized (prior to issuance of IRS Form 8609).

**Applications having combined for-profit and non-profit sponsorship will be subject to the for-profit fee structure.**

**C. Tax-Exempt Financed Projects:** All tax-exempt financed projects will be subject to the same fee structure as indicated above, depending upon for-profit or non-profit sponsorship.

## VII. PROJECT RATINGS

Each application meeting the threshold requirements in Section V of the Plan will be reviewed and assigned points according to the following selection criteria. Applications must receive a minimum of 55 points as determined by the NDHFA, in its sole discretion, to be eligible for further consideration. Based on ranking, projects will be selected for Conditional Reservation. In the case of a tie between two or more projects, the project requiring fewer credits per unit will be selected first. Representations made by applicants for which points are given will be binding and will be monitored during ongoing compliance monitoring.

Once a project is selected, NDHFA will determine the amount of credit to be reserved, which may not equal the amount requested in the application. IRS Code Section 42 requires that NDHFA determine that "the housing credit dollar amount allocated to the project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low income housing project throughout the credit period."

### A. Serves Lowest Income Groups 0-45 points

Points will be awarded to projects with a minimum percentage of units having gross rents based upon 50 percent or less of area median income. The units set aside in this category must be occupied by households within the applicable income limits published by NDHFA. Elections made in this category will be incorporated into the Land Use Restrictive Agreement and will be binding for the compliance period and extended use period.

Note: This category awards points for gross rents that are affordable for low to extremely low income households. For purposes of this category, gross rent is defined to include the tenant portion plus utility allowance.



**Percent of Median Income on Which Gross Rent is Based**

<b>50% Median Income</b>		<b>40% Median Income</b>		<b>30% or less Median Income</b>	
<u>% of Total Units</u>	<u>Points</u>	<u>% of Total Units</u>	<u>Points</u>	<u>% of Total Units</u>	<u>Points</u>
20%+	10	20%+	15	50%+	45
10%<20%	5	10%<20%	10	40%<50%	40
5%<10%	4	5%<10%	5	30%<40%	30
1%<5%	3	1%<5%	2	20%<30%	20
0%<1%	0	0%<1%	0	10%<20%	10
				0%<10%	0

All fractions of units are rounded up (i.e. 9 percent of 24 units is 2.16 or 3 units). The maximum number of points that may be earned in this category is 45 points.

**B. Extended Duration of Low Income Use 3-9 points**

Points will be awarded to projects that maintain units for low-income occupancy for a period of at least 5 years beyond the 15-year minimum compliance period. For each additional 5-year compliance period, an additional 3 points will be awarded. Projects will be bound by these terms through the use of a Land Use Restrictive Agreement (LURA). The maximum is 9 points.

**C. Redevelopment and Revitalization 5 points**

A project will receive 5 points if it meets one of the following conditions:

- (1) The project is located on a site considered by NDHFA, in its sole discretion, to be grayfield or brownfield in nature. For purposes of this Plan, the term grayfield refers simply to previously developed property while brownfield refers to previously developed property where future use is affected by real or perceived environmental contamination.
- (2) The project is in a QCT or city revitalization area established by resolution or other legal action by the city, and the development of the project contributes to a concerted community revitalization plan, as defined in section IIB of this Plan.

Adaptive reuse projects are eligible for points under this category. Rehabilitation of existing habitable and occupied housing is not.

**D. Permanent Supportive Housing 5-20 points**

Projects in which low-income units are set aside and rented to persons with special needs will receive up to 11 points. For purposes of this scoring category, special needs populations include:

- Persons suffering from chronic or persistent mental illness;
  - Persons suffering from chronic chemical dependency;
  - Persons with disabilities (physical and/or developmental);
  - Individuals or families who are experiencing long-term homeless, or at significant risk of long-term homelessness;
  - The frail elderly, defined as a person, 62 years of age or older, who are unable to perform one or more “activities of daily living” without help. Activities of daily living comprise walking, eating, bathing, grooming, dressing, transferring, and home management activities.
- 10 percent of the units ..... 5 points  
 15 percent of the units ..... 8 points  
 20 percent of the units..... 11 points

