

**DRAFT**  
**PENNSYLVANIA HOUSING FINANCE AGENCY**  
**ALLOCATION PLAN FOR YEAR 2010**  
**LOW INCOME HOUSING TAX CREDIT PROGRAM**

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**PROCESSING OVERVIEW AND PROCEDURES FOR 2010**

The Pennsylvania Housing Finance Agency (the "Agency") administers the Federal Low Income Housing Tax Credit Program ("Tax Credit Program") in the Commonwealth of Pennsylvania. Pursuant to federal law governing the Tax Credit Program, each year, the Agency adopts a plan (the "Allocation Plan") outlining the allocation priorities and procedures to be followed in distributing Federal Low Income Housing Tax Credits ("Tax Credits") based on the housing needs of the Commonwealth. Adoption of the Allocation Plan requires approval by the Governor after a public hearing.

The Agency is adopting this Allocation Plan for 2010. This Allocation Plan is unusual because its adoption takes place at the end of 2009, an extraordinary year of unprecedented events and disruptions in the debt and equity markets. Among the events of the past year, the federal adoption of the American Recovery and Reinvestment Act of 2009 (the "stimulus programs") and the funding provided through these stimulus programs has fundamentally changed the way the Agency approaches funding of Tax Credit Projects and allocation of resources.

It is the Agency's goal that this 2010 Allocation Plan will become effective for applications received no later than February 26, 2010. However, as the Agency continues to administer funds available through the stimulus programs, including any supplemental stimulus opportunities, Tax Credit Projects able to quickly and effectively utilize these federal resources will be given priority in 2010. This means that the ranking and scoring set forth in the following sections of the Allocation Plan may be superseded and additional deadlines may be imposed for the foreseeable future.

The Agency will monitor the lending and investing opportunities and activities in the Commonwealth throughout 2010 and will determine how the markets are affecting all sectors of the Tax Credit Program. The Agency will attempt to make such adjustments to its policies and priorities as necessary to respond to the varying needs throughout the Commonwealth. While it is the Agency's goal to "get back to normal" as soon as it is feasible to do so, until the markets normalize and provide reliable, consistent opportunities among all sectors of the Tax Credit Program, the Agency will allocate 2010 Tax Credits based on these overriding principles and preferences:

- 1.) Projects demonstrating an ability to proceed as determined by the Agency to maximize the benefits of the stimulus programs through the Tax Credit Program, while meeting reasonable cost parameters and achieving basic program standards as set forth in the Multifamily Program Guidelines.
- 2.) Projects achieving geographic distribution and affording diversity of project type (general occupancy, elderly and special needs) to the extent the Agency determines appropriate.
- 3.) Projects allowing the Agency to achieve the federally mandated nonprofit set aside.
- 4.) Projects serving the lowest income residents.

In order to maximize the distribution of funding through the stimulus programs, and any supplemental stimulus opportunities, and to best achieve statewide goals for affordable housing, the Agency may change any of the deadlines, processing requirements and priorities set forth in the Allocation Plan. Given the current condition of the market, the Agency does not expect that all of the 2010 Tax Credits will be allocated in the February cycle and we may determine to reserve some of the

Tax Credits. To that end, the Agency specifically reserves the right to announce a supplemental application cycle in 2010 to accommodate changes that may occur between now and then and to adjust to market conditions and opportunities in 2010. The Agency reserves the right to modify this Allocation Plan and all related documents without formal amendment or additional public hearings.

Applications for 2010 Tax Credit Projects may be submitted to the Agency on or before February 26, 2010. It is the Agency's intent to review the Applications it receives and to select among the Applicants based on the selection ranking criteria, with priority given to projects demonstrating an ability to move forward. Targeted amounts available in geographic set asides and for community impact, preservation and supportive housing will be determined based on reviews of the Applications and based on market conditions in effect when the Agency reviews the applications.

The Agency will provide supplemental policy and guideline announcements throughout the 2010 year affecting this Allocation Plan. Please refer to the Agency's website at [www.phfa.org](http://www.phfa.org).

### **SUBMISSION REQUIREMENTS**

All information submitted by the applicant or gathered by the Agency in the review of the Application is the sole property of the Agency and may be made public. The Agency's processing procedures, fee schedules and limitations, and current rent and income limits are set forth in the Agency's 2010 Multifamily Housing Application Package and 2010 Multifamily Housing Program Guidelines, which will be available on the Agency's website at [www.phfa.org](http://www.phfa.org), and may be amended from time to time.. It is the applicant's responsibility to be familiar and compliant with all Tax Credit Program requirements, the regulations, and the Internal Revenue Code (the "Code"), both in effect now and in the future, as applicable to any Application in this program.

The following details the general processing information applicable to the Year 2010 Tax Credit Program.

In 2010, Tax Credits Applications will be accepted for the following types of applications: general occupancy, senior occupancy, properties furthering the preservation of affordable housing, applications for supportive housing, developments seeking an allocation of additional Tax Credits and Community Impact developments.

For a development to be considered for a conditional reservation of Tax Credits, the entire Application package, including all exhibits, must be received by the Agency no later than **3:00 p.m. on February 26, 2010 (or such other deadline as may be established by the Agency on its website.)** The Agency will strive to announce the reservations of Tax Credits at its July 2010 Board meeting or earlier.

The entity(ies) identified as an applicant(s) in the Application must have a general partner interest in the final ownership entity of the development. The applicant(s) must be actively involved in both the development and ongoing control and management of the development as evidenced in the partnership agreement governing the ownership entity for the development. Sale, transfer or assignment of an applicant's interest in the proposed Tax Credit development is prohibited while the Application is pending. After reservation of Tax Credits, any such transfers, sales and assignments prior to placement in service and issuance of an IRS Form 8609 require prior written approval by Agency staff, may require submission of a new Application and/or may result in recapture of Tax Credits by the Agency.

An Application package submitted for review must include all of the information in the order set forth in the Application Checklist. Any material deficiency in the Application or omission from the mandatory submissions set forth in the Application Checklist, particularly the omission of documentation relating to the site, a market study/needs assessment and verification of funding sources, may result in immediate rejection. In addition, the Application must meet program eligibility requirements set forth in Section 42 of the Code. Applications and required exhibits may not be submitted via fax or email to the Agency. Any Application which does not contain sufficient information to be reviewed will be returned. The Agency reserves the right to reject or return any Application.

An Application, once received by the Agency, may not be altered, amended or modified except as approved by staff during underwriting and program review or except for developments participating in an Agency financing program, which may undergo subsequent substitute processing and ranking by the Agency. Applications will be ranked based only upon the information contained in the initial Application package. Agency staff will first review the development's construction costs, fees, sources of funds, operating income and expenses to determine the development's financial feasibility and long term viability. Developments that meet all threshold requirements, need and marketability and are financially feasible and viable will then be ranked according to the Selection Criteria. Applications that do not meet threshold requirements, are financially infeasible or that do not demonstrate long term viability may be returned at any time. The Agency reserves the right, in its sole discretion, to reject any Application in the event that the costs or fees associated with the proposed development are deemed to be excessive or unreasonable. Additionally, the Agency may discontinue processing of any Application if the Agency determines in its sole discretion that the development will not be able to receive a reservation of Tax Credits due to the oversubscription of Tax Credits in any Set-Aside.

Upon review of the Application, Agency staff may, but is under no obligation to, advise the applicant of incongruities, discrepancies or incomplete items and may allow the applicant to clarify or supplement the original submission. Such requests will be made in writing to the applicant and response will be required within the timeframe set forth therein, which will generally be no later than five business days from notification by staff. Applicants are urged to review their original Applications carefully prior to submission to the Agency. Corrections allowed during the staff review process will neither include replacement, substitution or amendment of material items used by staff in the ranking of an Application nor remedy the scoring of an Application as an incomplete submission. See the 2010 Multifamily Housing Program Guidelines for additional guidance and information about processing Applications.

### **APPLICATION ELIGIBILITY CRITERIA**

The Agency will only process Applications meeting all of the following eligibility criteria. Failure to meet any of these eligibility criteria may result in rejection of the Application. The Agency has established additional threshold eligibility criteria for each specific Set-Asides as further set forth herein.

1. Agency staff will review the Tax Credit Program compliance history and performance of the applicant (or any related entity or material participant) and the management agent of the proposed development. The applicant must certify that it is in compliance with all Tax Credit Program requirements for each Tax Credit development in which it has a material ownership interest. If the applicant (or any related entity) or management agent of the proposed development is currently involved in a Tax Credit development that has been reported to the Internal Revenue Service ("IRS") as being out of compliance with any Agency program requirement (including Restrictive Covenant Agreement violations) and said noncompliance has not been brought back into compliance prior to the submission of the Application, the Application may be rejected at any time prior to reservation of Tax Credits. In the alternative (or in addition, in the sole discretion of the Agency), attendance and satisfactory completion of an Agency-approved course in the compliance requirements of the Tax Credit Program may be required. The Agency in its sole discretion will determine whether a

compliance issue is of a material or nonmaterial nature and whether it is of a recurring nature. Note that while any material compliance issue may result in rejection of an Application, nonmaterial noncompliance issues may result in the adjustment of points during the ranking process. The Agency may reject any Application from an applicant who fails to submit and maintain timely unit and project information on the Agency's Apartment Locator. A form authorizing the release of compliance information is on the Agency's website, [www.phfa.org](http://www.phfa.org). However, we may release related information even if no release form is submitted.

