

**THE PLAN OF THE  
VIRGINIA HOUSING DEVELOPMENT AUTHORITY  
FOR THE ALLOCATION OF  
LOW-INCOME HOUSING TAX CREDITS**

This plan of the Virginia Housing Development Authority (the “Authority”) for the allocation of low-income housing tax credits (the “Plan”) made as of May 16, 1995, and amended February 19, 1996, February 12, 1997, February 10, 1998, March 10, 1999, January 24, 2000, March 22, 2000, April 9, 2001, January 9, 2002, April 2, 2003, January 12, 2004, January 14, 2005, January 1, 2006, February 4, 2008, January 1, 2009, July 1, 2009 and ~~July 1, 2009~~January 1, 2010, is amended effective January 1, ~~2010~~2011, for the purpose of governing the distribution, reservation and allocation of federal low-income housing tax credits (the “credits”) available under §42 for housing developments located throughout the Commonwealth of Virginia for occupancy by low-income persons and families, all in accordance with the requirements of the IRC.

Part I hereof sets forth the pools into which the Commonwealth’s total credit authority has been divided.

Part II hereof is comprised of the full text of the Authority’s Rules and Regulations governing the process of reserving and allocating the credits.

**PART I**

**ALLOCATION POOLS**

Under the low-income housing tax credit program established by § 42 of the Internal Revenue Code (the “IRC”), the Commonwealth of Virginia has a certain per capita dollar amount of low-income housing tax credits to be allocated each calendar year under § 42(h)(3)(C)(i) of the IRC (the “Annual Credit Authority”) to qualified low-income housing developments located therein. The Commonwealth of Virginia also has additional sources of low-income housing tax credits (i.e. unused, returned, national pool and future year’s per capita credits) that may be allocated (“Additional Credits”) to qualified low-income housing developments located therein. In order to promote a distribution of the Annual Credit Authority and Additional Credits (“Total Credit Authority”) which effectively address the low-income housing needs of the Commonwealth, the Authority hereby divides the Total Credit Authority, less pre-reservations, into several pools, all as set forth below:

**% of Total  
Credit Authority**

**1. Nonprofit Pool 15.00%**

Each development which is eligible for inclusion in this pool under the Rules and Regulations will initially compete in this pool regardless of where it is located within the state. Each development competing in this pool will be scored according to the rent burdened population characteristics of the geographic pool to which such development would be assigned if it did not compete in this pool.

**2. Local Housing Authority (“LHA”) Pool 7.50%**

Each development sponsored by local housing authorities or industrial development authorities (from localities that do not have a local housing authority), as sole general partner or managing member (either directly or through a wholly-owned subsidiary), in the jurisdiction of the local housing authority or industrial development authority and/or receiving HOPE VI funds that request \$750,000 or less in credits will compete in this pool. Each development competing in this pool will be scored according to the rent burdened population characteristics of the geographic pool to which such development would be assigned if it did not compete in this pool.

**3. Northern Virginia / Planning District 8 (Inner Washington MSA) Pool 21.28%**

Each development (including excess nonprofit and LHA developments) which is located within one of the jurisdictions listed below will compete in this pool. This pool is a pool with an increasing rent burdened population.

Alexandria City	Fairfax County	Loudoun County	Manassas Park City
Arlington County	Falls Church City	Manassas City	Prince William County
Fairfax City			

**4. Northwest / North Central Virginia Area Pool 10.89%**

Each development (including excess nonprofit and LHA developments) which is located within one of the jurisdictions listed below will compete in this pool. This pool is a pool with an increasing rent burdened population.

Albemarle County	Fredericksburg City	Nelson County	Spotsylvania County
Augusta County	Frederick County	Orange County	Stafford County
Charlottesville City	Greene County	Page County	Staunton City
Clarke County	Harrisonburg City	Rappahannock County	Warren County
Culpeper County	King George County	Rockingham County	Waynesboro City
Fluvanna County	Madison County	Shenandoah County	Winchester City
Fauquier County			

**5. Richmond MSA Pool 13.65%**

Each development (including excess nonprofit and LHA developments) which is located within one of the jurisdictions listed below will compete in this pool. This pool is a pool with an increasing rent burdened population.

Amelia County	Colonial Heights City	Hopewell City	Petersburg City
Caroline County	Dinwiddie County	King & Queen County	Powhatan County
Charles City County	Goochland County	King William County	Prince George County
Chesterfield County	Hanover County	Louisa County	Richmond City
Cumberland County	Henrico County	New Kent County	Sussex County

**6. Tidewater MSA Pool 21.85%**

Each development (including excess nonprofit and LHA developments) which is located within one of the jurisdictions listed below will compete in this pool. This pool is a pool with an increasing rent burdened population.

Chesapeake City	James City County	Portsmouth City	Virginia Beach City
Gloucester County	Matthews County	Poquoson City	Williamsburg City
Hampton City	Newport News City	Suffolk City	York County
Isle of Wight County	Norfolk City	Surry County	

**7. Balance of State Pool (Remaining Geographic Areas) 9.83%**

Each development (including excess non-profit and LHA developments) which is not eligible to compete in any of the four geographic pools above will compete in this pool. This pool is a pool with little or no increase in rent burdened population.

**8. At-Large Pool Unreserved Credits  
from Pools 1 – 7**

Each development that does not initially rank high enough to receive a reservation of credits in pools 1-7 will compete in this pool.

**Tier 1 Developments.** The following type of developments shall be designated “Tier 1” developments and shall be eligible to receive a reservation of credits prior to all Tier 2 developments: the highest ranked eligible development ranked above threshold that would receive a partial reservation of credits from each of the four MSA pools and the rural pool above if all the credits available to such pool were reserved to developments in the pool.

**Tier 2 Developments.** The following type of developments shall be designated “Tier 2” developments and shall receive a reservation of credits after all Tier 1 developments: any Tier 1 developments not funded in Tier 1 and all remaining developments ranking above threshold.

The reservation and allocation of credits to developments shall be governed by Part II of the Plan.

**PART II**  
**RULES AND REGULATIONS FOR ALLOCATION**  
**OF LOW-INCOME HOUSING**  
**TAX CREDITS**

**13VAC10-180**

**13VAC10-180-10. Definitions.**

The following words and terms when used in this chapter shall have the following meaning, unless the context clearly indicates otherwise:

“Applicant” means an applicant for credits under this chapter and also means the owner of the development to whom the credits are allocated.

“Credits” means the low-income housing tax credits as described in §42 of the IRC.

“Elderly housing” means any development intended to provide housing for elderly persons as an exemption to the provisions regarding familial status under the United States Fair Housing Act.

“IRC” means the Internal Revenue Code of 1986, as amended, and the rules, regulations, notices and other official pronouncements promulgated thereunder.

“IRS” means the Internal Revenue Service.

“Low-income housing units” means those units which are defined as “low income units” under §42 of the IRC.

“Low-income jurisdiction” means any city and county in the Commonwealth with an area median income at or below the Virginia non-metro area median income established by the U. S. Department of Housing and Urban Development (“HUD”).

“Principal” shall mean any person (including any individual, joint venture, partnership, limited liability company, corporation, nonprofit organization, trust, or any other public or private entity) that (i) with respect to the proposed development, will own or participate in the ownership of the proposed development or (ii) with respect to an existing multi-family rental project, has owned or participated in the ownership of such project, all as more fully described hereinbelow. The person who is the owner of the proposed development or multi-family rental project is considered a principal. In determining whether any other person is a principal, the following guidelines shall govern: (i) in the case of a partnership which is a principal (whether as the owner or otherwise), all general partners are also considered principals, regardless of the percentage interest of the general partner; (ii) in the case of a public or private corporation or organization or governmental entity that is a principal (whether as the owner or otherwise), principals also include the president, vice president, secretary, and treasurer and other officers who are directly responsible to the board of directors or any equivalent governing body, as well as all directors or other members of the governing body and any stockholder having a 25 percent or more interest; (iii) in the case of a limited liability company that is a principal (whether as the owner or otherwise), all members are also considered principals, regardless of the percentage interest of the member; (iv) in the case of a trust that is a principal (whether as the owner or otherwise), all persons having a 25% or more beneficial ownership interest in the assets of such trust; (v) in the case of any other person that is a principal (whether as the owner or otherwise), all persons having a 25 percent or more ownership interest in such other person are also considered principals; and (vi) any person that directly or indirectly controls, or has the power to control, a principal shall also be considered a principal.

“Qualified application” means a written request for tax credits which is submitted on a form or forms prescribed or approved by the executive director together with all documents required by the Authority for submission and meets all minimum scoring requirements.

“Qualified low-income buildings” or “qualified low-income development” means the buildings or development, which meets the applicable requirements in §42 of the IRC to qualify for an allocation of credits thereunder.

“Revitalization area” means any area for which the chief executive officer (or the equivalent) of the local jurisdiction in which the development is to be located certifies as follows: (i) either (1) the area is blighted, deteriorated, deteriorating or, if not rehabilitated, likely to deteriorate by reason that the buildings, improvements or other facilities in such area are subject to one or more of the following conditions- dilapidation, obsolescence, overcrowding, inadequate ventilation, light or sanitation, excessive land coverage, deleterious land use, or faulty otherwise inadequate design, quality or condition, or (2) the industrial, commercial or other economic development of such area will benefit the city or county but such area lacks the housing needed to induce manufacturing, industrial, commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings to locate or remain in such area; and (ii) private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in such area and will induce other persons and families to live within such area and thereby create a desirable economic mix of residents in such area. The area within a redevelopment project, conservation project, or rehabilitation district established by the city or county pursuant to Chapter 1 (§36-1 et seq.) of Title 36 shall be deemed a revitalization area without any such certification. Any such revitalization area must either (a) include discussions from the locality of the type of developments that will be encouraged, the potential sources of funding, and services to be offered in the area; or (b) be subject to a plan using Hope VI funds from HUD. A comprehensive plan does not qualify as certification of a revitalization area.