**Permanent Supportive Housing Threshold Criteria**

To earn points in this Permanent Supportive Housing scoring category, a project must provide documentation that it meets the following requirements:

- (1) A need for the special type of housing based on market demand, the applicable *Consolidated Plan* (either provide a narrative that cites page numbers and includes excerpts or mark applicable sections in the table of contents and provide the pages containing those excerpts, not the entire plan), and the findings of the local social service agency or the North Dakota Department of Human Services regional service center;
- (2) Third-party verification of the services which are appropriate to the targeted population. Such services will vary depending on the target population. Examples include, but are not limited to:
  - Case management.
  - Mental health services.
  - Alcohol and substance abuse counselling.
  - Independent living skills training.
  - Job and vocational skills training.
  - Health and medical care.
  - Social and community engagement activities.
  - “Peer-to-peer” guidance from individuals already in the service program.
  - For Frail Elderly, securing access to meal services adequate to meet nutritional needs, housekeeping aid, personal assistance, or other services essential to maintaining independent living.
- (3) A formal letter of intent between the owner and a qualified service agency/agencies to provide on-going services consistent with the needs of the targeted population. The service provider must have experience providing services to a similar population and have sufficient capacity to deliver the services proposed. The letter of intent must be detailed regarding:
  - the special needs population to be served
  - the services pledged
  - the projected costs of the services and the sources of funds to cover such costs
  - for projects serving chronic homeless (or at-risk of) populations, a tenant selection plan that describes how those individuals and/or families will be identified and assisted in renting the supportive housing units.  
Projects receiving conditional commitments for tax credits will be required to submit, as part of the reservation package, a formal agreement committing to the provision of the services described in the letter of intent.

Compliance monitoring activities will include confirmation of the provision of the services pledged at the time of LIHTC application as well as a review of marketing efforts targeted at the specific special needs population. Projects which dedicate 100% of its units to Permanent Supportive Housing and which will be staffed by services personnel will receive bonus points as follows:

- 8 to 12 hours per day, Monday through Friday.....3 points
- 8 to 12 hours per day, seven days per week.....6 points
- 24 hours per day.....9 points

Personnel whose primary responsibility is for the maintenance or security of the property is not considered to be “services personnel” for purposes of this scoring bonus.

**E. Design Standards**

**3-10 points**

- (1) Projects with an elevator in each residential building will receive 10 points.

- (2) Projects with a building(s) design that does not exceed two stories and has no more than four units per outside main entrance will receive 3 points.
- (3) Projects with a building design(s) that does not exceed two stories and includes a separate outside main entrance for each unit will receive 10 points. (Points given for this building design cannot be added to points given for design standard (2) above.)
- (4) Projects consisting of single family, detached homes will receive 7 points. (Points given for this building design cannot be added to points given for design standards (2) or (3) above.)

A maximum of 10 points may be earned in this category.

**F. Universal Design**

**3-12 points**

Projects which meet the minimum universal design features below are eligible for points in this scoring category based on a percentage of units:

- At least 10 percent of the units.....3 points
- 15 percent of the units.....6 points
- At least 20 percent of the units.....9 points

Universal design units must be wheelchair-accessible and contain design features which may exceed the ADA standards, but which allow a project to be usable for the greatest possible percentage of the population. For purposes of this scoring category, the required minimum universal design features include, to the extent allowed by local building code:

- Roll-in or walk-in shower in at least one bathroom in the unit;
- Any additional bathrooms containing a bath tub should include a transfer seat, grab bars, and a floor drain to handle water splashed onto the floor during transfer;
- Front loading washing machines and dryers with accessible controls;
- Dishwasher;
- Lever handles on all doors and fixtures;
- Security doors with automatic openers;
- Accessible garbage dumpsters;
- Covered outside entries with adequate lighting;
- Kick plates on apartment doors to prevent damage from wheelchairs;
- Apartment doors which are wieldy for persons using a wheelchair or a walker;
- Hard surface flooring with maximum threshold heights of ½” beveled or ¼” square-edged;
- Appliances with front controls;
- Controls for the garbage disposal, range hood light, and exhaust fan located on the front of the lower cabinets;
- Lower-mounted upper cabinets with handles within reach of a person in a wheelchair;
- Roll-under bathroom and kitchen sinks;
- Lower-mounted mirrors/medicine cabinets;
- Audio/visual alert doorbells;
- Braille characters included to the left on all interior common area signage;

The project architect must certify that the accessible units and common areas meet or exceed Federal Fair Housing Accessibility Guidelines and include the universal design elements listed above.

Applicants who receive points under this category will receive 1 additional point for each of the universal design units that are two-bedroom or larger, up to a maximum of 3 points. As an example, a project with more than 20 percent of the total units meeting the universal design elements, 3 of which are two-bedroom or larger will receive a total of 12 points.

**G. Green Communities**

**1-7 points**

To be eligible to earn any points in this category, applicants must submit a written development plan outlining the integrated design approach taken for this development that demonstrates involvement of the entire development team. The plan should provide a statement of the overall green development goals, the expected outcomes from addressing those goals, and the rationale for choosing each of the green features. Any applicant meeting 10 of the Green Communities' criteria found in Exhibit E of the LIHTC Application will receive 1 point. Any applicant meeting 15 of the listed criteria will receive 3 points. By meeting 20 of the criteria, the applicant will be eligible for a total of 5 points in this category. Applications involving rehabilitation must meet 13 of the criteria to be eligible for 3 points and must meet 17 of the criteria to be eligible for the maximum 5 points.

A project obtaining LEED, Green Communities or ICC 700 National Green Building Standard Certification will receive the maximum of 7 points in this category. Evidence of certification is required prior to 8609 issuance.

**H. Rent Rebate for Homeownership**

**2 points**

Applications that contain a commitment to set aside at least 5 percent of the tenant paid rent for home ownership will receive 2 points. The owner will enter into a binding contract (i.e. a signed addendum to the lease) with tenants of set-aside units at move-in agreeing to a rebate of the rent, payable to a lender, for a home selected by the tenant as a credit toward down payment, closing costs, etc. The accrual of rent to be rebated must be for the tenant's entire term of occupancy within a project (unit transfers should not void the rebate) and the vesting period can be no longer than three years of continuous occupancy within the project. It is intended that the rebate be paid only if the household moves directly into homeownership upon termination of the rental agreement. Applications seeking points under scoring category K are not eligible for points under this category.

**I. Tenant Ownership**

**2 points**

Properties intended for eventual tenant ownership will receive 2 points. All residential buildings in the project must be individually surveyed, platted, and have a physical address. Applicants must include a) a feasible plan that sets forth the process for transferring the property, in whole; b) the future purchase price; c) homebuyer counseling efforts; and d) any other information requested by NDHFA. Information will be reviewed for conformance with Section 42(h)(6) and IRS Revenue Ruling 95-49. Applicants will not qualify for points under the extended low-income use category if the property is intended for eventual home ownership.

**J. Housing for Individuals with Children**

**5 points**

Projects in which 20 percent or more of the low-income units are three-bedroom or larger will receive 5 points.

**K. Housing for People 55 and Over**

**8 points**

Projects that are designed for and marketed to households consisting of individuals 55 years of age and over and include a community room with kitchen facilities for the use of the tenants of the project at no charge will receive 8 points. The marketing plan must be consistent with Fair Housing requirements for 55 and over housing.

**L. Preserve Existing Affordability**

**5-12 points**

Federally assisted projects in danger of prepayment, such as Rural Development 515 financed or those with project-based rental assistance for 50 percent or more of the units, which are "at-risk" of being lost from the state's affordable housing inventory, and were not tax credit projects, will receive 10 points.

