

# South Carolina State Housing Finance and Development Authority 2008 Low-Income Housing Tax Credit Manual

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## **I. PROGRAM ADMINISTRATION and PROCEDURES**

### **General Guidelines:**

1. **Fees** - Payment of **all** fees must be in the form of a cashier's check made payable to the South Carolina State Housing Finance and Development Authority. All fees are nonrefundable.
2. **Deadlines** – All applications must be submitted by the required due dates as specified in the LIHTC Program Schedule. Additional information requested by the Authority will be due not later than seven (7) business days from the date the information was requested.
3. **Document Timeliness**- All supporting documentation required for the 2008 Tier One and Tier Two Applications must not be dated prior to September 1, 2007. The only exception will be for Site Control Documents.
4. **Material Changes Prohibited**
  - a) If, upon the submission of the Tier Two Application, the Carryover Allocation Document, the Verification of Ten Percent Expenditure (10% Test) Application or the Placed-in-Service (PIS) Application, it is determined that the development is not substantially the same as the development described in the Tier One Application, the development will not receive an allocation of Low Income Housing Tax Credits (LIHTC). The following changes are deemed to be material and are not permitted:
    - i. General or Managing Partners (GP);
    - ii. \*Total number of LIHTC units;
    - iii. \*Total number of units;
    - iv. \*Number of bedrooms and bathrooms per unit mix;
    - v. \*Specific tenant population targeted;
    - vi. \*Tenant mix (low-income/market rate);
    - vii. An increase in net rents from Tier One to Tier Two;
    - viii. An increase in the total number of units from Tier One to Tier Two; or
    - ix. Site.
  - b) \*Changes in total number of LIHTC units (only decreases are allowed), total number of units (only decreases are allowed), number of bedrooms and bathrooms per unit mix, specific tenant population targeted, and/or tenant mix (low-income/market rate) will be allowed between Tier One and Tier Two submittal dates if, and only if, the market analyst contracted by the Authority recommends such changes.
  - c) Changes in the number of buildings and units contained in each building will be allowed only to comply with changes required by local regulatory codes made after the Tier One submittal deadline. Required changes must be received in writing from the City/County/Regulatory Agency requiring such.
5. **Transfers**
  - a) Neither reservations nor carryovers are transferable without the prior written consent of the Authority. Examples of situations in which such consent may be given include, but are not limited to:
    - i. Death;
    - ii. Bankruptcy;
    - iii. Receivership; or
    - iv. Cessation of business operations of a GP;
  - b) No change in the makeup or identity of a GP in a partnership or its equivalent in a limited liability company is permitted without the prior written consent of the Authority. Without limitation, this prohibition includes indirect transfers through the admission of any "special limited partner(s)" under any scheme that leads to the eventual exit of a GP or its equivalent in a limited liability company;
  - c) LIHTCs allocated to developments whose ownership is altered in violation of this provision shall be subject to revocation by the Authority.
6. **Fractional Rounding** - Fractional units must be increased to the next whole unit.
7. **ADA Requirements and Certification**
  - a) The Authority will not offer an allocation to any development unless the Applicant submits, with its Tier Two Application, a certification, signed by an architect or professional engineer licensed to practice in SC, which states that the architect or engineer will review the plans and specifications of the proposed development to ensure that such plans and specifications will comply with the accessibility and other requirements of Section 504 of the Rehabilitation Act, the Fair Housing Amendments to the Civil Rights Act of 1968, the Americans With Disabilities Act, and any other applicable state or federal legislation;
  - b) As part of its PIS Application, a certification must be included which is signed by an architect or professional engineer licensed to practice in SC which contains a statement that the development has been constructed in accordance with the accessibility and other requirements of Section 504 of the Rehabilitation Act, the Fair Housing Amendments to the Civil Rights Act of 1968, the Americans With Disabilities Act, and any other

applicable state or federal legislation, and that the development, as built, complies with the U.S. Department of Housing and Urban Development (HUD) “*Fair Housing Act Design Manual*.”

### **Program Suspension/Debarment:**

1. Any of the following actions may result in suspension from participating for funding from any of the Authority administered programs for a period of three (3) years:
  - a) Developments that receive a carryover allocation under the program are expected to meet the Ten Percent (10%) Test by the date specified in the carryover document, and to be placed-in-service by the Code deadline. Failure of a development to achieve either of these goals will disqualify the Applicant.
  - b) All GPs of a limited partnership and the equivalent in a limited liability corporation that receive a carryover allocation are required to remain in the partnership until the development places-in-service. Exceptions due to death, bankruptcy, or cessation of business operations will be allowed. All other removals whether voluntary or involuntary will result in disqualification for all GPs in a limited partnership and the equivalent in a limited liability corporation. Any person or entity, including syndicators, that attempts to circumvent this provision will be subject to disqualification.
  - c) Failure to provide the Exhibit G certification, or providing a false or inaccurate certification that a development meets the above standards when, in fact, it does not, will result in the disqualification of the developer and the architect. The Authority will also file a complaint against the architect with the S.C. Department of Labor, Licensing and Regulation.
2. Any of the following actions will result in the permanent debarment from participating for funding from any of the Authority administered programs:
  - a) Any Applicant who provides false or misleading information to the Authority with regard to a development seeking LIHTC will be permanently debarred from further participation in the Authority’s programs, in any capacity whatsoever, regardless of when such false or misleading information is discovered. Any reservation or carryover allocation obtained on the basis of such false or misleading information shall be void. Each Applicant shall be given written notice by the Program Director stating the reason for which the sanction of debarment was imposed.
  - b) Any partnership formation and/or developer agreement, whether written or otherwise, that attempts to circumvent Authority requirements will result in the permanent debarment of all parties involved from further participation in the Authority programs, regardless of when the violation is discovered.
  - c) For nonprofit sponsored developments, if the requirement for continuous and ongoing material participation is breached, the nonprofit and all of its officers and directors shall be permanently debarred from future participation. In the event that the requirement for continuous and ongoing control over the development is breached, such breach will be reported to the IRS as noncompliance, and the nonprofit and all of its officers and directors shall be permanently debarred.
3. The Authority, in its sole discretion, may determine other acts to be infractions of the program that require suspension or debarment. Suspensions or debarments based on such acts not defined shall be conducted as outlined in the South Carolina State Housing Finance and Development Authority’s Debarment and Program Suspension Policy.

### **Definitions:**

1. **Applicant** - includes each person, corporation, developer, partnership, joint venture, association, or other entity that has an ownership interest in the development for which the LIHTC application is submitted.
2. **Developer** - any individual or entity responsible for initiating and controlling the development process and ensuring that a material portion of the development process is accomplished.
3. **Material Participation** - the regular, continuous and substantial involvement in the operation of the development throughout the compliance period, as defined by the Code.
4. **Participants** - the Applicant, owner, developer, property management entity, consultants, syndicators, etc., proposed to be involved with the development for which an application is submitted.
5. **Principal** – any Applicant, owner, developer, guarantor, financial guarantor, or any other person, corporation, partnership, joint venture, or other entity, including any affiliate thereof, or any other person, firm, corporation, or entity of any kind whatsoever that either directly or indirectly receives a portion of the development fee (whether or not deferred) for development services and/or receives any compensation with respect to such development.
6. **Related Parties** - Notwithstanding anything to the contrary contained herein, the Authority will not reserve credits in an amount in excess of \$1.8 million to any GP or Principal(s) of such GP, directly or indirectly. Applicants will be deemed to be related if any Principal of an Applicant is also a Principal in any other Applicant.

An “**Identity of Interest**” is considered to exist if any of the following conditions exist:

- When there is any financial interest of the Applicant, Principal, owner and any other member of the development team;
- When one or more of the officers, directors, stockholders, members, or partners of the Applicant, Principal, or owner is also an officer, director, stockholder, member, or partner of any other member of the development team;
- When any officer, director, stockholder, member or partner of the Applicant, Principal, or owner has any financial interest whatsoever in any other member of the development team;
- When any other member of the development team advances any funds to the Applicant, Principal, or owner;
- When any other member of the development team provides and pays, on behalf of the Applicant, Principal, or owner, the cost of any architectural services or engineering services other than those of a surveyor, general superintendent, or engineer employed by any other member of the development team in connection with its obligations under its contract with the Applicant, Principal, or owner;
- When any other member of the development team takes stock or any interest in the Applicant, Principal, or owner entity as part of the consideration to be paid him/her;
- When any relationship exists which would give the Applicant, Principal, or owner or any other member of the development team control or influence over the price of the contract or the price paid to any other member of the development team or to a subcontractor, material supplier or lessor of equipment;
- When there exist (or come into being) any side deals, agreements, contracts, or undertakings entered into or contemplated, thereby altering, amending, or canceling any of the required application or closing (should there be a closing) documents.

## **II. LIHTC ALLOCATION CEILING: LIMITS and CATEGORIES**

### **LIHTC Allocation Ceiling:**

The amount of LIHTC available in SC in each calendar year reflects the sum of the amounts allowed under IRC Section 42(h)(3)(C). This amount may be increased by returned tax credits from prior years, tax credits allocated from the National Pool or by new legislation increasing the amount of LIHTC distributed to each state. The Authority reserves the right to withhold such credits from allocation as it deems advisable.

**Return of Credits and Returned Credit Allocation Procedures** - Allocations of credit may be returned only in accordance with applicable U.S. Treasury Regulations on a date agreed upon by the Authority and the Applicant. Amounts that are not accepted or are returned will be made available as follows:

- a) Amounts awarded in the competition and returned prior to December 1 will be offered to qualified developments submitted in the annual tax credit funding cycle that are capable of meeting carryover requirements. Reservations of returned amounts will be offered to developments in the order in which they appear on the waiting list if the amount offered is at least ninety percent (90%) of the credit amount for which the development is qualified. If no development can be funded to at least ninety percent (90%) of its qualified amount, such amounts shall be carried forward to the following tax credit year. LIHTC developments receiving a reservation of credits prior to December 1 will be required to meet all carryover qualifications by December 31;
- b) Any amounts returned after December 1 will be carried forward into the next tax credit year.

### **Cap for Single Applicant/ Related Parties/ Principal/ Owner:**

1. The Authority will not allocate more than \$1.8 million in LIHTCs to a Principal involved with multiple developments (see "Definitions" on page 4).
2. The maximum tax credit awarded per project will not exceed \$650,000.
3. In the event a Principal exceeds the limitation, the tax credit award to that Principal's development with the lowest point score will be reduced so that the limitation is not exceeded. That development will be awarded a reservation only if the LIHTC amount, as calculated by the Authority, is at least ninety percent (90%) of the unreduced amount that the development would have otherwise received.
4. Regardless of the percentage of participation a Principal has in the development, one hundred percent (100%) of the development's LIHTC reservation will count toward the limitation per Principal.
5. A Principal may not be associated with or submit more than four (4) applications/developments.