**13VAC10-180-20. Purpose and applicability.**

The following rules and regulations will govern the allocation by the Authority of credits pursuant to §42 of the IRC.

Notwithstanding anything to the contrary herein, the executive director is authorized to waive or modify any provision herein where deemed appropriate by him for good cause to promote the goals and interests of the Commonwealth in the federal low-income housing tax credit program, to the extent not inconsistent with the IRC.

The rules and regulations set forth herein are intended to provide a general description of the Authority’s processing requirements and are not intended to include all actions involved or required in the processing and administration of the credits. This chapter is subject to change at any time by the Authority and may be supplemented by policies, rules and regulations adopted by the Authority from time to time.

Any determination made by the Authority pursuant to this chapter as to the financial feasibility of any development or its viability as a qualified low-income development shall not be construed to be a representation or warranty by the Authority as to such feasibility or viability.

Notwithstanding anything to the contrary herein, all procedures and requirements in the IRC must be complied with and satisfied.

**13VAC10-180-30. General description.**

The IRC provides for credits to the owners of residential rental developments comprised of qualified low-income buildings in which low-income housing units are provided, all as described therein. The aggregate amount of such credits (other than credits for developments financed with certain tax-exempt bonds as provided in the IRC) allocated in any calendar year within the Commonwealth may not exceed the Commonwealth’s annual state housing credit ceiling for such year under the IRC. An amount not less than 10% of such ceiling is set-aside for developments in which certain qualified nonprofit organizations hold an ownership interest and materially participate in the development and operation thereof. Credit allocation amounts are counted against the Commonwealth’s annual state housing credit ceiling for credits for the calendar year in which the credits are allocated. The IRC provides for the allocation of the Commonwealth’s state housing credit ceiling for credits to the housing credit agency of the Commonwealth. The Authority has been designated by executive order of the

Governor as the housing credit agency under the IRC and, in such capacity, shall allocate for each calendar year credits to qualified low-income buildings or developments in accordance herewith.

Credits may be allocated to each qualified low-income building in a development separately or to the development as a whole in accordance with the IRC.

Credits may be allocated to such buildings or development either (i) during the calendar year in which such building or development is placed in service or (ii) if the building or development meets the requirements of §42(h)(1)(E) of the IRC, during one of the two years preceding the calendar year in which such building or development is expected to be placed in service. Prior to such allocation, the Authority shall receive and review applications for reservations of credits as described hereinbelow and shall make such reservations of credits to eligible applications in accordance herewith and, subject to satisfaction of certain terms and conditions as described herein. Upon compliance with such terms and conditions and, as applicable, either (i) the placement in service of the qualified low-income buildings or development or (ii) the satisfaction of the requirements of §42(h)(1)(E) of the IRC with respect to such buildings or the development, the credits shall be allocated to such buildings or the development as a whole in the calendar year for which such credits were reserved by the Authority.

Except as otherwise provided herein or as may otherwise be required by the IRC, this chapter shall not apply to credits with respect to any development or building to be financed by certain tax-exempt bonds in an amount so as not to require under the IRC an allocation of credits hereunder. (See §10-180-100 hereinbelow.)

The Authority shall charge to each applicant fees in such amount as the executive director shall determine to be necessary to cover the administrative costs to the Authority, but not to exceed the maximum amount permitted under the IRC. Such fees shall be payable at such time or times as the executive director shall require.

**13VAC10-180-40. Adoption of allocation plan; solicitations of applications.**

The IRC requires that the Authority adopt a qualified allocation plan which shall set forth the selection criteria to be used to determine housing priorities of the Authority which are appropriate to local conditions and which shall give certain priority to and preference among developments in accordance with the IRC. The executive director from time to time may cause housing needs studies to be performed in order to develop the qualified allocation plan and, based upon any such housing needs study and any other available information and data, may direct and supervise the preparation of and approve the qualified allocation plan and any revisions and amendments thereof in accordance with the IRC. The IRC requires that the qualified allocation plan be subject to public approval in accordance with rules similar to those in §147(f)(2) of the IRC. The executive director may include all or any portion of this chapter in the qualified allocation plan. However, the Authority may amend the qualified allocation plan without public approval if required to do so by changes to the IRC.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit applications for credits. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of applications and the selection thereof as he shall consider necessary or appropriate.

No application for credits will be accepted for any building that has previously claimed credits and is still subject to the compliance period for such credits after the year such building is placed in service. Notwithstanding the limitation set forth in the previous sentence, an applicant may submit an application for credits for a building in which an extended low-income housing commitment has been terminated by foreclosure, provided the applicant has no relationship with the owner or owners of such building during its initial compliance period. No application will be accepted, and no reservation or allocation will be made, for credits available under §42(h)(3)(C) in the case of any buildings or development for which tax-exempt bonds of the Authority, or an issuer other than the Authority, have been issued and which may receive credits without an allocation of credits under §42(h)(3)(C).

### **13VAC10-180-50. Application.**

Prior to submitting an application for reservation, applicants shall submit on such form as required by the executive director, the letter for Authority signature by which the Authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located to provide such officers a reasonable opportunity to comment on the developments.

Application for a reservation of credits shall be commenced by filing with the Authority an application, on such form or forms as the executive director may from time to time prescribe or approve, together with such documents and additional information (including, without limitation, a market study that shows adequate demand for the housing units to be produced by the applicant's proposed development) as may be requested by the Authority in order to comply with the IRC and this chapter and to make the reservation and allocation of the credits in accordance with this chapter. The executive director may reject any application from consideration for a reservation or allocation of credits if in such application the applicant does not provide the proper documentation or information on the forms prescribed by the executive director.

All sites in an application for a scattered site development may only serve one primary market area. If the executive director determines that the sites subject to a scattered site development are served by different primary market areas, separate applications for credits must be filed for each primary market area in which scattered sites are located within the deadlines established by the executive director.

The application should include a breakdown of sources and uses of funds sufficiently detailed to enable the Authority to ascertain what costs will be incurred and what will comprise the total financing package, including the various subsidies and the anticipated syndication or placement proceeds that will be raised. The following cost information, if applicable, needs to be included in the application to determine the feasible credit amount: site acquisition costs, site preparation costs, construction costs, construction contingency, general contractor's overhead and profit, architect and engineer's fees, permit and survey fees, insurance premiums, real estate taxes during construction, title and recording fees, construction period interest, financing fees, organizational costs, rent-up and marketing costs, accounting and auditing costs, working capital and operating deficit reserves, syndication and legal fees, development fees and other cost and fees. All applications seeking credits for rehabilitation of existing units must provide for contractor construction costs of at least \$10,000 per unit for developments financed with tax-exempt bonds and \$15,000 per unit for all other developments.

Each application shall include plans and specifications or, in the case of rehabilitation for which plans will not be used, a unit-by-unit work write-up for such rehabilitation with certification in such form and from such person satisfactory to the executive director as to the completion of such plans or specifications or work write-up.

Each application shall include evidence of (i) sole fee simple ownership of the site of the proposed development by the applicant, (ii) lease of such site by the applicant for a term exceeding the compliance period (as defined in the IRC) or for such longer period as the applicant represents in the application that the development will be held for occupancy by low-income persons or families or (iii) right to acquire or lease such site pursuant to a valid and binding written option or contract between the applicant and the fee simple owner of such site for a period extending at least four months beyond any application deadline established by the executive director, provided that such option or contract shall have no conditions within the discretion or control of such owner of such site. Any contract for the acquisition of a site with existing residential property may not require an empty building as a condition of such contract, unless relocation assistance is provided to displaced households, if any, at such level required by the Authority. A contract that permits the owner to continue to market the property, even if the applicant has a right of first refusal, does not constitute the requisite site control required in clause (iii) above. No application shall be considered for a reservation or allocation of credits unless such evidence is submitted with the application and the Authority determines that the applicant owns, leases or has the right to acquire or lease the site of the proposed development as described in the preceding sentence. In the case of acquisition and rehabilitation of developments funded by Rural Development of the U.S. Department of Agriculture ("Rural Development"), any site control document subject to approval of the partners of the seller does not need to be approved by all partners of the seller if the general partner of the seller executing the site control document provides (i) an attorney's opinion that such general partner has the authority to enter into the site control document and such document is binding on the seller or (ii) a letter from the existing syndicator indicating a willingness to secure the necessary partner approvals upon the reservation of credits.

Each application shall include, in a form or forms required by the executive director, a certification of previous participation listing all developments receiving an allocation of tax credits under §42 of the IRC in which the principal or principals have or had an ownership or participation interest, the location of such developments, the number of residential units and low-income housing units in such developments and such other information as more fully specified by the executive director. Furthermore, for any such development, the applicant must indicate whether the appropriate state housing credit agency has ever filed a Form 8823 with the IRS reporting non-compliance with the requirements of the IRC that such non-compliance had not been corrected at the time of the filing of such Form 8823. The executive director may reject any application from consideration for a reservation or allocation of credits unless the above information is submitted with the application. If, after reviewing the above information or any other information available to the Authority, the executive director determines that the principal or principals do not have the experience, financial capacity and predisposition to regulatory compliance necessary to carry out the responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development or the ability to fully perform all the duties and obligations relating to the proposed development under law, regulation and the reservation and allocation documents of the Authority or if an applicant is in substantial non-compliance with the requirements of the IRC, the executive director may reject applications by the applicant. No application will be accepted from any applicant with a principal that has or had an ownership or participation interest in a development at the time the Authority reported such development to the IRS as no longer in compliance and is no longer participating in the federal low-income housing tax credit program.

