

**WASHINGTON STATE HOUSING FINANCE COMMISSION  
LOW-INCOME HOUSING TAX CREDIT PROGRAM**

***POLICIES***

[2009 Application Package](#)

[DDA/QCT Notice](#)

[Qualified Allocation Plan](#)

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# CHAPTER 1 OVERVIEW

## A. INTRODUCTION

The 1986 Tax Reform Act created the federal low-income housing tax credit (the “Credit”), under Section 42 of the Internal Revenue Code, to assist in the development of low-income rental housing. The Tax Credit Program provides qualified owners with Credit to reduce their federal tax obligations. The Washington State Housing Finance Commission (the “Commission”) is the authorized issuer of Credits for residential rental property located in the state of Washington. The Credit is available to owners of qualified buildings and projects that meet certain low-income occupancy and rent restrictions.

## B. PURPOSE OF THE *POLICIES*

The Tax Credit Program is described in three separate documents: the *Qualified Allocation Plan*, the *Rules*, and the *Policies*.

Pursuant to the requirements of the Internal Revenue code Section 42(m)(1)(B), the Commission has adopted a *Qualified Allocation Plan* that sets forth: (i) the preferences of the Commission in allocating Credit; (ii) the selection criteria used to determine the Commission’s housing priorities; and (iii) the procedures the Commission will follow in monitoring for Noncompliance, including noncompliance with habitability standards, and notifying the Internal Revenue Service of such Noncompliance.

The Commission has also adopted rules governing the Tax Credit Program (the “*Rules*”). The *Rules* are codified in Washington Administrative Code 262-01-130. The *Rules* set forth the principles by which the Commission administers the Tax Credit Program and to which all Applicants to the Tax Credit Program will be bound.

In addition, the Commission has published these *Policies*. RCW 34.05.230(1) provides that “an Agency is encouraged to advise the public of its current opinions, approaches, and likely courses of action by means of interpretive or policy statements.” The *Policies* are intended to be these interpretive or policy statements. The *Policies* are intended to provide guidance to Applicants and to Commission staff, but they are not binding on the Commission and do not have the force of a Rule.

The *Policies* describe the process and criteria that will be used by Commission staff to evaluate and rank projects for recommendations for Credit reservations and/or allocations.

The *Policies* also describe the conditions, limitations, and requirements that must be satisfied in order for a project to be eligible for a Credit reservation, carryover allocation and final allocation.

The *Policies* also set forth project transfer or assignment requirements, an overview of the project monitoring requirements, the Commission's fee schedule, a description of the Commission's process for decisions and reviews, and policies applicable to qualified tax-exempt bond-financed projects. Finally, the *Policies* include a Glossary of terms that are used throughout the *Policies*, the Credit reservation and carryover allocation Contract, the Regulatory Agreement, and other documents and agreements used in the Tax Credit Program.

The *Qualified Allocation Plan*, the *Rules*, and the *Policies* are supplements to Section 42 of the Code, as amended, and the treasury regulations published under it, and they include many of the federal requirements for the Credit. Nonetheless, they are not intended to replace or fully represent the requirements under the Code for the Credit and they include many requirements not found in Section 42 of the Code or the treasury regulations. If there is a conflict between any requirement, condition, definition, or restriction of the *Qualified Allocation Plan*, the *Rules*, or the *Policies* and the requirements of the Code, the more restrictive one will apply, as determined by the Commission.

### **C. APPROVAL AND EFFECTIVE DATE OF THE *POLICIES***

The *Policies* were approved by resolution at a special meeting of the Commission on September 25, 2008. The *Policies* will remain effective until they are amended, revoked, or superseded by action of the Commission, which will ordinarily take the form of a resolution approved at a special meeting of the Commission. The *Policies* will apply in their entirety to all Applications submitted on or after their effective date. In addition, the *Policies* apply to all projects for which the Commission has executed a Credit Reservation and Carryover Allocation Contract ("RAC"), or Regulatory Agreement, or issued an IRS Form 8609, as determined by the Commission. Please contact the Tax Credit Program Director for clarification regarding the application of the *Policies* to a project. The Tax Credit Program Director will determine the applicability of the *Policies* to projects.

Copies of the *Policies* are available on the Commission's website at ([wshfc.org/tax-credits/](http://wshfc.org/tax-credits/)) or by writing to:

Washington State Housing Finance Commission  
Tax Credit Division  
1000 Second Avenue, Suite 2700  
Seattle, WA 98104-1046

## **D. ADMINISTRATION AND INTERPRETATION OF THE *POLICIES***

Commission staff are authorized to administer, interpret, and clarify the *Policies*. In addition, staff have authority to administer and interpret the Code and the treasury regulations, subject to any formal written guidance, rulings or precedent received from the IRS or from court decisions.

The decisions to reserve and to allocate Credit to a project rest solely with the Commission. All projects receiving reservations or allocations must comply with the Code, specifically Section 42 of the Code, together with the restrictions, conditions, and requirements of the Tax Credit Program, which may be more restrictive than Section 42 of the Code.

The *Policies* should not be construed as impairing or limiting the rights of the Commission, or act to release a Tax Credit Program participant from any of the covenants, terms, obligations, duties, or conditions that apply to the participant as a result of entering into any agreement or contract. The Commission may bring a legal action against the participant as it may deem necessary or prudent if the participant fails to perform any obligation or provision, or term under any document, agreement, contract, or under any provision of law.

The *Policies* are subject to change by the Commission, based on, among other things, developments in federal or state law. The Commission may modify the *Policies*, as well as the forms, legal documents, and other material used by the Tax Credit Program, at any time determined by the Commission to be necessary and appropriate. It is necessary to stay informed of the actions of the Commission that may amend the *Policies*. A participant may ask Commission staff for specific information or assistance.

The Commission maintains a list of “interested parties” to whom certain notices and other information are mailed, including any new *Policies* issued by the Commission. A person may be included on this list by delivering a written request to the Commission.

## **E. DEFINITION OF TERMS**

The definitions of capitalized terms used throughout the *Policies* can be found in the Glossary. All chapter, section, and page references refer to the *Policies*, unless otherwise specified. In addition, the *Policies*, RAC and Regulatory Agreement use terms that are defined or used in Section 42 of the Code.

## **F. PROGRAM DOCUMENTS AND FORMS**

The Application package for Credits will include the Application and a copy of the *Qualified Allocation Plan*, the Rules, and the *Policies*. Sample copies of the primary legal documents that have been used in the past may be obtained from the Commission. These include, for example, the RAC and the Regulatory Agreement. Keep in mind that the legal documents that a participant is required to execute to participate in the Tax Credit Program may vary from the sample documents.

## **G. APPLICATION SCHEDULE AND DEADLINES**

The Commission will announce deadlines for receiving Applications by public notice to all interested parties registered on the Tax Credit Program's public information list kept by the Commission. A person can be added to these lists or receive Application materials by contacting the Commission. All Application material may be obtained from the Commission's website at [www.wshfc.org/tax-credits](http://www.wshfc.org/tax-credits).

The Application package includes forms, requirements, instructions, and other information about the Tax Credit Program.

## **H. CORRESPONDENCE AND SUBMISSIONS**

All correspondence and submissions to the Commission must be in writing and delivered to:

*Washington State Housing Finance Commission  
Tax Credit Division  
1000 Second Avenue, Suite 2700  
Seattle, WA 98104-1046*

All of the Commission's correspondence will be sent to the contact person identified in the Application. Be sure to notify the Commission in writing of any changes of the contact person or address.

The Commission may reject any documents, certifications, agreements, or other instruments that are necessary to participation in the Tax Credit Program if they are not in a form that is acceptable to the Commission.

All necessary instruments must be signed under penalties of perjury.

All fees are nonrefundable.



## **I. TIME PERIODS**

The Tax Credit Program and Section 42 of the Code have a number of important time periods that participants should be aware of. These time periods significantly affect both the use of the project and the period of time that the use of the project will be restricted. Participants should review carefully the time periods and deadlines set forth in these *Policies*, the Application, the RAC, the Regulatory Agreement and Section 42 of the Code.

## **J. PUBLIC RECORDS ACT NOTICE**

Materials and information submitted to the Commission are subject to public disclosure unless otherwise exempt from disclosure under the Washington Public Records Disclosure Act (RCW 42.17 et seq.). No assurances can be given that any materials provided can be protected from public review and copying.

## **K. WAIVER**

If the Commission fails to take action in accordance with the *Policies*, that should not be considered a waiver by the Commission of a project, person, or entity's compliance with the terms and provisions in the *Policies*, or establish a precedent for any other project, person or entity. In any event, no waiver, modification, or change in the *Policies* will be binding unless it is in writing and signed by an agent of the Commission. A waiver of any breach of any term or provision will not operate or be understood as a waiver of any other future breach.

## **CHAPTER 2**

### **GENERAL REQUIREMENTS AND DISCLOSURES**

The Commission has established the following requirements and disclosures with respect to selecting projects for Credit reservations and allocations. These requirements and disclosures, in addition to the other conditions and requirements described in these Policies and the Commission's legal documents, must be satisfied in order to obtain and maintain Credit reservations and allocations.

#### **A. IDENTITY OF INTEREST**

The Applicant will be required to disclose to the Commission whether certain financial, familial, business or similar relationships exist between or among the parties participating in the development and operation of the project (i.e. whether an "Identity of Interest" exists). This disclosure shall be made when the Application is filed and at such other times during the development and operation of the project as determined by the Commission.

#### **B. MISREPRESENTATION AND FRAUD**

The Commission may disqualify an Application and project and cancel a Credit reservation and carryover allocation, if the Applicant, a Principal, or any participant makes a material misstatement, omission, or misrepresentation to the Commission, or has been convicted of fraud, theft, or other criminal activity involving the misappropriation of funds, false certifications, financial improprieties, or the like.

#### **C. FINANCIAL SOLVENCY AND LITIGATION STATUS**

As part of the Application and at such other times as required by the Commission, the Applicant must provide a certification with respect to the financial solvency of the Applicant, the project and certain project participants in the form required by the Commission.

If the certification discloses any financial difficulties, risks or similar matters that the Commission believes might substantially impair or harm the successful development and operation of the project as a qualified low-income housing project, the Commission may:

- (1) refuse to allow the Applicant to participate in the Tax Credit Program;
- (2) reject or disqualify an Application and cancel any Credit reservation and carryover allocation; and/or

- (3) demand additional assurances that the development, ownership, operation, or management of the project will not be impaired or harmed (such as, performance bonds, pledging unencumbered assets as security, opinions of financial solvency by an independent certified public accountant, or such other assurances as determined by the Commission).

The Applicant must also disclose throughout the development and operation of the project if there is a material change in the matters addressed in the certification.

#### **D. LEGAL COUNSEL AND PROFESSIONAL REPRESENTATIVES**

The Applicant may not engage or use the Commission's legal counsel in any matters related to the Application or project, including but not limited to representing the Applicant in regard to:

- (1) the acquisition or lease of any land or buildings intended to be part of the project;
- (2) the organization of the ownership entity;
- (3) the preparation of any tax opinion;
- (4) participation in the financing or syndication process;
- (5) the Commission's administrative rules and policies;
- (6) project evaluation, review, recommendation, selection, monitoring, and/or cancellation; and
- (7) establishment, administration, or enforcement of the Commission's Contracts.

In addition, the Applicant must provide the names of the Applicant's developer, project management consultant, property management consultant, architect, legal counsel, tax advisor, accountant, and syndicator. The Commission may require the Applicant to retain legal counsel or other representatives that are in addition to, or different than, the above parties. For example, an Applicant may be required to change a consultant if the Commission believes that the proposed consultant lacks sufficient experience with the Tax Credit Program. It may also happen if the proposed party has made misrepresentations or misstatements to the Commission or has violated or breached any of the specific provisions or intent of the Tax Credit Program (such as furthering themselves or their clients by taking excessive fees or advocating positions that are insupportable given the terms, conditions, and requirements in the Policies and in the Code).

## E. PROJECT CHANGES

An Applicant must notify the Commission of any change in a project. An Applicant must notify the Commission in writing at least 30 days in advance of any material change in a project and must obtain the Commission's written consent to the proposed change. A "material change" includes but is not limited to: (i) a change in the number of buildings or units; (ii) a change in the project contact person; (iii) a change in the Identity of Interest disclosure; (iv) a change in the Development Team; (v) a change of legal counsel or other professional representatives information; (vi) a change of 10% or more of the project's Total Project Costs; (vii) a change in a financing source (whether debt or equity) or a change of 10% or more in the operating revenue or expenses for the project; and (viii) any change that would result in a loss of Allocation Criteria points. The Tax Credit Program Director will decide whether a change in a project is material.

The Commission will consider and may approve a material change to a project, if the change is:

1. Consistent with the Code and the Tax Credit Program; and
2. Does not decrease the total number of Allocation Criteria points for the project.

The Commission will not approve a material change in the project's location or site.

The request for approval of a material change in a project must be submitted in writing and include a narrative description and other supporting documentation, plus the applicable revised pages of the Application. If the Commission grants the request, it may reduce the Credit allocation to the project to the extent that the change results in a decrease in the equity gap or in the adjusted basis, eligible basis, or qualified basis of the project.

The Commission will consider a change in the actual Allocation Criteria for which a project has received Allocation Criteria points only if (i) the project or Applicant qualified for the Allocation Criterion when the Application was submitted, (ii) the Allocation Criterion is no longer feasible (through no fault of the Applicant), and (iii) the Applicant can substitute another Allocation Criterion that results in an equal or greater number of Allocation Criteria points. Aside from this exception, the Commission will not consider a project change after the original submission of an Application if it affects project eligibility for Credit, Allocation Criteria points, Credit Set-Asides, or project rankings.

Generally, all direct or indirect project transfers or assignments require the prior written consent of the Commission, as set forth in Chapter 9 of the *Policies*.

## **F. SELECTION OF TAX CREDIT FACTOR**

The Applicant is responsible for providing the Commission with the Tax Credit Factor that the Applicant believes will be achieved when the Credit is sold. The Commission will establish a minimum Tax Credit Factor based on its evaluation of the equity market.

The Tax Credit Factor represents, on a percentage basis, the net value of the Credit dollar amount available for the Total Project Costs (i.e., the amount paid by the investor for each one dollar of Credit). The Applicant's selection of the Tax Credit Factor in the Application establishes the absolute minimum Tax Credit Factor. Once selected, the Commission will use the Tax Credit Factor from then on when it calculates the Credit reservation and allocation to any building in a project, except as noted below. Consequently, the Applicant should be sure to research the market to determine an appropriate Tax Credit Factor.

If the proceeds from the sale of the Credit are more than projected in the Application, then, as provided in WAC 262-01-130(7), the Commission will reduce the Credit amount to the minimum amount necessary for the project to be financially feasible and viable as a qualified low-income housing project. In calculating the amount of Credit, if the actual Tax Credit Factor is higher, the Commission will use the actual Tax Credit Factor achieved from the sale of the Credit rather than the Tax Credit Factor in the Application. Consequently, the amount of Credit actually allocated to a building may be reduced below the amount initially reserved.