### **Set-Asides:**

The Authority has four (4) set-asides in which applicants may compete for credits: General, Rehabilitation, RHS, and Hard to Develop Counties Set-Asides. Excess funds in any pool will be allocated to the development, irrespective of the developments pool,

having the highest funding percentage. The funding percentage is determined by dividing the amount of credit available in that pool by the amount of credit requested for a development that is partially funded. These excess funds will be allocated if they increase the development's funding percentage to at least ninety-percent (90%). A development can compete for funding consideration only in the set-aside in which it applies.

**1. General Set-Aside:**

To compete in this set-aside, the Applicant must be qualified to do business in the State of South Carolina, as evidenced by having a status of "Good Standing" with the South Carolina Secretary of State's Office. Developments eligible to participate in this set-aside can be new construction, rehabilitation, or adaptive reuse.

**2. Rehabilitation Set-Aside:**

- a) Up to twenty-five percent (25%) of the funds remaining, after deducting the RHS and Hard to Develop Counties set-asides from the annual credit ceiling, may be used for rehabilitation developments.
- b) This set-aside is for one hundred percent (100%) rehabilitation developments only. Adaptive Reuse will not be allowed in this set-aside.
- c) Rehabilitation developments having a current vacancy rate of 30% or greater will not be allowed to participate in the Rehabilitation Set-Aside. These developments must compete in the General Set-Aside.

**3. Rural Housing Service (RHS) Set-Aside:**

- a) Up to \$750,000 of the state LIHTC ceiling is reserved for the exclusive use of eligible RHS developments;
- b) In order to compete within the RHS set-aside:
  - i. The development must have been selected for RHS 514, 515, or 516 funding as evidenced by a letter from the RHS State Multifamily Housing Director;
  - ii. The applicant must be qualified to do business in the State of South Carolina, as evidenced by having a status of "Good Standing" with the South Carolina Secretary of State's Office;
- c) Preference for HOME funding will be given to applications awarded a reservation of tax credits under the RHS set-aside. The Authority reserves the right to reduce HOME funds requested based on underwriting analysis.

**4. Hard To Develop Counties Set-Aside:**

- a) Up to \$750,000 of the state LIHTC ceiling is reserved for the use of eligible developments located in hard to develop counties. Hard to develop counties are those counties not having received a tax credit award in the past three (3) years;
- b) Developments must be at least 16 units and consist of no more than 40 units;
- c) Developments may be new construction, rehabilitation or adaptive reuse and may target any type tenant population;
- d) Developments in this set-aside are eligible for state HOME funds in an amount up to \$800,000 per development, which will be awarded as a 1%, 25 year deferred loan.
- e) The following counties are targeted in this set-aside: Abbeville, Allendale, Bamberg, Barnwell, Berkeley, Calhoun, Cherokee, Clarendon, Dillon, Fairfield, Hampton, Kershaw, Laurens, Lee, Marion, Marlboro, McCormick, and Union.
- f) Preference for HOME funding will be given to applications awarded a reservation of tax credits under the Hard To Develop Counties set-aside. The Authority reserves the right to reduce HOME funds requested based on underwriting analysis.

**Eligible Nonprofit Organizations**

- a) As per Section 42 of the Code, a minimum of ten percent (10%) of the state LIHTC ceiling is reserved for the exclusive use of eligible nonprofit organizations. Credits awarded to eligible nonprofit organizations from the designated set-asides will count toward meeting the minimum ten percent (10%) state ceiling. Should the Authority not award the minimum ten percent (10%) state ceiling then those credits will be carried forward to the next funding cycle for allocation to eligible nonprofit organizations.
- b) Eligible nonprofit organizations must meet the following criteria:
  - i. The nonprofit organization(s) must be a tax-exempt organization under Section 501(c)(3) or 501(c)(4) of the Code. A tax-exempt organization is defined as:
    - 1. An entity that has full-time staff whose responsibilities include the development of housing;
    - 2. An entity qualified to do business in the State of South Carolina, as evidenced by having a status of "Good Standing" with the South Carolina Secretary of State's Office.
  - ii. The nonprofit organization(s) must have among its exempt purposes the development of low-income housing;
  - iii. The nonprofit organization(s) must also meet the requirements for material participation contained in Section 469 of the Code:

1. Each nonprofit must submit a narrative statement, certified by a resolution of the nonprofit's Board of Directors, describing the nonprofit's plan for material participation during the development and compliance period;
  2. The Authority will review the narrative statement to determine whether the participation of the nonprofit in the ongoing operation of the development will be deemed material. Such determination shall be made in the sole discretion of the Authority;
  3. For participation to be deemed material, it must be continuous and ongoing throughout the compliance period;
  4. In the event that the requirement for continuous and ongoing material participation is breached, such breach will be reported to the IRS as noncompliance and the nonprofit and all of its officers and directors shall be permanently debarred.;
- iv. If the ownership entity of the development is a limited partnership, the GP must be either nonprofit entities or their wholly owned single-asset entity subsidiaries;
  - v. If the ownership entity of the development is a limited liability company, the managing member(s) (having similar powers to a GP in a limited partnership) must be comprised of nonprofits. The nonprofit GP of the limited partnership or its equivalent in a limited liability company may be an association or alliance of two or more eligible nonprofit organizations, but may not contain any for-profit members or Principals;
  - vi. The qualified nonprofit organization(s) must retain one hundred percent (100%) of the developer fee, exclusive of a consultant fee not to exceed \$35,000. Fees paid by the nonprofit to third party development consultants, evidenced by the cost certification, must not exceed \$35,000. The consultant fee must be for legitimate and necessary consulting services;
  - vii. The qualified nonprofit organization(s) must not be affiliated with or controlled by a for-profit organization and no staff member, officer or member of the board of directors of such qualified nonprofit organization(s) may materially participate, directly or indirectly in the proposed development as a for-profit entity;
- c) Joint ventures between a for-profit entity and a nonprofit entity are not permitted within the Nonprofit category;
  - d) Only the nonprofit organization(s) that is the GP, or the functional equivalent(s) in an LLC, shall be permitted to exercise substantial and ongoing continuous control over the application submission process and over the subsequently produced development. All functions and responsibilities normally performed or undertaken by a GP must be performed by the nonprofit GP. No LP or other investor shall be permitted to exercise control, either directly or indirectly, over the nonprofit GP or to participate in matters relating to the ownership or operation of the development beyond the degree of participation that is usual and customary for an LP.

### **Combination with Other Authority-Administered Programs:**

**Applicants may apply for HOME funds when applying for tax credits.**

#### **State HOME Funds**

- a) State HOME funds of approximately \$5 million will be available in the LIHTC competition;
- b) The maximum state HOME award any one (1) development can request is \$600,000. These awards will be available as permanent loans with a one percent (1%) interest rate and a term and amortization period of no longer than thirty (30) years. Different terms apply to developments in the Hard to Develop Counties Set-Aside;
- c) State HOME funds can be applied for and combined with LIHTC proposals only in conjunction with the LIHTC competition. If a HOME award has previously been awarded for the proposed LIHTC development and has not been closed out then the development is not eligible for LIHTC funding. Previously awarded HOME developments that have been closed out can apply only if written approval is given by state HOME Program Manager and if the development meets the 10-year rule criteria as outlined in Section 42 of the Code;
- d) State HOME funds may be awarded to any LIHTC development if, and only if, at least twenty percent (20%) of the development's total units are rent and income restricted and HOME restricted, based on the fifty percent (50%) Area Median Income. The twenty percent (20%) restriction is a federal HOME requirement but does not eliminate the federal HOME funding taint in a tax credit development. In addition, the maximum HOME subsidy per unit cannot exceed the per unit HUD 221(d) limits by bedroom size;
- e) Only one state HOME award will be allocated per development;
- f) LIHTC will not be allocated to any development that applies for state HOME funds but does not receive a state HOME award;
- g) In order to receive a reservation of LIHTC in conjunction with state HOME funds, each of the following provisions are applicable and must be met by the applicant by the Tier II application date:
  - i. All 2005 state HOME and earlier awards must be officially closed out; and
  - ii. All 2006 state HOME awards must have a minimum of seventy-five percent (75%) of the funds drawn down or seventy-five percent (75%) of the development completed; and

- iii. All 2007 state HOME awards must have a minimum of fifty percent (50%) of the funds drawn down or fifty percent (50%) of the development completed; and
- iv. Written confirmation from the state HOME Program Manager must be provided.

### **III. TIER ONE APPLICATION PROCESS (SITE and MARKET STANDARDS)**

#### **Application Submission Procedures:**

1. **Completed Tier One Application** – All pages of the Tier One Application must be completed and the application certification page executed. All required signatures must be originals. Faxes will not be accepted. The Authority reserves the right to determine whether any omission in the Tier One Application or required documentation is material or non-material for purposes of the satisfaction of the criteria. Each Applicant must submit an original in a notebook and two (2) stapled and/or binder clipped copies of the entire Tier One Application package, including all attachments.
2. **Tier One Fee** - A \$500 fee is due at the time of the Tier One Application submittal.
3. **Market Study Fee** – A market study fee of \$4,900 is due at the time of the Tier One Application submittal. This fee and the Tier One Application fee may be submitted as a single check.
4. **Certification for Development Rejection Form** - The Applicant consents to the Authority’s review of its application to determine whether or not it meets requirements, and agrees that a determination made that an application fails to meet requirements is final and is not subject to further appeal (**Form 1**).
5. **Rent Roll**- A certified rent roll for all rehabilitation developments must be submitted at the Tier One Application submittal.
6. **Utility Allowance**- The applicable PHA or RHS utility allowance must be submitted at the Tier One Application submittal.
7. **Development Narrative** - The Authority requires a description of:
  - a) The current use of the site;
  - b) All development and unit amenities;
  - c) Older person amenities, if applicable;
  - d) Number of units to receive project based rental assistance and the type of assistance;
  - e) Utilities to be used and if tenant or owner will be responsible;
  - f) Proposed supportive services, if applicable;
  - g) Furnishings, if applicable; and
  - h) Identity and proximity of services, including transportation, available to the proposed site and appropriate to its tenant population. Each application must include:
    1. A map identifying the development site and the location of services;
    2. Written directions from the site to each service;
    3. The services must be identified by name on the map and in the written directions.
8. **Site Control Documents** - At the time of the Tier One Application submittal, the Applicant must have site control. The Applicant must show evidence of site control by having one of the following executed documents:
  - a) The Applicant holds title to the site on which the development will be constructed by a properly executed and recorded deed; or
  - b) The Applicant has an executed purchase option (the Authority will not accept options on other options) with date certain performance; or
  - c) The Applicant has an executed purchase contract with date certain performance; or
  - d) The Applicant has an executed ninety-nine (99) year land lease or option on a long-term lease.
  - e) With the exception of **a)** above, the Applicant must also submit a copy of the current deed recorded for the site in order to verify the seller.
  - f) For all developments requesting HOME funds at the Tier One application submission or anticipating requesting HOME funds at the Tier Two application submission the following language **must be** included in any purchase option, purchase contract, or long term lease or included as an addendum attached to one of these documents and dated on or before February 28, 2007, “Notwithstanding any provision of this Agreement, if U.S. Department of Housing and Urban Development (HUD) funds are used, including, but not limited to HOME funds, the parties agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of an environmental review and receipt of a release of funds notice from the U.S. Dept of HUD under 24 CFR Part 58. The parties further agree that the provision of any federal funds to the project is conditioned on the determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review. If no HUD funds are utilized in regard to this property, this provision shall be considered null and void.”