Each application shall include, in a form or forms required by the executive director, a certification that the design of the proposed development meets all applicable amenity and design requirements required by the executive director for the type of housing to be provided by the proposed development.

The application should include pro forma financial statements setting forth the anticipated cash flows during the credit period as defined in the IRC. The application shall include a certification by the applicant as to the full extent of all federal, state and local subsidies, which apply (or which the applicant expects to apply) with respect to each building or development. The executive director may also require the submission of a legal opinion or other assurances satisfactory to the executive director as to, among other things, compliance of the proposed development with the IRC and a certification, together with an opinion of an independent certified public accountant or other assurances satisfactory to the executive director, setting forth the calculation of the amount of credits requested by the application and certifying, among other things, that under the existing facts and circumstances the applicant will be eligible for the amount of credits requested.

Each applicant shall commit in the application to provide relocation assistance to displaced households, if any, at such level required by the Authority.

If an applicant submits an application for reservation or allocation of credits that contains a material misrepresentation or fails to include information regarding developments involving the applicant that have been determined to be out of compliance with the requirements of the IRC, the executive director may reject the application or stop processing such application upon discovery of such misrepresentation or noncompliance and may prohibit such applicant from submitting applications for credits to the Authority in the future.

In any situation in which the executive director deems it appropriate, he may treat two or more applications as a single application. Only one application may be submitted for each location.

The executive director may establish criteria and assumptions to be used by the applicant in the calculation of amounts in the application; and any such criteria and assumptions may be indicated on the application form, instructions or other communication available to the public.

The executive director may prescribe such deadlines for submission of applications for reservation and allocation of credits for any calendar year, as he shall deem necessary or desirable to allow sufficient processing time for the Authority to make such reservations and allocations. If the executive director determines that an applicant for a reservation of credits has failed to submit one or more mandatory attachments to the application by the reservation application deadline, he may allow such applicant an opportunity to submit such attachments within a certain time established by the executive director with a ten point scoring penalty per item.



After receipt of the applications, if necessary, the Authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located and shall provide such officers a reasonable opportunity to comment on the developments.

The development for which an application is submitted may be, but shall not be required to be, financed by the Authority. If any such development is to be financed by the Authority, the application for such financing shall be submitted to and received by the Authority in accordance with its applicable rules and regulations.

The Authority may consider and approve, in accordance herewith, both the reservation and the allocation of credits to buildings or developments which the Authority may own or may intend to acquire, construct and/or rehabilitate.

**13VAC10-180-60. Review and selection of applications; reservation of credits.**

The executive director may divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.

An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. A "qualified nonprofit organization" (as described in §42(h)(5)(C) of the IRC) which is authorized to do business in Virginia and is determined by the executive director, on the basis of such relevant factors as he shall consider appropriate, to be substantially based or active in the community of the development and is to materially participate (regular, continuous and substantial involvement as determined by the executive director) in the development and operation of the development throughout the "compliance period" (as defined in §42(i)(1) of the IRC); and

2. (i) The "qualified nonprofit organization" described in the preceding subparagraph 1 is to own (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity thereof; (ii) the executive director of the Authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; (iii) the executive director of the Authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and (iv) the executive director of the Authority shall have determined that no staff member, officer or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

In making the determinations required by the preceding subdivision 1 and clauses (ii), (iii) and (iv) of subdivision 2 of this section, the executive director may apply such factors as he deems relevant, including, without limitation, the past experience and anticipated future activities of the qualified nonprofit organization, the sources and manner of funding of the qualified nonprofit organization, the date of formation and expected life of the qualified nonprofit organization, the number of paid staff members and volunteers of the qualified nonprofit organization, the nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development, the relationship of the staff, directors or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis and the proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities involved in the proposed development on a for-profit basis. The executive director may include in the application of the foregoing factors any other nonprofit organizations which, in his determination, are related (by shared directors, staff or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the foregoing requirements, a qualified nonprofit organization shall be treated as satisfying such requirements if any qualified corporation (as defined in §42(h)(5)(D)(ii) of the IRC) in which such organization

(by itself or in combination with one or more qualified nonprofit organizations) holds 100% of the stock satisfies such requirements.

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the preceding requirements. The executive director may establish such pools ("nonprofit pools") of credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools are so established, the executive director may rank the applications therein and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible hereunder (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate hereunder; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the Authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications therein and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available therein, the executive director may either (i) leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute, to the extent permissible under the IRC, such unreserved credits to such other pool or pools as the executive director shall designate reservations therefore in the full amount permissible hereunder (which applications shall hereinafter be referred to as "excess qualified applications") or (iii) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in §42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than \$750,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

Notwithstanding anything to the contrary herein, applicants relying on the experience of a local housing authority for developer experience points described hereinbelow and/or using Hope VI funds from HUD in connection with the proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

The Authority shall review each application, and, based on the application and other information available to the Authority, shall assign points to each application as follows:

1. Readiness:
  - (a) Written evidence satisfactory to the Authority of unconditional approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. (40 points, applicants receiving points under this subdivision 1(a) are not eligible for points under subdivision 5(a) below)
  - (b) Written evidence satisfactory to the Authority (i) of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable. (40 points)
2. Housing Needs Characteristics:
  - (a) Submission of the form prescribed by the Authority with any required attachments, providing such information necessary for the Authority to send a letter addressed to the current

chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. (minus 50 points for failure to make timely submission)

(b)(1) A letter dated within three months prior to the application deadline addressed to the Authority and signed by the chief executive officer of the locality in which the proposed development is to be located stating, without qualification or limitation, the following:

“The construction or rehabilitation of (name of development) and the allocation of federal housing tax credits available under IRC Section 42 for that development will help meet the housing needs and priorities of (name of locality). Accordingly, (name of locality) supports the allocation of federal housing tax credits requested by (name of applicant) for that development.” (50 points)

(2) No letter from the chief executive officer of the locality in which the proposed development is to be located, or a letter addressed to the Authority and signed by such chief executive officer stating neither support (as described in subdivision (b)(1) above) nor opposition (as described in subdivision (b)(3) below) as to the allocation of credits to the applicant for the development. (25 points)

(3) A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. In any such letter, the chief executive officer must certify that the proposed development is not consistent with current zoning or other applicable land use regulations. (0 points)

(c) Documentation in a form approved by the Authority from the chief executive officer (or the equivalent) of the local jurisdiction in which the development is to be located (including the certification described in the definition of revitalization area in 13VAC10-180-10) that the area in which the proposed development is to be located is a revitalization area and the proposed development is an integral part of the local government’s plan for revitalization of the area. (30 points)

(d) If the proposed development is located in a qualified census tract as defined in §42(d)(5)(C)(ii) of the IRC and is in a revitalization area. (5 points)

(e) Commitment by the applicant to give leasing preference to individuals and families (i) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant, or (ii) on section 8 (as defined in 13VAC10-180-90) waiting lists maintained by the local or nearest section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (10 points. Applicants receiving points under this subdivision may not require an annual minimum income requirement for prospective tenants that exceeds the greater of \$3,600 or 2.5 times the portion of rent to be paid by such tenants.)

(f) Any of the following: (i) firm financing commitment(s) from the local government, local housing authority, Federal Home Loan Bank affordable housing funds, Commonwealth of Virginia Department of Behavioral Health and Developmental Services funds from Item 315-Z of the 2008-2010 Appropriation Act, or the Rural Development for a below-market rate loan or grant or Rural Development’s interest credit used to reduce the interest rate on the loan financing the proposed development; (ii) a resolution passed by the locality in which the proposed development is to be located committing such financial support to the development in a form approved by the Authority; or (iii) a commitment to donate land, buildings or tap fee waivers from the local government. (The amount of such financing or dollar value of local support will be divided by the total development sources of funds and the proposed development receives two points for each percentage point up to a maximum of 40 points.)

(g) Any development subject to (i) HUD's Section 8 or Section 236 programs or (ii) Rural Development's 515 program, at the time of application. (20 points, unless the applicant is, or has any common interests with, the current owner, directly or indirectly, the application will only qualify for these points if the applicant waives all rights to any developer's fee and any other fees associated with the acquisition and rehabilitation (or rehabilitation only) of the development unless permitted by the executive director for good cause.)

(h) Any development receiving (i) a real estate tax abatement on the increase in the value of the development or (ii) new project-based subsidy from HUD or Rural Development for the greater of 5 units or 10% of the units of the proposed development. (10 points)

(i) Any proposed development located in a census tract that has less than a 10% poverty rate (based upon Census Bureau data) with no other tax credit units in such census tract. (25 points)

(j) Any proposed development listed in the top twenty-five developments identified by Rural Development as high priority for rehabilitation at the time the application is submitted to the Authority. (15 points)

(k) Any proposed new construction development (including adaptive re-use and rehabilitation that creates additional rental space) located in a pool identified by the Authority as a pool with little or no increase in rent burdened population. (up to minus 20 points, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool; the executive director may make exceptions in the following circumstances: (1) specialized types of housing designed to meet special needs that cannot readily be addressed utilizing existing residential structures; (2) housing designed to serve as a replacement for housing being demolished through redevelopment; or (3) housing that is an integral part of a neighborhood revitalization project sponsored by a local housing authority.)