The Applicant should be aware that an actual Tax Credit Factor that is lower than the figure included in the Application might result in a loss of Credit for the project. In such a case, the Applicant must demonstrate that the project is both financially feasible and viable with the reduced amount of Credit. The Commission may disqualify the project/Application and cancel the Credit reservation and/or allocation if the Applicant cannot do this. For example, the Applicant may have to provide evidence that it has secured other sources of funds to fill the remaining equity gap. Such alternative sources could also result in a decrease of Credit.

## **G. FEASIBILITY AND VIABILITY ANALYSIS**

The Commission is required to limit Credit allocated to a project to the amount it determines is necessary for the financial feasibility and viability of the project. The Commission is required to perform this analysis at each of the following times:

- (1) when the Applicant submits an Application for Credit;
- (2) when the Commission makes a carryover allocation by entering into the RAC; and

- (3) when each building in the project is placed-in-service.

In order to allow the Commission to perform these analyses, the Applicant is required to submit, among other things, (i) a comprehensive development budget showing all sources and uses of funds and the total financing plan for the project and (ii) a fifteen (15) year operating proforma for the project. The form and detail of each of the budgets must be satisfactory to the Commission and must be consistent with provisions of Treasury Regulation 1.42-17.

The Commission will review the reasonableness of the development and operating budgets submitted by the Applicant. It may require that the Applicant submit documentation to substantiate that any or all of a project's revenue or costs are reasonable and appropriate. In addition, if the Commission questions the reasonableness or appropriateness of the land costs for a project the Applicant may be required to submit a copy of an appraisal with an effective date within 6 months of the Application to establish the value of the land for a project. Even if the land cost is adequately supported by an appraisal, all or a portion thereof may be treated as Developer Fee (which could have the effect of reducing eligible basis). Further, the maximum amount of Credit allowable to a project is subject to the other limitations of the Tax Credit Program, such as the Tax Credit Program Limits set forth in Chapter 3.

Based on the feasibility and viability analyses performed by the Commission (or based on other relevant considerations of the Commission), (1) the amount of the Credit reservation and carryover allocation may be less (but never more) than the amount set forth in the Commission's initial project approval, and (2) the amount of the final Credit allocation reflected in Form 8609 may be less (but never more) than the amount of the Credit reservation and/or carryover allocation.

## **H. CREDIT RESERVATION AND CARRYOVER ALLOCATION**

All projects that receive an allocation of credit will receive a carryover allocation. To receive a carryover allocation, the Applicant must meet all the Credit reservation and carryover allocation requirements in Chapter 7 of the *Policies*. If any building in the project will be placed-in-service in the same year as the Application, that building does not need a carryover allocation but the Applicant will be required to comply with all of the placed-in-service allocation requirements before the end of the calendar year, in addition to meeting other requirements.

All Credit carryover allocations will be made on a "project" basis. The Credit reserved or allocated is the lump sum amount available to each qualified building in the project. The actual amount of Credit available for any specific building will be apportioned from the lump sum carryover allocation of credit and determined when that building satisfies the placed-in-service allocation requirements.

## I. FINAL ALLOCATION – ISSUANCE OF REGULATORY AGREEMENT AND FORM 8609

### 1. The Regulatory Agreement

As a condition of receiving a final allocation from the Commission, the Applicant must enter into a Regulatory Agreement that applies to each building in the project. The Regulatory Agreement addresses, among other things, the requirements of Section 42 of the Code, federal and state law, the Tax Credit Program and the Commitments undertaken in the Application and the RAC.

Generally, the provisions of the Regulatory Agreement will apply for a period of 30 years from the date the project is placed-in-service (the 15-year compliance period and an additional 15-year period, referred to as the “extended low-income use period”); however, if the Applicant makes a commitment for an Additional Low-Income Housing Use Period, the duration of the Regulatory Agreement will extend for a period of up to an additional 22 years beyond the 15-year compliance period.

A Regulatory Agreement will terminate prior to the expiration of the extended low-income use period or Additional Low-Income Use Period, as the case may be, only under very limited circumstances. In this respect, and many others, the requirements of the Regulatory Agreement are stricter than the provisions of Section 42 of the Code.

As a condition of receiving Credit, the Regulatory Agreement must be recorded in first lien position as a restrictive covenant running with the land and binding upon the Applicant’s successors in interest. If liens are recorded prior to the Regulatory Agreement, those liens must be subordinated to the interests of the Commission as shown in the Regulatory Agreement. Specifically, the Applicant and the holders of those liens must execute and record a subordination agreement in a form approved by the Commission that specifies that their security interests are subordinate to the interests of the Commission as shown in the Regulatory Agreement.

If the Applicant has established a long-term lease in lieu of ownership, the owner of the land and holders of any liens and encumbrances that are secured by a recorded mortgage or deed of trust against the land and the improvements on it before the Regulatory Agreement is recorded must execute and record a subordination agreement in a form approved by the Commission. The subordination agreement shall specify that the owner’s interest is subject to, and any other parties’ security interest are subordinate to, the interests of the Commission as show in the Regulatory Agreement.

After the subordination agreements are recorded, the owner must provide an updated title report that demonstrates that the Regulatory Agreement is in first lien position as required by the Commission.

2. Form 8609

For projects receiving a carryover allocation, the Applicant will have until the deadline(s) set forth in the RAC to ensure that each building in the project is placed-in-service and meets all the placed-in-service allocation requirements in Chapter 8 of the *Policies*. If the Applicant complies with the terms and conditions of the RAC and all other requirements of the Tax Credit Program, the Commission will make a final allocation of Credit for each qualified building by issuing IRS Form 8609.

**J. MINIMUM AND ADDITIONAL LOW-INCOME HOUSING COMMITMENTS**

The Tax Credit Program includes two low-income housing Commitments: The minimum low-income housing commitment (required by Section 42 of the Code) and the Additional Low-Income Housing Commitment (a voluntary election). Both of these Commitments are made when the Application is submitted and are *irrevocable* and binding upon the Applicant and the Applicant's successors in interest.

The Applicant must choose one of the following minimum low-income housing commitments:

- (1) at least 40% of the total housing units in a project must be rented to residents with incomes at or below 60% of the AMGI adjusted for household size; or
- (2) at least 20% of the total housing units in a project must be rented to residents with incomes at or below 50% of the AMGI adjusted for household size.

The income limits for the selected minimum low-income housing Commitment apply to any low-income housing unit in the project. Each low-income housing unit must be rent-restricted, with the maximum gross rent not to exceed 30% of the AMGI.

In addition, if the Applicant voluntarily selects an Additional Low-Income Housing Commitment, the Applicant is making a Commitment that may involve a lower percentage of AMGI for all or a selected portion of the total low-income housing units in the project. These housing units must be rented for no more than 30% of the applicable AMGI.

If the Applicant makes a Commitment to have an applicable fraction of 100%, then 100% of the total housing units in the project will be rent-restricted and rented to qualified low-income residents. This means that all of the residents must have incomes below 60% of the AMGI.



**EXAMPLE:** The Applicant chooses a minimum low-income housing Commitment of 40/60:

- (1) at least 40% of the total housing units in the project will be rent-restricted and rented to qualified low-income residents with incomes at or below 60% of AMGI; and
- (2) all low-income housing units in the project will be rent-restricted and rented to qualified low-income residents with incomes at or below 60% of the AMGI.

In order for this Application to score Allocation Criteria points for the Additional Low-Income Housing Commitment, an Applicant must commit certain percentages of the total low-income housing units to income levels below the minimum low-income housing commitment. Continuing with the example above, the Applicant may commit to 40% of the total low-income housing units for households at or below 30% of the AMGI and 40% of the total low-income housing units for households at or below 50% of the AMGI.

Thus, the Applicant will qualify for 44 Allocation Criteria points and the Applicant's combined Commitments will have the following effect:

- (1) 40% of the total low-income housing units will be rent-restricted and rented to residents with incomes at or below 30% of the AMGI, scoring 36 Allocation Criteria points;
- (2) 40% will be rent-restricted and rented to residents with incomes at or below 50% of the AMGI, scoring 8 Allocation Criteria points; and
- (3) the remaining 20% of the low-income units are restricted at 60% of the AMGI.

During the Project Compliance Period, the Applicant may only rent low-income housing units to residents who are income-eligible at initial occupancy in the project. More specifically, a low-income housing unit must remain vacant until the Applicant can rent it to a resident that meets the income eligibility criteria of the minimum low-income housing commitment and/or the Additional Low-Income Housing Commitment as applicable.

In determining the maximum gross rent for a low-income housing unit, the Applicant must include the utility allowance (i.e., the actual rent cannot be greater than the maximum applicable gross rent less the utility allowance). However, gross rent does not include HUD Section 8 or any comparable rental assistance payments.

If any of the low-income housing units currently are receiving rental assistance or if the Applicant has a commitment for rental assistance to housing units in the project, the Applicant must provide a copy of the applicable rental assistance documentation

or the commitment specifying the number of housing units, dollar amount, length of time, and any other significant details.

#### **K. DEVELOPER FEE AND ELIGIBLE BASIS LIMITATIONS**

Generally, that portion of the developer fee related to the construction or rehabilitation of a low-income building is capitalized as part of the building's basis and, therefore, is eligible for Credit. The portion of the developer fee that is attributable to the acquisition of the land is ineligible for credit.

In the case of an acquisition/rehabilitation project, the developer fee must be allocated among the various project components. For example, the portion of the developer fee that is earned with respect to the acquisition of the land is ineligible for Credit. The portion of the developer fee earned for the acquisition of the existing building may be eligible for the 4% credit.

Generally, expenses for activities occurring prior to the start of construction must be allocated to land and are excluded from eligible basis, unless a written explanation justifying an alternative treatment is included with the Application and with the Independent CPA's certification regarding the project's eligible basis and the qualified basis as well as the sources and uses of funds. Specifically, amounts incurred for legal and professional fees, real estate transfer taxes, closing costs, title insurance, loan origination fees and points, are ineligible. Similarly, land surveys, appraisals, demolition of existing structures, abatement of environmental hazards, escrow fees, filing fees, pre-construction period interest expense capitalized in accordance with Section 263A of the Code, Partnership organizational fees, and the like are also ineligible for Credit.

#### **L. COMPLIANCE WITH LAW AND COMMITMENTS**

The Applicant must agree that each building in the project will be owned, managed, and operated as a residential rental property consistent with Section 42 of the Code, federal law, the laws of the state of Washington, and the Commitments. The RAC and the Regulatory Agreement will set forth specific covenants, representations, and warranties of the Applicant with regard to these and other undertakings.

#### **M. INVESTOR LENDER NOTICE**

Within the time limits established by the Commission, the Applicant must provide a copy of the "Investor and Lender Notice" (in the form provided by the Commission) to each project lender and investor.

## **N. USE OF COMMISSION'S CONTRACTS, AGREEMENTS, AND OTHER LEGAL DOCUMENTS**

As provided in WAC 262-01-130(9), an Applicant must use the Commission's forms of legal documents, forms, and other materials.

The Commission's documents are not subject to negotiation. However, the Commission is willing to consider revisions that improve the accuracy and clarity of the material.

An Applicant or other participant in the Tax Credit Program may ask to revise or amend the language of the RAC, the Regulatory Agreement, or other documents of the Tax Credit Program if it finds an error, contradiction, or similar problem in the data or language of the documents. The request must be in writing and include any relevant documentation or support for the requested amendment.

Copies of the RAC and the Regulatory Agreement used by the Commission are available for review at the Commission's website and will be mailed to an Applicant or other party upon written request. The Commission anticipates that the 2009 RAC and Regulatory Agreement will be in substantially the same form as used in 2008, subject to revisions that the Commission determines are necessary or appropriate to address changes in the law or the Tax Credit Program. The Commission encourages Applicants to review those contracts and become familiar with its terms prior to submitting the Application.

## **O. PROJECT DISQUALIFICATION/CANCELLATION**

The Commission may disqualify the project and Application as well as cancel the Credit reservation and carryover allocation for the project if any of the following events occur:

1. The Applicant fails to comply with the requirements and policies of the Commission, including these *Policies*; or
2. The Applicant fails to comply with the terms, conditions, obligations, and restrictions in the Application, the RAC, or other legal documents for the project.

The Commission will have no duty or obligation to the Applicant, the lender, or investor upon termination of the project, Credit reservation, or carryover allocation and will bear no liability for the consequences of such termination or decrease of Credit. Furthermore, if the Applicant defaults, the Commission may bring an action to enforce the terms of its agreements or contracts, or seek recovery for damages.

## **P. ENFORCEMENT**

If an Applicant or project owner fails to comply with the QAP, the *Policies*, the RAC or the Regulatory Agreement, such Noncompliance will be considered an event of default and the Commission will be entitled to exercise any of the rights and remedies it may have under the Tax Credit Program. In addition, the Commission will be entitled to the rights and remedies it has the authority to exercise by law.

The Commission may prosecute any proceeding of law to seek recovery of monetary damages for the Applicant's failure to carry out and fulfill any contract entered into in connection with the Tax Credit Program. The Commission, if it prevails, will be entitled to its reasonable costs, disbursements, and attorneys' fees, together with all expenses it may have reasonably incurred.

In addition, the Applicant should understand that the Commission is required to report events of Noncompliance to the IRS regardless of whether the Noncompliance is corrected.

In addition, any resident or potential resident who meets the income limitations for the minimum low-income housing commitment or the Additional Low-Income Housing Commitment for the project, and/or meets the qualifications or restrictions for a Special-Needs Housing Commitment, may bring suit to enforce the terms, conditions, obligations, restrictions, covenants, representations, and warranties in the Regulatory Agreement. These persons may be a former, present, or a prospective resident of the project. These persons' rights are more explicitly set forth in the Regulatory Agreement.

Nothing in the *Policies*, the RAC or the Regulatory Agreement is intended, or should be construed, to create a duty or obligation of the Commission to enforce any term or provision of the *Policies*, the RAC, Regulatory Agreement, or any other Tax Credit Program document on behalf of, at the request of, or for the benefit of, any former, present, or prospective resident. The Commission assumes no direct or indirect obligation to any former, present, or prospective resident for violations by the owner or any other party.

## **Q. DEBARMENT**

Under certain circumstances, the Applicant or other parties associated with the Project may be barred from participating in the Commission's Tax Credit Program. The debarment rules and procedures are set forth in WAC 262-03-040. The rights and remedies of the Commission under the Tax Credit Program, the *Policies*, the RAC, the Regulatory Agreement, and other Tax Credit Program documents for breach and/or Noncompliance are in addition to, and not in lieu of, the rights and remedies the Commission has authority to exercise by statute, rule, or regulation, including, but not limited to, the debarment rules.

## **R. INDEMNIFICATION**

As a condition of submitting an Application, the Applicant agrees to at all times defend (with counsel reasonably acceptable to the Commission), indemnify and hold harmless and release the Commission, its successors and assigns, including their respective members, officers, employees, agents and attorneys, from and against any and all claims, suits, losses, damages, costs, expenses and liabilities of whatsoever nature or kind (including but not limited to attorneys' fees, litigation and court costs, amounts paid in settlement, amounts paid to discharge judgment(s), and any disallowance of tax benefits) directly or indirectly resulting from, arising out of, or related to: (i) the financing, acquisition, construction and/or rehabilitation, syndication, sale, management or operation of the project; (ii) any Noncompliance or failure to perform any covenant under the Application, the RAC, the Regulatory Agreement or any other Tax Credit Program document (collectively "Tax Credit Program Documents") (whether or not cured); (iii) any breach of a representation, warranty or covenant in a Tax Credit Program Document; (iv) any other act or omission (whether or not cured) constituting a default under a Tax Credit Program Document; or (v) the enforcement by the Commission, its successors and assigns of the Commission's rights and remedies under a Tax Credit Program Document or any Tax Credit Program Document.