9. **Site Suitability Determination and General Site Information** - The Applicant must provide:
- a) **Labeled photographs** (or color copies) of the proposed development site and all adjacent properties;
  - b) A **map clearly identifying the exact location** of the development site;
  - c) A **map with directions** to the development site from 300-C Outlet Point Blvd., Columbia, SC, 29210;
  - d) A **site plan** that shows how the development is to be built. This plan must indicate the placement of buildings on the site, parking areas, sidewalks, planned landscaping, amenities, easements, trash dumpsters, buffers, etc.;
  - e) **Schematic site plan** must show the site boundaries and include the location of any streams, ravines, gullies, drainage problems or other construction deterrents. All utility locations such as water, sewer, gas, electric, and phone lines must be shown. However, if these services are not currently located at the site then the plan must reflect the distances from the required services;
  - f) **Preliminary Development Plans** - Plans must include the front, rear and side elevations of the buildings as well as detailed unit floor plans for each bedroom size;
  - g) The most recent available **topography map** of the site that clearly identifies the site contour lines at twenty (20) foot intervals or less;
  - h) A current **aerial photograph** with the location of the site clearly marked.

All required plans and maps must be no larger than 11x17, utilize a scale in which one inch (1") equals one hundred feet (100') or less, and fit, neatly folded if necessary, in a 3-ring binder.

### Application Review:

1. **Internal Completeness Review**
  - a) Tier One applications will be reviewed for completeness after the submittal deadline. The Authority will make the final determination if applications are complete. The Authority has the right to request clarification or additional information if it deems necessary;
  - b) Applications with three (3) or fewer missing/incomplete documents will be assessed a \$1,000 administrative fee. If any missing/incomplete documents to be resubmitted are not received by the seven (7) business day deadline, the application will be disqualified;
  - c) If an application is missing four (4) or more documents the application will be disqualified;
  - d) If the application is not submitted as outlined in the LIHTC Manual, the application will be disqualified.
2. **Site Review**
  - a) Authority staff or contract consultants will conduct evaluations for each Tier One application site. A review will determine if there are (1) detrimental site characteristics on or near the proposed development and (2) positive site characteristics. If the Authority determines detrimental site characteristics exist on, adjacent to, or within unallowable distances from the site, the Authority may reject the application.
  - b) At Tier One review, all sites will receive a point score based on positive and detrimental site characteristics.

It is the objective of the Authority to select the best available sites for those developments best satisfying the general purpose and guidelines of this LIHTC Manual and the QAP. The determination of detrimental site characteristics should not be construed as a finding that a site is not a buildable site under any circumstances.

### Market Study Process:

The Applicant will be required to submit a market study fee in the amount of \$4,900 at the Tier One Application submittal or the application will be disqualified.

1. Upon receipt of Tier One Applications, the Authority will assign proposals to commissioned market analysts. The Authority will work to assign to each analyst proposals which are geographically clustered and for which the analyst has not already performed a preliminary market study. Market studies must conform to the requirements in **Exhibit S and S-2** and both will become property of the Authority.
2. Applicants should notify the Authority immediately if they believe a conflict of interest exists with an assigned market analyst. The Authority will make the final determination if a conflict exists and/or if changes will be made.
3. Unless a specific definition is given in the 2008 QAP Package, commissioned analysts must adhere to Market Study Terminology as sanctioned by the National Council of Affordable Housing Market Analysts. The Market Study terminology list is available at: [www.housingonline.com](http://www.housingonline.com) under Market Study/ NCAHMA; Recommended Practices; Market Study Terminology.

4. Once assignments are made, analysts may contact Applicants to ensure they have all information necessary to complete a market study. However, analysts and Applicants must not discuss the Primary Market Area (PMA) during this initial contact period. All analysts must provide the Authority and the Applicant, by email, fax or hard copy, a description of the PMA and a list of the comparable/competitive developments to be used in the market study for each assigned proposal by 5:00 PM (EST) Friday, March 14, 2008. Each pre-market analysis must include the following:
  - a. A map of the PMA;
  - b. A physical description of the PMA including the methodology used to define it;
  - c. Census tracts that encompass the PMA; and
  - d. A list of the comparable/competitive developments to be used.
5. The Applicant has until Thursday, March 20, 2008 not later than 5:00 p.m. (EST) to submit comments to the Authority, by email, fax, or hard copy, with respect to the PMA and comparables/competitive developments. The Authority will forward all comments to the analysts for consideration.
6. The Authority will notify analysts and Applicants via email once all pre-market analysis is deemed acceptable. Analysts will have six (6) weeks to complete all assigned market studies. All completed studies must be received by 5:00 PM (EST) on Thursday, April 17, 2008. Two hard copies must be submitted to the Authority along with one electronic copy. The electronic copy may be in the form of an email attachment, CD, or DVD.
7. Upon receipt of all completed market studies, the Authority will forward a copy to all Applicants at the same time and begin the in-house review. If alterations are recommended, the market study should reflect conclusions based on both the original proposal and the recommendations. This includes capture rates, absorption periods, market advantage, etc. This would include completing Exhibit S – 2 for both scenarios.
8. The Applicant must submit in writing to the Authority that s/he has received the market study. If alterations are recommended, the Applicant must indicate whether or not they will be incorporated into the proposal. If the Applicant chooses not to incorporate the recommendation(s), a statement justifying the decision is required.
9. The Authority will consider the market study, the market, marketability factors, and any additional information available to determine if an acceptable market exists for a development as proposed. The Authority is not bound by the conclusions or recommendations of the market analysts and reserves the right to disqualify any application in the competition if it determines an acceptable market does not exist.
10. In one cover letter, separate from the individual market studies submitted, the market analyst must indicate which proposals, if any, are located within the same market area. A determination must be made if the PMA can absorb all proposals, and if not, the analyst must identify the strongest proposal(s) and the reasons why.

#### **Tier One Notification:**

1. **Final Determination** – Based on the outcome of the internal completeness review and the site visit and market study review, the Authority will inform the Applicant in writing of each Tier One application whether or not the development will be invited to participate in the Tier Two application process. Determinations, as well as the point score ranking for each proposed development, will be posted to the Authority’s website.
2. **Appeals - There will be no appeals under any circumstances of the Authority’s determinations in the Tier One application review.**

### **IV. TIER TWO APPLICATION PROCESS**

#### **Application Submission Requirements:**

One (1) original hard copy of the Tier Two application and all applicable attachments, exhibits, certifications, opinions, fees, etc. must be submitted for each development. If state HOME funds are being applied for in conjunction with the LIHTC competition, an additional hard copy of the application and all applicable attachments, exhibits, certifications, opinions, fees, etc., must be provided. Tier Two applications will be accepted only if the application is:

1. For the same Tier One site that received notification that the project can participate in the Tier Two Competition;
2. From the same Tier One Applicant;
3. Typed and submitted in a three-ring binder large enough to efficiently hold the entire application;
4. Organized using tabs corresponding to Exhibit A - Tier Two application Checklist provided.

#### **Application Submission Procedures:**

1. **Completed Tier Two Application** - All pages of the Tier Two application must be completed and the application certification page executed. All required signatures must be originals. Faxes will not be accepted. The Authority

- reserves the right to determine whether any omission in the Tier Two application or required documentation is material or non-material for the satisfaction of point criteria.
2. **Tier Two Fee** - A **\$3,000** Tier Two fee is due at the time of application submittal.
  3. **Site Control** - A notarized letter from the Applicant is required stating (1) there has been no change in site control since the Tier One application submittal and (2) if applying for HOME funds, that the site has not been disturbed and construction and/or rehabilitation has not begun.
  4. **Zoning** – The Applicant must provide at the Tier Two application submission:
    - a) For new construction developments, evidence that the land use requirements for each site on which the development will be located is currently zoned multifamily residential. Evidence should verify that the proposed development site currently meets the local zoning or land use restrictions.
    - b) For rehabilitation developments, evidence that this type of development, as existing, is allowed by local zoning or land use restrictions.
    - c) For adaptive reuse developments, evidence that the zoning currently in place allows for multifamily residential developments.
  5. **Acquisition with Rehabilitation Requirements** - Preliminary plans showing all proposed changes to existing buildings, parking, utilities, etc.
  6. **Phase I Environmental Assessment Report** – The Applicant must provide at the Tier Two Application submission:
    - a) A Phase I Environmental Site Assessment Report prepared by a third party independent licensed environmental consultant that is addressed to the SC State Housing Finance & Development Authority. For developments with existing buildings, the Phase I report must also include the results from the following tests: lead in water, lead-based paint, asbestos and radon. The report must be prepared in accordance with the American Society for Testing and Materials Practice Standards E-1527-05, or as may be amended.
    - b) The report must be accompanied by a certification from the Applicant stating that any issues raised in the environmental review have been reviewed and budgeted accordingly in the development budget to address or remediate fully such issues. A plan must be submitted for the removal of any hazardous materials, if found.
    - c) Applicants applying for HOME funds must submit HUD environmental information in a completed format. Only the paper work, not the final HUD clearance, should be submitted.
  7. **Physical Needs Assessment Report (PNA)** - A PNA report prepared and certified by a third party independent licensed engineer or architect is required. The PNA report must not be dated prior to September 1, 2007.
    - a) The Authority requires a minimum of \$15,000 per unit in hard construction costs with at least fifty percent (50%) of the \$15,000 in hard construction costs attributed to interior unit costs.
    - b) Developments that do not reflect at least \$15,000 per unit in hard construction costs will be disqualified for LIHTC consideration. If the PNA report represents needed repairs in excess of \$15,000 per unit, then the application must reflect the higher rehabilitation costs.
    - c) The PNA report must state that 100% of the units were inspected and provide information unit by unit.
    - d) All rehabilitation developments must adhere to mandatory design criteria as outlined in the QAP. Any mandatory items replaced on or after January 1, 2005 are not required to be replaced as part of the rehabilitation. The PNA report must include a unit by unit listing of all mandatory items replaced on or after January 1, 2005.
    - e) The report must include a comprehensive list of the immediate necessary repairs and their costs. Additionally, the remaining “useful life” of major systems including the HVAC, electrical, plumbing, and roofing must be estimated. Major systems that have been replaced within the past seven (7) years are not allowable rehabilitation expenditure items for meeting the **\$15,000** in hard construction costs per unit requirement.
    - f) The PNA report must also address the overall structural integrity of each existing building(s).
    - g) Developments applying in the RHS set-aside may submit the rehabilitation assessment utilized by RHS. The assessment must not be dated prior to September 1, 2007.
    - h) **Exhibit R** must be submitted with the PNA report. The hard construction costs per unit indicated on page 13 of the Tier Two application must be greater than or equal to the hard construction costs indicated on **Exhibit R**.
    - i) Adaptive reuse developments are not required to submit a PNA report.
  8. **Relocation Certification and Tenant Profile Form** - Developments must minimize the displacement of low-income households.
    - a) Should permanent or temporary displacement occur, a detailed, step by step relocation plan must be furnished with the Tier Two application describing how displaced persons will be relocated, including a description of the costs of relocation. The applicant is responsible for all relocation expenses, which must be included in the project’s development budget. All applicants applying for acquisition/rehabilitation developments must complete FORM 3, Developer Relocation Certification and Tenant Profile Form. Applicants applying for HOME funds must comply with the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as revised in 49 CFR Part 24;
    - b) Developments involving permanent relocation of tenants are discouraged and will be considered for LIHTC only application submittals. No more than ten percent (10%) of the existing tenants may be permanently displaced. A

detailed, step by step relocation plan must be furnished with the Tier Two application describing how permanently displaced persons will be relocated, including a description of the costs of relocation. The applicant is responsible for all relocation expenses, which must be included in the project's development budget.