(l) Any proposed new construction development (including adaptive re-use and rehabilitation that creates additional rental space) that is located in a pool identified by the Authority as a pool with an increasing rent burdened population and is also in an urban development area as defined in §15.2-2223.1 of the Code of Virginia, or participating in a locally adopted affordable housing dwelling unit program as described in either §15.2-2304 or §15.2-2305 of the Code of Virginia. (up to 20 points, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool)

3. Development characteristics:

(a) The average unit size (100 points multiplied by the sum of the products calculated by multiplying, for each unit type as defined by the number of bedrooms per unit, (i) the quotient of the number of units of a given unit type divided by the total number of units in the proposed development, times (ii) the quotient of the average actual gross square footage per unit for a given unit type minus the lowest gross square footage per unit for a given unit type established by the executive director divided by the highest gross square footage per unit for a given unit type established by the executive director minus the lowest gross square footage per unit for a given unit type established by the executive director. If the average actual gross square footage per unit for a given unit type is less than the lowest gross square footage per unit for a given unit type established by the executive director or greater than the highest gross square footage per unit for a given unit type established by the executive director, the lowest or highest, as the case may be, gross square footage per unit for a given unit type established by the executive director shall be used in the above calculation rather than the actual gross square footage per unit for a given unit type.)

(b) Evidence satisfactory to the Authority documenting the quality of the proposed development's amenities as determined by the following:

- (1) The following points are available for any application:
- (a) If 2-bedroom units have 1.5 bathrooms and 3-bedroom units have 2 bathrooms. (15 points multiplied by the percentage of units meeting these requirements)
  - (b) If a community/meeting room with a minimum of 749 square feet is provided. (5 points)
  - (c) Brick covering 30% or more of the exterior walls. (20 points times the percentage of exterior walls covered by brick)
  - (d) If all kitchen and laundry appliances meet the EPA's Energy Star qualified program requirements. (5 points)
  - (e) If all the windows meet the EPA's Energy Star qualified program requirements. (5 points)
  - (f) If every unit in the development is heated and cooled with either (i) heat pump equipment with both a SEER rating of 15.0 or more and a HSPF rating of 8.5 or more, or (ii) air conditioning equipment with a SEER rating of 15.0 or more, combined with a gas furnace with an AFUE rating of 90% or more. (10 points)
  - (g) If the water expense is sub-metered (the tenant will pay monthly or bi-monthly bill). (5 points)
  - (h) If each bathroom contains only low-flow faucets and showerheads as defined by the Authority. (3 points)
  - (i) If each unit is provided with the necessary infrastructure for high-speed cable, DSL or wireless Internet service. (1 point)
  - (j) If all the water heaters meet the EPA's Energy Star qualified program requirements. (5 points)
  - (k) If every unit in the development is heated and cooled with a geothermal heat pump that meets the EPA's Energy Star qualified program requirements. (~~5~~15 points)
  - (l) If the development has a solar electric system that will remain unshaded year round, be oriented to within 15 degrees of true south, and be angled horizontally within 15 degrees of latitude. (1 point for each 2% of the development's electrical load that can be met by the solar electric system, up to 10 points)
- (2) The following points are available to applications electing to serve elderly and/or physically disabled tenants:
- (a) If all cooking ranges have front controls. (1 point)
  - (b) If all units have an emergency call system. (3 points)
  - (c) If all bathrooms have an independent or supplemental heat source. (1 point)
  - (d) If all entrance doors to each unit have two eye viewers, one at 48" and the other at standard height. (1 point)
- (3) If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the

Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)

The maximum number of points that may be awarded under any combination of the scoring categories under this subdivision 3b is 70 points.

(c) Any non-elderly development or elderly rehabilitation development in which (i) the greater of 5 units or 10% of the units will be subject to federal project-based rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; and (ii) the greater of 5 units or 10% of the units will conform to HUD regulations interpreting the accessibility requirements of section 504 of the Rehabilitation Act; and be actively marketed to people with special needs in accordance with a plan submitted as part of the application for credits (all the units described in (ii) above must include roll-in showers and roll under sinks and front control ranges, unless agreed to by the Authority prior to the applicant's submission of its application). (50 points)

(d) Any non-elderly development or elderly rehabilitation development in which the greater of 5 units or 10% of the units (i) have rents within HUD's Housing Choice Voucher ("HCV") payment standard; (ii) conform to HUD regulations interpreting the accessibility requirements of section 504 of the Rehabilitation Act; and (iii) are actively marketed to people with mobility impairments including HCV holders in accordance with a plan submitted as part of the application for credits. (30 points)

(e) Any non-elderly development or elderly rehabilitation development in which four percent (4%) of the units (i) conform to HUD regulations interpreting the accessibility requirements of section 504 of the Rehabilitation Act and (ii) are actively marketed to people with mobility impairments in accordance with a plan submitted as part of the application for credits. (15 points)

(f) Any development located within ½ mile of an existing commuter rail, light rail or subway station or ¼ mile of one or more existing public bus stops. (10 points, unless the development is located within the geographical area established by the executive director for a pool of credits for northern Virginia, in which case, the development will receive 20 points if the development is ranked against other developments in such northern Virginia pool, 10 points if the development is ranked against other developments in any other pool of credits established by the executive director)

(g) Any development for which the applicant agrees to obtain either (i) EarthCraft certification or (ii) US Green Building Council LEED green-building certification prior to the issuance of an IRS Form 8609 with the proposed development's architect certifying in the application that the development's design will meet the criteria for such certification, provided that the proposed development's architect is on the Authority's list of LEED/EarthCraft certified architects. (15 points for a LEED Silver development, or a new construction development that is 15% more energy efficient than the 2004 International Energy Conservation Code ("IECC") as measured by EarthCraft, or a rehabilitation development that is 30% more energy efficient post-rehabilitation as measured by EarthCraft; 30 points for a LEED Gold development, or a new construction development that is 20% more energy efficient than the 2004 IECC as measured by EarthCraft, or a rehabilitation development that is 40% more energy efficient post-rehabilitation as measured by EarthCraft; 45 points for a LEED Platinum development or a new construction development that is 25% more energy efficient than the 2004 IECC as measured by EarthCraft or a rehabilitation development that is 50% more energy efficient post-rehabilitation as measured by EarthCraft.) The executive director may, if needed, designate a proposed development as requiring an increase in credit in order to be financially feasible and such development shall be treated as if in a difficult development area as provided in the IRC for any applicant receiving 30 or 45 points under this subdivision ~~and 60 points under either subdivision 7(a) or subdivision 7(b) below~~, provided however, any resulting increase in such development's eligible basis shall be

limited to 5% of the development's eligible basis for 30 points awarded under this subdivision and 10% for 45 points awarded under this subdivision of the development's eligible basis. ~~(30 points)~~

(h) Any development for which the applicant agrees to use an Authority certified property manager to manage the development. (25 points)

(i) If units are constructed to meet the Authority's universal design standards, provided that the proposed development's architect is on the Authority's list of universal design certified architects. (15 points, if all the units in an elderly development meet this requirement; 15 points multiplied by the percentage of units meeting this requirement for non-elderly developments)

(j) Any development in which the applicant proposes to produce less than one hundred low-income housing units. (20 points for producing 50 low-income housing units or less, minus .4 points for each additional low-income housing unit produced down to 0 points for any development that produces 100 or more low-income housing units.)

4. Tenant population characteristics:

Commitment by the applicant to give a leasing preference to individuals and families with children in developments that will have no more than 20% of its units with one bedroom or less. (15 points; plus 0.75 points for each per cent of the low-income units in the development with three or more bedrooms up to an additional 15 points for a total of no more than 30 points)

5. Sponsor characteristics:

(a) Evidence that the principal or principals, as a group or individually, for the proposed development have developed, as controlling general partner or managing member, (i) at least three tax credit developments that contain at least three times the number of housing units in the proposed development or (ii) at least six tax credit developments that contain at least the number of housing units in the proposed development. (50 points, applicants receiving points under this subdivision 5(a) are not eligible for points under subdivision 1(a) above)

(b) Evidence that the principal or principals, as a group or individually, for the proposed development have developed at least one tax credit development that contains at least the number of housing units in the proposed development. (10 points)

(c) Any applicant that includes a principal that was a principal in a development at the time the Authority reported such development to the IRS for an uncorrected life threatening hazard under HUD's Uniform Physical Condition Standards. (minus 50 points for a period of three years after the violation has been corrected)

(d) Any applicant that includes a principal that was a principal in a development that either (i) at the time the Authority reported such development to the IRS for noncompliance, had not corrected such noncompliance by the time a Form 8823 was filed by the Authority or (ii) remained out-of-compliance with the terms of its extended use commitment after notice and expiration of any cure period set by the Authority. (minus 15 points for a period of three calendar years after the ~~time year~~ the Authority filed the 8823 or expiration of such cure period, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government or governmental agency, in which case, no negative points will be assessed to the applicant, or 0 points, if the appropriate individual or individuals connected to the principal attend compliance training as recommended by the Authority.)

(e) Any applicant that includes a principal that is or was a principal in a development that (i) did not build a development as represented in the application for credit (minus 2 times the number of points assigned to the item or items not built or minus 20 points for failing to provide a minimum building requirement, for a period of three years after the last form 8609 is issued for the development, in addition to any other penalties the Authority may seek under its agreements with

the applicant), or (ii) has a reservation of credits terminated by the Authority. (minus 10 points for a period of three years after the credits are returned to the Authority)

(f) Any applicant that includes a management company in its application that is rated unsatisfactory by the executive director or if the ownership of any applicant includes a principal that is or was a principal in a development that hired a management company to manage a tax credit development after such management company received a rating of unsatisfactory from the executive director during the compliance period and extended use period of such development. (minus 25 points)

6. Efficient Use of Resources:

(a) The percentage by which the total of the amount of credits per low-income housing unit (the “per unit credit amount”) of the proposed development is less than the standard per unit credit amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (180 points multiplied by the percentage by which the total amount of the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director.)