2. If the applicant (or any related entity or material participant) is involved or has been involved in an Agency funded development that is delinquent in payments to the Agency or has materially defaulted on any of its obligations to the Agency or has misrepresented any material information on a previous application, the Agency may reject the Application.
3. Applications may be returned if the applicant (or any related entity or material participant) has failed to meet any established program deadline date which resulted in loss or recapture of Tax Credits or potential loss of stimulus funds.
4. Applicants (or any related entities or material participants) who have unpaid fees due to the Agency may be ineligible to participate in the Tax Credit Program.
5. Developments that have resulted from or will result in the permanent displacement of low income residents will be ineligible for Tax Credit Program participation unless the developer provides evidence satisfactory to the Agency that an appropriate relocation plan has been developed. Furthermore, to the greatest extent feasible all residents must be offered their choice to either be temporarily relocated until such time, upon completion of the development, as they are able to return to an appropriately sized affordable unit in the development, or receive relocation benefits. Applicants are required to document the efficacy of notice given to residents to the satisfaction of the Agency.
6. Applications for acquisition Tax Credits will not be accepted for any existing occupied Tax Credit development during its initial compliance period unless the initial compliance period will have expired prior to the end of 2010 and the property meets all other acquisition Tax Credit rules.
7. Applications for 2010 Tax Credits must demonstrate a commitment to serve low income residents for a period of not less than 30 years or, in the alternative, offer homeownership opportunities to qualified residents after the initial 15 year compliance period. For the commitment to serve low income residents for a period of not less than 30 years, the owner will certify this commitment in the Application and the Restrictive Covenant Agreement will contain a provision waiving any right to petition the Agency to terminate the extended use term (as described in Section 42 of the Code.)

If the alternative of homeownership opportunities is selected, proposals must present a financially viable homeownership program for residents who inhabit the units during the compliance period. The program must incorporate an exit strategy, homeownership counseling and a minimum amount of funds (not less than \$1,000) set aside by the developer to assist the residents with the purchase. The only types of units eligible for consideration are townhouse and single family attached and detached structures. The Agency, in its discretion, may approve other unit types if structured as cooperative or condominium ownership. The developer will certify this commitment in the Application and the Restrictive Covenant Agreement will contain provisions ensuring enforcement of the related covenants by affected qualified residents. Should the units not be converted to homeownership, the Restrictive Covenant Agreement will contain a provision waiving any right to petition the Agency to terminate the extended use term for all units remaining as rental units. A certification from the design architect verifying the units are townhouse or single family attached or detached structures (or otherwise appropriate for homeownership by tenants as determined by the Agency) will be required as part of the Application.

8. The development team must have sufficient experience, as determined in the sole discretion of the Agency, to effectively own, design, construct, manage and operate a Tax Credit development. The development team members include the applicants, architects, general contractor, attorney, and the management agent. As appropriate, the experience of a housing consultant (including their ability to secure equity investment) or a housing management consultant may be considered in lieu of the applicant or management agent, respectively.
9. Applications must demonstrate that the housing needs of local public housing waiting lists have been met. Applicants may meet this requirement by providing either: (1) a current letter from the local public housing authority stating how the development is specifically meeting the housing needs of residents on the public housing waiting list; (2) a copy of the comprehensive plan outlining the current local public housing authority waiting list and evidence that the development will meet such resident needs; or (3) evidence of receipt of mailing to the local public housing authority prior to the date of the Tax Credit application a letter which evidences the commitment of the developer to work cooperatively to meet the needs of persons on the local public housing waiting list.

In addition to the above threshold eligibility criteria, the Agency reserves the right to take any action it deems appropriate if the applicant (or any related entity), proposed management agent, or other material participant has been found to be in violation of fair housing, housing accessibility or nondiscrimination laws or has been found to discriminate against Section 8 voucher and certificate holders or recipients of any state or local tenant or project based rental assistance, and such violation or discriminatory actions have not been remedied to the satisfaction of the governmental agency or entity with jurisdiction. The Agency specifically reserves the right to take any appropriate action and to deny any future Tax Credit Application from any applicant (or related entity) who evicts or terminates the tenancy of low income residents, except for good cause, throughout the entire project compliance period (including the extended use period) applicable to any existing Tax Credit development. Such action may include rejection of the Application, termination of processing, recapture of Tax Credits (if an IRS Form 8609 has not been issued) or, if applicable, issuance of an IRS Form 8823 or notification to the appropriate governmental authorities. (As evidence of such finding of violation, the Agency may rely upon its own investigations or may rely upon any order of a court with jurisdiction or upon notice of such a finding from any federal or state agency with investigative or regulatory jurisdiction regarding the subject matter, such as the Internal Revenue Service, U.S. Department of Justice, Department of Treasury, U.S. Department of Housing and Urban Development, Pennsylvania Human Relations Commission or Pennsylvania Office of Attorney General.)

“Material participant” for purpose of this section includes any entity who by written agreement may significantly affect, in the opinion of the Agency, the development or operation of the property. Such written agreement may include ground leases, operating subsidies, partnership agreements, management contracts or operating regulatory agreements.

#### Set-Asides

The Agency will target its allocation of Tax Credits to achieve several Set-Asides. An outline of these Set-Asides is provided below. The amounts available in each Set-Aside will be adjusted by the Agency at any time to ensure adequate and appropriate funding of the developments meeting the Program criteria and goals. The Agency may provide a preference to developments using Agency-sponsored pilot programs.

## Set-Aside Percentages

Set-Asides	Percentage of Tax Credits to be Allocated
Regional Set-Aside	55.00%
Region 1	
Region 2	
Region 3	
Region 4	
Region 5	
Region 6	
Preservation	15.00%
Supportive Housing	5.00%
Additional Tax Credits	5.00%
Community Impact	20.00%
Total	100.00%

### 1. Regional Set-Aside

A percentage of the Year 2010 Tax Credits will be set aside for each region of the Commonwealth. The counties in each region are shown on the map in Exhibit DCED in the 2010 Multifamily Housing Program Guidelines. The Regional Set-Asides are based on the percentage of households at or below 50 percent of median income for the given region. Allocations from the Regional Set-Aside will be further targeted in the following manner: fifty-five percent (55%) of the Regional Set-Aside of Tax Credits will be allocated to general occupancy developments and forty-five percent (45%) of the Regional Set-Aside of Tax Credits will be allocated to senior developments (defined as housing for older persons age 55 and older or 62 and older). These amounts may be adjusted to ensure adequate funding for developments or regional distribution within this Set-Aside.

### 2. Nonprofit Organization Set-Aside

The Agency seeks to encourage development by nonprofits which have demonstrated commitment to improving the living environment, public health, or safety of local populations in Tax Credit developments and will target a minimum of twenty-five percent (25%) of the state per capita allocation amount toward developments involving qualified nonprofit organizations. To be eligible, all nonprofits must meet the following requirements:

A nonprofit organization will qualify for consideration under the Nonprofit Set-Aside if it is described in paragraphs (3) or (4) of Section 501(c) of the Code, is exempt from tax under Section 501(a) and will materially participate in the Tax Credit development throughout the compliance period. In addition, the nonprofit organization must have the fostering of low income housing as one of its exempt purposes. The nonprofit organization must own (directly or through a partnership) at least a 51% interest in the general partner of the partnership entity in accordance with current laws and IRS regulations throughout the development's compliance period. The nonprofit organization may neither be an affiliate of, nor controlled by, a for profit organization. An opinion of counsel addressing the status of the nonprofit organization and qualification for the Nonprofit Set-Aside may be required.

Priority may be given to nonprofits which have a substantial base of operations within the county or municipality in which it proposes a development. To show a substantial base of operations, the nonprofit must demonstrate that it has provided quality charitable services to persons in the county or

municipality without substantial interruption for at least the last two years, or performed other such activities which demonstrate, to the satisfaction of PHFA, that the organization will further the living environment, public health, or safety of persons in the proposed development. Charitable services are services recognized as charitable by the IRS.

### **3. Preservation Set-Aside**

Some of the state per capita allocation available in the Year 2010 will target developments that meet the Agency's requirements for preservation of affordable housing. Applications for the preservation of general occupancy and senior developments may qualify for the Preservation Set-Aside if targeting:

- (a) Existing low income units receiving project-based rental subsidies that are within two years of any permitted prepayment or subsidy contract expiration with a likely conversion to market rate housing or equivalent loss of low income use restrictions. (The likelihood of conversion to market rate housing must be supported by a current market study in a form and substance acceptable to the Agency); or
- (b) Rehabilitation of already existing low income units provided that the rehabilitation will repair or replace major systems and components that are 1) in immediate need of repair or replacement; or 2) functionally obsolete or require modification or enhancement to meet new applicable federal, state or local housing or building code requirements. In addition, there must be a legitimate lack of sufficient and available, unrestricted property reserve funds or capital to provide for the necessary capital improvements. Developments must expend for rehabilitation a minimum of \$10,000 per unit in construction costs on major systems and components based upon a professionally commissioned Capital Needs Assessment (not more than twelve months old from the date of Application) or such additional amounts, the Agency in its discretion deems necessary for the long term viability of the development; or
- (c) Rehabilitation of already existing low income units provided that the rehabilitation is being funded through the Agency and the development will be monitored through an Agency preservation program.

Preference may be given to developments participating in the Agency's Preservation through Smart Rehab Program or to those that face conversion to market or which have rehabilitation scope of work that addresses significant life safety issues. Applicants for the Preservation Set-Aside should refer to the 2010 Multifamily Housing Program Guidelines for further guidance on submission requirements. The Agency, in its discretion, may consider any Applications under the appropriate Regional Set-Aside once the Preservation Set-Aside is exhausted.