9. **Opinions, Certifications and Exhibits** – All opinions, certifications and exhibits submitted by attorneys, the Applicant, or other professionals must be based on an independent investigation into the facts and circumstances surrounding the proposed development. All opinions, certifications, and exhibits must be in the form specified by the Authority. **Applications will be disqualified if an opinion, certification, or exhibit has been materially altered, amended, or changed.** All opinions and certifications submitted by attorneys, architects and/or engineers, and certified public accountants (CPAs) must be on letterhead and with original signatures. Changes in professionals hired by the Applicant, i.e. attorneys, architects, and certified public accountants, are permissible; however, the new professionals must adhere to the original certifications made by previous professionals.
10. **Third Party Professionals** - Attorneys, architects, and certified public accountants must be third-party independent professionals and be licensed to practice their professions in SC.
11. **Parking Space Criteria** - In localities that do not have their own parking space regulatory code/requirement, the Authority requires that the development provide adequate parking spaces. If tenants are required to pay for parking, those charges must be included in the rental fees and are subject to the LIHTC allowable rent limitations. The minimum number of parking spaces is as follows (again, only in those localities that **DO NOT** have their own regulatory code/requirements):
  - a) For elderly developments – a minimum of one-half (.5) parking space per unit is required;
  - b) For a homeless/transitional development – a minimum of one (1) parking space per every ten (10) beds is required in addition to sufficient parking for all development staff;
  - c) For all other developments, for each unit of three (3) or more bedrooms – a minimum of two (2) parking spaces per unit is required; for each unit of two (2) or fewer bedrooms – a minimum of one and one-half (1.5) parking spaces per unit is required;
  - d) Existing properties being submitted for acquisition or rehabilitation are not required to increase existing parking as stated in (a), (b) or (c) above.

### Application Review:

#### Internal Completeness Review

- a) Staff will review all applications for completeness, Applicants will be notified in writing of any documents that are missing/incomplete and given seven (7) business days to submit those documents;
- b) Applications with four (4) or fewer missing/incomplete documents will be assessed a \$1,000 administrative fee. If any missing/incomplete documents to be resubmitted are not received by the seven (7) business day deadline, the application will be disqualified;
- c) Applications that have five (5) or more missing/incomplete documents will be disqualified;
- d) Any documents that are determined to be missing and/or incomplete and are identified as documents needed for points consideration may be accepted but will not receive points.
- e) Authority staff will review and point score all Tier Two applications. Final point scores will be posted to the Authority's website.
- f) If there is a tie between developments when point scores are determined the Authority will utilize the Authority Discretion and Tie Breaker Criteria outlined in Section IV of the 2008 QAP to determine the development(s) to be awarded tax credits.

## V. TIER TWO FINANCIAL UNDERWRITING STANDARDS

### Basic Financial Feasibility Review:

1. Section 42(m)(2)(A) of the Code provides that “The housing credit dollar amount allocated to a development shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the development and its viability as a qualified low-income housing development throughout the compliance period.” **In determining financial feasibility, the Authority will disregard all personal or other guarantees that are required to supply deficiencies in income necessary to pay debt service and operating expenses of the development. Developments that are not financially feasible without such guarantees will not be offered a LIHTC award.**
2. Developments determined not to be financially feasible or determined not to need the LIHTC will be disqualified.
3. To receive an allocation, a development must be underwritten to determine the least amount of credit necessary to be financially feasible at the following times:
  - a) When the Tier Two application is made; and
  - b) When the Carryover Allocation is requested; and

- c) When the last building is Placed-In-Service.

### **Financial Characteristics:**

Development income information on any market rate and low income units must be provided. Market rate units are units that are not income or rent restricted and are available without regard to tenant income. The low-income units are units subject to the income and rent restrictions of the Code. The Applicant must indicate all federal, state, or local subsidies that will be providing any type of assistance for the low-income tenants.

In determining maximum allowable gross rent and utility allowances for LIHTC units, the use of an imputed income based on the number of bedrooms in a unit is required by the provisions of the Code. Units with no separate bedroom are treated as being occupied by one (1) person and larger units are treated as being occupied by one and one-half (1.5) persons per separate bedroom.

0 Bedroom Unit	= 1.0 person income
1 Bedroom Unit	= 1.5 person income
2 Bedroom Unit	= 3.0 person income
3 Bedroom Unit	= 4.5 person income
4 Bedroom Unit	= 6.0 person income

Maximum annual gross rents cannot exceed thirty percent (30%) of the imputed income. Gross rent does not include any payment under Section 8 of the U. S. Housing Act of 1937, or any comparable rental assistance program with respect to such unit or the occupants. Gross rent must include an allowance for any utilities paid by the tenant.

The Revenue Reconciliation Act of 1993 requires the housing credit agency to consider the reasonableness and appropriateness of development costs and operating expenses. In making this determination, the housing credit agency must consider: (1) the sources and uses of funds and the total financial structure of the development; (2) any proceeds expected to be generated by the syndication of the tax credit; and (3) the percentage of the housing credit dollar amount to be used for development costs other than intermediary costs.

Certain fees are considered to be intermediary costs. The term "intermediary" has not been defined in the Code, and the IRS has not issued regulations concerning this provision. Until such regulations are promulgated, the Authority has defined intermediary costs as all costs other than "land, sticks, and bricks." For evaluating the reasonableness of certain fees and overhead items represented for tax credit basis purposes, additional documentation as to the nature and amount of intermediary costs may be required. The Authority reserves the right to question any fees which are unidentified, unusual or excessive and to limit these fees and overhead items, based on the development size and other associated risk factors. A tax attorney or consultant is recommended to aid in determining which development costs are included in eligible basis under the Code.

The development costs are evaluated for reasonableness, necessity, and eligibility. Cost comparisons with previous development cost certifications and other third party data may be performed for comparability and reasonableness. Acquisition and/or rehabilitation development costs will be evaluated to assess whether the proposed rehabilitation is required and satisfies the PNA. The Authority reserves the right to inspect proposed rehabilitation developments before a reservation is offered.

Applicants are cautioned to be accurate in providing development cost information. Underestimating could result in insufficient tax credits being available to successfully complete the development while overestimating could result in a development being considered infeasible. **Increases in development costs due to cost overruns will not result in an increase in the allocated tax credit.**

### **Utility Allowances:**

Any utility services paid for by the tenant must be considered in the calculation of tenant-paid rent. An allowance for tenant-paid utilities is deducted from the maximum allowable monthly gross rent to determine the maximum allowable monthly net rent; the proposed tenant rent may not exceed the maximum allowable monthly net rent. Any services paid for by the owner should not be included in the utility allowance.

1. **Sources:** Applicants may submit utility allowances only from those sources approved by the Authority. The Authority will accept utility allowances provided by the Rural Housing Service (RHS), the Authority's Contract Administration

division, and the public housing authority (PHA) serving the proposed project. The Authority will not accept utility allowances determined by any other sources, including utility providers, engineers, consultants, and applicants/developers.

2. **Mandatory Services:** Utility services which must be provided to all tenants are heating, air conditioning, cooking, lighting and/or other electric, hot water, water and sewer, and trash collection. Air conditioning must be separately identified in the allowance calculation.
3. **Other Charges:** The utility allowance must include an amount for the cost of any service paid for by the tenant. In addition the allowance must include any charges imposed by the utility provider for access or connection, such as electric or natural gas facilities fees. Charges for services must accurately reflect any surcharges based on the location of the development, such as higher water and sewer fees for sites outside the city limits. Charges for specific appliances, such as ranges and refrigerators, should be included in the allowance only if the tenant must supply the appliance(s).
4. **Calculation:** The utility allowance is computed by first adding the exact amount of each individual utility service (e.g., heating, cooking) for each bedroom size, without rounding. The resulting total utility allowance for each bedroom size is then rounded upward to the next whole dollar if it contains any fraction of a dollar (i.e., .01-.99). See Exhibit U for an example of a completed utility allowance schedule.

### Underwriting Standards:

1. **Operating Reserves** - Developments receiving loan funds from RHS may satisfy the operating reserve requirement of the LIHTC program by establishing the two percent (2%) operating and maintenance capital reserve account and by maintaining this account as required by RHS. Developments not subject to the RHS two percent (2%) operating and maintenance capital reserve requirements must establish and maintain minimum operating reserves equal to six (6) months of projected operating expenses. The reserve must be established at the time the development places in service and must be maintained at the required level throughout the compliance period unless earlier release of the reserves is approved by the Authority and the Syndicator of the low-income housing tax credits.

The Authority may allow for release of operating reserves after certain requirements are met. The following conditions must be met for consideration:

- a) The Syndicator of the low-income housing tax credits must provide a written statement verifying the Syndicator's approval of the release of operating reserves and must attest that the agreement is the result of the property meeting the conditions of release specified in the partnership agreement or operating agreement. The Syndicator must use **Exhibit OR-1** to report the approval for release of the reserves and must indicate on this form the conditions that have been met which allow for the release.
- b) The Owner/Principal(s) must provide a statement that the conditions required by the Syndicator for release of the operating reserves have been met. This must be certified on **Exhibit OR-2**. Providing false or misleading information to obtain the release of reserves may result in debarment.
- c) Before a release of operating reserves will be considered, the property must have been placed in service a minimum of five (5) years and have maintained a minimum debt coverage ratio of 1.15 for the three (3) most recent consecutive calendar years.

The Authority reserves the right to hire an accounting firm at the property owner's expense to confirm that the required conditions for release of the operating reserves have been met.