(b) The percentage by which the cost per low-income housing unit (the “per unit cost”), adjusted by the Authority for location, of the proposed development is less than the standard per unit cost amounts established by the executive director for a given unit type based upon the number of such unit types in the proposed development. (75 points multiplied by the percentage by which the total amount of the per unit cost of the proposed development is less than the applicable standard per unit cost amount established by the executive director.)

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount and the per unit cost amount in subdivision 6 above. For the purpose of calculating the points to be assigned pursuant to such subdivision 6 above, all credit amounts shall include any credits previously allocated to the development, and the per unit credit amount for any building documented by the applicant to be located in both a revitalization area and either (i) a qualified census tract or (ii) difficult development area (such tract or area being as defined in the IRC) shall be determined based upon 100% of the eligible basis of such building, in the case of new construction, or 100% of the rehabilitation expenditures, in the case of rehabilitation of an existing building, notwithstanding any use by the applicant of 130% of such eligible basis or rehabilitation expenditures in determining the amount of credits as provided in the IRC.

7. Bonus points.

(a) Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision (a) may not receive points under subdivision (b) below. (The product of (i) 50 points multiplied by (ii) the percentage of housing units in the proposed development both rent-restricted to and occupied by households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income, up to an additional 10 points.)

(b) Commitment by the applicant to impose rent limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development.) Applicants receiving points under this subdivision (b) may not receive points under subdivision (a) above. (The product of (i) 25 points (50 points for proposed developments in low-income jurisdictions) multiplied by (ii) the percentage of housing units in the proposed development rent-restricted to households at or below



50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income, up to an additional 10 points.)

(c) Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 30-year extended use period (as defined in the IRC). Applicants receiving points under this subdivision (c) may not receive bonus points under subdivision (d) below. (40 points for a 10-year commitment beyond the 30-year extended use period or 50 points for a 20-year commitment beyond the 30-year extended use period.)

(d) Participation by a local housing authority or qualified nonprofit organization (substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership) and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or right of first refusal to such local housing authority or qualified nonprofit organization or to a wholly-owned subsidiary of such organization or authority at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for profit entity. The applicant must record such option or right of first refusal immediately after the low-income housing commitment described in 13VAC10-180-70 hereinbelow. Applicants receiving points under this subdivision (d) may not receive bonus points under subdivision (c) above. (60 points; plus 5 points if the local housing authority or qualified nonprofit organization submits a homeownership plan satisfactory to the Authority, in which, the local housing authority or qualified nonprofit organization commits to sell the units in the development to tenants.)

In calculating the points for subdivisions 7(a) and (b) above, any units in the proposed development required by the locality to exceed 60% of the area median gross income will not be considered when calculating the percentage of low-income units of the proposed development with incomes below those required by the IRC in order for the development to be a qualified low-income development, provided that, the locality submits evidence satisfactory to the Authority of such requirement.

After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application. Any application which is assigned a total number of points less than a threshold amount of ~~500~~525 points (~~475~~500 points for developments financed with tax-exempt bonds in such amount so as not to require under the IRC an allocation of credits hereunder) shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

During its review of the submitted applications, the Authority may conduct its own analysis of the demand for the housing units to be produced by each applicant's proposed development. Notwithstanding any conclusion in the market study submitted with an application, if the Authority determines that, based upon information from its own loan portfolio or its own market study, inadequate demand exists for the housing units to be produced by an applicant's proposed development, the Authority may exclude and disregard the application for such proposed development.

The executive director may exclude and disregard any application which he determines is not submitted in good faith or which he determines would not be financially feasible.

Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Available credits will include unreserved per capita dollar amount credits from the current calendar year under §42(h)(3)(C)(i) of the IRC, any unreserved per capita credits from previous calendar years, and credits returned to the Authority prior to the final ranking of the applications and may include up to 40% of the next calendar year's per capita credits as shall be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. However, if any set-sides established by the executive director cannot be satisfied after ranking the applications based on the number of points, the executive director may rank as many

applications as necessary to meet the requirements of such set-aside (selecting the highest ranked application(s) meeting the requirements of the set-aside) over applications with more points.

In the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the Commonwealth, and in the event that the amount of credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of all of the developments described therein, the Authority shall, to the extent necessary to fully utilize the amount of credits available for reservation within such pool or, if none, within the Commonwealth, select one or more of the applications with the highest combination of points from subdivision 7 above, and each application so selected shall receive (in order based upon the number of such points, beginning with the application with the highest number of such points) a reservation of credits. If two or more of the tied applications receive the same number of points from subdivision 7 above and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the financial feasibility of all the developments described therein, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive (in order of such selection by lot) a reservation of credits.

For each application which may receive a reservation of credits, the executive director shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. In making this determination, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or receipts expected by the Authority to be generated with respect to the development, and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall deem reasonable for the purpose of making such determination, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined hereinabove) at fixed interest rates, debt service on the proposed mortgage loan. The executive director may, if he deems appropriate, consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review and establish any or all of the foregoing items as to the larger development in making such determination for the development.

At such time or times during each calendar year as the executive director shall designate, the executive director shall reserve credits to applications in descending order of ranking within each pool and tier, if applicable, until either substantially all credits therein are reserved or all qualified applications therein have received reservations. (For the purpose of the preceding sentence, if there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool after reservations have been made, "substantially all" of the credits in such pool shall be deemed to have been reserved.) The executive director may rank the applications within pools at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool. The executive director may also establish more than one round of review and ranking of applications and reservation of credits based on such rankings, and he shall designate the amount of credits to be made available for reservation within each pool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of credits so reserved exceed the maximum amount permissible under the IRC.

Not more than 20% of the credits in any pool may be reserved to developments intended to provide elderly housing, unless the feasible credit amount, as determined by the executive director, of the highest ranked elderly housing development in any pool exceeds 20% of the credits in such pool, then such elderly housing development

shall be the only elderly housing development eligible for a reservation of credits from such pool. However, if credits remain available for reservation after all eligible non-elderly housing developments receive a reservation of credits, such remaining credits may be made available to additional elderly housing developments. The above limitation of credits available for elderly housing shall not include elderly housing developments with project-based subsidy providing rental assistance for at least 20% of the units that are submitted as rehabilitation developments or assisted living facilities licensed under Chapter 17 of Title 63.2 of the Code of Virginia.

If the amount of credits available in any pool is determined by the executive director to be insufficient for the financial feasibility of the proposed development to which such available credits are to be reserved, the executive director may move the proposed development and the credits available to another pool. If any credits remain in any pool after moving proposed developments and credits to another pool, the executive director may for developments which meet the requirements of §42(h)(1)(E) of the IRC only, reserve the remaining credits to any proposed development or developments scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application with additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed development(s). However, the reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable discretion of the executive director if he determines it to be in the best interest of the plan. In the event a reservation or an allocation of credits from the current year or a prior year is reduced, terminated or canceled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, the executive director may either (i) leave such unreserved credits in such pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute such unreserved credits to such other pool or pools as the executive director may designate or (iii) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in §42(h)(3)(C) of the IRC) for such year.

Notwithstanding anything contained herein, the total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed 15% of Virginia's per capita dollar amount of credits for such credit year (the "credit cap"). However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth above shall be less than Virginia's dollar amount of credits available for such credit year, then the Authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development or developments. For purposes of this paragraph, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date. Substantial relationships shall include, but not be limited to, the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other): (i) the persons are in the same immediate family (including, without limitation, a spouse, children, parents, grandparents, grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household; (ii) the entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners which (by themselves or together with any other related persons and entities) have, in the aggregate, 5% or more ownership interest in each entity; (iii) the entities are under the common control (e.g., the

same person or persons and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities); (iv) the person is a general partner, member or employee in the entity or is an owner (by himself or together with any other related persons and entities) of 5% or more ownership interest in the entity; (v) the entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5% or more ownership interest in the other entity; or (vi) the person or entity is otherwise controlled, in whole or in part, by the other person or entity. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such applicant if the executive director determines that (i) such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted, (ii) such person or entity has no agreement or understanding relating to such application or the tax credits requested therein, and (iii) such person or entity will not receive a financial benefit from the tax credits requested in the application. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant or applicants shall, upon notice from the Authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as he or she shall determine to best serve the interests of the program. Each applicant and each principal therein shall make such certifications, shall disclose such facts and shall submit such documents to the Authority as the executive director may require to determine compliance with the credit cap. If an applicant or any principal therein makes any misrepresentation to the Authority concerning such applicant's or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals therein and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described above) with the applicant or any principal therein from submitting applications for credits for such period of time as the executive director shall determine.

Within a reasonable time after credits are reserved to any applicants' applications, the executive director shall notify each applicant for such reservations of credits either of the amount of credits reserved to such applicant's application (by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director therein, by the IRC and by this chapter) or, as applicable, that the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance herewith. The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit the developers' fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director.

If credits are reserved to any applicants for developments which have also received an allocation of credits from prior years, the executive director may reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years, provided such previously allocated credits are returned to the Authority. Any previously allocated credits returned to the Authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

The executive director shall make a written explanation available to the general public for any allocation of housing credit dollar amount, which is not made in accordance with established priorities and selection criteria of the Authority.

The Authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the aforementioned binding commitment issued or to

be issued to the applicant, the IRC and this chapter. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall so notify the applicant.

Subsequent to such ratification of the reservation of credits, the executive director may, in his discretion and without ratification or approval by the board, increase the amount of such reservation by an amount not to exceed 10% of the initial reservation amount.

The executive director may require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to assure that the applicant will comply with all requirements under the IRC, this chapter and the binding commitment (including, without limitation, any requirement to conform to all of the representations, commitments and information contained in the application for which points were assigned pursuant to this section). Upon satisfaction of all such aforementioned requirements (including any post-allocation requirements), such deposit shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.

If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, this chapter and the terms of any binding commitment that the Authority would have otherwise issued to such applicant, the executive director may at that time allocate the credits to such qualified low income buildings or development without first providing a reservation of such credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in the preceding paragraph, nor to relieve the applicant from any other requirements hereunder for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided above with respect to reservations.

The executive director may require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment and any contractual agreements between the applicant and the Authority. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development which were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment, then the executive director may (i) terminate the reservation of such credits and draw on any good faith deposit, or (ii) substitute the reservation of credits from the current credit year with a reservation of credits from a future credit year, if the delay is caused by a lawsuit beyond the applicant's control that prevents the applicant from proceeding with the development. If, in lieu of or in addition to the foregoing determination, the executive director determines that any contractual agreements between the applicant and the Authority have been breached by the applicant, whether before or after allocation of the credits, he may seek to enforce any and all remedies to which the Authority may then be entitled under such contractual agreements.

The executive director may establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as he shall deem necessary or desirable to allow the Authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant thereto.

Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with this chapter, the IRC, the binding commitment and any other contractual agreement between the Authority and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the reservation of such credits, impose additional terms and conditions with respect thereto, seek to enforce any contractual remedies to which the Authority may then be entitled, draw on any good faith deposit, or any combination of the foregoing.

In the event that any reservation of credits is terminated or reduced by the executive director under this section, he may reserve, allocate or carry over, as applicable, such credits in such manner as he shall determine consistent with the requirements of the IRC and this chapter.

Notwithstanding the provisions of this section 13-180-60, the executive director may make a reservation of credits, to any applicant that proposes a non-elderly development that (i) provides rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD regulations interpreting the accessibility requirements of section 504 of the Rehabilitation Act; and (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director for at least 50% of the units in the development. Any such reservations made in any calendar year may be up to six percent of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year.

Notwithstanding the provisions of this section 13-180-60, the executive director may, except in calendar ~~year~~years 2010 and 2011, make a reservation of credits, to any applicant that proposes to acquire and rehabilitate a non-elderly development that the executive director determines (i) cannot be acquired within the schedule for the competitive scoring process described in this section 13-180-60 and (ii) cannot be financed with tax-exempt bonds using the Authority's normal underwriting criteria for its multi-family tax-exempt bond program. Any proposed development subject to an application submitted under this paragraph must meet the following criteria: (i) at least 20% of the units in the development must be low-income housing units for residents at 50% of the area median income or less, (ii) the development must be eligible for points under subdivision 3(g) or a combination of at least 35 points under subdivisions 3(b)(1)(b) through 3(b)(1)(j), excluding subdivision 3(b)(1)(c), (iii) the executive director's review of the application must confirm that the portion of the developer's fee to be deferred is at least 5% of the total development costs, (iv) participation by the local government in the form of low-interest loan/grant monies from such locality's affordable housing funds in an amount equal to or greater than 20% of the total development costs, and (v) the application for the development must obtain as many points as the lowest ranked development that could have received a partial reservation of credits from the geographic pool in which the applicant would have been ranked in the most recent competitive scoring round. Any such reservations made in any calendar year may be up to fifteen percent of the Commonwealth's annual state housing credit ceiling for the applicable credit year, of which at least ten percent of the Commonwealth's annual state housing credit ceiling for the applicable credit year will be reserved for developments within Arlington County, Fairfax County, Alexandria City, Fairfax City or Falls Church City. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year.

#### **13VAC10-180-70. Allocation of credits.**

At such time as one or more of an applicant's buildings or an applicant's development which has received a reservation of credits is (i) placed in service or satisfies the requirements of §42(h)(1)(E) of the IRC and (ii) meets all of the preallocation requirements of this chapter, the binding commitment and any other applicable contractual agreements between the applicant and the Authority, the applicant shall so advise the Authority, shall request the allocation of all of the credits so reserved or such portion thereof to which the applicant's buildings or development is then entitled under the IRC, this chapter, the binding commitment and the aforementioned contractual agreements, if any, and shall submit such application, certifications, legal and accounting opinions, evidence as to costs, a breakdown of sources and uses of funds, pro forma financial statements setting forth anticipated cash flows, and other documentation as the executive director shall require in order to determine that the applicant's buildings or development is entitled to such credits as described above. The applicant shall certify to the Authority the full extent of all federal, state and local subsidies, which apply (or which the applicant expects to apply) with respect to the buildings or the development.

As of the date of allocation of credits to any building or development and as of the date such building or such development is placed in service, the executive director shall determine the amount of credits to be necessary for the financial feasibility of the development and its viability as a qualified low-income housing development throughout the credit period under the IRC. In making such determinations, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or receipts expected by the Authority to be generated with respect to the development and the percentage of the credit dollar amount used for development costs

other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall then deem reasonable (or he may apply the criteria and assumptions he established pursuant to 13VAC10-180-60) for the purpose of making such determinations, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined in 13VAC10-180-60 hereinabove) at fixed interest rates, debt service on the proposed mortgage loan. The amount of credits allocated to the applicant shall in no event exceed such amount as so determined by the executive director by more than a de minimis amount of not more than \$100.

Prior to allocating credits to an applicant, the executive director shall require the applicant to execute and deliver to the Authority a valid IRS Form 8821, Tax Information Authorization, naming the Authority as the appointee to receive tax information. The Forms 8821 of all applicants will be forwarded to the IRS, which will authorize the IRS to furnish the Authority with all IRS information pertaining to the applicants' developments, including audit findings and assessments.

Prior to allocating the credits to an applicant, the executive director shall require the applicant to execute, deliver and record among the land records of the appropriate jurisdiction or jurisdictions an extended low-income housing commitment in accordance with the requirements of the IRC. Such commitment shall require that the applicable fraction (as defined in the IRC) for the buildings for each taxable year in the extended use period (as defined in the IRC) will not be less than the applicable fraction specified in such commitment and which prohibits both (i) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of a low-income unit and (ii) any increase in the gross rent with respect to such unit not otherwise permitted under the IRC. The amount of credits allocated to any building shall not exceed the amount necessary to support such applicable fraction, including any increase thereto pursuant to §42(f)(3) of the IRC reflected in an amendment to such commitment. The commitment shall provide that the extended use period will end on the day 15 years after the close of the compliance period (as defined in the IRC) or on the last day of any longer period of time specified in the application during which low-income housing units in the development will be occupied by tenants with incomes not in excess of the applicable income limitations; provided, however, that the extended use period for any building shall be subject to termination, in accordance with the IRC, (i) on the date the building is acquired by foreclosure or instrument in lieu thereof unless a determination is made pursuant to the IRC that such acquisition is part of an agreement with the current owner thereof, a purpose of which is to terminate such period or (ii) the last day of the one-year period following the written request by the applicant as specified in the IRC (such period in no event beginning earlier than the end of the fourteenth year of the compliance period) if the Authority is unable to present during such one-year period a qualified contract (as defined in the IRC) for the acquisition of the building by any person who will continue to operate the low-income portion thereof as a qualified low-income building. In addition, such termination shall not be construed to permit, prior to close of the three-year period following such termination, the eviction or termination of tenancy of any existing tenant of any low-income housing unit other than for good cause or any increase in the gross rents over the maximum rent levels then permitted by the IRC with respect to such low-income housing units. Such commitment shall also contain such other terms and conditions as the executive director may deem necessary or appropriate to assure that the applicant and the development conform to the representations, commitments and information in the application and comply with the requirements of the IRC and this chapter. Such commitment shall be a restrictive covenant on the buildings binding on all successors to the applicant and shall be enforceable in any state court of competent jurisdiction by individuals (whether prospective, present or former occupants) who meet the applicable income limitations under the IRC.

In accordance with the IRC, the executive director may, for any calendar year during the project period (as defined in the IRC), allocate credits to a development, as a whole, which contains more than one building. Such an allocation shall apply only to buildings placed in service during or prior to the end of the second calendar year after the calendar year in which such allocation is made, and the portion of such allocation allocated to any building shall be specified not later than the close of the calendar year in which such building is placed in service. Any such allocation shall be subject to satisfaction of all requirements under the IRC.

If the executive director determines that the buildings or development is so entitled to the credits, he shall allocate the credits (or such portion thereof to which he deems the buildings or the development to be entitled) to the applicant's qualified low-income buildings or to the applicant's development in accordance with the requirements of the IRC. If the executive director shall determine that the applicant's buildings or development is not so entitled to the credits, he shall not allocate the credits and shall so notify the applicant within a reasonable time after such determination is made. In the event that any such applicant shall not request an allocation of all of its reserved credits or whose buildings or development shall be deemed by the executive director not to be entitled to any or all of its reserved credits, the executive director may reserve or allocate, as applicable, such unallocated credits to the buildings or developments of other qualified applicants at such time or times and in such manner as he shall determine consistent with the requirements of the IRC and this chapter.