Existing LIHTC projects that are near the end of the initial 15-year compliance period and did not waive the ability to opt out will receive 10 points. LIHTC projects that waived their ability to opt out of the extended use period will receive 5 points.

Provide a copy of all relevant documents as applicable:

- (1) HAP Contract
- (2) Regulatory Agreement
- (3) Filing documents of intent to opt out
- (4) Loan documents that describe the ability to pre-pay the financing including required approvals and/or penalties
- (5) Copy of most recent REAC or RD inspection report or other evidence of physical deterioration that would threaten the HAP contract
- (6) At least three market comparables for each bedroom size to indicate what market rents might be achievable at the project without the federal assistance restrictions
- (7) Narrative describing the dissolution of current ownership/management entity capacity

Properties that are historic in nature (i.e. on the National Register of Historic Places or determined eligible by the State Historic Preservation Office for review by the National Park Service) will receive an additional 2 points.

**M. Committed Leverage 1-4 points**

An applicant who provides signed, firm commitments for contributions or incentives from local government, private parties and/or philanthropic, religious or charitable organizations, excluding entities with an identity of interest or those with a significant role in the project (e.g. contractors, accountants, architects, engineers, consultants, etc.), valued at least 1 percent of the total development costs, will receive 1 point; if valued at more than 1 percent but less than or equal to 5 percent of the total development costs, an applicant will receive 2 points; if valued at more than 5 percent but less than or equal to 10 percent of total development costs, an applicant will receive 3 points; if valued at greater than 10 percent of total development costs, an applicant will receive 4 points. Not eligible for these points are interest bearing loans to the project.

**N. Geographic Location**

Points will be deducted based on the relationship (stated as a percentage) of the set-aside units selected within a location as compared to the total units selected, taking into consideration the population (based on the most recently published census data) of the community where the tax credit project is proposed. The point table for geographic distribution is as follows:

<u>Percentage of Units</u>	<u>Points</u>
40% +	-10
<40.0%	-9
<30.0%	-8
<20.0%	-7
<15.0%	-6
<10.0%	-5
<5.0%	-4
<4.0%	-3
<3.0%	-2
<2.0%	-1
<1.0%	0

Projects approved under a prior tax credit year which are receiving an additional allocation of credits in the current tax credit year will not trigger this point deduction in the current tax credit year.

## VIII. SET-ASIDES

NDHFA has established the following set-aside requirements:

- A. Non-Profit Participation:** Ten percent of the state's housing credit ceiling will be set aside for projects involving non-profit organizations. To qualify for this set-aside category, the Applicant must be a qualified non-profit organization (IRS 501(c)(3) or 501(c)(4) status) which has as an exempt purpose, the fostering of low income housing; owns an interest in the project (directly or through a partnership); and materially participates on a regular, continuous, and substantial basis in the development and operation of the project throughout the compliance period. Ownership interest is defined as a minimum 50 percent general partner position in a limited partnership.

The initial application must include:

- (1) Explanation illustrating that the non-profit has been actively involved within the community as a non-profit organization;
- (2) Explanation outlining the rights and responsibilities of the non-profit organization including the right of the non-profit to purchase the project in the future; and,
- (3) Information to show that the non-profit organization is not affiliated with, or controlled by, a for-profit individual or organization.

The highest-ranking non-profit application will be considered to be a part of the non-profit set-aside. Other non-profit applications in excess of the set-aside must compete with eligible "for-profit" applications.

- B. Indian Reservation Set-Aside:** The highest-scoring qualified application of all projects in the round, located within North Dakota Indian Reservations or on Tribal land, either held in trust or fee-simple, will be eligible for approval under this set-aside, subject to the limits identified in Section II K of this Plan. If sufficient proposals on Reservations are not received by the close of the first funding round, the unused set-aside credits will be awarded to non-Reservation proposals in accordance with this Plan.