### **4. Supportive Housing Set-Aside**

If feasible, a special Set-Aside of Tax Credits will target developments that meet the Agency's requirement for Supportive Housing. To qualify for the Supportive Housing Set-Aside, the development must:

- a. Provide at least 25% of the total units for developments of 20 or fewer units and at least 15% and no more than 25% of the total units for development with more than 20 units to eligible populations including persons that are homeless; or to non-homeless households that require supportive services including those with mental, physical, sensory, or developmental disabilities; persons with substance abuse disorders; persons diagnosed with AIDs and related diseases, and other special populations approved by the Agency on a case-by-case basis. Designated units must be rented only to the target population (subject to fair housing laws).
- b. Document the need for housing for the target population (including size of units).

- c. Be located within 2 blocks of a public transit stop or include transportation in the site plan of services.
- d. Have funding in place or identify a viable plan for the funding of appropriate services for the duration of the compliance period.
- e. Provide a rental subsidy so that rents in Supportive Housing Units do not exceed 30% of household income.
- f. Identify a lead agency that will act as a referral agent for the targeted units and have an agreement in place for that referral process. Services for the target population cannot be a condition of residency for these or other units.

Applicants for this Supportive Housing Set-Aside should refer to the 2010 Multifamily Housing Program Application Instructions for further guidance on submission requirements. Applications for the Supportive Housing Set-Aside may be either for general occupancy or senior developments.

## **5. Requests for Additional Tax Credits Set-Aside**

A special Set-Aside of Tax Credits will target developments that have received an initial reservation of Tax Credits in a prior year and are seeking additional Tax Credits in 2010. Developments that must be placed in service in 2010 will receive preference for the Tax Credits. This Set-Aside is only available for developments which have closed on their equity investment or can demonstrate the capacity to secure an equity investment, satisfactory to the Agency, and qualified applicants must neither have changed any selection criteria nor made any unapproved modifications to the development from the initial Application. Applications will not be accepted for additional Tax Credits due solely to an increase in Maximum Basis Limits.

In the event the applicant is amending the selection criteria considered by the Agency in making the initial reservation the applicant must submit a new Application. Regardless of which source the applicant chooses (i.e. Regional Set-Aside or Additional Set-Aside), applicants may only request additional Tax Credits two times subsequent to the initial reservation.

A development seeking Additional Tax Credits from the Set-Aside will not be considered at the same time under the Regional Set-Aside. Once the Additional Tax Credits Set-Aside is exhausted the Agency, in its discretion, may reallocate Tax Credits in an amount as determined by the Agency to developments which must be placed in service in 2010.

All applicants for Additional Tax Credits should refer to the Checklist of Exhibits in the 2010 Multifamily Housing Program Guidelines for resubmission requirements and processing instructions.

## **6. Community Impact**

Based on the Agency's experience, there are circumstances under which an evaluation of a development supported by Tax Credits needs to take account of the contribution it can make to a neighborhood's revitalization. The Agency has set-aside Tax Credits to target such developments.

In weighing the impact of community revitalization, the Agency will look at how, in measurable terms, the development meets the Community and Economic Impact Selection Criteria (set forth herein).

Applicants should articulate and demonstrate how the development will fulfill or achieve a "community changing" effect on the neighborhood, citing and evidencing as many of the above attributes as possible to be favorably considered under this program. If part of a comprehensive strategy, there should be a commitment of sufficient resources to substantiate that the strategy has a reasonable chance of being implemented. Efforts that show coordination with other state and local

funding sources for economic and community development are encouraged in this initiative. However, the combination of such funding sources must tie together neighborhood enhancement and be part of a broader overall community plan.

Applications for Community Impact should refer to the 2010 Multifamily Housing Program Guidelines for further guidance on submission requirements. The Agency, in its discretion, may consider any Application for Community Impact after the other Set-Asides have been exhausted. The Agency may consider developer participation, regional distribution, scale of community impact and competitive rankings of Applications in making allocations under the Community Impact Set-Aside including how the development maximizes the inclusion of affordable accessible units in its design.

### **Additional Resources and Supplemental Set-Aside Information**

Should additional Tax Credits or stimulus funds become available for whatever reason at any time in 2010, the Agency will not issue an amendment to this Allocation Plan but will instead make allocations of such additional Tax Credits based upon priorities and preferences set forth in this Allocation Plan as it deems appropriate. The amounts available in each Set-Aside may be adjusted by the Agency at any time to ensure adequate and appropriate funding of the developments meeting the Program criteria. Additionally, the Agency may consider any development in any Set-Aside it deems appropriate to maximize distribution and meet state housing goals.

The amounts available in each Set-Aside may be adjusted by the Agency at any time to ensure adequate and appropriate funding of the developments meeting the program criteria. Further, the Agency reserves the right to allocate more than the available Tax Credits in each Set-Aside in order to fully fund a project reservation which has scored sufficient points to warrant funding but for which funds remaining in the set-aside can not fund the full credit amount needed for feasibility. For developments returning Tax Credits from a previous or current year's allocation, the Tax Credits may be redistributed at the Agency's discretion.

After the Agency reserves Tax Credits for 2010 Applications, the Agency may allocate such 2010 Tax Credits as may be available to any development which either did not receive a reservation or which needs additional credits to fully support their financial feasibility. In addition, the Agency may make binding commitments to allocate Tax Credits through a forward allocation process to ensure that it will be able to completely allocate year 2010 Tax Credits prior to the end of the year. Developers may not apply for or request a forward allocation. The Agency may determine to forward allocate based on geographic distribution, specific project needs or program considerations in the sole discretion of the Agency.

Applications may be returned if the amount of Tax Credits requested for a development exceeds the amount of Tax Credits available for the applicable Set-Aside by more than 10 percent of the Set-Aside amount. Tax Credits are not guaranteed to any party, regardless of the ranking or points achieved through the evaluation process. The Agency will review the geographic location, developers and types of projects to ensure distribution throughout the Commonwealth. In addition, the Agency may impose a \$1,200,000 per developer per region maximum on the Tax Credits or otherwise restrict the amount of Tax Credits to any particular developer or project. The Agency may impose a \$1,600,000 per developer per region maximum on Tax Credits for developments located in a distressed municipality as defined by the Financially Distressed Municipalities Act to any particular developer or project. Based upon the demand for Tax Credits and development rankings, the Tax Credits reserved for any one applicant (or related entity or material participant) or development in any specific jurisdiction or within a particular Set-Aside may be limited at the discretion of the Agency. Moreover, the Agency reserves the right to amend, modify or waive specific nonmaterial submission requirements or requisite documentation to best achieve affordable housing programs or affirmatively further fair housing in the Commonwealth.

## **MAXIMUM PER UNIT BASIS LIMITATIONS**

The Agency has established a maximum basis per unit of one hundred twenty percent (120%) of the U. S. Department of Housing and Urban Development's (HUD) Section 221(d)(3) maximum mortgage limits ("Maximum Basis"). Maximum Basis includes all depreciable costs normally included in the eligible basis determination for rehabilitation or new construction (not including the developer's fee or cost of acquisition). Maximum Basis for the purposes of this calculation may be determined after the deduction for commercial space costs but prior to the pro rata reduction for historic tax credits and other nonqualified financing and costs normally not included in eligible basis.

Developments located in a "qualified census tract" or "difficult development area", as established by HUD, may qualify for Tax Credits based on 130 percent of the eligible rehabilitation/new construction basis.

If the Maximum Basis per unit, as previously described, exceeds the established limits, Agency staff may waive the Maximum Basis per unit for some developments. An Agency waiver of the established limits will be based upon the demonstration of compelling circumstances and justification for the additional costs which are eligible basis incurred in the development. Compelling circumstances are limited to the following: costs predominately related to the preservation of a designated historic building or necessitated by building in or adjacent to a designated historical district; construction costs attendant to providing supportive services to the resident population that are over and above that typically associated with such housing, including reasonable costs related to the construction of community service facilities; costs due to structurally unsuitable subsoil conditions; costs associated with environmental remediation of an existing building that will remain in the development; up-front capital expenditures related to energy efficiency systems that will result in demonstrable savings in utility costs to the development, including solar, geothermal, or other innovative energy savings techniques; and costs resulting from local conditions or attempts to exclude affordable housing (this may include excessive impact fees, building code requirements, restrictive zoning, extraordinary litigation costs incurred because of neighborhood opposition and planning requirements). For those properties seeking to exceed limits based on costs due to unsuitable subsoil conditions, costs associated with environmental remediation, or up-front capital expenditures related to energy efficiency systems that will result in demonstrable savings in utility costs must provide evidence that such costs are in excess of expenditures required for eligibility for tax credits. In addition, a detailed cost breakdown must be provided indicating the difference between the costs for these items and those of typically constructed developments. Developers must provide full explanation of all alternative site considerations and provide adequate justification of the need for the development at the identified location or a full explanation and adequate evidence of cost savings. For developments affected by local attempts to exclude affordable housing, Agency staff will not approve Tax Credits above 30 percent of the Maximum Basis limitation. For all other circumstances, Agency staff will not approve Tax Credits above 15 percent of the Maximum Basis limitation. A waiver of the Maximum Basis limitation is at the sole discretion of the Agency.

See Exhibit MAX BASIS for a breakdown of the Agency's Maximum Basis limitation by market area and unit size.