2. **Replacement Reserves** - Applicants are required to establish and maintain minimum replacement reserves of **\$250** per unit annually for new construction and for rehabilitation developments serving older persons (aged 55 and up). Replacement reserves for all other rehabilitation developments are **\$300** per unit annually. The Authority requires evidence of the existence of Replacement Reserves. Replacement Reserves must be reflected in the development's annual audited financial statements.
3. **Developer Fees, Developer Overhead, and Consultant Fees (the "Fees")** - In evaluating the reasonableness of Fees the Authority has established limits as follows:
  - a) **New Construction** – The sum of **Fees** may not exceed fifteen percent (**15 %**) of Adjusted Development Costs\*.
  - b) **Rehabilitation without a change in ownership** – The sum of **Fees** may not exceed fifteen percent (**15%**) of Adjusted Development Costs\*.
  - c) **Acquisition with rehabilitation**
    - i. **Acquisition** - For acquisition with rehabilitation developments, **Fees** allowed on the acquisition costs are limited as follows:

1. **Acquisition costs up to \$500,000 – Fees** may not exceed eight percent (8%) of Adjusted Development Costs\*
  2. **Acquisition costs from \$500,001 to \$1,000,000 – Fees** may not exceed the **greater of \$40,000** or seven percent (7%) of Adjusted Development Costs\*
  3. **Acquisition costs from \$1,000,001 to \$1,500,000 - Fees** may not exceed the **greater of \$70,000** or six percent (6%) of Adjusted Development Costs\*
  4. **Acquisition costs greater than \$1,500,000 – Fees** may not exceed the **greater of \$90,000** or five percent (5%) of Adjusted Development Costs\*
  5. **Acquisition cost limit - Fees** on acquisition costs are capped at a **maximum of \$150,000**.
- ii. **Rehabilitation – Fees** on rehabilitation costs may not exceed fifteen percent (15%) of Adjusted Development Costs\*

<u>*Adjusted Development Costs</u>	=	Total Development Costs (Line 51)	_____
		Less Land (Line 1)	- _____
		Less Consulting Fees (Line 20)	- _____
		Less Developer Fees (Line 45)	- _____
		Less Developer Overhead (Line 46)	- _____
		Less Other Developer Costs (Line 47)	- _____

Line numbers refer to pages 11-12 in the Tier Two application, the 10% Test, and PIS application.

4. **Deferred Developer Fees** - Developer fees can be deferred to cover a gap in funding sources when:
  - a) The entire amount will be paid pursuant to the standards required by the Code to stay in basis.
  - b) The deferred portion does not exceed fifty percent (50%) of the total amount in the Tier Two application.
  - c) Payment projections do not jeopardize the operation of the development.
  - d) Nonprofit organizations must include a resolution from the Board of Directors authorizing a deferred payment obligation from the development.
  - e) Applicants must include with the application a statement describing the terms of the deferred repayment obligation, including any interest rate charged and the source of repayment.
  - f) The Authority will require a Note evidencing the principal amount and terms of repayment of any deferred repayment obligation to be submitted at the time of the PIS cost certification.
5. **Contractor Cost Limits** - The combined total of Contractor Profit, Overhead, and General Requirements (the "Contractor Fees") shall be limited to fourteen percent (14%) of Hard Construction Costs. The restrictions on Contractor Fees are the following:

Contractor Profit and Overhead:	may not exceed <b>8%</b> of Hard Construction Costs
<u>General Requirements:</u>	may not exceed <b>6%</b> of Hard Construction Costs
Total Contractor Fees:	may not exceed <b>14%</b> of Hard Construction Costs

If there is an identity of interest between the Applicant and contractor, as defined in the LIHTC Manual, the Authority, at its sole discretion, may require an additional cost certification with the PIS application of the construction costs. The Authority will commission the CPA and the associated accounting fees will be charged to the Applicant.

\*\*\***Hard Construction Costs** are limited to the following line items from the development cost budget in the Tier Two application:

- Line 3 – Demolition
- Line 5 – On Site Improvement
- Line 6 – Off Site Improvement
- Line 7 – Other (Site Work)
- Line 8 – New Building
- Line 9 – Rehabilitation
- Line 10 – Accessory Building
- Line 15 – Contractor Contingency

6. **Annual Operating Expenses (AOE)**
  - a) Applicants must provide a detailed explanation of the methodology used in determining AOE.
  - b) AOE must be projected in a range from a minimum of \$2,800 to a maximum of \$3,800 per unit.
  - c) AOE per unit are to be calculated excluding reserves.

- d) The Authority may, in its sole discretion, consider and approve AOE outside of this range. The Applicant must present support for those expenses and provide evidence supporting the higher amount (e.g., insurance for coastal properties). Owner-paid utilities, other than water, sewer, and trash, will also be considered.
7. **Development Cost Limit** – Applicants submitting proposals with Eligible Basis per Heated Square Foot (“EBHSF”) determined by the Authority to be unusual or excessive will be required to justify these costs. In addition, the Authority may hire a construction consultant at the Applicant’s expense, to render an opinion on the projected costs. The Authority, in its sole discretion, will decide if the EBHSF in excess of an amount determined to be appropriate by a construction consultant may be utilized in calculating the LIHTC to be awarded.
8. **Debt Coverage Ratio (DCR)**
- a) LIHTC dollars will not be reserved or allocated to developments that are not made financially feasible by the credit or which are financially feasible without the credit. The development’s initial DCR must fall within the range of **1.15 to 1.40**.
  - b) The DCR is calculated as Net Operating Income (NOI) divided by the annual debt service. For this purpose, NOI is the income remaining after subtracting Operating Expenses and Replacement Reserves from the Effective Gross Income (EGI).
  - c) For the purpose of determining the appropriate amount of tax credits to be allocated to a development, the Authority assumes that each development will bear the maximum level of permanent debt. **When calculating the tax credit amount, the Authority will limit the maximum DCR to 1.40. A proposed development may exceed the 1.40 maximum DCR for financial feasibility purposes, but when calculating the credit to be allocated, the Authority will limit the DCR to 1.40. In the event that the development DCR, as submitted, is greater than 1.40, the Authority will increase debt based on the terms submitted in the application in order to reduce the DCR to 1.40 for the calculation of the credit amount. This increase in debt will be included in the equity gap calculation.**
9. **Expense Coverage Ratio (ECR)**
- a) For developments whose funding sources do not include repayable debt, financial feasibility will be measured by the Expense Coverage Ratio (ECR). The development’s initial ECR must fall within the range of **1.15 to 1.40**.
  - b) The ECR is calculated as Effective Gross Income (EGI) divided by the sum of Annual Operating Expenses (AOE) plus Replacement Reserves.
10. **Funding Sources**
- a) Applicants receiving “soft loans” (e.g., AHP, Deferred Developer Fees, etc.) must adequately explain in their applications the repayment terms of these loans.
  - b) Income that is projected to be generated by a property during the construction or rent up period may not be used as a funding source in the proposal for low-income housing tax credits. Examples of this are “rent-up cash flow” and interest earnings.
11. **Permanent Financing**  
A letter of intent is required for all permanent financing sources. The letter must clearly state the term of the permanent loan, the amortization period, how the interest rate will be indexed, the current rate at the time of the letter, the anticipated principal amount of the loan, and the lien position. All permanent loans are required to amortize so that debt service on such loans is paid in equal installments over a period of twenty (20) years or longer. Any permanent loan represented as having an amortization period shorter than twenty (20) years or with an accelerated payment of debt service (such that the loan is paid off in less than 20 years) will be underwritten by Authority staff with a minimum twenty (20) year amortization with 240 equal monthly debt service payments. Should a proposal fail to meet other underwriting guidelines resulting from projecting a minimum twenty (20) year amortization, the proposal may be disqualified.
12. **Annual Rent, Expense Trends and Vacancy Rates**
- a) Development rents will be trended upward at a three percent (**3%**) annual increase.
  - b) Operating expenses will be trended upward at a four percent (**4%**) annual increase.
  - c) For the vacancy rate, the Authority will utilize the greater of seven percent (**7%**) or the vacancy rate represented in the market study for the primary market area.
  - d) The pro-forma financial statements must substantiate that the development will maintain a positive cash flow for the full fifteen (15) year period.
13. **Other Income**  
Projected income from services or charges other than monthly rental of dwelling units must be clearly specified with type and amount of income identified in detail in the application for tax credits.
14. **Minimum Hard Cost Requirement** - The Authority requires a minimum hard cost ratio of not less than sixty-five percent (**65%**) of total development costs.

*Hard Costs* are the following line items on the development cost budget in the Tier Two application:

- Line 1 – Land
- Line 2 – Existing Structure



- Line 3 – Demolition
- Line 4 – Other (Land & Buildings)
- Line 5 – On Site Improvement
- Line 6 – Off Site Improvement
- Line 7 – Other (Site Work)
- Line 8 – New Building
- Line 9 – Rehabilitation
- Line 10 – Accessory Building
- Line 15 – Contractor Contingency

15. **Alternative Plan for AHP Funding Source** - Applications that compete for tax credits and represent that Affordable Housing Program (AHP) funds will be sought from the Federal Home Loan Bank (FHLB) must provide a narrative with the Tier Two application detailing how the funding gap will be filled if not awarded AHP funds. Additionally, revised pages 7, 8 (rental income section only), 9, 10 and 14 (rental income section only) of the application must be attached to the narrative. The only changes allowed are changes in funding sources and rental income. Changes not allowed include, but are not limited to, operating expenses, total development costs, total number of units, and unit mix. This information will be required at the Tier Two application submittal. This requirement may be waived for Applicants that provide a firm commitment of the AHP funding.
16. **Value Assigned to Land**- For all proposals involving the purchase of land and building(s), the Applicant must provide a detailed explanation of the method used to allocate acquisition costs to land. If the Authority determines that the explanation or method of allocation is inadequate, an appraisal or a copy of the latest tax assessment may be required to support the allocation of costs to land.
17. **Appraisals**
  - a) The Authority reserves the right to require appraisals on all development proposals.
  - b) If the Authority deems submitted acquisition costs of land and/or buildings to be unusual or excessive, an appraisal will be required.
  - c) In such a case, the Authority will hire the appraiser at the expense of the Applicant.
  - d) The land value and building(s) value will be appraised “as is” and reported separately.
  - e) The Authority will use discretion in allowing acquisition costs in excess of appraised value. These situations will be reviewed on a case-by-case basis and the Applicant must provide justification to support acquisition costs in excess of the appraised value. If the Authority finds the justification offered to be unacceptable, acquisition costs in excess of the appraised value will be excluded from the development’s eligible basis.
  - f) Developments not meeting minimum underwriting requirements or found to be financially infeasible as a result of this reduction will be disqualified.

**Syndication Information:**

If the information as to the syndication value is unusual, the Authority in its sole discretion may assign a value based on existing market information. If any elements of the syndication proposal are unusual, the Applicant must provide an explanation.