## IX. CREDIT AWARD PROCESS

Applications will first be reviewed for compliance with the Threshold Requirements (Section V). Thereafter, the following definitions shall apply:

- (1) **Conditional Reservation** - A commitment to reserve tax credits conditioned upon Applicant providing required items and documentation within the timeframe allotted.
- (2) **Formal Reservation** - A commitment that tax credits have been reserved for the project. The commitment is conditioned on evidence of timely progress toward completion of the project acceptable to NDHFA and evidence of compliance with Federal Tax Code and state law.
- (3) **Final Allocation of Tax Credits** - The awarding of the tax credits by NDHFA to the project and the issuance of IRS Form 8609 upon the project being placed in service.

- A. Conditional Reservation:** Those proposals which meet the basic eligibility criteria will be evaluated for a Conditional Reservation and will be given points as outlined in Section VII (Project Ratings).

NDHFA will give priority during the evaluation process to projects which serve the lowest income tenants, are obligated to serve qualified tenants for the longest period and utilize the credits most efficiently.

The selection process is based on the numerical value awarded to each project in accordance with Section VII (Project Ratings). The projects with the highest numerical value will be selected first. The

time frame for selection of successful projects is expected to be within 45 days.

Once NDHFA has completed the evaluation and determined the amount of tax credit to be reserved, it will issue a Conditional Reservation on its prescribed form to the Applicant, which shall be good through January 31, 2018 for application cycle 1, or for a period of 60 days for subsequent application cycles. For good cause shown, NDHFA may extend the Conditional Reservation beyond its expiration date.

**B. Formal Reservation:** Prior to the expiration of the Conditional Reservation, the Applicant must submit to NDHFA acceptable evidence of the following:

- (1) Firm commitment of construction and permanent financing: The Applicant must demonstrate that it has enforceable financing commitments. Generally, an enforceable financing commitment is a written approval of a loan from a lender with conditions that can only be satisfied and controlled by the Applicant. The letter must state the interest rate, term of the loan and all conditions.

If the Applicant intends to finance all or part of the project costs out of its own resources, the Applicant must prove that such resources are available and committed solely for this purpose (i.e. written third party verification of fund availability).

- (2) Necessary local zoning and site plan approvals. (i.e. a letter from a city official stating that appropriate zoning is in place).
- (3) Updated 15-year pro-forma financial projection, if there has been a change in income, expense, or debt service projections since the original application. If there has been no change, an affidavit to that effect from the Applicant is required.
- (4) Documentation of ownership entity (i.e. partnership agreement, registration with good standing with the North Dakota Secretary of State).
- (5) Signed certification as to the full extent of all federal, state, and local subsidies that will apply to the project.
- (6) If applicable, a complete report on the status and history of the non-profit Applicant and a copy of the Board minutes approving the non-profit's involvement in the project.
- (7) A statement regarding developer's fee and what costs they represent.
- (8) An updated application.
- (9) An affidavit regarding the establishment and maintenance of replacement and operating reserve accounts, as well as a tax escrow account, if applicable.
- (10) The reservation fee.

Upon receipt of this information, NDHFA will conduct another evaluation of the project based on updated information, and may issue a Formal Reservation of tax credits to the Applicant in the amount it deems necessary and reasonable. Applications containing material changes which would have affected the initial scoring may be deemed ineligible and require forfeiture of the conditional commitment of credits. The Applicant would have the ability to reapply for credits in future application cycles.

The above information must be received in our office within the timeframe identified in the Conditional Reservation letter. Applicants who do not submit the items within the specified timeframe, and who have not requested and been granted an extension, will be assessed a late fee of \$200 per calendar day up to a maximum of \$2000. If the information is not received within 10 days of the required

deadline, the Conditional Reservation will be cancelled and the credits made available to other applicants.