The executive director may prescribe (i) such deadlines for submissions of requests for allocations of credits for any calendar year as he deems necessary or desirable to allow sufficient processing time for the Authority to make such allocations within such calendar year and (ii) such deadlines for satisfaction of all preallocation requirements of the IRC the binding commitment, any contractual agreements between the Authority and the applicant and this chapter as he deems necessary or desirable to allow the Authority sufficient time to allocate to other eligible applicants any credits for which the applicants fail to satisfy such requirements.

The executive director may make the allocation of credits subject to such terms, as he may deem necessary or appropriate to assure that the applicant and the development comply with the requirements of the IRC.

The executive director may also (to the extent not already required under 13VAC10-180-60 hereof) require that all applicants make such good faith deposits or execute such contractual agreements with the Authority as the executive director may require with respect to the credits, (i) to ensure that the buildings or development are completed in accordance with the binding commitment, including all of the representations made in the application for which points were assigned pursuant to 13VAC10-180-60 hereof and (ii) only in the case of any buildings or development which are to receive an allocation of credits hereunder and which are to be placed in service in any future year, to assure that the buildings or the development will be placed in service as a qualified low-income housing project (as defined in the IRC) in accordance with the IRC and that the applicant will otherwise comply with all of the requirements under the IRC.

In the event that the executive director determines that a development for which an allocation of credits is made shall not become a qualified low-income housing project (as defined in the IRC) within the time period required by the IRC or the terms of the allocation or any contractual agreements between the applicant and the Authority, the executive director may terminate the allocation and rescind the credits in accordance with the IRC and, in addition, may draw on any good faith deposit and enforce any of the Authority's rights and remedies under any contractual agreement. An allocation of credits to an applicant may also be canceled with the mutual consent of such applicant and the executive director. Upon the termination or cancellation of any credits, the executive director may reserve, allocate or carry over, as applicable, such credits in such manner, as he shall determine consistent with the requirements of the IRC and this chapter.

#### **13VAC10-180-90. Monitoring for IRS Compliance.**

A. Federal law requires the Authority to monitor developments receiving credits for compliance with the requirements of §42 of the IRC and notify the IRS of any noncompliance of which it becomes aware. Compliance with the requirements of §42 of the IRC is the responsibility of the owner of the building for which the credit is allowable. The monitoring requirements set forth hereinbelow are to qualify the Authority's allocation plan of credits. The Authority's obligation to monitor for compliance with the requirements of §42 of the IRC does not make the Authority liable for an owner's noncompliance, nor does the Authority's failure to discover any noncompliance by an owner excuse such noncompliance.

B. The owner of a low-income housing development must keep records for each qualified low-income building in the development that show for each year in 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 that are low-income units.
3. The rent charged on each residential rental unit in the building (including any utility allowances).
4. The number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under §42(g)(2) of IRC (as in effect before the amendments made by the Revenue Reconciliation Act of 1989).
5. The low-income unit 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.
7. Documentation to support each low-income tenant's income certification (for example, a copy of the tenant's federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation). Tenant income is calculated in a manner consistent with the determination of annual income under section 8 of the United States Housing Act of 1937 ("section 8"), 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 section 8, the documentation requirement of this subdivision 7 is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under §42(g) of the IRC.
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 the building's eligible basis under §42(d) of the IRC (e.g., 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 facilities reasonably required by the development).

The owner of a low-income housing development must retain the records described in this subsection B for at least 6 years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

In addition, the owner of a low-income housing development must retain any original local health, safety, or building code violation reports or notices issued by the Commonwealth or local government (as described in subdivision C.6. below) for the Authority's inspection. Retention of the original violation reports or notices is not required once the Authority reviews the violation reports or notices and completes its inspection, unless the violation remains uncorrected.

C. The owner of a low-income housing development must certify annually to the Authority, on the form prescribed by the Authority, that, for the preceding 12-month period:

1. The development met the requirements of the 20-50 test under §42(g)(1)(A) of the IRC or the 40-60 test under §42(g)(2)(B) of the IRC, whichever minimum set-aside test was applicable to the development.
2. There was no change in the applicable fraction (as defined in §42(c)(1)(B) of the IRC) of any building in the development, or that there was a change, and a description of the change.
3. The owner has received an annual income certification from each low-income tenant, and documentation to support that certification; or, in the case of a tenant receiving section 8 housing assistance payments, the statement from a public housing authority described in subdivision 7 of subsection B (unless the owner has obtained a waiver from the IRS pursuant to §42(g)(8)(B) of IRC).

4. Each low-income unit in the development was rent-restricted under §42(g)(2) of the IRC.
5. All units in the development were for use by the general public (as defined in IRS Regulation §1.42-9), and that no finding of discrimination under the Fair Housing Act has occurred for the development. (A finding of discrimination includes an adverse final decision by the Secretary of HUD, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616(a)(1), or adverse judgment from federal court.)
6. Each building in the development was suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and that the Commonwealth or local government unit responsible for making local health, safety, and building code inspections did not issue a violation report for any building or low-income unit in the development. (If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice or a copy of the violation report or notice to the annual certification. In addition the owner must state whether the violation has been corrected.)
7. There was no change in the eligible basis (as defined in §42(d) of the IRC) of any building in the development, or if there was a change, the nature of the change (e.g., a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge).
8. All tenant facilities included in the eligible basis under §42(d) of the IRC of any building in the development, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building.
9. If a low-income unit in the development 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 qualifying income before any units in the development were or will be rented to tenants not having a qualifying income.
10. If the income of tenants of a low-income unit in the development increased above the limit allowed in §42(g)(2)(D)(ii) of the IRC, the next available unit of comparable or smaller size in the development was or will be rented to tenants having a qualifying income.
11. An extended low-income housing commitment as described in §42(h)(6) of the IRC was in effect (for buildings subject to §7108(c)(1) of the Omnibus Budget Reconciliation Act of 1989).
12. All units in the development were used on a nontransient basis (except for transitional housing for the homeless provided under §42(i)(3)(B)(iii) of the IRC or single-room-occupancy units rented on a month-by-month basis under §42(i)(3)(B)(iv) of the IRC).

Such certifications shall be made annually covering each year of the compliance period and must be made under the penalty of perjury.

In addition, each owner of a low-income housing development must provide to the Authority, on a form prescribed by the Authority, a certification containing such information necessary for the Commonwealth to determine the eligibility of tax credits for the first year of the development's compliance period.

D. The Authority will review each certification set forth in subsection C of this section for compliance with the requirements of §42 of the IRC. Also, the Authority will conduct on-site inspections of all the buildings in the development by the end of the second calendar year following the year the last building in the development is placed in service and, for at least 20% of the development's low-income housing units, inspect the low-income certification, the documentation the owner has received to support that certification, and the rent record for the tenants in those units. In addition, at least once every three years, the Authority will conduct on-site inspections of all the buildings in each low-income housing developments and, for at least 20% of the development's low-income units, inspect the units, the low-income certifications, the documentation the owner has received to

support the certifications, and the rent record for the tenants in those units. The Authority will determine which low-income housing developments will be reviewed in a particular year and which tenant's records are to be inspected.

In addition, the Authority, at its option, may request an owner of a low-income housing development not selected for the review procedure set forth above in a particular year to submit to the Authority for compliance review copies of the annual income certifications, the documentation such owner has received to support those certifications and the rent record for each low-income tenant of the low-income units in their development.

All low-income housing developments may be subject to review at any time during the compliance period.

E. The Authority has the right to perform, and each owner of a development receiving credits shall permit the performance of, an on-site inspection of any low-income housing development through the end of the compliance period of the building. The inspection provision of this subsection E is separate from the review of low-income certifications, supporting documents and rent records under subsection D of this section.

The owner of a low-income housing development should notify the Authority when the development is placed in service. The Authority reserves the right to inspect the property prior to issuing IRS Form 8609 to verify that the development conforms to the representations made in the Application for Reservation and Application for Allocation.

F. The Authority will provide written notice to the owner of a low-income housing development if the Authority does not receive the certification described in subsection C of this section, or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described in subsection D of this section or discovers by inspection, review, or in some other manner, that the development is not in compliance with the provisions of §42 of the IRC.

Such written notice will set forth a correction period which shall be that period specified by the Authority during which an owner must supply any missing certifications and bring the development into compliance with the provisions of §42 of the IRC. The Authority will set the correction period for a time not to exceed 90 days from the date of such notice to the owner. The Authority may extend the correction period for up to 6 months, but only if the Authority determines there is good cause for granting the extension.

The Authority will file Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the IRS no later than 45 days after the end of the correction period (as described above, including any permitted extensions) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The Authority must explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis under subdivisions 2 and 7 of subsection C of this section, respectively, that results in a decrease in the qualified basis of the development under §42(c)(1)(A) of the IRC is noncompliance that must be reported to the IRS under this subsection F. If the Authority reports 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 Form 8823 in subsequent years to report that building's noncompliance.

The Authority will retain records of noncompliance or failure to certify for 6 years beyond the Authority's filing of the respective Form 8823. In all other cases, the Authority must retain the certifications and records described in subsection C of this section for 3 years from the end of the calendar year the Authority receives the certifications and records.