An indemnified party may monitor and participate in the defense of any claim or suit and may select any law firm to do so. This may include any level of participation the indemnified party wants. The Applicant will promptly reimburse the indemnified party for all attorneys' fees, litigation and court costs, amounts paid in settlement, and other sums as described above that are incurred by the indemnified party.

Furthermore, as a condition of submitting an Application, the Applicant waives any right to bring legal action, on the Applicant's own behalf or on behalf of any other party, against the Commission for any matter for which the Applicant agrees to indemnify and hold harmless the Commission.

## **CHAPTER 3 PROGRAM LIMITS**

The Commission has established the following program limits (the “Program Limits”) for selecting projects for Credit reservations and allocations. The Applicant should demonstrate in the Application compliance with all the Program Limits.

In determining the amount of Credit to allocate, the Commission may reduce the budget and/or Credit to reflect the Program Limits listed below.

### **A. MAXIMUM CREDIT – WAC 262-01-130(7)**

As required by Section 42 of the Code, the Commission will allocate no more than the minimum amount of Credit needed to ensure that the project will be financially feasible and viable as a qualified low-income housing project throughout the credit period.

As part of the Commission’s Credit determination, the Commission will evaluate each project based upon the project’s feasibility and viability which includes examining the development and operational costs of each project as well as the market need and demand.

### **B. MAXIMUM DEVELOPMENT COST PER HOUSING UNIT – WAC 262-01-130(8)(a)**

The Commission encourages development at the lowest reasonable cost and will review development costs accordingly. The Applicant must provide a detailed breakdown of anticipated Total Project Costs exclusive of any amount attributable to any commercial portion. This breakdown must be updated if there is a change of 10% or more of the anticipated Total Project Costs.

The following outlines the Commission’s maximum development cost per unit policy:

- (1) The maximum development cost per unit is 110% of the statutory mortgage limit schedules for the FHA 221(d)(3) mortgage insurance program.
- (2) Land cost is excluded from the limit calculation. Reserves, Donation and Intermediary Costs are excluded from the limit calculation
- (3) Initial Credit determination is subject to project’s adherence to the HUD limits schedule for the Application year.
- (4) Final Credit determination is subject to project’s adherence to the HUD limit schedules for the year that the project places-in-service or the Application year, whichever is greater.

(5) The Applicant may request to have the maximum development cost limit raised if the project meets one or more of the adjustment criteria listed below.

A. 135% of the HUD mortgage limit schedules, because the project is subject to:

Competitive bid requirements;

Davis Bacon wage rates or state prevailing wage requirements; or

B. 150% of the HUD mortgage limit schedules, because the project meets the Allocation Criterion (and receives points) for the:

Housing for Large Households;

Housing for Persons with Disabilities;

Housing for the Homeless;

Rehabilitation projects; or

Farmworker Housing

C. 175% of the HUD mortgage limit schedules, because the project meets at least one of the requirements for A and received points for one of the requirements for B, above.

D. 200% of the HUD mortgage limit schedules, because the project consists of the rehabilitation of a historic property and meets least one of the requirements for "A" and receives points for one of the requirements for "B" above.

If the project receives Historic Tax Credits, it is eligible for a 25% increase in the respective maximum development cost limit.

This limitation of development costs applies for purposes of determining the Equity Gap and Credit amount. Although the costs in excess of the described limits will be excluded from these calculations, the source to cover excess costs will not be excluded. The Commission retains the right to disallow any development cost.

Subject to the approval of the Tax Credit Program Director, Applicants may request up to an additional 15% increase to the applicable limit. Applicants seeking to include this additional increase as part of the credit determination must receive approval in writing from the Tax Credit Program Director prior to submission of the Application. Any increase above this 15% must be approved by the Executive Director prior to submission of the Application and shall be reported to the Commission.

**C. MAXIMUM REHABILITATION/NEW CONSTRUCTION CONTINGENCY**

WAC 262-01-130(8)(b)

The maximum amount of Credit reserved or allocated to a project will be determined after limiting:

- (1) the rehabilitation contingency to 15% of the rehabilitation costs (i.e., rehabilitation costs, site work costs, and contractor profit & overhead);
- and
- (2) the new construction contingency to 10% of new construction costs (i.e., new construction costs, site work costs, and contractor profit & overhead).

The limitation on the rehabilitation/new construction contingency applies for the purposes of determining the Equity Gap and the Credit amount. Although any rehabilitation/new construction contingency in excess of the described limits will be excluded from these Equity Gap and Credit reservation calculations, the total sources of funds will be included. Hence, the Equity Gap and the maximum amount of Credit reserved or allocated to a project will be reduced by the amount that the rehabilitation/new construction contingency exceeds the applicable limitation.

**D. MAXIMUM ANNUAL CREDIT PER LOW-INCOME HOUSING UNIT –**

WAC 262-01-130(8)(c)

The maximum amount of Credit reserved or allocated to a project is \$14,440\* per low-income housing unit. For a project located in a qualified census tract (“QCT”), a difficult development area (“DDA”), or a rural county (see Rural Credit Set-Aside, Chapter 5, Section A(5) for list of rural counties), the maximum annual amount of Credit reserved or allocated is \$18,735\* per low-income housing unit.

If an Applicant submitted an Application in the immediately preceding year for a project located in a QCT/DDA, and the QCT/DDA designation no longer exists, the Commission will treat the project as if the QCT/DDA designation still applies for purposes of applying the credit per unit limit.

\*This limit shall adjust annually in concert with and at the same rate of any adjustment made to the per capita authority rate (currently \$2.10 per capita) as determined by the United States Department of Treasury. For purposes of 2009 allocations, this limit does not include the temporary per capita adjustment made under the Housing and Economic Recovery Act.



**E. MAXIMUM CREDIT PER APPLICANT –**  
WAC 262-01-130(8)(d)

When the Commission determines the amount of Credit to be reserved or allocated, it will limit the (i) Applicant, (ii) the Principals, (iii) the developer, and (iv) other parties directly or indirectly related to the Applicant or project (as determined by the Commission) to a maximum, in the aggregate, of the lesser of 2 projects or 15% of the lesser of:

- (1) the per capita Annual Authority available in a given year; or
- (2) the total Annual Authority available for that year.

This limitation will apply regardless of whether the Commission reserves or allocates an amount of Credit to the Applicant and other related parties as described in the proceeding paragraph, for only one project or for multiple projects. This maximum Credit does not apply to any limited partner or Credit investors in the project in their capacities as such.

**F. MAXIMUM CREDIT PER PROJECT –**  
WAC 262-01-130(8)(e)

Credit reservations and allocations to a single project are limited to not more than 10% of the lesser of:

- (1) the per capita Annual Authority available in a given year; and
- (2) the total Annual Authority Available for that year.

The Commission may, in its sole discretion, elect to make a reservation or allocation of Credit in an amount up to 15% of the lesser of (1) and (2) above. Included among the factors, the Commission will consider are Allocation Criteria selected, project ranking on allocation list together with the amount of Annual Authority available, and the impact of the project's credit request on other qualified projects.

*Note: At the time this Application Packet was published, the actual per capita authority for Washington State was not yet known. Please contact the tax credit staff for further direction if you are seeking the maximum allowable credit per project.*

If the amount of Credit that is reserved or allocated is less than the amount of Credit asked for, the Applicant must demonstrate the financial feasibility and viability of the project with the reduced amount of Credit.

For the purposes of this restriction, the Tax Credit Program Director may determine that it is appropriate to treat two or more otherwise separate projects, submitted by the same Applicant or by multiple Applicants, as a single project if the Tax Credit Program Director determines that the projects and/or buildings have substantially common characteristics or attributes.

In making this determination, the Tax Credit Program Director may consider, among other factors:

- (1) location;
- (2) plan and design;
- (3) projected tenant base and set-asides;
- (4) financing; and/or
- (5) the identity of the Applicants, owners, developers, lenders, contractors and/or other parties engaged in connection with each project

#### **G. MAXIMUM CREDIT BASED ON LOCATION**

The amount of Credit recommended by the Commission staff for projects from King County will be limited to a maximum of 40% of the lesser of:

- (1) the per capita Annual Authority available in a given year; or
- (2) the total Annual Authority available for such year.

The Commission will increase the portion of the available Annual Authority for projects from King County if the remaining portion of the Credit available to the last highest-ranked project from King County selected by the Commission for a Credit reservation and/or allocation equals at least 50% of the total amount of Credit needed for the project's feasibility and viability throughout the credit period. The portion of the Annual Authority will be increased by the amount of additional Credit needed for the above project's feasibility and viability throughout the credit period. In addition, the Commission will award additional Credit to projects from King County if there are no other qualified projects available to use the balance of the Commission's Annual Authority.

#### **H. MAXIMUM DEVELOPER FEES – WAC 262-01-130(8)(f)**

The Commission will only consider developer fees in the aggregate, up to 15% of Total Project Costs, less the requested developer fee amount. For this purpose, developer fees include all consultant fees (other than arms length architectural, engineering, appraisal, market study and syndication costs) and all other fees paid in connection with the project for services that would ordinarily be performed by a developer, as determined by the Commission.

For acquisition/rehabilitation projects where the cost of rehabilitation is less than 25% of the reasonable "as-is value" of the building, the Commission will only allow in eligible basis developer fees up to 10% of Total Project Costs less the requested developer fee amount. Total rehabilitation costs consist of the budget categories of site work, rehabilitation, contractor overhead and profit, and contingency. The Commission may require the Applicant to submit a copy of a current appraisal to establish the building's as-is value.

If there is an increase in land cost in a transaction between Related Parties or other parties with an Identity of Interest (a “Related Buyer and Seller”), the Commission may require the Applicant to submit a copy of a current appraisal to establish the land value. The Commission may limit the land costs included in the Total Project Costs. If any portion of the increased land cost in a transaction between a Related Buyer and Seller is accepted by the Commission, the amount of the increased land price will be deducted from the lesser of the developer fees listed in the Applicant’s project budget or the maximum developer fees applicable to the project. If land improvements have been completed by a Related Party or other person having an Identity of Interest to the Applicant, the work should be itemized on the project’s budget and not included as an increased land cost.

For the purpose of this policy, intermediary costs, reserves and any amounts attributed to commercial areas or other non-residential areas are not considered part of the Total Project Costs. Intermediary costs are expenses involved in selling the Credit to raise equity capital and include syndication fees, partnership organizational costs, reserves, and broker fees.

**I. MAXIMUM CONSULTANT FEES –**  
WAC 262-01-130(8)(f)

Consultant fees (other than arms length architectural, engineering, property appraisal, market study, and syndication costs) must be included in the developer fees limit set forth above.

**J. MAXIMUM CONTRACTOR’S PROFIT AND OVERHEAD –**  
WAC 262-01-130(8)(g)

When the general contractor is a Principal, Related Party or otherwise has an Identity of Interest with the Applicant or project owner, the Commission will limit the contractor’s combined profit and overhead to 10% of total rehabilitation/construction costs plus site work costs.

**K. HUD SUBSIDY LAYERING LIMITATIONS**

The Commission may limit the amount of Credit reserved or allocated to a project that also receives HUD housing assistance before IRS Form 8609 is issued, based on the administrative guidelines or regulations published by HUD and/or the IRS regarding limitations on combining other government assistance with HUD housing assistance.

**L. OTHER LIMITATIONS –**  
WAC 262-01-130(8)

If the Commission determines that additional Program Limits are necessary or appropriate, it may make additions or modifications to the Program Limits regarding any project.

## **CHAPTER 4 MINIMUM THRESHOLD REQUIREMENTS**

All projects must meet the minimum threshold requirements listed below (the “Minimum Threshold Requirements”) by the Application deadline in order to be considered for a Credit reservation and allocation.

The Applicant is responsible for demonstrating to the satisfaction of the Tax Credit Program Director that the project meets all of the Minimum Threshold Requirements. Projects that do not meet all of the Minimum Threshold Requirements will be disqualified and will not be eligible for a Credit reservation or allocation. The Applicant may be able to request a review of this determination by the Executive Director or his designee using the procedures described in Chapter 12, Decisions and Reviews.

### **A. COMPLETE APPLICATION AND APPROPRIATE FEE – WAC 262-01-130(1)**

The Applicant must submit a complete, legible, and executed Application. The Applicant must include all required attachments and the appropriate Application fee by the deadlines established by the Commission. The Applicant must use the Commission’s Application forms.

The Application, attachments, and Application fee must be received by the Commission at its office no later than 5:00 p.m. Pacific Standard Time on the Application deadline. No late Applications will be accepted.

The Applicant may pay the fee with a business or personal check, a money order, or a cashier’s check. Cash is not accepted. An Application submitted with a check that is returned for insufficient funds will be disqualified and not considered further. The check will be returned to the Applicant.

The Applicant should include all of the required attachments to show that the project meets:

- (1) the requirements for any Credit Set-Aside category the Applicant has selected;
- (2) the Minimum Threshold Requirements; and
- (3) all Allocation Criteria the Applicant has selected for the project.

Resolutions and/or consents demonstrating authority to sign must be provided for each entity that is a party to the Application. A sample authorization is provided on the Commission website at [www.wshfc.org/tax-credits/](http://www.wshfc.org/tax-credits/).

Material changes to an Application will be permitted only at the discretion of the Tax Credit Program Director. If the Applicant desires to make a material change to the Application after it has been submitted and the Tax Credit Program Director refuses

to permit the change, the Application must be canceled and a new Application and fee must be submitted before the expiration of the deadlines referenced above. The Tax Credit Program Director will decide whether a change to the Application is “material.”

For purposes of considering project eligibility for Credit, satisfaction of the Minimum Threshold Requirements, project Allocation Criteria points, Credit Set-Asides, and project rankings, the Commission will only consider the material and information that is included in the Application when it is first submitted to be considered, except for (i) changes permitted by the Tax Credit Program Director as described in the preceding paragraph and (ii) material accepted during a Correction Period (as described in Section B below).

## **B. CORRECTION PERIOD**

If the Tax Credit Program Director determines that an Application is substantially complete but an item is missing, incorrect, or needs clarification, the Applicant will have five business days from receipt of written notice from the Commission to deliver the required information to the Commission. At the discretion of the Commission staff, additional time may be permitted to submit the required information. The written notice will be sent to the address of the contact person identified in the Application. If the Applicant fails to submit the required information within the required time period (including extensions), the Tax Credit Program Director may disqualify the Application.

The Correction Period does not apply to any Application that is not substantially complete as determined by the Tax Credit Program Director. The Correction Period provision may not be used to change the Credit Set-Aside category or the number of Allocation Criteria Points selected for a project.