- C. Project Progress Reports:** In order to assure that the available credits are fully utilized, each Applicant receiving a Formal Reservation will be required to submit quarterly progress reports. The report must describe the Applicant's actual progress in comparison to the project schedule (page 17 of the Application) submitted as part of the Formal Reservation package. Project development costs that increase above the contingency provided in the application during the construction/rehabilitation of the project must be disclosed in progress reports along with an explanation of how the gap has been or will be filled.
- D. Credit Return or Cancellation:** If, at any time after issuance of a Formal Reservation of credits, an Applicant is unable to complete the project within the program's limitations, the Applicant shall voluntarily return the tax credits to the state. If the credits are returned prior to September 30<sup>th</sup> of the tax credit year, thereby providing NDHFA sufficient time to reallocate the credits, the returned credit penalty fee will be \$1,000. If the credits are returned after September 29<sup>th</sup> of the tax credit year, a penalty fee of \$2,500 will be charged. Further, if NDHFA is unable to reallocate the credits prior to the tax credit year end, the Applicant will be ineligible to participate in application cycles for 2 full years following the return of the credits. Failure to pay the returned credit penalty fee will result in permanent ineligibility to participate in NDHFA programs until the fee is paid.
- E. Carryover Allocation:** For projects that receive a forward commitment of 2018 Credits but are not able to place the project in service during 2018, a carryover allocation may be awarded if more than 10 percent of the project's reasonably anticipated basis is incurred by the taxpayer within twelve months **from the date of the reservation**. The carryover allocation would then give the Applicant until December 31, 2020, to place the project in service. Applicants should review Section 42 (including IRS regulations, notices and private letter rulings) to ensure all requirements for a carryover allocation are met. All developments funded with 2018 Credits during the year must submit requests for a carryover allocation of credits to the NDHFA by December 1, 2018. The request must include both an "Owner Certification of Costs" and a certification of those costs from an independent CPA. The certification may be based on projected expenditures. If a carryover is issued based on projected expenditures, a follow-up certification from both the owner and CPA will be required at the end of the twelve-month period. Developers who received reservations of credits should contact the NDHFA for specific forms and instructions.

**Carryover Late Fee: Developers that do not submit a carryover allocation request by the established due date of December 1, 2018 will be assessed a late fee of \$500 plus a supplementary fee of \$200 per day for each day from the original due date through the date on which the NDHFA receives the carryover documents. This fee will not be allowed as an eligible cost in carryover basis or final basis and will not be included when calculating the total application fee of 10 percent.**

- F. Final Allocation of Tax Credits:** The final evaluation of the project will be made at the time the building is placed in service, which is defined as the date on which the first certificate of occupancy is issued. Within 180 days after the last building is placed in service, the Applicant must submit a complete final application package. Unless waived by NDHFA for good cause, failure to deliver by this due date will result in a penalty of \$200 per day. For projects that place in service in the year of allocation, the deadline to submit a complete final allocation package is December 1<sup>st</sup> in order to allow sufficient time for 8609 issuance. If it becomes necessary to reissue the 8609 form(s) to a project due to erroneous information supplied in the final application package, a processing fee of \$500 for 10 forms or less, or \$1000 for more than 10 forms, will be assessed. The final allocation package must contain the following documentation:
- (1) Updated application, including all exhibits;
  - (2) A schedule of project costs, prepared on the method of accounting used by the taxpayer for federal income tax purposes, must detail the project's total costs as well as those costs that



may qualify for inclusion in eligible basis. The schedule of costs must be accompanied by a Certified Public Accountant's examination report on the schedule and on the sources of funding. The CPA's examination must be conducted in accordance with generally accepted attestation standards and must be unqualified;

- (3) Updated 15-year pro-forma financial projection on the project;
- (4) Original or certified copy of the recorded Land Use Restrictive Agreement that is signed by the project owner and permanent lender(s);
- (5) A signed certification giving full disclosure of all federal, state, and local subsidies that apply to the project;
- (6) A copy of the final ownership documents. Ownership interest of 15 percent or more must be disclosed;
- (7) Certification from Applicant or architect that the project is in compliance with ADA and Section 504, as applicable;
- (8) Verification of all sources of funds (loan amounts and terms shown on executed, permanent loan documents or up-to-date firm commitments, equity generation, etc.);
- (9) Evidence that tax escrow, operating reserve and replacement reserve accounts have been established;
- (10) Copy of Certificate(s) of Occupancy, if issued or other evidence of project completion;
- (11) Evidence of title to land; i.e. copy of title insurance; attorney's title opinion; or BIA title status report and, if necessary, backup or supporting documentation;
- (12) Documentation of current utility allowance;
- (13) Breakdown of units and square footage;
- (14) Executed management agreement;
- (15) Sample rental application and lease with all addenda. The rental application must request the applicant's demographic information (race, ethnicity, marital status, and disability status).
- (16) Documentation of industry recognized training for owner(s) and on-site manager(s);
- (17) Balance of allocation fee; and,
- (18) Any other information requested by NDHFA.