G. If the Authority decides to enter into the agreements described below, the review requirements under subsection D of this section will not require owners to submit, and the Authority is not required to review, the tenant income certifications, supporting documentation and rent records for buildings financed by Rural Development under the §515 program, or buildings of which 50% or more of the aggregate basis (taking into account the building and the land) is financed with the proceeds of obligations the interest on which is exempt from tax under §103 (tax-exempt bonds). In order for a monitoring procedure to except these buildings, the Authority must enter into an agreement with Rural Development or tax-exempt bond issuer. Under the agreement, Rural Development or tax-exempt bond issuer must agree to provide information concerning the income and rent of the tenants in the building to the Authority. The Authority may assume the accuracy of the information provided by

Rural Development or the tax-exempt bond issuer without verification. The Authority will review the information and determine that the income limitation and rent restriction of §42(g)(1) and (2) of the IRC are met. However, if the information provided by Rural Development or tax-exempt bond issuer is not sufficient for the Authority to make this determination, the Authority will request the necessary additional income or rent information from the owner of the buildings. For example, because Rural Development determines tenant eligibility based on its definition of “adjusted annual income,” rather than “annual income” as defined under Section 8, the Authority may have to calculate the tenant’s income for purposes of §42 of the IRC and may need to request additional income information from the owner.

H. The owners of low-income housing developments must pay to the Authority such fees in such amounts and at such times as the Authority shall reasonably require the owners to pay in order to reimburse the Authority for the costs of monitoring compliance with §42 of the IRC.

I. The owners of low-income housing developments that have submitted an IRS Forms 8821, Tax Information Authorization, naming the Authority as the appointee to receive tax information on such owners shall submit from time to time renewals of such Forms 8821 as required by the Authority throughout the extended use period.

J. The requirements of this section shall continue throughout the extended use period, notwithstanding the use of the term compliance period, except to the extent modified or waived by the executive director.

#### **13VAC10-180-100. Tax-exempt bonds**

In the case of any buildings or development to be financed by certain tax-exempt bonds of the authority, or an issuer other than the authority, in such amount so as not to require under the IRC an allocation of credits hereunder, the owner of the buildings or development shall submit to the authority, prior to the issuance of the bonds, an application for allocation of credits and supporting information and documents as described in 13VAC10-180-70, and such other information and documents as the executive director may require (including a market study, in form and substance satisfactory to the authority, that shows adequate demand for the housing units to be produced by each applicant's proposed buildings or development). The executive director shall determine, in accordance with the IRC, whether such buildings or development satisfies the requirements for allocation of credits hereunder. For the purposes of such determination, buildings or a development shall be deemed to satisfy the requirements for allocation of credits hereunder if (i) the application submitted to the authority in connection therewith is assigned not fewer than the threshold number of points under the ranking system described in 13VAC10-180-60, (ii) the executive director shall determine that the buildings or development shall receive an amount of credits necessary for the financial feasibility of the development and its viability as a qualified low-income housing development throughout the credit period under the IRC, as more fully described in 13VAC10-180-70, and (iii) premature retirement of any of the tax exempt bonds or principal portion thereof issued to finance the buildings or development (including any tax exempt bonds issued solely for the purpose of satisfying the requirement in §42(h)(4)(B) of the IRC) shall be neither required by the terms of the bonds nor anticipated by the applicant during the period commencing on the date of issuance of such bonds and ending on the date seven years thereafter. For the purpose of (iii) in the foregoing sentence, premature retirement shall be any total reduction in the principal amount of such bonds or portion thereof during such seven-year period in excess of 50% of the original principal amount of such bonds or portion thereof. The principal of any bonds which are defeased or for which funds (and any investments thereof) are otherwise determined by the Authority to be available during such seven-year period for payment of principal thereof shall be deemed to be reduced by the principal amount so defeased or by the amount of such available funds during such seven-year period. Compliance with (iii) above shall be determined by the Authority based upon the substance of the transactions and without regard to any artifice or device intended to evade the requirement prohibiting the premature retirement of bonds as described in (iii) above. Notwithstanding anything contained herein, the requirement in (iii) above shall not apply to tax-exempt bonds, not exceeding \$3,000,000 in original principal amount, issued for the rehabilitation of any development secured by a Rural Development 515 loan, provided such tax-exempt bonds are issued with the intent to preserve the Rural Development 515 loan.

The owner of the buildings or development shall, as required by the executive director, pay such fees as described in §10-180-50 hereof, and such good faith deposits as described in §10-180-70 hereof. Furthermore, the owner of the buildings or development shall satisfy all other requirements for an allocation as required by the

executive director, including execution, delivery and recordation of an extended low-income housing commitment as more fully described in §10-180-70 hereof and all requirements for compliance monitoring as described in §10-180-90 hereof.

### **13VAC10-180-110. Qualified Contracts**

After the first day of the fourteenth year of the compliance period, an owner of a low-income housing tax credit development may seek to terminate the extended use period pursuant to §42(h)(6)(E) by requesting the Authority to present a qualified contract for the acquisition of the low-income portion of the development, unless such right to terminate has already been waived by the owner for the tax credits allocated to such development. A request for a qualified contract shall be commenced by filing with the Authority a complete application, on such form or forms as the executive director may from time to time prescribe or approve, together with such documents and additional information as may be requested by the Authority in order to comply with the IRC and this chapter and to determine the qualified contract price in accordance with §42(h)(6)(F). The executive director may reject any application from consideration for a qualified contract, if in such application, the owner does not provide the proper documentation or information on the forms prescribed by the executive director.

The application should include following information sufficiently detailed to enable the Authority to ascertain the qualified contract amount: first year IRS Form 8609 for each building, the owner's annual tax returns for all years of operation since the start of the credit period ("all years"), annual project financial statements for all years, loan documents for all secured debt during the credit period, the owner's organizational documents (original, current and all interim amendments), and accountant work papers for all years. The application may require a physical needs assessment, appraisal for the entire project, market study for the entire project, a title report showing marketable title; and a Phase I environmental assessment at the time of the original submission of the application or the executive director may permit such items to be obtained after the confirmation of the qualified contract price.

The executive director may also require the submission of a legal opinion or other assurances satisfactory to the executive director as to, among other things, compliance with the IRC and a certification, together with an opinion of an independent certified public accountant or other assurances satisfactory to the executive director, setting forth the calculation of the qualified contract amount requested in the application and certifying, among other things, that the owner is entitled to the qualified contract amount requested.

The executive director may establish criteria and assumptions to be used by the owner in the calculation of qualified contract amount; and any such criteria and assumptions may be indicated on the application form, instructions or other communication available to the public.

The Authority shall charge reasonable fees in such amounts as the executive director shall determine to be necessary to cover third party costs and the Authority's actual costs incurred in producing a qualified contract. Such fees shall not include any general costs associated with the general operations of the Authority. Such fees shall be payable at such time or times as the executive director shall require.

### **13VAC10-180-120. Application for Tax Credit Assistance Funds and Credit Exchange Funds.**

The American Recovery and Reinvestment Act of 2009 (Recovery Act), PL 111-5, (i) includes funds to be allocated to housing credit agencies from HUD under a program called the tax credit assistance program (TCAP), to facilitate the production of developments awarded low-income housing tax credits in fiscal years 2007, 2008 and 2009, and (ii) permits the authority to monetize credits by exchanging eligible credits for cash grants, which can be used by the authority to finance the construction or acquisition and rehabilitation of qualified low-income buildings.

Application for TCAP funds and credit exchange funds shall be filed with the Authority on such form or forms as the executive director may from time to time prescribe or approve, together with such documents and additional information as may be requested by the Authority in order to comply with the Recovery Act, the IRC and this chapter and to make an award of TCAP funds or credit exchange funds in accordance with this chapter. The executive director may establish criteria and assumptions to be used by the applicant in the calculation of the amounts of tax credits, TCAP funds, and credit exchange funds in the application; and any such criteria and assumptions may be indicated on the application form or instructions made available by the authority to applicants.

Each applicant for TCAP funds and credit exchange funds shall commit in the application to comply with all federal requirements applicable to such funds.

The executive director may divide the amount of TCAP funds into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate to best meet the housing needs of the Commonwealth. Proposed developments to be financed by certain tax-exempt bonds and eligible to receive credits pursuant to 13VAC10-180-100 that apply for TCAP funds will be scored and ranked pursuant to the requirements of 13VAC10-180-60 with all other applications applying for TCAP funds and credits. Such developments may be placed in pools with other applicants for TCAP funds or may be put in their own separate pool as the executive director deems appropriate.

For each application which may receive an award of tax credits and either TCAP funds or credit exchange funds or both, the executive director shall determine the amount, as of the date of the deadline for submission of applications for such funds, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. The executive director may substitute TCAP funds for some or all of the credit exchange funds in the application or credit exchange funds for some or all of the TCAP funds requested in the application in such amounts as determined by the executive director to maximize the number of developments or units that are expected to benefit from the equity provided by tax credit investors. Any TCAP funds and credit exchange funds awarded to a proposed development shall be in the form of a grant or, if requested by the borrower, a loan. Such grant or loan shall (i) be subordinate to all other unrelated third-party financing for the construction or acquisition and rehabilitation of the development; (ii) be secured by a deed of trust for the full amount of the grant or loan during the compliance period; and (iii) provided no conditions exist that would result in default under the deed of trust, be forgiven by the authority in part each year on a pro rata basis based upon the length of the extended use period.

Any tax credit developments that have received a reservation of tax credits pursuant to 13VAC10-180-60 in calendar years 2007 and 2008 may request the authority to exchange their tax credit allocation for credit exchange funds in an amount not to exceed the lesser of (i) \$.85 per \$1.00 of credit exchanged or (ii) the tax credit equity amount shown in their allocation application.

The executive director may place conditions and limitations on the availability and use of the grant or loan deemed necessary to comply with the provisions of the Recovery Act and the IRC. The executive director may also prescribe such deadlines for accomplishing certain milestones established by the executive director in the acquisition, construction or rehabilitation of the developments deemed necessary or desirable to ensure full use of TCAP funds and credit exchange funds within the timeframes established by the Recovery Act.