**Determination of Credit Award:**

1. **Equity Gap Calculation:**

Equity gap is defined as total development costs minus the total of all non-LIHTC sources of funds (i.e., the development costs not covered by debt financing, grants, etc.). The Authority will impute debt for owner financed developments. **When calculating the tax credit amount to be awarded/allocated, the Authority will limit the maximum DCR to 1.40. In the event that the DCR for the proposal submitted is greater than 1.40, the Authority will increase debt based on the terms stated in the application in order to reduce the DCR to 1.40 for the purpose of calculating the tax credit. This increase in the debt amount will be utilized in the equity gap calculation.** The tax credit amount is calculated so that, over ten years, the allocation equals the excess development costs, thereby "closing" the equity gap. If credits are syndicated, only a portion of the ten (10) year allocation amount is returned to the developer as equity. The rest is used to cover the syndicator's expenses and reserve requirements. The equity factor is the percentage of the ten (10) year credit returned to the development owner in the form of equity.

A certified statement from the syndicator or private placement entity identifying the syndication factor per tax credit dollar and the amount of syndication proceeds is required when available, but not later than the PIS date. The equity gap is calculated as follows:

Total Development Cost \_\_\_\_\_

Less:	
Total Sources of Funds*	( _____ )
Equity Gap	_____
Divide by 10 Year Credit Period	÷ 10
Annual Tax Credit Required	_____
Divide by Syndication Value	_____
Returned Per Tax Credit Dollar	÷ _____
Annual Credit Amount	_____

\* For the purpose of the equity gap calculation, a developer fee note will not be considered as a source of funding.

2. Maximum Credit Allowable:

The amount of the tax credit awarded will be limited to the amount necessary to fill the equity gap but cannot exceed the amount determined using the applicable percentage set monthly by the Secretary of the Treasury.

Total Qualified Basis	_____
Multiplied by Applicable Percentage	_x_____ %
Maximum Annual Credit Amount	_____

The actual amount of the credit for the development is determined by the Authority.

If the development is eligible for historic tax credits, include a detailed narrative description of the calculation of eligible basis for the historic credit and other information critical to the successful combination of the two (2) tax credit programs.

**VI. RESERVATION/CARRY-OVER ALLOCATION PROCEDURES**

**Notification of Reservation Award:**

**Reservation Certificate** – Reservation Certificates will be sent to Applicants for those developments in order of highest to lowest point score until tax credits have been exhausted. To acknowledge acceptance of the reservation of tax credits, Applicants must execute and return the Reservation Certificates. Once all Reservation Certificates have been executed and returned, the LIHTC Awards List will be released and posted on the Authority’s website: [www.schousing.com](http://www.schousing.com) . The date of the Reservation Certificate is the “Reservation Date.”

The amount of tax credits reserved will be calculated based on the **greater of** the tax credit applicable percentage (%) in effect for the month of credit reservation or the applicable percentage (%) in effect for the month of the deadline for Tier Two applications. Applicants who receive a reservation of tax credits will be notified of the dollar amount of tax credits preliminarily reserved and the Reservation Fee which must be submitted to the Authority. Applicants have ten (10) calendar days from the date of the notification letter to submit fees and the executed original Reservation Certificate. Upon receipt of the Reservation Fee and the executed Reservation Certificate, the Authority will execute the Reservation Certificate and forward a copy to the Applicant.

**Reservation Certificate Conditions:**

**Reservations of LIHTCs are not transferable.** Any changes in GP, partnership, or individual, etc., listed as the "owner" entity on the initial application will result in cancellation of the reservation of tax credits. A non-refundable Reservation Fee will be charged in an amount equal to seven percent (7%) of the annual LIHTC amount reserved for the development. Applicants must strictly comply with the following reservation conditions:

1. Developments may, because of the limited supply of credit dollars, be offered reservations in an amount less than the maximum amount for which it would otherwise qualify. Additional LIHTC amounts that may become available for reallocation will be reserved only upon payment of a Reservation Fee equal to seven percent (7%) of the additional amount awarded.
2. Developments seeking a Placed-In-Service (PIS) allocation the year in which the reservation was made must submit a PIS application on or before the second Monday in December not later than 5:00 p.m. (EST).
3. Developments with a reservation of LIHTC that will PIS after December 31 of the year in which the reservation was issued must submit an application for a Carryover Allocation to the Authority no later than the date specified in the Reservation Certificate.
4. Issuance of additional regulations by the IRS may change the amounts and terms of the Reservation Certificate, or may cause it to be revoked in order to comply with such regulations.

5. Failure to meet any of the above conditions will render the Reservation Certificate null and void.
6. Any untimely submission of documentation referenced in the Reservation Certificate will result in its cancellation.

### **Carryover Allocation Procedure:**

Applicants receiving a Reservation Certificate will be notified of the requirements to apply for an **allocation** of tax credits at the time of the reservation.

Issuance of a Reservation Certificate does not guarantee that the development will be the recipient of an allocation of LIHTC, nor does it guarantee that, if the development becomes the recipient of an allocation of LIHTC, such credit will be in the amount stated in the Reservation Certificate. All allocations will be determined by the Authority. The Authority reserves the right to investigate the validity of any certifications and/or opinions and reserves the right to request supplemental information. Also all allocations will be based upon the determination by the Authority of the least amount of credit which will render the development financially feasible. Should it be determined that the development is financially feasible without an allocation of the credit, then no LIHTC will be allocated to the development and the reservation certificate will be null, void and of no force or effect.

**Carryover Allocations are not transferable.** An application, together with all supporting documentation must be received in the Authority's office on or before the date specified in the Reservation Certificate. No extension will be given.

If the Carryover Application is complete and deemed eligible, the Authority will mail a Carryover Agreement together with a Binding Agreement for signature. The Applicant must return the original documents by the due date indicated in the notification letter. In addition, the Applicant must enter into an Agreement as to Restrictive Covenants with the Authority and record the covenants in the Office of the Register of Mesne Conveyance (or office of the Clerk of Court if there is no RMC) in the county in which the development is located. The Authority requires the recorded Restrictive Covenants to be submitted within twelve (12) months after the Reservation Date.

### **Verification of Ten Percent Expenditure:**

The Code requires that the Verification of Ten Percent Expenditure (10% Test) be met no later than six (6) months after the Carryover Allocation date. Extensions of this date are not permitted under any circumstances.

1. The 10% Test is due and must be submitted by the due date specified in the Carryover Allocation Agreement. Failure to submit by the due date will result in the cancellation of the LIHTC award.
2. This date will be three (3) weeks after the date that the development is required by the provisions of the Code to have met the 10% Test.
3. In the event that the three (3) week period does not end on a business day, the due date will be extended until 5:00 p.m. (EST) on the next business day.
4. The 10% Test must be complete and correct as of the date on which it is submitted.
5. The 10% Test will be reviewed for completeness and accuracy to allow the Authority to compare the information with **Exhibit A - 10% Expenditure Information Checklist**. If any of the required documents are found to be missing/incomplete the following will apply:
  - a) Prior to the application deadline – the missing/incomplete document(s) may be submitted without penalty.
  - b) After the application deadline – the missing/incomplete document(s) may be submitted upon payment of a \$1,000 administrative fee for each business day after the deadline until the documents are submitted.
6. If the missing/incomplete documents are not corrected and resubmitted to the Authority within seven (7) business days following the notification, the development will forfeit its allocation of tax credits.
7. Costs incurred to meet the 10% Test must be certified by an independent (unrelated third party) CPA by the date that the Carryover Allocation Agreement requires the 10% Test information to be submitted to the Authority.

The following documents must be submitted with the 10% Test:

1. Certification of 10% Expenditure (**Exhibit H**); and
2. Accountant Certification of Costs and 10% Expenditure (**Exhibit I**) (all cost certifications must be issued by a CPA licensed by South Carolina Board of Accountancy); and
3. If land cost is being used to meet the 10% Test then a copy of the executed deed or executed ninety-nine (99) year land lease with a recorder's clock mark or a recorder's receipt must be provided. The grantee on the deed or the land lease must be same entity as the owner listed on the Reservation Certificate and Carryover Allocation application. The recordation date must reflect that the deed or land lease was recorded no later than six (6) months from the allocation date; and
4. Attorney Opinion Letter for 10% Expenditure (**Exhibit F**); and

5. All supporting documentation required by the application Checklist (**Exhibit A**).

## **VII. DEVELOPMENT PROGRESS REPORT REQUIREMENTS**

### **Exhibit L Progress Reports- (For Developments/Buildings from Reservation through initial Rent-up period):**

1. The Authority will accept **Exhibit L** Progress Reports by fax (803) 896-9189 or email.
2. The Applicant must file quarterly Exhibit L Progress Reports. The first (1<sup>st</sup>) Report will be due on April 7 of the calendar year following Reservation/Carryover. Subsequent reports are due July 7, October 7, and January 7 thereafter until the development reaches a stabilized occupancy of at least ninety-three percent (93%). "Stabilized occupancy" is defined as sustaining at least ninety-three percent (93%) occupancy for six (6) consecutive months.
3. Exhibit L Progress Reports must accurately describe the status of the development and will be used to track the initial lease-up progress of the development.
4. All developments are subject to inspection by Authority staff at any time.
5. A fine of \$1,000 for each business day, without limit, will be assessed against any development for which Exhibit L Progress Reports are not received by the due date. Report dates falling on Saturday, Sunday, or state holidays will be due the next business day.

Applicants are required to submit Exhibit L Progress Reports until the development reaches stabilized occupancy. Failure to submit the required Exhibit L Progress Report within seven (7) business days of the due date may result in a revocation of the reservation award or Carryover Allocation.

From the date of reservation, the applicant is expected to adhere to the time constraints as outlined below. The Authority may grant a forty-five (45) calendar day extension of certain items for a fee of \$1,000. The Authority will only accept and grant extensions for individual categories and will not accept or approve an overall blanket extension for all categories. All extension requests must be in writing and submitted not less than one (1) week prior to the deadline. Fees must be paid at the same time the extension request is submitted. After the first approved extension the fee for any additional extensions will be \$2,000 per request. Additional extensions will only be made for thirty (30) days at a time.

### **Ten (10) Months after the Reservation Date:**

1. Final development plans and specifications for LIHTC developments are due to the Authority before 5:00 p.m. (EST) not later than ten (10) months after the reservation date. Development plans and specifications must incorporate all **Exhibit G** design and amenity items. The development architect must include a letter certifying that all design and amenity items are incorporated into the plans and specifications.
2. The land must be purchased by the ownership entity, and the deed and/or land lease recorded as evidenced by a copy of the recorded document. If the recorded deed and/or land lease was previously provided as part of the 10% Test, then another copy is not required.