## **THRESHOLD CRITERIA**

The Agency has determined that the following minimum development characteristics will be considered threshold criteria for all developments seeking Tax Credits in 2010. The Agency may waive the requirement of a specific amenity if compelling circumstances exist, or if the inclusion of such amenity adversely affects the financial feasibility of the development or if, due to the nature of the rehabilitation of the development, the inclusion of such amenity is cost prohibitive. The Agency will review the architectural documents submitted with the proposal to confirm the existence of the proposed amenities. A certification from the design architect verifying the inclusion of the amenities in the

development must be submitted with the Application. Confirmation from the construction contract administration architect is required with the submission of the cost certification documents. For developments not requiring the services of an architect, the certifications may be provided by the general contractor. Amenities should be appropriate for the proposed resident population. Verification of the availability of all amenities may be required by the Agency at any time and throughout the development's compliance period.

1. Development Amenities – The following Development Amenities must be included in the proposed development. (Please note that the applicant should seek independent tax advice as all of the costs of the following amenities may not be includible in eligible basis.)
  - On-site Community Room. The community room must be one room and should be of sufficient size to accommodate the residents and services to be provided. The community room in senior housing developments should include a kitchen or kitchenette that will be available to all residents.
    - An on-site community room will not be required for developments with 11 units or less or scattered site properties. Applications which are continuation of a phased development will be required to provide space sufficient to meet the size requirements below based on the aggregate of the number of units in all phases.
    - The community room should contain at least 15 net square feet per unit for properties between 12 and 50 units. Community rooms in developments with more than 50 units should be at least 750 square feet in size. The square footage required shall be in addition to the kitchen or kitchenette, where provided.
  - Laundry Facilities. Common laundry facilities or the provision of individual washers and dryers in each unit are required. If the development contains a common laundry facility, the following requirement must be met:
    - For general occupancy developments: one washer and dryer per 12 units, with a minimum of two washers and two dryers required at each laundry facility.
    - For elderly development: one washer and dryer per 20 units, with a minimum of two washers and two dryers required at each laundry facility.
    - A minimum of one front load washer and dryer is required for each laundry facility and will be required in accessible units containing washer and dryer in the unit.
  - Air Conditioning. For new construction or substantial rehabilitation developments, all common spaces must be air conditioned (except stair towers, mechanical rooms and storage rooms).
    - Preservation or moderate rehabilitation properties may be required to include air conditioning as part of the proposal if financially feasible and deemed reasonable by the Agency.
  - On-site Management Office. An on-site management office will be required for all developments except: those containing 11 units or less or scattered site properties. Applications which are a continuation of a phased development with a total of more than 11 units will be required to provide evidence of a management office in one of the prior phases.
2. Unit Amenities – The following Unit Amenities must be included in the proposed development.
  - The net area of all dwelling units must fall within the limits listed below. (Net area is measured from the interior finish surface of the unit perimeter walls, and shall include all

rooms, corridors, walls, storage areas, and mechanical spaces). Rehabilitation developments may vary from the maximums and minimums by 10%. Accessible units may vary from the maximums as required to provide an accessible route and accessible clearances.

	FLATS	MULTI-FLOOR UNITS
SRO	90 to 150 s.f.	
EFF	400 to 550 s.f.	
1 BR	550 to 750 s.f.	650 to 850 s.f.
2 BR	700 to 1,000 s.f.	850 to 1200 s.f.
3 BR	950 to 1,200 s.f.	1,000 to 1400 s.f.
4 BR	1,100 to 1400 s.f.	1,200 to 1600 s.f.
5 BR	1,300 to 1,600 s.f.	1,400 to 1,850 s.f.

- Air conditioning shall be supplied to living areas and all bedrooms of each unit. Individual window units will not be considered as meeting this criteria.
  - Refrigerators, ranges and ovens will be required in all units except for developments containing SRO units provided such properties have common cooking facilities containing these appliances.
  - Window treatments in all residential units are required. Window treatments include venetian blinds, vertical blinds, or other opaque blinds. Roller shades will not be considered in this category.
3. VisitAbility - All newly constructed units in townhouse developments and elevator buildings, and all ground floor units in walk-up apartment buildings shall be VisitAble. In rehabilitation developments, a minimum of twenty-five (25) percent of the units in townhouse developments, elevator buildings and walk-up apartments shall be VisitAble. Properties unable to do this due to physical constraints or building type may apply for a waiver from this threshold requirement. To meet VisitAbility design features: the building and units must have at least one zero-step entrance with a 36 inch wide door; all doorways and passages on the entry level floor should have a width of 36 inches; there should be a clear pathway to a bathroom or powder room; such bathroom or powder room should include grab bars on reinforced walls, which can also serve as towel bars; and there should be a clear pathway to the living room and dining area of the unit. The powder room and bathroom must follow the Fair Housing Act design parameters. (Preservation developments are exempt from this requirement but are encouraged to provide VisitAble units where feasible.)
4. **Digital Accessibility** - Three distinct wiring networks must be provided for each unit. The three networks are the following; a separate dedicated CAT5e (or better) internet access line to each unit routed from a central distribution point or a development-wide wireless network; a CAT5e (or better) telephone line to each unit; and digital capable cable television wiring routed from a central location must also be provided to each unit. Residents must be able to connect to the internet independently of the development network.
5. **Phase 1 Reports** - A Phase 1 Environmental Site Assessment prepared in accordance with ASTM E-1527-05 and the PHFA requirements found in the Submission Guide for Architects, is required for all developments. The report cannot be more than 12 months old at the time the application is submitted. The report shall be accompanied by a certification from the sponsor stating that any issues raised in the environmental review have been reviewed and budgeted accordingly in the development budget. For existing buildings, the Phase I report must also include the results from the following tests: lead in water, lead-based paint, asbestos and radon. Only the executive summary of the report shall be submitted in the application. Cost estimates for any remediation

work shall be provided and included in the executive summary.

## 6. Energy Conservation –

- In new construction and rehabilitation developments, all appliances, mechanical equipment, windows, ceiling fans, exhaust fans and exit signs, shall be Energy Star® labeled when such equipment and appliances exist. (Exception: programmable thermostats do not need to be provided). In addition, 50% of the permanent room light fixtures in the dwelling units shall be equipped with compact fluorescent bulbs and 100% of the community room and common area corridor and stair lighting shall be fluorescent with electronic ballasts or shall utilize compact fluorescent bulbs.

or

In preservation developments, existing refrigerators more than 6 years old shall be replaced with Energy Star® labeled type. Existing heat pumps, air conditioning condensing units, and through-wall air conditioners more than 6 years old shall be replaced with Energy Star® labeled type, when such equipment exists. Existing furnaces and boilers more than 10 years old shall be replaced with Energy Star® labeled type, when such equipment exists. (Programmable thermostats do not need to be provided) In addition, an existing community room, common area corridor and stair lighting more than 15 years old shall be replaced with fluorescent fixtures with electronic ballasts or fixtures that utilize compact fluorescent bulbs. Where windows are scheduled for replacement, replacement should be made with Energy Star® qualified products.

The developer certifies that when existing equipment, appliances and products are replaced, they will be replaced with Energy Star® labeled equipment, when such equipment exists.

- The development shall meet Energy Star® Standards by achieving a Home Energy Rating System (HERS) index necessary to achieve an Energy Star® rating (issuance of the actual Energy Star® label is not required). Rehabilitation developments must achieve a HERS index that is no greater than 2 points above that needed for an Energy Star® rating. This shall include computing a HERS index based on a review of the drawings and specifications, blower door testing, duct blaster testing (if ductwork exists) a thermal bypass inspection, and HVAC design in conformance with ACCA Manuals D, J, and S. (A HERS index is not required for preservation developments.)

Please review for the Multifamily Housing Application and Guidelines for specific energy conservation requirements.

7. Affordability of Units - Developments must provide a financing plan which evidences that at least ten percent (10%) of the units are affordable to persons at or below twenty percent (20%) of the area median income, adjusted for family size. At least half of these units must be accessible. The development must evidence a viable plan to charge rents at levels affordable to persons at or below twenty percent (20%) of area median income for these units throughout the compliance period which shall include supportive service commitments from qualified provider entities (including those supported through programs of the Commonwealth's Department of Public Welfare) needed to support the residents of the units. The Restrictive Covenant Agreement will require that the extremely low rents are maintained and that a corresponding number of units are marketed to and set aside for such extremely low income households throughout the compliance period.
8. Market Analysis - The Agency will measure the marketability and need of a development based on information provided by the Market Study/Needs Assessment. A Market Study/Needs Assessment form must be completed by the market analyst in the format developed by the Agency. The Market Study/Needs Assessment must address the following criteria:

- Size and trends of waiting lists in existing complexes;
- Vacancies in existing complexes;
- Affordable housing options in the primary market area;
- Rent pricing advantage of the proposed development rents compared to market rents;
- Population statistics;
- Impact on existing subsidized, affordable and Tax Credit developments; (Adverse impact, as determined by the Agency in its discretion, may lead to rejection of an Application or trigger additional scrutiny by the Agency.);
- Results of the Housing Provider Needs Assessment Form completed by the local housing authority (note: refusal by the housing authority to complete the form will not impact ranking of the development);
- Capture rate relating the number of rental units being proposed to the number of age and income qualified households in the primary market area;
- Local community support;
- Projected absorption period;
- Estimated vacancy rate; and
- Recommendations of the market analyst.