## **C. REQUIREMENTS, DISCLOSURES AND PROGRAM LIMITS**

The Applicant and/or the project must comply with all of the requirements and disclosures listed in Chapter 2 and the Program Limits listed in Chapter 3, respectively.

## **D. FEDERAL IDENTIFICATION NUMBER – WAC 262-01-130(2)(a)**

Each entity/applicant must provide a copy of the IRS notification letter informing them of their federal identification number.

**E. SITE CONTROL –**  
WAC 262-01-130(2)(b)

The Applicant must have control of all land necessary for the project by the Application deadline and submit evidence of that control and a site map such as a tax assessor's map, recorded survey, etc. with the Application. Acceptable evidence of site control is a document that has a complete and accurate legal description and is either:

- (1) a recorded deed or conveyance showing that the Applicant has ownership;
- (2) a valid purchase and sale agreement;
- (3) a valid option to purchase;
- (4) a valid and recorded long-term lease<sup>1</sup>;
- (5) a valid option for a long-term lease<sup>2</sup>; or
- (6) other evidence approved in advance in writing by the Commission.

The Applicant should be sure that the name on the evidence of site control and the Application is exactly the same. The site control document should also identify the exact same area as the project site listed in the Application and the exact same cost for the land and/or existing buildings for the project referenced in the Total Project Cost budget provided with the Application. If the site described in the Application and the site control document are not exactly the same, the Applicant should provide a narrative description and supporting documentation to clarify how the area and cost for the project were established.

The Commission will only accept one Application for a specific site or for any part of the same site, regardless of whether Applications are submitted by the same Applicant or by multiple Applicants. If there is more than one Application received for the same site, or any part of the same site, the Commission will immediately disqualify all of the Applications. The non-refundable Application fee for each Applicant will be retained by the Commission.

If the Commission questions the reasonableness or appropriateness of the land costs for a project, the Applicant may be required to submit a copy of an appraisal with an effective date within 6 months of the transaction and acceptable to the Commission to establish the value of the land. The Commission reserves the right to limit the land costs included in the Total Project Costs for a project when evaluating the Credit amount.

The Applicant should be aware that the Credit reservation and allocation of Credit for a project is site-specific. The Applicant must identify in the Application any changes that are anticipated in the legal description for the project site, including a narrative description and drawings to explain the planned changes (e.g., a land survey,

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<sup>1</sup> The minimum term must be the term of the Regulatory Agreement (Extended Use Agreement).

<sup>2</sup> Ibid

partition, subdivision, etc.). The final legal description must be consistent with the planned site changes identified in the Application.

## **F. TITLE REPORT**

The Applicant must include a title report that is dated not more than 60 days prior to the Application date that shows that the ownership of the land containing each site is vested in the exact same name as either the Applicant or the person/entity with which the Applicant has executed an option to purchase, a purchase and sale agreement, a long-term lease option, a long-term lease, or other acceptable evidence of site control approved in advance in writing by the Commission.

The title report must identify all encumbrances and liens upon the land and include a complete and accurate legal description.

## **G. RELOCATION PLAN – WAC 262-01-130(2)(d)**

If there are any tenants residing on the proposed project site, the Applicant must submit a relocation plan approved by the appropriate government authority. Be sure to review the landlord/Tenant Act, RCW 59.18.010. The plan must be approved in writing by a local government Commission that has jurisdiction over tenant relocation issues, such as a planning or community development department or housing authority.

In the absence of a local policy, Applicants are required to notify existing households of the proposed financing within 10 days following the real estate closing. It will be the responsibility of the Applicant to ensure proper notice is given to all existing residents and sufficiently posted in common areas of the property. Notice should include information regarding transfer of ownership and any and all potential restrictions on income, rent and/or populations served as a result of the proposed financing. Tenants must also be advised of where to obtain further information. Once notification has taken place, a copy of the notification must be submitted to the Commission.

To help minimize displacement, unit turnover will be allowed for units occupied by households with incomes at or below the 60% AMGI, but above income levels pledged in the Application. Once the Project places in service, all units must be rented at turnover to households meeting all program commitments with the additional low income set-asides being filled first.

Commission staff is available and will work proactively to link sponsors and potentially displaced households with the Commission's Homeownership Division to explore the possibility that some displaced households could transition into homeownership.



**H. CONSISTENCY WITH STATE OR LOCAL CONSOLIDATED PLAN –**  
WAC 262-01-130(2)(e)

All projects must be consistent with the state or local consolidated plan at the time that the Application is submitted, and the Applicant must submit adequate evidence consistent with the Plan. Specifically,

- (1) For projects located in communities covered by a local consolidated plan, the Applicant must submit a letter (dated within 60 days of the Application date) from the local government planning or community development department or housing authority responsible for administering the consolidated plan. The letter must:
  - (a) identify the specific consolidated plan;
  - (b) state that the project is consistent with the consolidated plan; and
  - (c) indicate that the project is responsive to local housing needs described in the consolidated plan.
  
- (2) For projects located in communities not covered by a local consolidated plan, the Applicant should submit a letter dated no later than 60 days prior to the Application date from the local government where the project is located which describes local housing needs and states that the project is responsive to those needs.

**I. MARKET STUDY –**  
WAC 262-01-130(2)(c)

A complete market study must be submitted with the Application. The market study must satisfy the requirements of this chapter, the Application and Section 42 of the Code. An independent third party analyst, using generally accepted principles and theory, must prepare the market study. The analyst must be included on the Commission's list of approved providers\*. The analyst must have demonstrated experience in the proposed project's market area and with the rent restricted market. The market study must have an effective date no more than 6 months prior to the date that the Application is submitted to the Commission. An update of a market study will be accepted, at the Commission's discretion, if the effective date of the original market study is within 12 months of the Application deadline.

The market study must demonstrate to the Commission that the project is creating, preserving, or renovating housing that current market forces are not addressing. In addition, the market study must address current market conditions and determine that the project is viable and provides units at below market rents or gives some other public benefit.

The Commission will accept a current appraisal (same "currency" guidelines as above) in lieu of the required market study, provided that the market analysis and

rent discussion sections include the information listed below. In addition, at the Commission's discretion, the Commission may require further market justification of the project, or accept a market study in a different format. Any deviation from the market study requirements must be approved in writing by the Commission prior to submission of the Application.

\*The approved list, along with instructions for being added to the list, may be found on the Commission website at [wshfc.org/tax-credits/msprovider.htm](http://wshfc.org/tax-credits/msprovider.htm) or by contacting the Tax Credit Division. Please contact the Tax Credit Division to determine how an analyst can be added to the list.

*Note: The Commission reserves the right to contact the market analyst as needed.*

### **Minimum Requirements (Guidelines for Market Analysts)**

- I. EXECUTIVE SUMMARY
- II. PROJECT DESCRIPTION
  - (A) Description of Market Area (general and specific)
  - (B) Site Amenities (include any unique characteristics)
  - (C) Description of Improvements (as available in the case of new construction)
    - (1) Unit mix, unit amenities, common amenities
    - (2) Comparison to market rate projects (does project have typical finish, amenities found in local market)
    - (3) Comparison to other rent restricted projects
- III. MARKET AREA ECONOMY
  - (A) Delineation of market area
  - (B) Population and household trends
  - (C) Housing trends, including proposed projects and other new developments
  - (D) Supply and Demand Analysis
    - (1) Market Rate Supply
      - a. Existing
      - b. Potential/Developing
    - (2) Market Rate Demand
      - a. Vacancy rates, incentives
      - b. Rent Trends
      - c. Absorption
    - (3) Rent-Restricted Supply (discuss HUD-assisted housing, TC projects, other subsidized projects, and public housing, as applicable)
      - a. Existing
      - b. Potential/Developing
    - (4) Rent-Restricted Demand
      - a. Vacancy Rates

- b. Market Penetration Analysis (using income banding – min. and max. income for project)
- c. Projected Absorption for project
- (5) Analysis of project's special-needs set asides, if applicable.
  - a. Statistical and anecdotal information from appropriate social service agencies
  - b. Analysis of specific demand for special needs units.
- (6) Conclusion: Proposed project's competitive position

#### IV. COMPETITIVE RENTAL MARKET

Description of Comparable Properties, both **market rate** and **rent restricted**

- (1) Analysis of rents, including amenities and utilities
- (2) Conclusion of Rents by unit type

V. Analysis of Rent Gap (Gap between maximum restricted rents, projected restricted rents and market rents)

VI. Analysis of the project's effect on the market area, including the impact on Tax Credit and other existing affordable rental housing

#### VII. CONCLUSION

(A) Specific Questions

- (1) Is the project, as proposed, viable?
- (2) Does the project meet a current or projected market need?
- (3) Does the project supply units below market rate?
- (4) If not, does the project provide some other public benefit?  
(i.e. Curing deferred maintenance or supplying better housing than currently available, holding rents stable in a market of increasing housing prices, or supplying reasonably-priced housing where there is a shortage?)

(B) Summary

- (1) Recap of project
- (2) Conclusion and Recommendations

#### J. EVERGREEN SUSTAINABLE DEVELOPMENT STANDARD (ESDS)

All projects must comply with the Evergreen Sustainable Development criteria as developed under legislative mandate by the State of Washington Department of Community, Trade and Economic Development (DCTED). Although initially developed for applicants to the Housing Trust Fund, all Applicants to the Low Income Housing Tax Credit Program, regardless of their funding sources, will be held to the Evergreen standard. This applies to projects combining tax-exempt bonds and tax credits as well as to those projects financed with competitive tax credits. Specific

information regarding the ESDS can be found online at <http://www.cted.wa.gov/site/1027/default.aspx>.

Projects financed through DCTED will not be required to submit any additional materials at application. As part of the placed-in-service documentation, they will be required to submit evidence from DCTED that all requirements of the Evergreen Standard have been met.

All other projects applying for Low Income Housing Tax Credits must submit the *Evergreen Sustainable Development Standard Checklist* as well as the *Evergreen Owner Certification* along with their Application. The Evergreen Owner Certification attests that the Applicant has read and understands the Evergreen Sustainable Development Standard as posted on the DCTED website. Projects must meet all mandatory criteria and must score a minimum of 40 option points for rehabilitation projects or 50 points for new construction projects.

As part of the placed-in-service package for these projects, the Applicant will supply a copy of the *Evergreen Project Implementation Plan*. This document will document exactly how the project met each of the criteria indicated in the *Evergreen Sustainable Development Standard Checklist*. It will be accompanied by an architect's certification attesting to the information supplied in the *Plan* and the *Plan's* implementation.

Failure to comply with this requirement may result in a temporary suspension from the program. Such action will be considered on a case-by-case-basis.

#### **K. AFFIRMATIVE MARKETING PLAN (AMP)**

The Applicant must provide an AMP. The AMP should detail the Applicant's marketing activity to all communities in the area, including typically excluded groups, such as communities of color and special needs populations. This plan should include racial or ethnic organizations and referral agencies contacted, advertising in publications targeting specific racial or ethnic groups, if applicable, and other similar strategies. If a project proposal commits to serving any Special Needs population, the AMP must also identify marketing methods and referral agency contact information.

If the project is currently occupied, the Applicant must provide the AMP with the Application, and in addition to the elements listed above, the AMP must outline the demographics of the current population being served.

New Construction Projects must provide the AMP 6 months prior to placing the first building in service.

**L. DEVELOPMENT TEAM CAPACITY –**  
WAC 262-01-130(2)(g)

The Applicant must submit a statement of experience with the Application for the Applicant, the developer, and, if applicable, a project management consultant. The Applicant must demonstrate to the satisfaction of the Tax Credit Program Director, that the Applicant, the developer, and/or the project management consultant under contract with the Applicant:

- (1) has successfully completed a multifamily housing project of a comparable number of housing units and of a similar complexity as the proposed project<sup>3</sup>;
- (2) has the necessary level of staffing and financial capacity to successfully manage development and operations of the current project portfolio, including but not limited to, all current and pending tax credit projects and applications; and if applicable
- (3) has successfully completed previous Credit projects for which a Credit allocation was received in Washington or other states.

If the Applicant is using a project management consultant to show this capacity, the Applicant must also submit a copy of the executed contract detailing terms, conditions, and responsibilities between the Applicant and the project management consultant.

**M. PROPERTY MANAGEMENT CAPACITY –**  
WAC 262-01-130(2)(h)

If the Applicant is going to employ a property manager with respect to the project, the Applicant must provide a document detailing the experience level of the proposed property management consultant that demonstrates that the consultant has successfully managed:

- (1) a multifamily housing project of a comparable number of housing units and/or of a similar complexity as the proposed project, and
- (2) a multifamily assisted or subsidized housing project with local, state, and/or federal operating requirements comparable to those of the Tax Credit Program.

Additionally, the Applicant must provide the letter of intent or an executed property management agreement at the time of the application.

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<sup>3</sup> And for a similar target population if the Applicant selected any additional housing commitments.

## **N. CONSULTANT CONTRACT**

If consultant services and corresponding fees are not detailed in the developer agreement, the Applicant must submit a copy of each consultant contract that itemizes the services to be performed by each consultant and the amount of the consultant fee for each service or group of services.

## **O. FINANCIAL FEASIBILITY –** WAC 262-01-130(7)

The Applicant must submit a 15-year operating pro forma for the project demonstrating financial feasibility and viability for the 15 year compliance period. The operating pro forma must list each year (1-15) separately and include assumptions, notes and explanations regarding the income and expense projections.

Absent a long-term commitment, projects with rental assistance must demonstrate financial feasibility excluding the rent subsidy.

If the project includes commercial and/or other non-residential space, the Applicant will need to submit with the Application the following information and supporting documentation in addition to the residential pro forma requested above:

- (1) a breakdown of the total residential and commercial project costs;
- (2) a list of the financing sources for the commercial areas;
- (3) a separate 15 year operating pro forma for the commercial areas, including the assumptions for the commercial income projections and expenses;
- (4) a combined 15 year operating pro forma for the residential and commercial areas.

All of the forms an Applicant will need to submit for residential and commercial/non residential Applications are provided on the Commission website at [www.wshfc.org/tax - credits/](http://www.wshfc.org/tax - credits/).

## **P. NOTIFICATION OF PUBLIC HOUSING AUTHORITIES –** WAC 262-01-130(2)(f)

The Applicant must provide a copy of the written commitment letter in the form described below, dated no earlier than 60 days before the date of the Application, addressed to the relevant public housing authority or to such other agency authorized to act in lieu of a public housing authority where no public housing exists<sup>4</sup>.

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<sup>4</sup> If there is no public housing authority and no other agency authorized to act in lieu of a housing authority serving the community where the Project is located, this requirement is waived.

In the commitment letter the Applicant must:

- (1) identify the location, the planned number of low-income housing units, the target population and the expected placed-in-service date for the proposed project;
- (2) agree to notify the public housing authority or other such agency, in writing, of the availability of low-income housing units at least 60 days before the placed-in-service date of each building in the project;
- (3) agree to notify the public housing authority or other such agency, in writing and at least once a year, of the ongoing availability of low-income housing units; and
- (4) encourage the public housing authority or such other agency to make the above notices available in any way it deems appropriate to those people on a waiting list for public housing programs.

This requirement does not apply if the housing authority is the project owner or its general partner.