### **Twelve (12) Months after the Reservation Date:**

1. A certified copy of the executed, recorded, FINAL construction mortgage document for all LIHTC developments is due before 5:00 p.m. (EST) not later than twelve (12) months after the reservation date. The construction mortgage document must have the recorder's clock mark date stamp showing the date, book, and page number of recording.
2. The executed and recorded Restrictive Covenants for all LIHTC developments are due before 5:00 p.m. (EST), not later than twelve (12) months after the reservation date.
3. The executed binding commitment for syndication for all LIHTC developments is due before 5:00 p.m. (EST), not later than twelve (12) months after the reservation date.
4. Applicants must list their development on the South Carolina Housing Search website, [www.SCHousingSearch.com](http://www.SCHousingSearch.com). The South Carolina Housing Search website is a database, partially sponsored by the Authority, that assists South Carolina residents in locating available affordable housing units. This is a free service with no fees charged for listing the development or maintaining development information throughout the compliance period. The applicant must provide evidence that the development has been listed on the website.

### **Fifteen (15) Months after the Reservation Date:**

1. All building permits must be obtained and copies submitted to the Authority.
2. All developments must be under construction.
  - a) New construction developments must have all footings in place not later than fifteen (15) months after the reservation date, as evidenced by photographs submitted with a Progress Report that is certified by the development

architect or development engineer. The Authority will allow the use of monolithic slabs as a substitute for the footings requirement.

- b) Rehabilitation developments must have begun actual rehabilitation of the units no later than fifteen (15) months after the reservation date, as evidenced by photographs submitted with a Progress Report certified by the development architect.
- c) Rehabilitation and new construction must be continuous and progressive from this date to completion. If it is determined that an Applicant started the construction or rehabilitation only to technically meet this requirement, then the Authority will determine that these criteria have not been met.

## **VIII. PLACED-IN-SERVICE ALLOCATION**

Placed-In-Service allocations will be issued only in the name of the Applicant named on the initial application. Transfers subsequent to the issuance of the placed in service allocation are subject to provisions of Section 42 (j) (6) of the Code. If the Placed-In-Service application is complete and deemed eligible, the Authority will execute and mail a Form 8609 to the owner following the final underwriting.

### **Placed-in-Service Allocation Requirements:**

The Authority will issue a Form 8609 on a building-by-building basis; however, a Form 8609 will not be issued to a multi-building development until the last building in the development has been placed in service. In addition, **the Authority requires that all rental units in all buildings be complete and suitable for occupancy before a Form 8609 will be issued.** The owner must submit to the Authority a Placed-In-Service application on or before the second Monday in December not later than 5:00 p.m. (EST). The Placed-In-Service application must include the following:

1. All unpaid fees or charges owed the Authority to include development monitoring or administrative fees; and
2. All applicable updated attorney opinion letters, (**Exhibits C, D, & E**), and final allocation CPA certification package (**Exhibits J-1, J-2, J-3 & J-4**); and
3. A final partnership agreement, if the owner entity on the application is a partnership, must be submitted. The final partnership agreement must reflect the annual LIHTC allocation and syndication proceeds. If the owner entity is a limited liability corporation, the operating agreement must also be submitted; and
4. All supporting documentation required by the application Checklist (**Exhibit A**).

This process is subject to change to comply with additional guidance, notices, or regulations issued by the IRS. All deadlines have been established to allow the Authority sufficient time for processing and underwriting. The owner must enter into any agreements that may be required by federal regulations to return unused credits.

### **Placed-In-Service Application Submission:**

Placed-In-Service applications are due on or before the second Monday in December not later than 5:00 p.m. (EST). The development's first year compliance monitoring fee, payable in certified funds, must be included or the application will not be accepted. The fee is equal to **\$35.00** for each LIHTC unit in the development.

1. Placed-In-Service applications not received by the due date stated above may be submitted until 5:00 p.m. (EST) on the last business day in December, upon payment of a administrative fee equal to \$1,000 for each business day after the second Monday in December. All administrative fees must be paid to the Authority when the late application is submitted.
2. Placed-In-Service applications will be reviewed in the order received for completeness, allowing staff to review the submission against the application Checklist (**Exhibit A-Placed-In-Service Checklist**). If any of the required documents are found to be incomplete or missing, the following will apply:
  - a) Prior to the second Monday in December – the documents may be submitted without penalty.
  - b) After the second Monday in December – the documents may be submitted upon payment of a \$1,000 administrative fee for each business day after notification until the documents are submitted.
3. If the Authority does not receive the corrected or missing documents and administrative fee within ten (10) business days following December 31, the development will lose its allocation of tax credits.
4. **The Authority requires that all units in all buildings must be one hundred percent (100%) complete and available for immediate occupancy by the placed in service deadline.** This must be documented by the Certificates of Occupancy or the equivalent provided by the local government entity. Failure to meet this criterion will result in cancellation of the LIHTC allocation.

5. After a Placed-In-Service application is submitted, the Authority will review the application and inspect the development to ensure it was constructed as described in the application and in accordance with the representations contained in **Exhibit G**. The development must comply with **Exhibit G** before any Form 8609 will be issued..
6. Should the Authority be required to amend a Form 8609 due to errors in the application submitted, the Applicant must submit an administrative fee of \$100 for each corrected Form 8609. This fee must be paid prior to the issuance of the corrected Form 8609.
7. In accordance with Revenue Procedure 94-57, the IRS will treat the gross rent floor defined in Section 42(g)(2)(a) for a building as taking effect on the date that an allocation of tax credits is made to the building unless the owner elects to have the gross rent floor take effect on the date that the building is placed in service. For buildings described in Section 42(h)(4)(B) (a bond financed building), with respect to the gross rent floor effective date for each building in the development, the building owner must submit an executed gross rent floor designation (**Exhibit N**) with the Placed-In-Service application.

### **Cost Certification Requirements:**

As part of the application for final allocation of tax credits, the Applicant is required to submit a cost certification acceptable to the Authority. **The cost certification must be in the form outlined in Exhibit J-2 and must include line item costs and a building-by-building breakout of building designation, building identification number, address, applicable fraction, placed in service date, applicable federal rate, and eligible and qualified basis costs.** The cost certification must be prepared and certified as to accuracy by a CPA licensed by the South Carolina Board of Accountancy. It must also state that a significant portion of the CPA's practice relates to tax matters and the interpretation of the Code. It must include a statement that a final copy of all costs incurred has been reviewed and is in accordance with the requirements of the LIHTC Program. The certification must indicate that after careful review and investigation into the eligible basis, the costs that are not includable have been excluded from the eligible basis. The Authority considers ineligible costs to include, but not to be limited to, costs for land, reserves, syndication, and permanent loan origination fees. **The Authority reserves the right to require an attorney opinion for costs that are questionable as to their eligibility for tax credit purposes. The Authority assumes no responsibility for determining which costs are eligible and urges the Applicant and their tax attorney/CPA to perform an independent investigation into the eligibility of all cost items.**

## **IX. COMPLIANCE MONITORING PROCEDURES**

These procedures are applicable to all buildings receiving LIHTC to include tax-exempt bond financed developments. Section 1.42-5 (a) of U.S. Treasury Regulations (the "Regulations") requires that each QAP include a procedure that the housing credit agency will follow in monitoring for noncompliance with the provisions of the Code and in notifying the IRS of any noncompliance of which the Authority becomes aware. The procedure for monitoring contained in the QAP must contain procedures consistent with the Regulations that address the following areas: record keeping and record retention; certification and review; on-site inspection; and notification as to noncompliance. This section of the LIHTC Manual complies with the mandate of the Regulations. The Authority reserves the right to make such alteration or amendment to its monitoring procedures as may be required. Such alteration or amendment is expressly permitted without further public hearings. The specific procedures that owners must follow to remain in compliance with program requirements are outlined in the LIHTC Compliance Monitoring Manual. Changes and updates to the manual can be found on the Authority's web site. The web site address is [www.schousing.com](http://www.schousing.com).

### **Record Keeping:**

In the manner prescribed by the Authority, the owner of a LIHTC development must keep records for each building in the development to which an allocation has been made that show for each year of the compliance period:

1. The total number of residential rental units in the building (including the number of bedrooms and the size, in square feet, of each residential rental unit);
2. The percentage of residential rental units in the building which are LIHTC units;
3. The rent charged on each residential rental unit in the building (including utility allowances);
4. The number of occupants in each LIHTC unit;
5. The LIHTC vacancies in the building and information that shows when, and to whom, the next available units were rented;
6. The annual income certification of each low-income tenant per unit. The Tenant Income Certification Form (TIC) or other Authority approved income certification must be signed and dated by each adult member of the household and executed on or before the date of initial move-in. Thereafter, gross annual household income must be re-certified every twelve (12) months unless the owner has applied for and received the Waiver of Annual Income Re-certification as described in IRS Revenue Procedure 94-64;

7. Documentation to support each low-income tenant's income certification consisting of verifications of income from third parties such as employers or state agencies paying unemployment compensation. Such third party verifications may be supported by copies of the tenant's federal income tax returns or W-2 forms. All income verification documentation must be received before the TIC may be executed. Income verifications are valid for one hundred twenty (120) days from the date of the verifying party's signature or printout. Owners may not rely on verifications that are more than one hundred and twenty (120) days old to support an annual income certification. Tenant income must be calculated in a manner consistent with the determination of income under Section 8 and not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under the Section 8 program, the documentation requirement of this paragraph is satisfied if the public housing authority administering the Section 8 program provides the building owner with a statement that the tenants' income does not exceed the applicable income limit under Section 42(g);
8. The eligible basis and qualified basis of the building at the end of the first year of the credit period;
9. The character and use of the nonresidential portion of the building included in eligible basis under Section 42(d) (for example, (i) tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or (ii) facilities reasonably required by the development);
10. Copies of executed IRS Forms 8609, Schedules A, Forms 8586, or other applicable documentation filed with the IRS for the purposes of claiming the LIHTC must be retained and available for inspection for the entire compliance period.

### **Record Retention:**

Other than the records for the first year of the credit period, the owner of a LIHTC development must retain the records for at least six (6) years after the due date (with extensions) for filing the federal income tax returns for that year. The records for the first year of the credit period must be retained for at least six (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.