If the applicant is seeking consideration for Tax Credits from Community Impact, the Market Study/Needs Assessment must include a separate breakout of items identified for Community Impact. Additionally, the Market Study /Needs Assessment must identify the criteria set forth in the Community and Economic Impact Selection Criteria for ranking consideration in this category. If the Market Study/Needs Assessment is not completed by the appropriate party or is not in the Agency's format, the Application may be rejected and returned to the applicant.

The Agency will closely review the Market Study/Needs Assessment and the information gathered during its site visit. If questions or concerns are raised regarding the market and/or need of the development or the impact on affordable housing units in the area, clarification will be requested of the developer and/or market analyst. The Agency is not bound by the conclusion of the market analyst(s) and will use its discretion to determine eligibility for Tax Credits. If the concerns are not addressed by the applicant and/or market analyst to the satisfaction of the Agency, the Application may be returned.

## **SELECTION CRITERIA**

### **General Processing Information**

The Agency will review the Application and assign points based on the Selection Criteria. Applications will be underwritten by the Agency at the adjusted gross pay-in provided by the developer in the application but the Agency may adjust the pay-in during underwriting based upon market conditions or investor information. The Agency will be soliciting more information from and communicating directly with investors during the underwriting of applications. A development must address a substantial number in each of the six categories of Selection Criteria in order to qualify for a reservation of Tax Credits. The Agency has established a minimum point threshold of one hundred fifteen (115) points for Applications during the Year 2010 Tax Credit Program. The Agency reserves the right, at any time, to require submission of such documentation or additional support as it deems necessary to evidence any of the items set forth herein including, without limitation, additional independent market studies, independent appraisals, evidence of property location and accurate deed and title information, independent capital needs assessments and opinions of qualified tax counsel or certified public accountants and will impose additional documentation or clarifying information as further set forth herein

and in the 2010 Multifamily Housing Program Guidelines.

All Tax Credit reservations are made based upon the information contained in the Application. Unless specifically directed or approved by the Agency, changes or supplements to an Application during the processing period for ranking are not permitted. Changes to a development made by the applicant after a reservation is received affecting any of the Selection Criteria features will result in reconsideration of the ranking and may lead to a "rescission" of the conditional reservation. As a reminder, certain Selection Criteria will be incorporated into the Restrictive Covenant Agreement and monitored during the compliance period. Changes in any of the Selection Criteria subsequent to issuance of an IRS Form 8609 may result in noncompliance, may lead to specific enforcement action against the development and may result in the loss of Tax Credits to the development and its investors.

The scoring and ranking of a development does not guarantee funding by the Agency. In the event the Agency departs from the ranking and scoring criteria, it shall document such departure in accordance with the Code.

The Selection Criteria are set forth in Exhibit SC2010.

### **RANKING OF DEVELOPMENTS**

Developments will be evaluated to determine the amount of Tax Credits required to make the development economically feasible and to ensure the development's long term viability. If two or more developments have the same ranking within a region, Set-Aside or the statewide pool and only one development can be awarded credits, the Agency will select the development that has a higher percentage of units available to residents whose incomes are at or below 50 percent of area median gross income as compared to total number of Tax Credit eligible units. If the developments have the same percentage of units serving residents at or below 50 percent of area median income, the Agency, in its sole discretion, may select the Application that it determines best fits the Agency's affordable housing priorities and achieves geographic distribution.

The Agency's determination as to the amount of Tax Credits reserved for or allocated to a development shall not be construed by the developer, lender, or any other interested party to be a warranty of the development's feasibility and viability, nor shall such determination constitute a representation of compliance with any requirements of the Code.

### **DEVELOPER'S FEE**

The developer's fee, which is meant to compensate the developer for staff time, effort and work involved in the development of the property, includes developer's expenses, overhead, profit and consulting fees or other fees and costs that are above the maximums allowed by the Agency. For developments that have 25 or more units, the developer's fee is limited to 15 percent of the first \$10 million of replacement cost of the development less all costs of acquisition and 10 percent on every \$1 of replacement cost thereafter. For developments of 24 units or less, the developer's fee is limited to 20 percent of the replacement cost of the development less all costs of acquisition. Additional developer's fee will not be available for applications requesting Additional Tax Credits.

For rehabilitation and preservation developments that qualify for acquisition Tax Credits, a developer's fee will be allowed on a portion of the acquisition cost that is basis eligible. The fee is limited to 10 percent of the purchase price of the property less the cost of the land. The maximum acquisition cost that will be recognized in determining the developer's fee will be the lesser of the actual amount paid for the building or the MAI appraised value. The Agency will limit developer's fee to 5% if the seller and buyer are related parties.

In addition, the Agency may impose a developer's fee cap of \$1,500,000 per development on the total developer's fee allowable for costs associated with both the rehabilitation and acquisition of the

development.

The developer's fee may not be calculated on a basis that exceeds the Agency's maximum per unit basis limitation. However, Agency staff may consider a higher developer's fee (up to the maximum percentage limits) if an amount of funds equal to the increased developer's fee calculated in excess of the Agency's maximum per unit basis limitation is committed by the owner to the provision of social supportive services, as support for lower income families in transition or in concert with a families moving to work initiative of the Commonwealth, or as an internal rental subsidy to subsidize rents at or below 20 percent of area median gross rent. Evidence of these commitments must be provided with the Tax Credit Application.

Applicants may request a developer's fee in excess of the maximum allowable amount up to but not exceeding an additional 5 percent (exclusive of developer's fees based on acquisition costs) if the applicant commits to provide to the development an amount equal to the equity raised from the additional development fee of 5 percent for the provision of an internal rent subsidy for all units set aside to provide affordable accessible housing to persons with disabilities. A unit would be considered affordable in this instance if the housing expense to the resident is maintained at a level affordable to a person with income at or below 20 percent of the area median income. Applicants may also request an increase in developer's fee in an amount not to exceed an additional 5 percent (exclusive of developer's fees based on acquisition costs) if the applicant commits to provide to the development an amount equal to the equity raised from the additional development fee of 5 percent for the provision of an internal rent subsidy for units set aside to subsidize rents to person with income at or below 40 percent of the area median income. For developments not receiving Agency financing, Agency staff will only approve an increased developer's fee if the applicant provides adequate assurances and documentation (including evidence of a third party escrow arrangement) that an amount of funds equal to the increased equity raised from the additional developer's fee will be committed to the development to establish an internal rent subsidy for at least the initial 15 year occupancy period. In order to qualify for the additional developer fee, the applicant must provide evidence satisfactory to the Agency that an equity investor has been secured. If an investor has not been secured, the applicant will need to fund the reserves with other resources. (The Agency may, in its discretion, determine to allow additional stimulus resources to be used for this purpose.) In the event the Agency allows a developer's fee which exceeds the maximum per unit limitation up to the replacement cost, the Agency will not consider the additional 5 percent increases. Whenever an increased developer's fee is allowed, the partnership or operating agreement must provide that the approved developer's fee will, in fact, be paid to the developer from available funds. Additionally, provision of funds for supportive services or to fund various internal rent subsidies will be incorporated in the Restrictive Covenant Agreement.

Development consultant's fees and organizational costs are required to be paid from the developer's fee. These fees may not be listed and shall not be recognized as separate line items on the Application.

### **TAX EXEMPT FINANCED DEVELOPMENTS**

All tax exempt financed developments utilizing Tax Credits in their financing plan must submit a Tax Credit Application and must be evaluated in accordance with the 2010 Tax Credit Allocation Plan and the 2010 Multifamily Housing Program Guidelines. Developments receiving tax exempt financing for at least 50 percent of the aggregate basis of the property including land are not required to receive an allocation of Tax Credits through competitive allocation from the Agency. The eligible basis of the development would qualify for the Tax Credits without competing through the regular allocation process however, the Agency may require the application meet the threshold criteria and minimum threshold points under the Selection Criteria. Developments receiving tax exempt financing on less than 50 percent of the aggregate basis will be eligible for Tax Credits on only that portion of the eligible basis financed by the tax exempt bonds. For the remaining portion, the owner must apply and compete for an allocation of Tax Credits from the Agency in the established allocation process, but the Agency may establish a lower threshold for qualified applicants.

Only that amount of Tax Credits that is necessary to ensure feasibility and long term viability will be issued on the IRS Form 8609. See the 2010 Multifamily Housing Program Guidelines for the appropriate documentation to be submitted and the applicable timeframes.

Because of the competitive nature of Tax Credits, the Agency may require certain applicants to pursue Tax Exempt financing as an alternative to seeking Tax Credits from the Set-Asides. Additionally, for developments seeking Tax Exempt financing, the Agency may waive such timelines, processing and program requirements, in its discretion, to encourage and facilitate such financings. The Agency may also allow costs per unit above Maximum Basis limits and may allow higher developer's fees for developments using this funding source.

### **SUBSIDY LAYERING REVIEWS**

Pursuant to Section 911 of the Housing Community Development Act of 1992, HUD published administrative guidelines concerning subsidy layering review of Tax Credit developments receiving assistance from the HUD's Office of Housing. The guidelines provide for the delegation of subsidy layering reviews for certain programs to Tax Credit allocating agencies. Pennsylvania requested and has been delegated this subsidy layering review responsibility. Assistance received from the Office of Public and Indian Housing (which includes Section 8 Project Based Assistance) requires a subsidy layering review by HUD. Section 911 guidelines provide the Tax Credit allocating agencies with standards for evaluating builder's profit, developer's fee, syndicator expenses, and net syndicator proceeds. The guidelines include both a safe harbor standard and ceiling standard for each category. The Tax Credit allocating agency may simply use the safe harbor standards or through the Allocation Plan may raise the safe harbor standards to the published maximum ceiling standards. The Agency has elected to raise the safe harbor guidelines to the maximum ceiling standards established for the Section 911 layering review since the ceiling standards are within the fee and cost limitations already established for the Tax Credit Program.