**Q. MINIMUM NUMBER OF ALLOCATION CRITERIA POINTS –**  
WAC 262-01-130(3)(a)

Except as noted otherwise, the Applicant must select Allocation Criteria in the Application that total at least 130 Allocation Criteria points. Any Application that does not have at least 130 Allocation Criteria points will be disqualified. Bond-financed projects must score a minimum of 50 points.

For Applicants submitting projects seeking to compete in the Credit Set-Aside for Rural Development projects (Chapter 5), the Applicant must select Allocation Criteria in the Application that total at least 95 Allocation Criteria points. In order for Rural Development project Applications to be considered outside the Credit Set-Aside for Rural Development projects (i.e. to compete for and receive Credit from the general pool), the Applicant must select Allocation Criteria in the Application that total at least 130 Allocation Criteria points.

The Applicant is responsible for demonstrating that the project should receive Allocation Criteria points for a specific Allocation Criterion.

**R. CORPORATIONS, PARTNERSHIPS AND LIMITED LIABILITY COMPANIES AS APPLICANTS AND PROJECT OWNERS**

If an Applicant is a corporation, partnership or limited liability company, the requirements listed below must be met. The Applicant cannot submit an Application on behalf of any entity that has not been formed. If the entity has not been formed by the date of Application submission, the Applicant may subsequently satisfy these requirements and transfer the Applicant's rights, title, and interest in the project, the Application, the Credit reservation, and/or the carryover allocation, as applicable, to the entity; however, the Applicant may do so only if it satisfies the requirements

established by the Commission to approve a project transfer or assignment. (See Chapter 9).

**Entity Documents** – The following items must be submitted with the Application:

- (1) A complete copy of the current partnership agreement or limited liability company agreement and any documents or agreements that set forth the rights, duties, and obligations of each partner, member and/or manager, as the case may be;
- (2) An organizational chart or diagram that identifies each entity or individual with an ownership interest in the project and the Applicant, including the percentage of ownership.
- (3) A Certificate of Existence/Authorization issued by the Washington Secretary of State. This document must be dated within 60 days of the Application date;
- (4) In the case of a general partnership, the Applicant must submit a Certificate of Existence/Authorization issued by the Washington Secretary of State for each limited partnership, limited liability company or corporate entity.

**Additional Requirements for Foreign Entities**

- (5) In the case of an entity which is incorporated or organized outside Washington, the Applicant must submit a Certificate of Existence/Authorization from the state of incorporation or organization.
- (6) In the case of a general partnership with a partner which is a corporation, limited partnership, or limited liability company that is incorporated or organized outside Washington, the Applicant must submit with the Application a Certificate of Existence/Authorization from such foreign entity's state of incorporation or organization.

**S. DISQUALIFICATION –**  
WAC 262-01-130(3)(a)

The Commission may disqualify any Application that does not meet by the Application date, the requirements and disclosures listed in Chapter 2, Program Limits, and Minimum Threshold Requirements. The Applicant may be able to request this determination be reviewed using the procedures described in Chapter 12, Decisions and Reviews.



**T. OTHER REQUIREMENTS –**  
WAC 262-01-130(2) and (3)(a)

If the Commission decides that additional Minimum Threshold Requirements are necessary or appropriate, it may make additions to or modifications of the Minimum Threshold Requirements for any project.

## **CHAPTER 5 PROJECT RANKING PROCEDURES AND CREDIT SET-ASIDES**

This Chapter explains the credit set-asides (the “Credit Set-Asides”) that have been established by the Commission and the Commission’s procedures for ranking Projects and awarding Credit. The Allocation Criteria and point system used by the Commission for ranking Projects are set forth in Chapter 6.

### **A. PROJECT RANKING PROCEDURES**

#### *1. COMMISSION PRIORITIES – WAC 262-01-130(5)*

For the purposes of ranking projects and allocating credit dollar amounts, the Commission will give preference to fully funded projects that serve the lowest income tenants, that are obligated to serve low-income tenants for the longest period of time, and that are located in qualified census tracts and the development of which will contribute to a concerted community revitalization plan. In determining housing priorities, the Commission will consider sponsor and project characteristics. The Commission will give weight to those projects which, among other things:

- (1) Are located in areas of special need as demonstrated by location, population, income levels, availability of affordable housing and public housing waiting lists;
- (2) Commit units to serving special needs populations such as large households, the elderly, the homeless and/or the disabled;
- (3) Preserve federally assisted projects as low-income housing units;
- (4) Rehabilitate buildings for residential use;
- (5) Include the use of existing housing as part of a community revitalization plan;
- (6) Have received written authorization to proceed as a United States Department of Agriculture - Rural Housing Service multifamily new construction project approved by the Commission;
- (7) Are historic properties;
- (8) Are located in targeted areas;
- (9) Leverage public resources;

- (10) Maximize the use of credits;
- (11) Demonstrate a readiness to proceed;
- (12) Serve tenant populations of individuals with children; and
- (13) Are intended for eventual tenant ownership.

In accordance with the methods and procedures described in this Chapter and Chapter 6, the Commission will rank projects based on the degree to which they meet the housing priorities described above.

## 2. IMPLEMENTATION AND INTERPRETATION OF THE ALLOCATION CRITERIA

Commission staff will use the Allocation Criteria (as described in Chapter 6, Allocation Criteria) and the points assigned to the Allocation Criteria to assess the degree to which the proposed projects promote the Commission's housing priorities. The points associated with these Allocation Criteria, when satisfied, facilitate ranking of projects by the staff.

If projects receive equal scores, priority in the staff's recommendations for Credit reservations and allocations will be given to the project that requests the least amount of Credit. If projects receive equal scores and request the same amount of Credit, priority in the staff's recommendations for Credit reservations and allocations will be given to the project that requests the least amount of Credit per housing unit.

The Applicant is responsible for showing in the Application the project meets all the Allocation Criteria selected, but the Tax Credit Program Director will decide if a project should receive Allocation Criteria points for a specific Allocation Criterion.

## 3. FULLY FUNDED PROJECTS

For purposes of ranking projects and allocating credit dollar amounts, the Commission will give top priority to Applications satisfying the Fully Funded Projects criteria. To be eligible for the Fully Funded Projects priority, Applicants must demonstrate to the satisfaction of the Commission that at the time of Application, all necessary funding commitments have been made. There no longer will be any allocation points tied to "Project Readiness".

Proof of funding commitment must be demonstrated as follows:

- (a) For funding from *public resources*, provide evidence of binding loan commitments or other documentation that is deemed acceptable by the Commission for 100% of permanent/takeout financing to meet the Total

Project Costs less the anticipated proceeds from the sale of the Credit. (Lender confirmation may be sought by Commission staff to verify extent of commitment.)

- (b) For funding from private sources:
  - (i) Provide a letter of interest from expected lender.
  - (ii) Provide lender ordered appraisal (Note: appraisal may serve to fulfill market study requirement provided it satisfies all required market study elements. Refer to market study policy in Chapter 4 of the Policies for detail).

Projects seeking consideration under this Fully Funded Projects criterion must also achieve a minimum of 132 total allocation points (Readiness Score), calculated as: total allocation points selected less “Housing Needs” points, in order to be considered “fully funded”. Projects competing in the Rural Development Credit Set-Aside must achieve a minimum Readiness Score of 105 points.

$\text{Readiness Score} = \text{Total allocation points selected} - \text{Housing Needs Points}$
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Projects applying with a Readiness Score of less than this 132 point minimum, regardless of whether they have all funding committed, will not be considered as a “fully funded project” and for project ranking purposes they will be considered in rank order after all fully funded projects have been accounted for.

Credit set-asides (with the exception of the temporary Hope VI Credit Set-Aside) will be filled first with projects satisfying the Fully Funded Projects criterion, in rank order and subject to existing Credit Set-Aside policies. Likewise, priority will be granted, in rank order to fully funded projects for consideration in the General Pool.

Projects involving RD financing must submit a fully executed RD-issued Letter of Conditions along with the Application.

Once all fully funded projects have been appropriately placed on the allocation list, priority will then be given in rank order to the highest scoring project for the purposes of filling under subscribed Credit Set-Asides or placement in the General Pool or Waiting List.

Unless stated otherwise, projects not satisfying the Fully Funded Projects criterion will not be considered over projects that have.

This policy does not apply to tax-exempt bond-financed projects.

#### 4. NIMBY EXEMPTION POLICY

Under the NIMBY Exception Policy, the Commission may give the highest priority for a new allocation of tax credits to projects it determines have satisfied certain conditions, regardless of the Application's total point score.

To be considered, projects must satisfy the following conditions:

- (1) The applicant submits substantially the same project proposal;
- (2) The applicant satisfactorily demonstrates their case for consideration;
- (3) The Applicant demonstrates that the proposal has substantially prevailed against the issues causing delays;
- (4) The resubmitted project does not score enough points to receive an allocation of credit; and
- (5) The project remains viable and feasible.

Projects recognized under the NIMBY Exception policy must pay a new Application fee but may be credited any Credit Reservation Fee paid previously.

Credit allocated under this policy will be allocated outside of all Credit Set-Asides and therefore hold harmless those set-asides. Credit returned involving a King County project will be added to and therefore not counted against the current year's "King County 40% cap."

#### 5. DECISIONS REGARDING CREDIT RESERVATIONS AND ALLOCATIONS

The Tax Credit Program Director will make determinations regarding whether a project meets the Minimum Threshold Requirements, and if so, whether a project qualifies for a Credit Set-Aside category or an award of Allocation Criteria points. The Applicant may request that determination by the Tax Credit Program Director with respect to these matters be reviewed by the Executive Director or his designee using the procedures described in Chapter 12, Decisions and Reviews. The Commission will generally not consider any complaint or argument about the Tax Credit Program Director's determinations that an Applicant could have raised through these review procedures, if the Applicant has not sought and obtained such review.

Commission staff will recommend that Credit reservations and allocations be awarded beginning with the highest ranked project to the lowest ranked project until the total available Annual Authority is consumed.

This process will be subject to the Credit Set-Aside categories described in this Chapter 5 and Program Limits described in Chapter 3. In addition, all Credit reservations and allocations will be contingent upon the Applicant and the project, as the case may be, meeting all applicable requirements. Projects will also be evaluated on their feasibility and viability as qualified low-income housing projects. This will include an examination of the development and operational costs of each project as well as the market need and demand.

As part of their recommendations, Commission staff may also present any anomalies or concerns regarding the project ranking, any market need/demand issues (e.g., the appropriateness of the number of low-income housing units in a given area or the impact of the proposed project on existing rental housing), or other significant items which may be necessary for the Commissioners to consider along with the project ranking.

Although it will receive the staff's recommendations, the Commissioners alone will determine whether a project should receive a Credit reservation and/or allocation from the Annual Authority and the amount of the Credit. The staff's recommendation of projects to receive Credit reservations and/or allocations based on their Allocation Criteria points and their ranking is intended to be advisory only and is not binding on the Commissioners. While the Commissioners may elect to approve those rankings without change, it may also determine that a different ranking is appropriate. Ordinarily the Commissioners' determination will be made at the conclusion of a public hearing. The Commissioners may, however, approve or defer action on one, some, or all projects.

The Commissioners may also direct the Executive Director to make findings or take other action to address an issue of concern to the Commissioners, following which the Commissioners will make a final decision that cannot be appealed.

Any person intending to present testimony at a public hearing that addresses the staff's recommendations for projects to receive Credit reservations and/or allocations should deliver to the Commission a written summary of his or her planned testimony no later than 24 hours before the time the public hearing is scheduled to begin.

## 6. *WAITING LISTS*

When the number of qualified projects exceeds the available Annual Authority, projects not awarded Credit will be placed on a waiting list. These projects will be listed in the order described under these Policies unless otherwise determined by the Commissioners. Based upon this project ranking process, if projects remain tied, priority for Credit will be given to the Application that is requesting the least amount of Credit, except that, if projects receive equal scores and also request the same amount of Credit, priority for Credit will be given to the Application that requests the least amount of Credit per housing unit. In the event a project being considered for a

Credit reservation or allocation either withdraws or is cancelled, projects on the waiting list may move up from the waiting list and thereby contend for Credit.

If, due to insufficient Annual Authority, the last project to receive a Credit reservation or carryover allocation in any round receives a carryover allocation for only a portion of the Credit needed for the project, the Commission may choose to issue the project a reservation of the balance of Credit needed for the project in a succeeding round, if there is one, for that year or provide the project a Forward Credit Commitment of the balance of Credit needed from the following year. The Forward Credit Commitment will be contingent upon having Annual Authority available in the following year, among other conditions.

## *7. FORWARD CREDIT COMMITMENT*

The Commission may choose to provide a Forward Credit Commitment to one or more projects. The Commission may, in its discretion, commit up to 20% of the following year's anticipated Annual Authority for this purpose.

The Applicant of a project selected for a Forward Credit Commitment must comply with the requirements and conditions set by the Commission by, for example, entering into a Forward Credit Commitment contract. The Forward Credit Commitment will be contingent upon having Annual Authority available in the following year. Thus, the Forward Credit Commitment contract may be executed even though it is uncertain whether there will be any available Annual Authority. The Applicant should be aware of the risks of proceeding with a project given this uncertainty.

## **B. CREDIT SET-ASIDE CATEGORIES**

Pursuant to WAC 262-01-130(6), the Commission has established specific percentages of the Annual Authority for Credit Set-Asides.

The Applicant must demonstrate the project's eligibility for the selected Credit Set-Aside category. The Tax Credit Program Director will make final determinations regarding the eligibility of Projects for these categories.

The Applicant may select only *one* Credit Set-Aside for a project. The desired Credit Set-Aside must be identified in the Application and, once selected, is irrevocable and binding upon the Applicant including any subsequent owner of the project. If the Applicant fails to select a category or demonstrate that the Applicant or the project is eligible for a particular category, the project will be considered only for the balance of the Annual Authority remaining after the Credit Set-Asides.

## 1. CREDIT SET-ASIDE FOR PROJECTS SPONSORED BY QUALIFIED NONPROFIT ORGANIZATIONS

Ten percent of the total amount of Annual Authority will be set aside for projects that will be owned directly or indirectly by an organization that is a Qualified Nonprofit Organization as required under Section 42(h)(5) of the Code and WAC 262-01-130(6)(a).

To be considered a Qualified Nonprofit Organization, the organization must be described in Section 501(c)(3) or Section 501(c)(4) of the Code and have as one of its exempt purposes the “fostering of low-income housing.” Furthermore, the organization must materially participate in the development and operation of the project throughout the compliance period. The organization must not be Affiliated With, or Controlled By, a for-profit organization, entity, or individual.

For additional requirements with respect to this Set-Aside, See Section D below.

## 2. TEMPORARY CREDIT SET-ASIDE FOR HOPE VI PROJECTS

For Credit years 2005-2009, twenty percent of per capita Annual Authority, less the prior year’s Forward Credit Commitment, will be set-aside for HOPE VI Projects each year. A “HOPE VI Project” is a public housing community revitalization project that is entitled to receive HOPE VI financing from HUD pursuant to an executed and enforceable grant agreement.