### **Annual Owners Certification:**

The owner of a LIHTC development must provide to the Authority on or before the first day of February of each year after a development has been placed in service, an annual Owner's Certification for the preceding calendar year which certifies:

1. The development met the requirements of the twenty percent (20%) of the units at fifty percent (50%) of AMI requirement under Section 42(g)(1)(A), or the forty (40%) of the units at sixty (60%) of the AMI requirement under Section 42(g)(1)(B), whichever set-aside was applicable to the development;
2. If applicable, the development met the fifteen percent (15%) of the units at forty percent (40%) of AMI requirement under Sections 42(g)(4) and 142(d)(4)(B) for "deep rent skewed" developments;
3. There was no change in the applicable fraction (as defined in Section 42(c)(1)(B)) of any building in the development, or that there was a change and a description of the changes;
4. The owner has received an annual income certification from each low-income tenant, and documentation which supports the accuracy of that certification, or, in the case of tenants receiving Section 8 housing assistance payments, a statement from the public housing authority, or the owner has a re-certification waiver letter from the IRS in good standing that waives the requirement to obtain third party verification at re-certification and has received an annual income certification from each low-income household and documentation to support the certification at their initial occupancy;
5. Each LIHTC unit in the development was rent-restricted under Section 42(g)(2);
6. All units in the development were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless under Section 42(i)(3)(B)(iii));
7. Under the Fair Housing Act, 42 USC 3601-3619, no finding of discrimination to include any adverse final decision by HUD, an adverse final decision by a substantially equivalent state or local fair housing agency, or an adverse judgment from a federal court;
8. Each building in the development was suitable for occupancy, taking into account local health, safety, and building codes, and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or LIHTC unit in the development;
9. There was no change in the eligible basis (as defined in Section 42(d)) of any building in the development, or if there was a change, the nature of the change (for example, a common area has become commercial space, or a fee is charged for a tenant facility formerly provided without charge);
10. All tenant facilities included in the eligible basis under Section 42(d) of any building in the development, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the building;

11. If a LIHTC unit in the building became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualified income before any units in the development were or will be rented to tenants not having a qualifying income;
12. If the income of tenants of a LIHTC unit in the development increased above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the development was or will be rented to tenants having a qualifying income;
13. The LIHTC extended commitment as described in Section 42(h)(6) was in effect (for buildings subject to Section 7108(c)(1) of the Revenue Reconciliation Act of 1989), including the requirement that an owner cannot refuse to lease a unit in the development to a tenant because the tenant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f, and the owner has not refused to lease a unit to a tenant based solely on their status as a holder of a Section 8 voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C.1437f;
14. The development meets the provisions, including any special provisions, outlined in the LIHTC extended use commitment;
15. The owner received its credit allocation from the portion of the state ceiling for a development involving “qualified nonprofit organizations” under Section 42(h)(5) of the Code and its nonprofit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code;
16. There has been no change in the ownership or management of the development, or provide details of changes in ownership or management of the development.

### **Document Review:**

Annually, the Authority will inspect at least thirty-three percent (33%) of LIHTC developments to which it has made an allocation under the Code. In each development selected for review, the Authority will review the low-income certifications, the documentation the owner has received to support that certification, and the rent record for no fewer than twenty percent (20%) of the LIHTC units located in each such development. Records relating tenant income, supporting documentation and rent records will be selected at random by the Authority's monitoring officer at the time the review is held. In addition, the Authority's monitoring officer will conduct a physical inspection of each LIHTC unit that receives a record review. The purpose of the physical inspection is to determine whether the units meet Uniform Physical Condition Standards as defined by HUD. The owner will be notified prior to the arrival of the Authority's compliance monitoring officer conducting the management review.

The Authority will review all required certifications submitted to determine whether or not the requirements of the Code have been complied with by the owner. As necessary, the Authority will review documentation to support a nonprofit's continued participation in the development throughout the compliance period as described in the development agreement.

### **Frequency of Certification Documents:**

Certifications are required annually each year of the credit period. The Certifications are a legally binding document to be made under oath and subject to the penalties of perjury as provided by law. The Authority reserves the right to require additional submissions of any Certifications for review more frequently than an annual basis.

### **Physical Inspection of LIHTC Development:**

The Authority reserves the right to perform a physical inspection at its discretion of any LIHTC development. The Authority's right to perform such inspection shall be ongoing and shall continue at least through the end of the compliance period and any extended use period.

### **Authority Retention of Records:**

The Authority will retain records of noncompliance or failure to certify for a period of six (6) years beyond the Authority's filing of the respective Form 8823. In all other cases the Authority shall retain certifications, inspection reports and other records for a period of three (3) years from the end of the calendar year in which the Authority has received or generated the certifications or reports.

### **Notification of Noncompliance:**

The Authority will provide prompt written notice to the owner of a LIHTC development if the Authority does not receive the required certifications, if it is not permitted to review tenant income certifications, supporting documentation and rent



records, or if it discovers by inspection, review, or in some other manner, that the development is not in compliance with the provisions of the Code.

The Authority will file Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance" with the IRS no later than forty-five (45) days after the end of the Cure Period (including any permitted extensions), and no earlier than the end of the Cure Period, whether the noncompliance or failure to certify has been corrected. The Authority shall explain on Form 8823 the nature of the noncompliance or failure to certify and shall indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or the eligible basis that results in a decrease in the qualified basis of the development under Section 42(c)(1)(A) is noncompliance and must be reported to the IRS. Should the Authority report on Form 8823 that a building is entirely out of compliance and will not be in compliance at any time in the future, the Authority need not file additional Form 8823's in subsequent years to report that building's noncompliance.

### **Cure Period:**

The owner will be given the opportunity to supply any missing documentation or correct physical deficiencies to bring the development into compliance with the Code requirements. The Cure Period will not exceed ninety (90) days and will begin on the date of the written notice given by the Authority. The Cure Period for violations that threaten the health and/or safety of tenants will not exceed forty-eight (48) hours. The Authority may grant an extension an additional period not to exceed six (6) months only in the event of judicially caused delays in the eviction of tenants.

### **Compliance Monitoring Fees:**

The owner of each building to which an allocation of the LIHTC has been made by the Authority shall pay to the Authority an annual compliance monitoring fee of **\$35** for each LIHTC unit contained in each building. All compliance monitoring fees must be certified funds paid to the Authority within thirty (30) days of the date on which the building is PIS and on or before the first day of February of each succeeding year throughout the remainder of the fifteen (15) year compliance period and any extended use period. Checks should be made payable to the Authority. The Authority will assess a ten percent (10%) late fee of the total outstanding balance for payments received after thirty (30) days from the date due. The minimum late fee will be **\$50**. The Authority reserves the right to make adjustments in the amount of the annual compliance monitoring fee to defray the cost of compliance monitoring. Such an adjustment by the Authority shall not be treated as an amendment of the QAP.

Developments receiving non-competitive tax credits in conjunction with tax exempt bonds issued by the Authority shall pay monitoring fees according to the bond program. If the bond program's compliance period expires prior to the end of the tax credit compliance period, monitoring fees shall be assessed as described above. Developments receiving non-competitive tax credits in conjunction with tax exempt bonds not issued by the Authority shall pay monitoring fees as described above.

Developments proposed for financing by private activity bonds may be eligible to receive an approximate four percent (4%) tax credit without competing for an allocation of tax credits. To be considered for a non-competitive allocation, a development must satisfy the requirements of Sections 42(h)(4), 42(m)(1)(D) and 42(m)(2)(D) of the Code. The development must also comply with the applicable procedures and requirements of the QAP and this LIHTC Manual. The LIHTC allocated to a development shall not exceed the amount the housing credit agency determines is necessary for its financial feasibility and viability as a qualified low-income housing development throughout the credit period.

## **X. DEVELOPMENTS UTILIZING NON-COMPETITIVE TAX CREDITS WITH TAX EXEMPT BOND FINANCING**

### **Preliminary Opinion of Eligibility (QAP Requirements):**

To receive an allocation of tax credits, a bond-financed development must be eligible to receive a tax credit allocation under the QAP for the year in which the application for bond financing is filed with the Authority. If tax credits are sought as a funding source, the Applicant must notify the Authority of this at the time of the application for bond financing. Upon notification that a development intends to utilize non-competitive LIHTC, the Authority will evaluate the proposal and will provide a preliminary, non-binding statement as to whether the development, as described to the Authority, is eligible to receive funding under the current QAP. This preliminary Authority evaluation of the proposal will consist of reviewing the site and market of the proposed development for conformity with the QAP. The site must meet all Tier One site threshold criteria for consideration for tax credits. If the project is to be financed by bonds offered for sale to the public, the market

study must be ordered by the DUS lender and prepared by an independent third-party analyst. If the project is to be financed by bonds that are privately placed or sold as a limited offering to sophisticated investors, the Applicant will notify the Authority and the Authority will either order the market study at the Applicant's expense or require the bond purchaser to order a market study prepared by an independent third-party analyst. The Authority reserves the right to use its own judgment in making a final decision on the site and/or market.

For a development proposing rehabilitation, a Physical Needs Assessment Report (PNA) must be submitted with the Tier One site and market information. The PNA must follow the guidelines provided in the LIHTC Manual. Developments must meet the minimum rehabilitation standards identified in the QAP and LIHTC Manual to be eligible for low-income housing tax credits.

If the Authority review is favorable, the preliminary, non-binding statement provided by the Authority shall state: (i) that it is based upon information provided to the Authority regarding the development, the accuracy of which has not been finalized; (ii) that it assumes that the development as PIS will exactly match the development described to the Authority; and (iii) that the opinion is preliminary, non-binding, and may not be relied upon by any party. **THE APPLICANT ASSUMES ALL RISK FOR REPRESENTATIONS MADE TO THE AUTHORITY IN THE APPLICATION FOR FINANCING.**

### **Application for an Allocation of Non-Competitive LIHTC:**

For bond-financed developments that are seeking LIHTC, an application for LIHTC must be submitted to the Authority only after the development is Placed-In-Service. A Final Cost Certification Package, prepared and certified as to accuracy by a third-party Certified Public Accountant licensed by the South Carolina Board of Accountancy, must accompany this application. This cost certification must follow the format and guidelines identified in the LIHTC Manual. In addition, the CPA must attest that the 50% aggregate basis test has been met to qualify the development for tax credits. This requirement shall be met with a signed opinion accompanied by the CPA's detailed calculation of the aggregate basis financed by the tax-exempt bonds.

The development must meet all financial underwriting standards identified in the QAP and LIHTC Manual except those that are superceded by the following requirements applying only to developments with tax-exempt bond financing:

**1. Operating Reserves:** Bond-financed developments are required to establish and maintain minimum operating reserves equal to three (3) months of projected operating expenses. These reserves must be established at the time the development places-in-service.

**2. Developer Fees:** Developer fees are limited as a percentage of development costs adjusted for project size. For new construction and/or rehabilitation costs, the sum of Developer Fees + Developer Overhead + Consulting Fees is limited as follows:

Up to 100 units	15% of <u>Adjusted Development Costs*</u>
101 – 150 units	12.5% of <u>Adjusted Development Costs*</u>
151 units or more	10% of <u>Adjusted Development Costs*</u>

For acquisition costs, the sum of Developer Fees + Developer Overhead + Consulting Fees is limited to a maximum of 5% of Adjusted Development Costs.\*

Adjusted Development Costs\* are defined below. Line numbers refer to pages 11-12 of the LIHTC application:

Total Development Cost (Line 51)
Less Land (Line 1)
Less Consulting Fees (Line 20)
Less Developer Fees (Line 45)
Less Developer Overhead (Line 46)
Less Other Developer Costs (Line 47)

If an identity of interest exists between the developer and any construction contractor, any payments rebated to the developer must be identified and itemized.