### **PLACED-IN-SERVICE/CARRYOVER ALLOCATION**

All developments receiving a conditional reservation of Year 2010 Tax Credits must either be placed in service by December 1, 2010 or, by October 1, 2010, be eligible for a carryover allocation of Tax Credits pursuant to Section 42 (h)(1)(E) of the Code. Any owner who will not be able to place the building in service by December 1, 2010 must notify the Agency by October 1, 2010 of the need to execute a Carryover Allocation Agreement. All processing deadlines for Carryover Allocations must be met.

To qualify for a Carryover Allocation, an owner must, by the required date, have evidence of ownership of the land or the depreciable real property that is part of the proposed development. The Agency may, in its sole discretion, accept 1.) an Attorney's Opinion Letter or a Certified Public Accountant Letter that certifies that the owner has carryover allocation basis for the development pursuant to the Code; or 2.) an owner's certification which includes sufficient identification of the property (i.e. legal descriptions, surveys, title insurance) to assign building identification numbers. In making this certification, the owner accepts full responsibility of all discrepancies, errors or omissions of properties and acknowledges that subsequent adjustments may require Internal Revenue Service approval. The Code requires that an owner must incur more than 10% of the "reasonably expected basis" in the property, including land, no later than one year from the date of Carryover Allocation. The "reasonably expected basis" is that basis which is expected to be incurred as of the close of the second calendar year following the calendar year of the Carryover Allocation. See the 2010 Multifamily Housing Program Guidelines for further details and additional processing deadlines.

## **PROCESSING PROCEDURES**

Selected developments will receive a contingent set aside of Tax Credits. In order to receive a conditional reservation of credits, documentation evidencing an equity investment within the established deadline will need to be provided. Developments receiving a conditional reservation of Tax Credits in Year 2010 are subject to the Agency's Year 2010 Multifamily Housing Program Guidelines and in the event the initial reservation is modified or amended, the Year 2010 Multifamily Housing Program Guidelines shall remain in force and effect for the property. However, the Agency may amend the 2010 Multifamily Housing Program Guidelines from time to time to further comply with Tax Credit Program requirements or to enable Agency staff to better fulfill its administrative duties and such changes would be applicable to the development.

The Agency reserves the right, in its sole discretion upon review and approval of a committee of the Board, to provide an allocation of Year 2010 Tax Credits to a development, without requiring re-ranking under the Year 2010 Allocation Plan. The development must be currently holding a valid allocation of Tax Credits and, due to circumstances beyond its control, unable to meet Tax Credit program placed in service deadlines. The Year 2010 Tax Credits will be allocated upon release and return of the prior allocation. Such circumstances may include delays caused by local government's opposition to affordable housing; delays due to the failure of the federal government to release program guidelines or regulations in a timely manner or due to temporary freezes in federal government budget authority for program activity; or similar extraordinary and compelling basis (and but for such circumstance, Agency program deadlines and requirements would have been met.) Notwithstanding the above, Developments which need additional Tax Credits to be viable for their equity closing must submit a new Application for funding with the Agency. Said developments will not be considered for substitution of Tax Credits because their Application has substantially changed. Further, the Agency may not consider any other Applications for Tax Credits, in its sole discretion for a new development submitted by the same applicant (or related entity or material participant) during the same or following funding round for Tax Credits if it provides this extraordinary relief due to the Developer's inability to meet placed in service deadlines.

## **DEVELOPMENTS WITH MULTIPLE BUILDINGS**

A development may include multiple buildings if it has similarly constructed units, is located on the same or contiguous tracts of land, is owned by the same federal taxpayer and is financed pursuant to a common plan of financing. A development with multiple buildings that is proposing a mixed income structure must have low-income units in each building of the development. Scattered site buildings on noncontiguous tracts of land may also qualify if the development meets all of the other requirements described above and the development is 100 percent rent and income restricted, however, costs associated with the development of a separate community building may not be eligible for Tax Credits unless the building contains a residential rental unit.

## **COMPLIANCE**

Owners are responsible for ongoing compliance with all requirements of the Section 42 of the Code and the Agency's Compliance Program Manual, including such rules, regulations, administrative revenue proclamations and revenue rulings as may be issued from time to time.

Each owner of a Tax Credit development must execute an agreement setting forth allowable occupancy and use restrictions, owner responsibilities and continuing Section 42 qualified development characteristics. This agreement, the "Restrictive Covenant Agreement," must be recorded for the maximum period required by the Code and no Tax Credits may be claimed by a property owner in any taxable year unless the Restrictive Covenant Agreement is in effect and is appropriately recorded on the property in the county land records.

The Agency will monitor each Tax Credit development for compliance with the Code. Such requirements may change from time to time and the protocol for compliance monitoring may be adjusted as deemed necessary or appropriate by the Agency. In addition to monitoring for all federal requirements, developments will be monitored for compliance with the occupancy standards, Selection Criteria and other covenants set forth in the Restrictive Covenant Agreement.

The Agency has established an interactive database (the "Agency Apartment Locator") for all affordable housing units in developments participating in any of the Agency's multifamily housing programs, to provide a resource for households seeking affordable housing throughout the Commonwealth and to provide a marketing tool to owners. All developments receiving 2010 Tax Credits must participate in this data collection effort and will be expected to provide information including, but not limited to unit amenities, household size, household income and move-in information and any ongoing unit vacancies in a secure and timely manner. Owners are reminded that they must comply with the Agency's Accessible Unit Policy (see Multifamily Housing Program Guidelines).

All owners must keep the following records for each qualified low income building in the development for each year of the compliance period: number of residential units in the building, the number of low income units in building, the number of occupants in each low income unit, the number of bedrooms in each unit, the square footage of each unit, the rent charged on each unit including the utility allowance, the low income unit vacancies in the building and the rentals of the next available unit for each building in the development including when and to whom it was rented. The owner must also keep documentation of the eligible basis and the qualified basis of the building as of the end of the first year of the Tax Credit period. Owners must also keep a record of the annual income certification of low income residents along with documentation to support the certification. Owners renting to holders of Section 8 certificates or vouchers may ask the public housing authority issuing the certificates or vouchers to provide a statement declaring that the resident's income does not exceed the applicable income limit under Section 42(g) of the Code. Any nonresidential portion of a building included in the eligible basis of the building must demonstrate its availability to all residents in the building at no additional cost to the residents.

Records for the first year of the Tax Credit period must be retained for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building. In all subsequent years of the Tax Credit period, records must be kept by property owners for a minimum of 6 years after the due date (with extensions) for filing the federal income tax return for the year.

The Agency will also review and monitor developments for compliance with required certification submissions. Owners must provide certification at least annually to the Agency, under penalty of perjury, as to the following: the development meets the requirements of the elected minimum set-aside test; the applicable fraction, as defined in Section 42(c)(1)(B) of the Code, of each building in the development has not changed, or, if there was change, a description of the change; owner has received the annual income certification from each low income resident along with supporting documentation; the low income unit is rent restricted under Section 42(g)(2) of the Code; all units are available to the general public and used on a non-transient basis and no finding of discrimination under the Fair Housing Act has occurred for the development; each building is suitable for occupancy pursuant to local health, safety and building codes and meets all habitability standards for the Tax Credit Program; the building's eligible basis pursuant to Section 42(d) of the Code has remained the same (or if there was a change, the nature of the change); and any resident facility in the building is available to all residents in the building on a comparable basis without a separate fee charged to the resident. Furthermore, owners must certify that no low-income resident of a Tax Credit property will be or has been evicted or otherwise had their lease terminated other than for good cause and owner must confirm that all leases state this affirmatively. Owner must also certify that if a low income unit becomes vacant, reasonable attempts are made to rent that unit to a qualified low income resident, and while that unit is vacant no units of comparable or

smaller size may be rented to a non-qualified low income resident. If a low income resident's income rises above the limit established in Section 42(g)(2)(D)(ii) of the Code, all available units of comparable or smaller size in that building must be rented to an income qualified resident. Owner must also certify that an extended low income housing commitment, as described in Section 42(h)(6) of the Code, was in effect for all qualified low income buildings in the development. Owner must also certify that a unit lease has not been refused to a Section 8 applicant because the applicant holds a Section 8 voucher or certificate. Owner's certifications of these items must be submitted at least annually or with such greater frequency as may be required by the Agency. The Agency may adjust any and all of its compliance protocols as it deems appropriate throughout the compliance period and the extended use term covered by the Restrictive Covenant Agreement.

The Agency may review the information set forth on the certifications at any time for compliance with the Code. On-site inspections of all Tax Credit developments will be held from time to time, at the sole discretion of the Agency, for compliance with the certification requirements, habitability standards, rent records, lease provisions, supporting documentation and all record keeping requirements in the low income units. Physical inspections of all buildings and at least 20% of all low income units are performed at least once every three years. The Agency will determine which developments and which records it will inspect and how often such inspections will be conducted in its discretion. The Agency retains the right to perform on-site inspections at any time during the compliance period for any Tax Credit development or to conduct more frequent or more detailed site visits if the Agency deems it appropriate. As referenced above, the Agency may also require submission of ongoing data from each property regarding move-ins and vacant units.