No more than fifty percent of the Credit available under this Credit Set-Aside shall be awarded to any single HOPE VI Project. Credit awarded pursuant to the HOPE VI Set-Aside to Projects located in King County shall count, dollar for dollar, against the King County Credit limitation described in Chapter 3, Section H of these Policies.

An award of Credit under the HOPE VI Set-Aside is subject to the following terms, conditions and requirements:

- 1) For the 2005 allocation round, Applications must include a proposed Master Plan (the Plan). The Plan shall demonstrate, among other things, the level of public benefit that will be provided at the conclusion of developing the Project site. The Plan must be approved, in form and substance, by the Commission staff before the Commission will issue a carryover allocation of Credit (i.e., enter into a RAC) for the Project.



- The Plan shall include, among other things, the following:
    - Phase by phase breakdown demonstrating the ability to complete all phases by the close of the calendar year 2011. Breakdown shall include those units financed with, but not limited to, tax-exempt bonds and noncompetitive 4% Credits awarded pursuant to Section 42(h)(4) of the Code (“Noncompetitive 4% Credits”) and HUD Section 202 financing.
    - Breakdown of total units subject to the Additional Low-Income Housing Commitment at each income level for the HOPE VI Set-Aside Credit phases and the tax-exempt bond and Noncompetitive 4% Credit phases. At least 50% of the units developed using HOPE VI Set-Aside Credit shall be committed for households at or below 30% of AMGI. As shown by the Plan, a portion of these 30% AMGI units may be dispersed among phases developed using other forms of financing including but not limited to, tax-exempt bonds and Noncompetitive 4% Credits and HUD Section 202.
    - Special Needs Commitment applicable to at least 40% of the total units developed using the Credit awarded from the HOPE VI Set-Aside (“HOPE VI Set-Aside Credit”). A portion of this Special Needs Commitment may be incorporated into phases developed using other forms of financing including but not limited to, tax-exempt bonds and Noncompetitive 4% Credits and HUD Section 202 to meet the overall 40% Commitment.
    - Public housing residents returning to the site shall be included in the units subject to the Additional Low-Income Housing Commitment regardless of their current income, provided that upon turnover the unit is rented to a household with an income at or below 30% AMGI in accordance with Commitment requirements.
- 2) Subject to the reasonable approval of the Commission staff, the Plan for each site may be updated and modified by the Applicant in the event circumstances and conditions change, so long as the Applicant demonstrates that the minimum percentages for Special-Needs Housing Commitment and Additional Low-income Housing Commitment set forth above are met.
- 3) Each successive application in 2006-2009 must include a status report demonstrating performance to date against the Plan, in form and substance acceptable to the Commission. This status report will include detail with respect to the Set-Aside Credit, as well as units being developed using other forms of financing including, but not limited to, tax-exempt bonds and Noncompetitive 4% Credits, and HUD Section 202. The applicant must demonstrate the ability to make up any shortfalls in public benefit in future phases. Allocation of the Set-Aside Credit in each of years 2006-2009 will be conditioned, among other things, on the ability to meet overall projections.

- 4) In order to receive an award of Credit from the HOPE VI Set-Aside for any Credit year from 2006-2009, the Applicant or a related party must have received an award of HOPE VI Set-Aside Credit in 2005.
- 5) An Applicant requesting an award of HOPE VI Set-Aside Credit may not submit an Application for an award of competitive Credit with respect to any other Project in the same Application round. Any such Application will be rejected and returned to the Applicant. This limitation does not prohibit the Applicant from requesting an award of Noncompetitive 4% Credits.
- 6) With respect to the 2005 Application and all future applications for Credit under this Set-Aside, an Applicant must select the maximum points for the "Additional Low-Income Use Period" Allocation Criteria (i.e., commit to an additional period of 22 years) and the "Developer Fee" Allocation Criteria (i.e., commit to limit developer fees to 10%) and also must select the "Donation in Support of Local Housing Needs" Allocation Criteria.
- 7) If an Applicant selects the HOPE VI Set-Aside category but does not receive an award of Credit there under, the Project is not eligible for Credit from the balance of the Annual Authority.
- 8) The reservation and allocation of Credit shall be subject to such other terms, conditions and requirements as the Commission determines may be reasonably necessary to further the housing priorities, preferences and goals of the Tax Credit Program.

### ~~3. CREDIT SET-ASIDE FOR PROJECTS SPONSORED BY NONPROFIT ORGANIZATIONS~~

***Note: The Set-Aside for Nonprofit Organizations is not available for Credit years 2005-2009. Unless the Commission determines otherwise, the Set-Aside for Nonprofit Organizations will be restored commencing in 2010. The language referencing this Set-Aside remains in the Policies as an administrative convenience to the Commission.***

Fifteen percent of the per capita Annual Authority, less the prior year's Forward Credit Commitment, will be set aside for projects that will be owned directly or indirectly by Nonprofit Organizations. These include organizations exempt from federal income tax under Section 501(a) of the Code, for example, organizations described in Section 501(c)(3) and Section 501(c)(4) of the Code, and public housing authorities and public development corporations and agencies. The organization must not be Affiliated With, or Controlled By, a for-profit organization, entity, or individual.

For Additional requirements with respect to this Set-Aside, See Section C below.

~~4. CREDIT SET-ASIDE FOR PROJECTS SPONSORED BY FOR-PROFIT ENTITIES OR INDIVIDUALS WAC 262-01-130(6)(b)~~

**Note: The Set-Aside for For-Profit Entities or Individuals is not available for Credit years 2005-2009. Unless the Commission determines otherwise, the Set-Aside for For-Profit Entities or Individuals will be restored commencing in 2010, subject to Commission approval. The language referencing this Set-Aside remains in the Policies as an administrative convenience to the Commission.**

Fifteen percent of the per capita Annual Authority, less the prior year's Forward Credit Commitment, will be set aside for projects that are owned by private, for-profit entities or individuals.

To qualify for this category, the Applicant must provide with the Application a certification that neither the Applicant nor any partner, member, or manager of the Applicant is a Nonprofit Organization, or Affiliated With or Controlled By, a nonprofit organization, and that the Applicant (and all its partners, managers and members) are motivated, in part, by profit.

5. CREDIT SET-ASIDE FOR RURAL HOUSING PROJECTS

Fifteen percent of the per capita Annual Authority, less the prior year's Forward Credit Commitment, will be set aside for projects located in the following counties:

Adams, Asotin, Benton (except Kennewick and Richland), Chelan (except Wenatchee), Clallam, Columbia, Cowlitz (except Longview), Douglas (except East Wenatchee), Ferry, Franklin (except Pasco), Garfield, Grant, Grays Harbor, Island (except Oak Harbor), Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit (except Mount Vernon), Skamania, Stevens, Thurston (except the cities of Olympia, Lacey, and Tumwater), Wahkiakum, Walla Walla (except the City of Walla Walla), Whatcom (except Bellingham), Whitman (except Pullman), Yakima (except the City of Yakima).

To qualify for this category, the entire project must be located in one or more of the counties specified above. Projects located just outside a city that is excluded from the purpose of defining "rural area" may be deemed functionally related to that excluded city and therefore may not be eligible for the Credit Set-Aside for Rural Housing Projects.

A rural area is defined as follows:

- 1) Counties with a population of less than 85,000, except for those cities within these counties with a population of greater than 20,000,

Example: Franklin County except the City of Pasco

- 2) Counties with a population greater than 85,000 but less than 385,000 when more than an aggregated 25% of that county's population resides in one substantially contiguous metropolitan area. In this case, the county except such metropolitan area, would be considered rural.

Example: Yakima County except the City of Yakima

### **State Designated Eligible Basis Increase**

A 130% "basis boost" is available to all Rural Projects. For the purposes of this Policy, "Rural" carries the definition used for determining the program's Rural Credit Set-Aside. Buildings in DDA's or QCT's that already qualify for additional credits will not qualify for an additional state designated increase if they have already received the 130% eligible basis increase. This additional eligible basis is not available to tax-exempt bond-financed housing.

## **6. CREDIT SET-ASIDE FOR RURAL DEVELOPMENT PROJECTS**

Five percent of the per capita Annual Authority, less the prior year's Forward Credit Commitment, will be set aside for:

- (1) Projects that have obtained a written authorization to proceed from RD as a Section 515 new construction project. To qualify, the Applicant must provide with the Application a copy of a fully-executed Form AD-622 or FHA Form 1944-51 for the project; or
- (2) Projects that have existing RD financing for which the existing owners are considering prepayment options that would convert the low-income housing units to market rate housing units. To qualify, the Applicant must include the following:
  - (i) Evidence that the project has existing RD financing for which the existing owner is considering a prepayment option that would convert low-income housing units to market rate housing units within five years of the date of the Application; and,
  - (ii) An agreement with RD in which the Applicant agrees to maintain each building in the project for low-income use for a minimum of fifteen (15) years beyond the expiration date of the existing owner's current agreement. Your agreement must further provide

that the existing low-income residents may not be evicted (except for good cause), nor may their gross rent be increased for a three (3) year period following the Applicant's acquisition of the project, unless the increases are required by RD.

A fully-executed RD-issued Letter of Conditions must be submitted along with the Application for any project with RD financing, regardless of whether they are competing under this credit set-aside. This requirement applies to tax-exempt bond-financed projects receiving tax credits as well as "competitive" tax credit deals.

Priority for the Commission staff recommendations within the RD projects Credit Set-Aside will be provided, first, to projects which qualify under item (1) above and, second, to projects which qualify under item (2) above.

### **C. IMPLEMENTATION OF THE CREDIT SET-ASIDES**

All projects will be considered for the Credit Set-Aside category selected in the Application. If a project does not receive a Credit reservation or allocation in the selected category, the project may still qualify based upon its ranking against other projects competing for the balance of the Annual Authority.

If the Applicant selects the category for a Qualified Nonprofit Organization but is determined to be ineligible, the Application will automatically be considered under the Nonprofit Organizations Credit Set-Aside category if determined eligible for that category.

If the Applicant selects and qualifies for the category Qualified Nonprofit Organizations, the project will be considered under both the 10% Credit Set-Aside category for Qualified Nonprofit Organizations and the 15% Credit Set-Aside category for Nonprofit Organizations.

The Credit Set-Aside category for Qualified Nonprofit Organizations is based on the total Annual Authority for a given year. All other categories are based on the amount available of per capita Annual Authority, less the prior year's Forward Credit Commitment.

As required by Section 42(h)(5) of the Code, the category for Qualified Nonprofit Organizations will remain in effect for a given year until the Commission allocates not less than 10% of the total Annual Authority for that year to projects that qualified for the Credit Set-Aside. For all other Credit Set-Aside categories, any amount of Annual Authority that is not allocated to qualified projects will be added to the balance of the Annual Authority and will be available to be allocated to all qualified projects.

The Annual Authority apportioned to each Credit Set-Aside category will be reserved and allocated to the projects selected by the Commissioners until the Credit Set-Aside amounts are committed. Any remaining projects that qualified for a Credit Set-Aside but did not receive a Credit reservation or allocation must compete with all other projects for a Credit reservation or allocation from this balance.

With respect to Qualified Nonprofit Organization category, when the last highest-ranked qualified project selected by the Commissioners for a reservation and allocation receives only a portion of the Credit necessary for the project's feasibility and viability, an increased amount of Credit will be reserved and allocated.

With respect to the other Credit Set-Aside categories, if the remaining portion of any Credit Set-Asides available to the last highest-ranked project selected by the Commissioners equals at least 50% of the amount needed to make the project feasible, the Credit amount for that category will be increased. If the amount needed is less than 50% of the total Credit needed for feasibility, the last highest-ranked project (along with all other, lower-ranked Projects in the Credit Set-Aside) must compete for a Credit reservation and/or allocation from the balance of the Annual Authority remaining in the general pool.

If a project is reserved and allocated Credit from a Credit Set-Aside but the Credit is returned or cancelled for any reason prior to the end of the same calendar year, the Commission may, (i) allocate such Credit to the next highest scoring project(s) in that same Credit Set-Aside category, (ii) allocate the Credit to the next highest scoring project(s) in the general pool, or (iii) may allow the Credit to carryover to the subsequent calendar year, as determined in the sole discretion of the Commission.

If the Applicant made a Commitment in the Application to participate under a Credit Set-Aside category, the Commission's consent to any transfer or assignment of the Applicant's rights or the project will be conditioned upon:

- (1) continued compliance with the requirements for the applicable Credit Set-Aside category by the transferee/assignee;
- (2) satisfaction of the requirements in Chapter 9, Project Transfer or Assignment Requirements.

#### **D. ADDITIONAL REQUIREMENTS FOR CREDIT SET-ASIDES FOR QUALIFIED NONPROFIT ORGANIZATIONS AND NONPROFIT ORGANIZATIONS**

To qualify for either of the 10% Credit Set-Aside for Qualified Nonprofit Organizations or the 15% Set-Aside for Nonprofit Organizations, the Applicant must include the following with the Application:

- (1) A copy of the Nonprofit Organization's IRS determination letter;

- (2) A complete and current as amended copy of the Nonprofit Organization's articles of incorporation as filed with the Secretary of State. (For a Qualified Nonprofit Organization, the articles of incorporation must have as one of its exempt purposes the "fostering" of low-income housing".);
- (3) Complete and current as amended copies of the bylaws and other governing instruments of the Nonprofit Organization;
- (4) Evidence that the Nonprofit Organization has an ownership interest in the project, and that the Nonprofit Organization will materially participate in the development and operation of the project throughout the project compliance period<sup>5</sup>;
- (5) A certification by the Nonprofit Organization that it is not Affiliated With, or Controlled By, a for-profit organization, entity, or individual;
- (6) A current list of names of all board members and officers of the Nonprofit Organization and any affiliation (plus the nature of the affiliation) such board member or officer has with any for-profit entities or individuals;

In addition, projects that are owned by a partnership or limited liability company will qualify for these Credit Set-Asides only if the following additional requirements are satisfied:

- (7) For a partnership, all general partners must be Qualified Nonprofit Organizations or Nonprofit Organizations, respectively, depending upon the Credit Set-Aside selected;
- (8) For a limited liability company, all members (other than the investor/member) and managers must be Qualified Nonprofit Organizations or Nonprofit Organizations, depending upon the Credit Set-Aside selected. Further, the investor/member must not actively participate in the day-to-day management of the Company; and
- (9) The partnership agreement or limited liability company agreement must specifically evidence that the Nonprofit Organization will materially participate in the project's development and operation and is not merely a nominee. Furthermore, all partners, managers and members will be required to give the sworn statement concerning control and affiliation described in item (5) above.

**Nonprofit Organizations are cautioned that participation in the Program may jeopardize an organization's tax-exempt status. Nonprofit Organizations should consult with legal counsel regarding the risks and issues involved with participation.**

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<sup>5</sup> E.g., as shown in an executed partnership agreement or limited liability company agreement. Please reference the specific sections in your agreement relied upon for material participation.

## CHAPTER 6 ALLOCATION CRITERIA

### A. INTRODUCTION

Commission staff will use the Allocation Criteria (described below) and the points assigned to the Allocation Criteria to assess the degree to which the proposed projects promote the Commission's housing priorities. The points associated with these Allocation Criteria, when satisfied, facilitate ranking of projects by the staff as described in Chapter 5.