## **X. RESPONSIBILITY OF APPLICANT**

The Applicant has the responsibility to abide by the representations made in the tax credit application and in the Land Use Restrictive Agreement. Failure to abide by these representations may result in sanctions against the Applicant, including but not limited to, the inability to apply for tax credits in the future and participate in other programs administered by NDHFA.

## **XI. CLARIFICATION OF NDHFA ROLE**

Eligible applications will be evaluated to determine the credit reservation. NDHFA will conduct 3 evaluations prior to awarding the credit:

- (1) At the time of initial Application/Conditional Reservation.
- (2) At the time of Formal Notification to allocate credits.
- (3) At the time the building is placed-in-service.

Prior to each evaluation, the eligible Applicant will be asked to submit the most recent financial information on the project. Any federal, state, or local subsidies anticipated must be certified. Inaccurate or misrepresented information will result in non-issuance of IRS Form 8609, debarment from the LIHTC Program, audit of Applicant's financial records at the Applicant's expense, and possible referral for criminal prosecution.

NDHFA reserves the right to exchange information with other state allocating agencies and with other parties as deemed appropriate. By submitting an application for tax credits, the Applicant is acknowledging and agreeing to this exchange of information.

NDHFA is charged with allocating enough tax credits to a project to make that project economically feasible. This decision shall be made solely at the discretion of NDHFA but in no way represents or warrants to any Applicant, investor, lender, or others that the project is feasible, viable or of investment quality.

In spite of the development standards and selection criteria outlined in this allocation plan, each and every proposal is analyzed on a comparative basis in a variety of categories to ensure the highest value for the tax credits awarded.

NDHFA review of documents submitted in connection with the allocation is for its own purpose. The NDHFA makes no representations to the Applicant or anyone else regarding adherence to the Internal Revenue Code, Treasury regulations, or any other laws or regulations governing tax credits.

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

Projects awarded tax credits will be subject to compliance monitoring by NDHFA for the duration of the period of affordability plus the extended use period. The degree to which a LIHTC project is in decent, safe, and sanitary condition will be assessed according to the Uniform Physical Conditions Standards (UPCS) established by HUD. Adherence to the representations made in the tax credit application and the Land Use Restrictive Agreement will be monitored by NDHFA through annual desk review of project files and records.

## **XII. MODIFICATION TO THE QUALIFIED ALLOCATION PLAN**

To the extent necessary to facilitate the award of low income housing tax credits that would not otherwise be awarded, this Plan may be modified by NDHFA from time to time. The Executive Director may make minor modifications deemed necessary to facilitate the administration of the tax credit program or to address unforeseen circumstances. Further, the Executive Director is authorized to waive any conditions not mandated by the Code on a case-by-case basis for good cause shown. For example, in the event of a major natural disaster, NDHFA may disregard any section of the Plan, including point scoring and evaluation criteria, that interferes with an appropriate response. As a matter of practice, NDHFA will document any waivers from the established priorities and selection criteria of the Plan and will make this documentation available to the public, upon request.

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

**North Dakota Housing Finance Agency**

2624 Vermont Avenue

PO Box 1535

Bismarck, ND 58502-1535

800/292-8621 or 701/328-8072

800/366-6888 (TTY)

[www.ndhfa.org](http://www.ndhfa.org) · [info@ndhfa.org](mailto:info@ndhfa.org)



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