Audited financial statements must be submitted annually to the Agency's Compliance Monitoring Department for all properties with twenty (20) or more units. If audited financial statements are not available, a compilation must be prepared and submitted to the Agency's Compliance Monitoring Department. (Applications for Tax Credits in any year may be rejected from organizations or individuals who have not submitted to the Agency the audited financial statements for a Tax Credit development for the preceding tax year.)

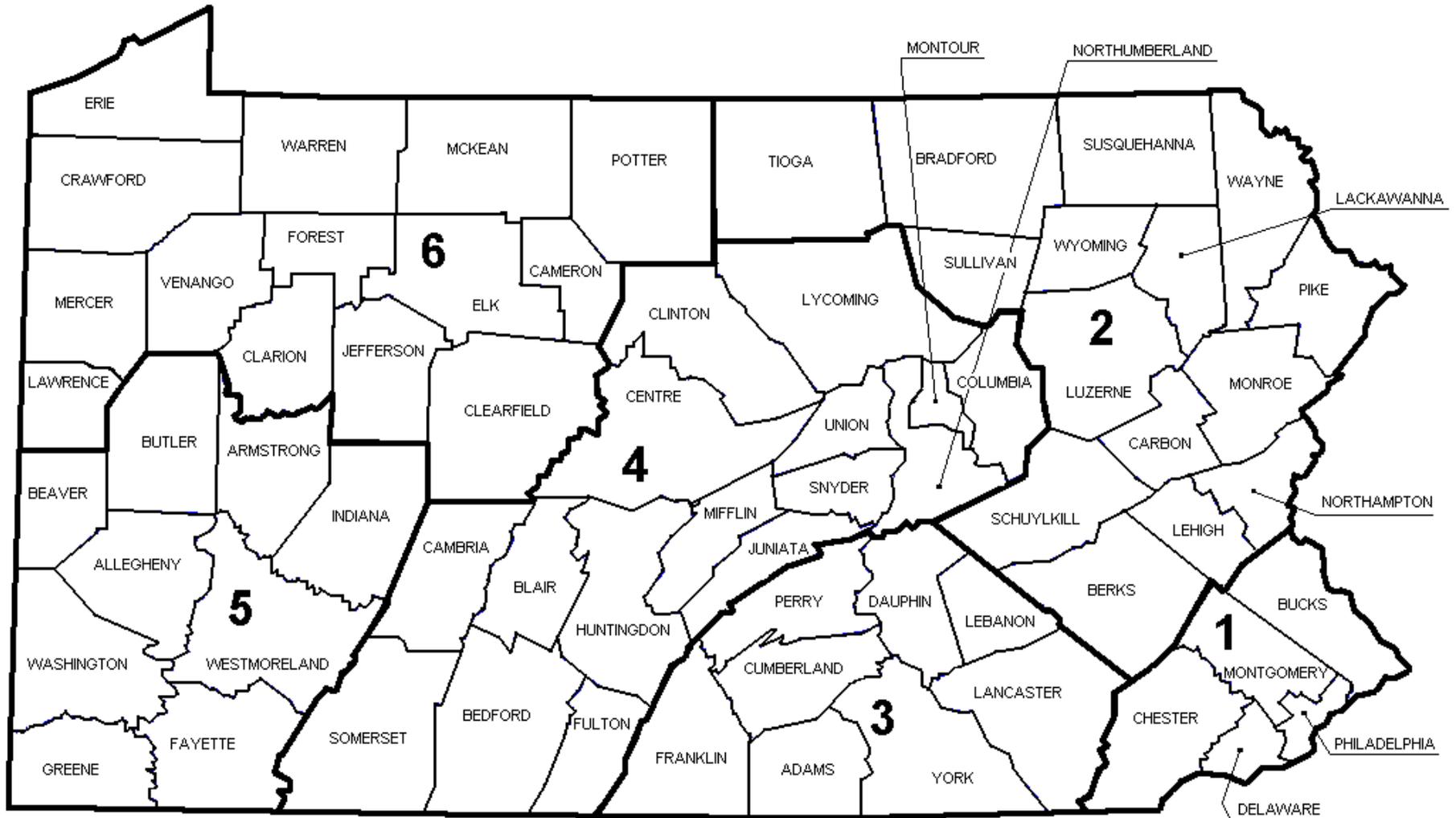
As required by the IRS, in the event the owner or the development does not comply with any of the provisions of the Code, the Agency will provide written notice to the owner that specifies a correction period that may not exceed 90 days, unless extended by the Agency in writing. Upon the expiration of the correction period set forth in the written notice to the owner, the Agency must file IRS Form 8823 "Low Income Housing Credit Agency Report of Noncompliance" ("IRS Form 8823") with the IRS to advise the IRS of the existence of an event of noncompliance with an explanation of the nature of the event and whether the owner has corrected the noncompliance. Any change in either the applicable fraction or eligible basis resulting in a decrease in the qualified basis will be treated as an event of noncompliance. In addition, any failure to provide required information to the Agency on a timely basis in accordance with its written request or the procedures established in Agency directives or set forth in its Compliance Program Manual may be treated as an event of noncompliance and may result in the filing of IRS Form 8823. Failure to continually meet the requirements of the use, occupancy and other conditions relevant to the operation of the development, as set forth in the Restrictive Covenant Agreement, may be treated as an event of noncompliance and may result in the filing of IRS Form 8823.

Pursuant to Revenue Procedure Ruling 94-64, an owner of a 100 percent qualified low income building may request a waiver from the IRS of the annual recertification of the resident's income requirement. Please see the Agency's 2010 Multifamily Housing Program Guidelines for further details.

The Agency will assess owners an upfront compliance fee designed to cover administrative expenses associated with the performance of compliance monitoring. Additional fees may be charged, as necessary and appropriate, for any property.

*Exhibit DCED*

**DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT  
REGIONS & COUNTY MAP**



**DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT  
REGIONAL OFFICES**

**Region 1 – South East**

908 State Office Building  
Broad & Spring Garden Sts.  
Philadelphia, PA 19130  
(215) 560-2083

**Region 5 - South West**

1405 State Office Bldg.  
300 Liberty Avenue  
Pittsburgh, PA 15222  
(412) 565-5002

**Region 2 – North East**

201 Samters Building  
101 Penn Avenue  
Scranton, PA 18503-2025  
(570) 963-4573

**Region 6 – North West**

1200 Lovell Place  
Erie, PA 16503  
(814) 871-4241

**Region 3 & 4 – North & South  
Central**

400 North Street 4<sup>th</sup> Fl.  
Keystone Building  
Harrisburg, PA 17120  
(717) 720-7300

*Exhibit MAX BASIS*

**MAXIMUM PER UNIT TAX CREDIT BASIS LIMITATIONS**

## Selection Criteria

### A. Community and Economic Impact

*30 points*

It is the goal of the Agency to encourage affordable housing in areas with job opportunities; in areas near strong and stable communities and in areas which demonstrate the capacity for community revitalization opportunities. The Market Study /Needs Assessment must identify the criteria set forth in the Community and Economic Impact Selection Criteria for ranking consideration in this category. To that end, up to 30 points will be awarded to developments located in areas that demonstrate the following relative to the immediate market area:

1. Underserved Areas

a. General Occupancy Developments -

- Low poverty rates
- Limited affordable housing options, both subsidized and non-subsidized
- Limited affordable housing production in past 20 years
- Close proximity to employment
- Strong housing markets
- High owner-occupied markets

b. Senior Occupancy Developments-

- Large number of seniors eligible for affordable housing
- Limited affordable housing options, both subsidized and non-subsidized
- Limited affordable housing production in past 20 years
- Close proximity to amenities for the senior population, including health and retail establishments, home health agencies, and hospitals.

AND/OR

2. Community Revitalization Plans – A critical circumstance is the development's forming an important part of a broader or comprehensive program of neighborhood improvement which has the capability of changing fundamentally the character of that neighborhood or enhancing the lives and amenities available to residents of the community. Such improvement should include the provision of mixed income housing. A program of neighborhood improvement includes municipal support articulated in a publicly approved community plan or in the form of significant funding commitments, or evidence of substantial major investment in the area that is consistent with an existing comprehensive plan for neighborhood improvement. Such funding commitments or major investments cannot be derived solely from the development of Tax Credit properties and may include proposals participating in: Main Street, Elm Street, Neighborhood Partnership or other programs of the Pennsylvania Department of Community and Economic Development; the Agency's Homeownership Choice Programs; the Healthy Village Initiative of the Local Initiatives Support Corporation; the Blueprint Communities Initiative of the Federal Home Loan Bank or similar community support programs. Additionally, the plan should generally include municipal support, private investment and/or private sector commitments to the area. The Agency will consider in its evaluation of community impact the use of existing housing or buildings if the development is not located in a qualified census tract.

**B. Development Characteristics**

*15 points*

1. Development Amenities – The Agency may award up to 5 points for the provision of each of the following development amenities.
  - a. Energy Conservation –
    - (i) 5 points may be awarded to developments where the overall U-value of the exterior building envelope exceeds the requirements of the 2009 International Energy Conservation Code for residential buildings (regardless of the number of stories) by at least 10%, as verified by a REScheck certificate. Trade-offs available in the REScheck software for mechanical equipment will not be allowed.
    - (ii) 5 points may be awarded to developments that conform to all of the Green Building Criteria found in the Multifamily Housing Program Guidelines.
  - b. Digital Accessibility – 5 points may be awarded to developments that provide low cost, broadband internet service to all dwelling units via a wired or wireless network.