The Applicant must select Allocation Criteria in the Application that total at least 130 Allocation Criteria points (unless the project is competing in the RD Set-Aside, where the minimum is 95 points). Any Application that does not have this minimum number will be disqualified, the project will not be considered for a Credit reservation or allocation and the Application fee will not be refunded. (Note: Projects may be subject to alternative minimums: Fully Funded Projects – 132 points; Fully Funded Projects in the RD set-aside – 105 points; tax-exempt bond-financed projects – 50 points).

The Applicant is responsible for showing in the Application that the project meets all the Allocation Criteria selected, but the Tax Credit Program Director will decide if a project should receive Allocation Criteria points for a specific Allocation Criterion.

**WARNING: The Commitments that the Applicant makes may have serious consequences for the project's marketing strategies and its long-term financial viability. The Commission encourages the Applicant, in particular, to carefully review and evaluate the reasonableness of the project's low-income housing and special-needs housing Commitments prior to submitting an Application.**

### B. TOTAL POSSIBLE NUMBER OF ALLOCATION CRITERIA POINTS

The total possible number of Allocation Criteria points is 200. However, no one project can meet all the Allocation Criteria or, consequently, receive a total of 200 points. Therefore, the actual number of points received by projects to be considered for a Credit reservation and allocation will be between 95 and 200 points. The number of points that a specific qualified project will need to be recommended by the Commission staff for a Credit reservation and allocation will depend on, among other things:

- (1) the number of qualified Applications the Commission receives;
- (2) the number of points received by other projects;
- (3) the total amount of Credit requested by Applicants;
- (4) the amount of Annual Authority available;
- (5) whether the specific project is eligible for a Credit Set-Aside category;



- (6) the number of other projects that qualify for the same Credit Set-Aside category; and
- (7) the amount of Credit the Applicant is requesting for the project.

**C. ALLOCATION CRITERIA AND POINTS**

The following is the list of Allocation Criteria and the points assigned to each:

**(1) ADDITIONAL LOW-INCOME HOUSING COMMITMENT  
50 MAXIMUM POINTS (See chart below)**

Points will be awarded to projects based on the Applicant’s Commitment to provide selected percentages of the total low-income units for occupancy by households at or below selected area median gross income levels (the “Additional Low-Income Housing Commitment”).

Units subject to the Additional Low-Income Housing Commitment are both rent and income restricted at the selected income levels.

**Points can only be scored under a maximum of two matrix categories. Unit and income categories selected in the matrix below cannot total greater than 50 points.**

Set-asides at the ≤ 30% AMGI level are limited to no more than 50% of the total low-income units.

% Low-Income Units	<u>% OF AREA MEDIAN INCOME</u>		
	≤ 50%	≤ 40%	≤ 30%
≥ 10%	0 points	3 points	8 points
≥ 25%	3 points	6 points	15 points
≥ 30%	5 points	13 points	25 points
≥ 40%	8 points	15 points	36 points
≥ 50%	12 points	29 points	44 points
≥ 75%	17 points	39 points	0 points

Note: Applications that claim Additional Low-Income Housing Commitment categories that total greater than 50 points will be awarded 0 points.

**Points can only be scored under a maximum of two Additional Low-Income Housing Commitment categories.**

*Example 1 – The Applicant makes the following commitment for their 100% low-income project with a 40/60 minimum low-income housing commitment:*

- 1) 40% of the total low-income units set-aside @ 30% AMGI = 36 points
- 2) 50% of the total low-income units set-aside @ 50% AMGI = 12 points
- 3) balance of 10% of the total low-income units not to exceed 60% AMGI = 0 points
- Total points** = **48 points**

*Example 2 – The Applicant makes the following commitment for their 100% low-income project with a 40/60 minimum low-income housing commitment:*

- 1) 50% of the total low-income units set-aside @ 30% AMGI = 44 points
- 2) 25% of the total low-income units set-aside @ 50% AMGI = 3 points
- 3) balance of 25% of the total low-income units not to exceed 60% AMGI = 0 points
- Total points** = **47 points**

**Points cannot be claimed in two categories if the point total exceeds 50 points.**

*Example – The Applicant cannot make the following commitment for its 100% low-income project with a 40/60 minimum low-income housing commitment:*

- 1) 50% of the total low-income units set-aside @ 30% AMGI = 44 points
- 2) 30% of the total low-income units set-aside @ 40% AMGI = 13 points
- 3) balance of 20% of the total low-income units not to exceed 60% AMGI = 0 points
- Total points** = ~~**57 points**~~

Because this combination seeks points in two unit and income categories that total more than 50, it is not allowed and the Applicant is awarded no points.

**Rounding Rule:** For instances where the respective percentage of units that are subject to the commitment do not distribute evenly (i.e. 50% of 25 units = 12.5), start by rounding the lowest income targeting category up to the next unit and if necessary also round the 2<sup>nd</sup> lowest income set-aside category up.

*Example 1 – 25 unit project with the following additional low-income housing commitment:*

	≤ 40% AMGI	≤ 50% AMGI	≤ 60% AMGI	Total
% of low-income units selected:	50%	50%	N/A	100%
Actual units per % selected	12.5 units	12.5 units	N/A	
After rounding rule	13 units	12 units	N/A	25 units

*Example 2 – 47 unit project with the following additional low-income housing commitment:*

	≤ 30% AMGI	≤ 50% AMGI	≤ 60% AMGI	Total
% of low-income units selected:	40%	50%	10%	100%
Actual units per % selected	18.8 units	23.5 units	4.7 units	
After rounding rule	19 units	24 units	4 units	47 units

**(2) ADDITIONAL LOW-INCOME HOUSING USE PERIOD  
44 MAXIMUM POINTS**

Two points will be awarded (up to a maximum of 44 points) for every year of the additional low-income housing use period selected by the Applicant in the Application, up to a maximum of 22 years (the “Additional Low-Income Housing Use Period”). The Additional Low-Income Housing Use Period commences upon the close of the compliance period. If the Applicant makes this Commitment, the Applicant agrees to maintain the low-income housing units and all the applicable Commitments the Applicant made in the Application to receive Allocation Criteria points for the duration of the Project Compliance Period.

**(3) HOUSING NEEDS  
10 MAXIMUM POINTS**

Points will be awarded based on the county in which the project is located. These points are not cumulative. If a project is located in more than one county, the project will be awarded points equal to the points applicable to the county that offers the least number of points.

Note: Projects financed with tax-exempt bonds are required to set aside a minimum of 50% of the Total Housing Units to serve households at or below 50% AMGI in order to qualify for these points.

**Housing Needs:**

- (i) King ..... **10 Points**
- (ii) Pierce, Spokane..... **7 Points**
  
- (iii) Chelan, Clark, Cowlitz, Kitsap, Kittitas, Snohomish, Thurston, Walla Walla, Whatcom, Whitman, Yakima..... **5 Points**
- (iv) Benton, Franklin, Grant, Grays Harbor, Lewis, Okanogan, Skagit..... **3 Points**
- (v) Adams, Asotin, Clallam, Columbia, Douglas, Ferry, Garfield, Island, Jefferson, Klickitat, Lincoln, Mason, Pacific, Pend Oreille, San Juan, Skamania, Stevens, Wahkiakum..... **1 Point**

**(4) NONPROFIT SPONSOR**  
**5 POINTS**

Nonprofit Organizations (as defined in our Glossary) are critical to the delivery of affordable housing for low-income households in Washington. Nonprofit housing developers are mission driven entities that do not need to produce economic profits for investors and thus are able to place a very high priority on the needs and interests of residents most in need. They have a vested and long-term interest in developing, maintaining and preserving safe, quality and affordable housing options for low-income individuals and families.

Across our state, the organizational capacity and housing development experience of Nonprofit Organizations is uneven. In certain areas of the state, especially in rural areas, the existing capacity of Nonprofit Organizations is not sufficient to meet the affordable housing needs.

For-profit entities also provide an important vehicle for the provision of affordable housing. In certain parts of the state they are the only developers of such housing and they often bring equity and expertise to transactions that would not otherwise be available to Nonprofit Organizations. Because of their need to produce returns on investment and their sensitivity to the tax treatment of investments, for-profit entities as a group may not provide the sustained development capacity needed to meet the long term affordable housing needs of low-income individuals and families.

It is the primary intent of this policy to increase the capacity of Nonprofit Organizations to provide affordable housing and thereby increase the number of affordable housing projects developed and owned by Nonprofit organizations

now and in the future. The secondary objective is to encourage partnerships between Nonprofit Organizations and for-profit entities, thereby expanding the capacity of Nonprofit Organizations and recognizing the important contribution that for-profit entities can provide to meet our housing needs. The third objective is to recognize situations where there is simply insufficient Nonprofit Organization capacity or other unique circumstances and provide incentives to for-profit entities to develop affordable housing.

In order to be considered for the Nonprofit Sponsor points, Applicants must qualify under one of the following three scenarios:

Nonprofit only: Developed, owned and operated solely by a credible and viable Nonprofit Organization, recognizing that there may be for-profit partners or participants to provide tax-credit equity.

For-Profit Nonprofit Partnership: Developed owned and operated by a partnership between a for-profit entity and a Nonprofit Organization as co-owners (FP and NP Partnership). For example, a Limited Partnership may have a for-profit and a Nonprofit Organization as co-general partners or in the case of a Limited Liability Company, co-managing members. Also projects may be co-developed by partnerships between for-profit entities and Nonprofit Organizations. The Nonprofit Organization should have a material role in the development or management of the project, provide services or otherwise contribute to the project.

Nonprofit Sponsor Waiver: Under certain circumstances and only after making specific findings, the Tax Credit Program Director may waive the required Nonprofit Organization involvement. The findings must demonstrate that either no credible and viable Nonprofit Organization is willing and/or able to participate in the project development and ownership, or that unique conditions exist such that only a for-profit entity can complete the project. Approval for such waiver requests must be granted in advance of the published application deadline. Waiver requests must be made in writing at least 60 days in advance of application submittal deadline.

All For-Profit and Nonprofit Partnerships must provide all items required in Chapter 5, Section D: Additional Requirements for Credit Set-Asides for Qualified Nonprofit Organizations and Nonprofit Organizations.

Nonprofit Sponsor points do not apply to tax-exempt bond-financed projects.

**(5) SPECIAL-NEEDS HOUSING COMMITMENTS**  
**35 POINTS MAXIMUM**

In order to receive points for Special-Needs Housing Commitments, the Applicant must agree to comply with all the requirements and conditions described in Section D of this Chapter, as applicable, in addition to other applicable requirements and conditions.

Points will be awarded based upon the Applicant's Commitment in the Application to provide low-income housing units for the populations listed below in the following manner:

Note:

Set-Aside option #3 below is a selection only available to projects combining Tax Exempt Bonds with Tax Credits (Bond/TC deals). Although Bond/TC deals may select option #1 or #2 below, tax credit only projects may not select option #3.

Applications may not score points under #2 or #3 if making a Commitment under #1. For the purposes of scoring allocation points under #2 and #3 below, Applicants may select no more than two special-needs categories for a maximum point score of 20 points. The selection cannot be for the same special-needs category (e.g., cannot select both 20% Large Household and 10% Large Household).

- 1) The following Special-Needs Housing Commitments are worth **35 allocation points total**:
  - A. Provide a minimum of 75% of the total housing units as Housing for the Homeless
  - B. Provide a minimum of 75% of the total housing units as Farmworker Housing

**OR**

- 2) The following Special-Needs Housing Commitments are worth **10 allocation points each**:
  - A. Provide a minimum 20% of the total housing units as Housing for Large Households
  - B. Provide a minimum 20% of the total housing units as Housing for Persons with Disabilities
  - C. Provide a minimum of 20% of the total housing units as Housing for the Homeless
  - D. Provide an Elderly Housing Project

**OR**

3) **(Bond/TC Deals Only)** The following Special-Needs Housing Commitments are worth **5 allocation points each**:

- A. Provide a minimum 10% of the total housing units as Housing for Large Households
- B. Provide a minimum 10% of the total housing units as Housing for Persons with Disabilities
- C. Provide a minimum of 10% of the total housing units as Housing for the Homeless

A 10% Special-Needs Housing Commitment alone does not deem a project eligible for the allowable increase in maximum development costs from 110% to 150% (as outlined in Section B of Chapter 3). However, a combined Special-Needs Housing Commitment of at least 20% will qualify (e.g., 10% large household and 10% disabled).

A commitment to serve any special needs population requires that the Applicant provide an Affirmative Marketing Plan. Please refer to Chapter 4, Minimum Threshold Requirements for the specific requirement of the Affirmative Marketing Plan.

## **HOUSING FOR THE HOMELESS**

Points will be awarded based on the Applicant's Commitment to provide a minimum of 10% (5 points), 20% (10 points) or 75% (35 points) of the total housing units in the project as low-income housing units for Homeless households (the "Housing for the Homeless Commitment").

The Applicant may only select one of the following options (A, B, or C):

**Homeless Option A:** Provide a minimum of 10 – 20% of the total housing units in the project for transitional housing for the homeless as prescribed under the Code.

Each housing unit in a building used for transitional housing for the Homeless must contain sleeping accommodations as well as kitchen and bathroom facilities. The building must be used exclusively to ease the transition of homeless persons to independent living within 24 months<sup>6</sup>.

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<sup>6</sup> A building must be 100% transitional housing if any housing unit in the building is used for transitional housing.

The Applicant must provide with the Application evidence that a governmental body or Qualified Nonprofit Organization (QNP) will provide Homeless individuals with temporary housing and supportive services designed to assist them in locating and retaining permanent housing.

For a governmental body, the Applicant must submit a resolution authorizing the governmental body to provide temporary housing and supportive services for the project.

For a Qualified Nonprofit Organization, the Applicant must submit all documentation required of a QNP outlined in Chapter 5.

**Homeless Option B:** Provide a minimum of 10 – 20% of the total housing units in the project as housing to the homeless.

Each unit must be set-aside to serve Homeless households as defined under the Stewart B. McKinney Homeless Assistance Act or under RCW 43.185c010(3) and must provide supportive services designed to promote self-sufficiency, meeting the needs of the target population. Any Household initially qualifying as Homeless, counts toward the Homeless Set-Aside Commitment for as long as the household remains in the project.

Note: Implementation of this “once qualified, always qualified” policy is retroactive to all tax credit projects serving the homeless.

This election imposes the requirement of Section 42 of the Code that tax credit units cannot be used on a transient basis.

Applicants electing to make this Commitment must provide with the Application:

- (i) A comprehensive service plan that includes both an assessment and identification of the service needs of the targeted population and a specific strategy for service delivery (i.e., what services, who will provide them and how, as well as where will they be provided).
- (ii) A detailed funding strategy for the provision of services including annual budget, proposed funding sources, and respective funding cycles with letters of interest from each service provider and funder.



**Homeless Option C:** Provide a minimum of 75% of the total housing units in the project as housing to the homeless.

Each unit must be set-aside to serve Homeless households as defined under the Stewart B. McKinney Homeless Assistance Act or under RCW 43.185c010(3) and must provide supportive services designed to promote self-sufficiency, meeting the needs of the target population. Any Household initially qualifying as Homeless, counts toward the Homeless Set-Aside Commitment for as long as the household remains in the project.