The Agency will review the architectural documents submitted with the proposal to confirm the existence of the proposed amenities. A certification from the design architect verifying the inclusion of the amenities in the development must be submitted with the Application. Confirmation from the construction contract administration architect is required with the submission of the cost certification documents. For developments not requiring the services of an architect, the certifications may be provided by the general contractor or appropriate professional. Amenities should be appropriate for the proposed resident population. The appropriateness and adequacy of the proposed amenities for ranking purposes will be determined at the sole discretion of the Agency. Verification of the availability of all amenities may be required by the Agency at any time and throughout the development’s compliance period.

**C. Resident Population and Services**

*55 points*

1. Income and Rent Targeting – The applicant may be awarded up to 20 points for developments that are designed to be substantially occupied by and affordable to residents with incomes that are at or below 50 percent of the area median income. Points will be considered for the following percentages of units affordable to and occupied by residents whose incomes are at or below 50 percent of area median income:

<u>Percentage</u>	<u>Points</u>
>10-20%	4
>20-30%	8
>30-40%	12
>40-50%	16
>50%	20

2. Designated Populations & Supportive Services – Developments requesting consideration for providing service-enriched housing must provide a level and scope of services consistent with the anticipated needs of the designated resident population (general occupancy, over 55, over 62, or populations with special needs.) To receive points in this category, the development will provide evidence that appropriate services will be provided for the entire resident population for the duration of the compliance period. Evidence consists of a supportive services plan that:

- Is specific to the development and provides a scope of services that is greater than is available to a similar population in a broader community.

General occupancy developments should deliver or coordinate services that: improve building and unit maintenance; stabilize occupancy by improving residents' ability to uphold their lease obligations; and enhance quality of life through increased self-sufficiency and programs that improve life skills, employment, education, income/asset building, child and youth development, community building, and access to services.

Senior occupancy developments should deliver or coordinate services that: stabilize occupancy by improving residents' ability to uphold their lease obligations throughout the aging process and enhance quality of life through improved access to services and benefits, health promotion, community building, and socialization.

Developments for populations with special needs should deliver or coordinate services that stabilize occupancy by improving residents' ability to uphold their lease obligations and enhance quality of life through improved access to services that support the needs of the targeted population.

- Includes sufficient funds to implement the described plan of services. It is recommended that this funding be set aside in a supportive services escrow account, but the development's annual operating budget, collaboration with a community-based service provider (include letter of intent or Memorandum of Understanding) or funds from other identified sources may be used. If currently committed funds fall short of the cost of services for at least the first fifteen year period, identify how services will be funded for the remainder of the compliance period.
- Utilizes a service provider with the capacity to deliver described services with sufficiently equipped staff. The recommended minimum is 1 hour of on-site per week for every 5 units. Services staff should have access to a computer with Internet and email capabilities. There should be sufficient space to carry out the described services, including adequate office and community space.

Confirmation from the service provider regarding the availability of applicable services at initial occupancy of the development will be required prior to issuing the IRS Form 8609. To ensure the continued provision of supportive services, the Restrictive Covenant Agreement will reflect such commitment.

A total of 15 points may be awarded for meeting the above criteria.

### 3. Accessible Units –

Consideration may be given to developments where the developer agrees to provide twice as many fully accessible units as are otherwise required (under local, state, or federal mandate, whichever is greater) in the development. All employee units and market rate units must be included in the total unit count when calculating the required number of accessible units. The developer must certify that these units are accessible and, that during initial lease up, the developer will exclusively reserve the units for occupancy by persons needing the accessible units for the first thirty days. Thereafter, the developer will include certain provisions in the lease to allow the units to be occupied by persons who need the accessible features of the units, to the greatest extent feasible. Evidence of enforcement of the lease provisions will be required and implementation and adherence to additional outreach programs to identify and match qualified residents who need the accessible features within the development may be required throughout the compliance period which may include contacting the Agency prior to renting the unit to persons who do not require the accessible features in accordance with the Agency's Accessible Unit Policy.

Terms addressing the accessible units and the subsequent rental of these units will be incorporated in the Restrictive Covenant Agreement. In addition, a certification from the design architect verifying the inclusion of the accessible units in the development will be required at the time of application. Confirmation from the construction contract administration architect will be required with the submission of the cost certification documents. For developments not requiring the services of an architect, the certifications may be provided by the general contractor. For preservation developments, consideration will be given for points under this category if the development increases the number of accessible units available in the development by at least 5 percent of the total units available. (All other requirements applicable to rental and long term occupancy of these units are the same.) (10 points)

4. Large Families – Up to 10 points may be awarded for those developments providing units with three or more bedrooms for large families. High rise developments and senior housing cannot qualify for this category. Points will be considered for developments that include the following percentages of units with three or more bedrooms:

<u>Percentage</u>	<u>Points</u>
>15-20%	6
>20-25%	8
>25%	10

A certification from the design architect verifying the number of large family units in the development will be required at the time of application. Confirmation from the construction contract administration architect will be required with the submission of the cost certification documents. For developments not requiring the services of an architect, the certifications may be provided by the general contractor.

**D. Development Process**

45 points

Noncompliance – The Agency may deduct up to 10 points from the score for proposals involving either an applicant (or any related entity) that owns a managing or controlling interest in a Pennsylvania Tax Credit development or a management agent of such development who has unresolved IRS Form 8823 noncompliance issues, has not met the requirements of the Restrictive Covenant Agreement or failed to meet the selection criteria for which an allocation of Tax Credits was made.

Ability to Proceed – Points will be awarded for site ownership, zoning, site plan approval, construction and architectural submissions and committed funding sources and equity investment. As the Agency strives to make resources available to those projects which can quickly and effectively utilize its resources, consideration will be given to those properties which can demonstrate the ability to proceed. A total amount of 45 points may be awarded in this category.

- Site ownership (5 points) – The developer must submit evidence of site ownership, satisfactory to the Agency (which may be in the form of copies of the deeds and recording receipts) of all real estate parcels with the Application. Property ownership (as listed on the deeds) must be the same as the ownership entity listed on the Application. (A subsidiary or related entity to be formed with the same principals may satisfy this standard.)

Developments utilizing long-term lease arrangements (minimum of 35 years) are eligible, provided the lease is executed at the time of application. A copy of the recorded deed evidencing ownership of the property by the lessor must be provided.

- Zoning (5 points) – The developer must provide evidence that zoning is in place for all sites included in the Application and that all variances/special exceptions have been approved.
- Site Plan Approval (5 points) – A letter from the appropriate local government (or opinion of city solicitor or experienced real estate counsel) that certifies the developer has satisfied the site planning process or that no further municipal approvals are required.
- Construction and Architectural Submissions (5 points) – The developer must submit a copy of the following:
  - 90% architectural plans and specifications
  - Draft Architect Contract with selected architect
  - Draft Construction Contract with selected contractor
  - Construction Cost Estimate prepared by selected contractor
- Equity Investment (25 points) – The developer must submit evidence, satisfactory to the Agency that an equity investor has been secured for the development. Consideration in this category will be given if such evidence demonstrates, satisfactory to the Agency that a direct investor has been secured for the investment or if the syndicator’s letter shows that the funds have been committed to the project.

**E. Financial Aspects of Development**

*30 points*

1. Leveraging of Resources – The Agency may award up to 20 points for the amount of leveraging brought to support the development. Such leveraging may include permanent funding from state or local programs, for-profit and nonprofit organizations' loans supported by current audited financial statements, private foundations and/or federal sources. This category also includes permanent amortizing debt from banks and financial institutions, equity from historic tax credits, land and/or building donation or provision of a long term lease for a nominal amount (subject to verification by a current appraisal). Applications with a donation or a reduction in development related fees (i.e., tap-in, impact, recreational and/or other development rights by the local government unit/municipality) may also be included. The reduction must be measurable and based upon an existing fee schedule that applies to all developments. This category includes a PennHOMES Program in a Nonparticipation Jurisdiction request that has not yet reached feasibility approval and requests for permanent amortized debt, either through taxable or tax exempt bond financing from the Agency. This category does not include deferred (or reinvested) developer's fee. Resources included as a source of financing in the application may not be substituted or adjusted in the future by another funding source in the financing plan unless approved by the Agency.

Comparison will be made between total leveraging and total development costs (for preservation developments, assumed debt will not be included as a funding source nor added as a development cost for purposes of this calculation), with possible points granted as follows:

<b>Participating Jurisdiction Percentage</b>	<b>Nonparticipating Jurisdiction Percentage</b>	<b>Points</b>
>15 -25%	>5-15%	5
>25-35%	>15-25%	10
>35-45%	>25-35%	15
> 45%	>35%	20

2. Development Cost Savings - The Agency may award up to 10 points to Applications which have Maximum Basis (as defined in the Allocation Plan) below the Maximum Per Unit Basis Limitations ("Max Basis") as shown below. Points in this category will generally only be considered for substantial rehabilitation or new construction developments which evidence quality construction at efficient cost levels. (Most preservation deals would not qualify for this category). In addition to submission of certifications that the building as designed and as constructed will meet/meets all labor and material standards set forth in applicable local or statewide codes (without sacrificing unit size and other building amenities), the Agency reserves the right to require additional certifications from local officials or building design professionals prior to the issuance of an IRS Form 8609 for the building or to conduct its own site visits during construction to ensure that the quality of construction is not compromised by cost savings.

<b>Percentage Below Max Basis:</b>	<b>Points</b>
10-20%	5
>20%	10

**F. Other**

*5 points*

Complete and Accurate Application Package – 5 points will be added to the total score of an application for completeness and for including all essential components necessary for the Agency to determine financial feasibility and project eligibility.

**Total Points Available**

*180 points*