Note: Implementation of this “once qualified, always qualified” policy is retroactive to all tax credit projects serving the homeless.

This election imposes the requirement of Section 42 of the Code that tax credit units cannot be used on a transient basis.

Applicants electing to make this Commitment must provide with the Application:

- (i) A comprehensive service plan that includes both an assessment and identification of the service needs of the targeted population and a specific strategy for service delivery (i.e., what services, who will provide them and how, as well as where will they be provided).
- (ii) A detailed funding strategy for the provision of services including: annual budget, proposed funding sources and respective funding cycles with letters of interest from each service provider and funder.

**All Homeless projects** – Option A, B, or C – must be consistent with the Ten-Year Plan to End Homelessness at the time the Application is submitted, and the Applicant must submit adequate evidence consistent with the plan. Specifically,

- (i) For projects located in communities covered by a Ten-Year Plan to End Homelessness, the Applicant must submit a Certification of Consistency with the Ten-Year Plan to End Homelessness dated no more than 60 days prior to the Application date.
  - a) A Consistency letter must be signed by the local Jurisdiction Contact Person and/or Plan Contact Person.
    - For a list of county contacts, please visit the Department of Community Trade and Economic Development’s Homelessness Housing and Assistance Act website at <http://www.cted.wa.gov/site/823/default.aspx> A link to the contacts for each county can be found under “Contact Information” the bottom of the page.

- A copy of the Certification of Consistency with the Ten-Year Plan to End Homelessness is located in Exhibit H.
- b) If a project located in the City of Seattle or King County, the applicant must use their Certification of Consistency with the Ten-Year Plan to End Homelessness.
- (ii) For projects located in communities that opted-out of the Ten-Year Plan to End Homelessness, the Applicant must submit a Certification of Consistency with the Ten-Year Plan to End Homelessness dated no more than 60 days prior to the Application date:
- a) A Certification of Consistency with the Ten-Year Plan to End Homelessness must be signed by the Washington Department of Community, Trade and Economic Development. A copy of the Certification of Consistency with the Ten-Year Plan to End Homelessness is located in Exhibit H.

## **FARMWORKER HOUSING**

Farmworker means a household whose Income is derived from farmwork in an amount not less than \$3,000 per year and which, at the time of initial occupancy at the project, has an Income at or below 50% of the area median gross income. See Glossary for a complete definition of “farmwork.” All Farmworker units are to be rent and income restricted at or below 50% AMGI.

All housing units subject to the Farmworker Housing Commitment must be rented to qualifying Farmworker households at initial project occupancy.

All applicants requesting points for making a Farmworker Housing Commitment must provide a marketing and referral plan acceptable to the Commission at the time of application. This Plan must specifically describe how the applicant has established relationships with local nonprofit service providers and organizations, how these agencies will refer Farmworkers to the project, and what services these agencies may provide to Farmworker tenants. Agencies could include, but are not limited to, health care providers, churches, and local housing authorities. The marketing and referral plan must also describe how the project will be advertised to Farmworkers.

The plan must further describe how the identified organizations and providers are connected with the local Farmworker community in the market area to be served, and must include a contact name and phone number for each agency. The Commission may contact these organizations to ensure that the applicant has established the required relationships.

If an Applicant makes the Farmworker Housing Commitment, the required market study (See Section I of Chapter 4) must specifically demonstrate the need for Farmworker housing in the project's market area. Applicants are encouraged to provide additional documentation that helps to demonstrate the need for Farmworker housing. Projects electing the Farmworker Housing Commitment must include at application two letters of support from local non-profit organizations that serve Farmworkers. The letters must identify the local need for Farmworker housing and support the project as being able to meet that need.

## **HOUSING FOR LARGE HOUSEHOLDS**

Points will be awarded based on the Applicant's Commitment to provide a minimum of either 10% or 20% of the total housing units in the project as low-income housing units with three bedrooms or more and to reserve these housing units for Large Households (the "Housing for Large Households Commitment"). A Large Household consists of four or more persons who are not necessarily related.

## **ELDERLY HOUSING**

Points will be awarded on the Applicant's Commitment to maintain the project as an Elderly Housing Project (the "Elderly Housing Commitment").

## **HOUSING FOR PERSONS WITH DISABILITIES**

Points will be awarded based on the Applicant's Commitment to provide a minimum of either 10% or 20% of the total housing units in the project for persons with Disabilities (the "Housing for Persons with Disabilities Commitment").

### **(6) AT-RISK PROPERTIES** **10 POINTS**

Points will be awarded to applications that meet each of the following criteria:

- (i) The project has one or more Federally Assisted Building(s);
- (ii) At least 50% of the total housing units in the project are low-income;
- (iii) The applicant agrees to maintain the low-income housing units included in the project for a minimum of 30 years (i.e., make an additional low-income housing use period Commitment of at least 12 years);

- (iv) The Federal agency regulating the low-income use certifies that the owner may be released from all low-income use restrictions within five years of the date of the Application. Examples include a prepayment option, cancellation, or expiration of a project-based Section 8 rental assistance contract or other comparable project-based Federal rental assistance contract, or other factors approved by the Commission; and

Note: One or more years of eligibility for renewal of rental assistance alone does not qualify the project for these points. Only on a case by case basis will expiring/expired projects that are passed from one non-profit to another nonprofit to be considered at risk for the purposes of Preservation points.

- (v) The market study clearly demonstrates that (1) market rate rents are significantly greater than current rents being charged and (2) that those market rate rents are achievable, creating the likelihood that existing residents will be displaced as a result of increasing rents.

In addition, if the project has project-based Section 8 rental assistance, or other comparable project-based Federal rental assistance, the Applicant must agree to renew such subsidy for as long as the rental assistance is available.

In the event that rental assistance is eliminated, rents charged to the residents may not exceed 30% of their gross income at that time. The Applicant may request that the Commission waive or modify this requirement if the rental income is insufficient to support the economic viability of the project.

**(7) REHABILITATION PROJECTS/COMMUNITY REVITALIZATION PLAN  
7 MAXIMUM POINTS**

**A. Rehabilitation Projects, 5 points**

Points will be awarded to the Applicant's project if it consists of one or more buildings which will be rehabilitated and returned to, or converted to, residential use as follows:

If the project consists of, (a) the rehabilitation of 80% or more of the housing units that exist in the project prior to rehabilitation and the number of rehabilitated units are 50% or more of the total units in the project, or (b) in the instance of a building use conversion, 50% or more of the total residential units in the project are included in the converted building(s).

**B. Community Revitalization Plan, 2 points**

An additional 2 points will be awarded if rehabilitation is part of a Community Revitalization Plan.

A Community Revitalization Plan must:

- (i) Be a published document, approved and adopted by a governing body, by ordinance, resolution, or other legal action; and
- (ii) Target funds or tax incentives to specific geographic areas for either of the following:
  - a) economic development, including economic related initiatives; and/or
  - b) commercial/retail development, including infrastructure and community facility improvement.

**(8) DEVELOPER FEES  
10 MAXIMUM POINTS**

Points will be awarded based on the Applicant’s Commitment in the Application to limit the maximum developer fees, in the aggregate, for the project to:

(i)	10%.....	<b>10 Points</b>
(ii)	11%.....	<b>8 Points</b>
(iii)	12%.....	<b>6 Points</b>
(iv)	13%.....	<b>4 Points</b>
(v)	14%.....	<b>2 Points</b>
(vi)	15%.....	<b>0 Points</b>

For a discussion of how the developer fee is calculated with respect to a Project, see Chapter 3, Section H of these *Policies*.

**(9) HISTORIC PROPERTY  
5 POINTS**

Points will be awarded based on documentation submitted with the Application that the project is:

- (i) Listed, or has been determined eligible for listing, in the National Register of Historic Places administered by the U.S. Department of the Interior in accordance with the National Historic Preservation Act of 1996;
- (ii) Located in a registered historic district and certified by the Secretary of the U.S. Department of the Interior as being of historic significance to that district; or

(iii) Listed in the Washington Heritage Register.

To receive points, 50% or more of the total housing units in the project must be located in the building(s) designated as historic property.

**(10) TARGETED AREAS**  
**7 MAXIMUM POINTS**

**A. Targeted Areas, 5 Points**

Points will be awarded based on documentation submitted with the Application that the entire project is located in:

- (i) A difficult development area (DDA) designated by the Secretary of the U.S. Department of Housing and Urban Development (HUD);
- (ii) A qualified census tract (QCT) designated by the Secretary of HUD where 50% or more of the households have an Income that is less than 60% of the area median gross income;
- (iii) An area approved by the governing body or chief executive officer of the local jurisdiction as targeted for low-income housing serving households at 80% of the area median gross income or below, and approved by the Commission; or
- (iv) Land within the boundaries of an eligible Indian Reservation or within the service area of an eligible tribe provided that the project is sponsored by the Indian tribe or tribally-designated housing entity. Indian Tribes eligible for these points are those where the percentage of households living below the poverty level is 20% or more of the total tribal households.

Note: A list of eligible tribes is available in Exhibit P of the Application. Tribal eligibility is based upon poverty rate levels as determined by the U.S. Census. For tribes not listed in Exhibit P, on a case by basis, the Commission will consider supplemental demographic data provided by the Applicant that demonstrates that 20% or more of the total Indian households are living below the poverty level. To be considered for these points using supplemental data, the Applicant must present their data to the Commission at least 30 days prior to the application deadline and receive pre-approval by the Commission.

If the project is located in a DDA, the Applicant must submit with the Application a site map and a description of the project's location. If the project is located in a QCT, the Applicant must submit with the Application a site map identifying the project location and census tract number and

boundaries. If the project is located in a qualified area as defined in item (iii) above, the Applicant must submit with the Application documentation of the targeted area designation by the local jurisdiction. If the project is located in a qualified area as defined in item (iv), the Applicant must demonstrate that the project is located within the service area of the tribe.

In order to receive points for this Allocation Criterion, the entire project must be located in at least one of the specified targeted areas. In other words, if a project includes multiple sites, each of the sites must be located in at least one of the specified targeted areas in order for the project to receive points (i.e., be located in a qualified area as defined in items (i), (ii), (iii), or (iv) above).

*Note: If the project is located in a QCT or a DDA, please see the following notice: [DDA/QCT Notice](#)*

## **B. Community Revitalization Plan, 2 Points**

Additional points\* may be scored if the entire project is located in a targeted area and the project's development contributes to a Community Revitalization Plan. See Chapter 6, Section C(7) for the definition of a Community Revitalization Plan.

\*Points cannot be claimed under this category if also claimed under the Rehabilitation with Community Revitalization Plan Allocation Criterion.

## **(11) LEVERAGING OF PUBLIC RESOURCES** **10 POINTS**

Points will be awarded based on documentation submitted with the Application that the project has received a substantial funding commitment from a Federal, state, and/or local government in the form of a loan, grant, and/or contribution of land for the project with a combined amount/value of at least:

- 15% of the Total Project Costs for projects located in King County; or
- 10% of the Total Project Costs for projects located in counties other than King County

To qualify for points under this Allocation Criterion, the Applicant must include a copy of the written funding commitment or agreement with the lender or grantor detailing the amount of funds committed and all conditions of the loan or grant.

**Note: For the purposes of this Allocation Criterion, tax-exempt bond financing is not considered as public leveraging. Bond projects are not eligible for these points.**

Any project with RD financing must submit a fully-executed RD-issued Letter of Conditions with the Application regardless of whether they participate in the RD credit set-aside.

With respect to a contribution of land as described above, the Applicant must also submit with the Application a copy of a current appraisal to establish the value of contributed land. The Applicant must also provide a legal description of the land being contributed.

In-kind contributions such as goods and services will not be considered to be a funding commitment for the purpose of an award of points under this Allocation Criterion.

**(12) DONATION IN SUPPORT OF LOCAL HOUSING NEEDS**  
**5 POINTS**

Points will be awarded to projects based on the Applicant's Commitment to contribute funds to a local Nonprofit Organization in an amount equal to the greater of either 25 basis points (0.0025) of Total Project Costs; or \$10,000. The local Nonprofit Organization must not be Affiliated With or Controlled by the Applicant. The contribution must be in support of a low-income housing program that provides housing or housing-related services.

The Applicant does not need to identify the proposed recipient or use of the donation funds at the time of the Application. If the Applicant selects this Allocation Criterion, the Applicant will need to submit this information for review and approval by the Commission as a placed-in-service allocation requirement.

The Applicant must provide the Commission at that time with certifications from both the Applicant/donor and the proposed recipient of the contribution confirming that the contribution will be made or received, respectively, without any benefit given or expected in return for such contribution. The Applicant must provide a letter from the Nonprofit Organization acknowledging receipt of the contribution amount as well as a copy of the cancelled check from the donation. The cost of the donation cannot be included in the project's total project costs.

**Note: For tax-exempt bond projects where the Commission is the issuer of the bonds, this Tax Credit donation is separate from any donation amount selected in the Bond Application.**



**(13) EVENTUAL TENANT OWNERSHIP**  
**2 POINTS**

Points will be awarded to projects that are intended for eventual tenant ownership after the initial 15-year compliance period. Intent to convert must be expressed in a clear and comprehensive plan at the time of the application in a manner satisfactory to the Commission. This plan must address among other things: financial and programmatic structure; timing of ownership transfer; eligibility and selection process for potential owners; and all lien holder interests. The project development team must also demonstrate capacity for designing, developing and managing the eventual ownership program.

Projects seeking these points are encouraged to discuss their proposal with Commission staff prior to submitting an Application.

**D. FURTHER REQUIREMENTS OF SPECIAL-NEEDS HOUSING COMMITMENTS**

All Applicants who select one or more Special-Needs Housing Commitments must comply with all the following requirements:

- (1) The Applicant agrees that any Special-Needs Housing Commitment will be established, implemented, and kept in compliance with the Fair Housing Act, as amended; the Architectural Barriers Act of 1968; the Americans with Disabilities Act; and any other local, state, and Federal nondiscrimination or accessibility laws, regulations, or requirements.
- (2) The Applicant must demonstrate that it has identified and will provide (either directly itself or indirectly by another appropriate entity) appropriate support/social services for each Special-Needs Housing Commitment selected in the Application.
- (3) All housing units subject to the Housing for Large Households Commitment, the Housing for the Homeless Commitment, or the Farmworker Housing Commitment must be rent-restricted low-income housing units.
- (4) With respect to the Housing for Persons with Disabilities Commitment and the Elderly Housing Commitment, the Applicant may reserve a combination of the low-income housing units and the market-rate housing units for the given Commitment if a project includes both low-income housing units and market-rate housing units. The Applicant agrees that the gross rent for the low-income housing units must be rent-restricted.
- (5) The same housing unit cannot be used for more than one Special-Needs Housing Commitment, regardless of whether a resident is eligible for more than

one. Further, the Applicant must provide a minimum of 20%, or 10% if applicable, of the total housing units in the project for all Special-Needs Housing Commitments selected.

For example, if the Applicant selects the 20% Housing for Large Households Commitment and the 20% Housing for Persons with Disabilities Commitment, the Applicant must provide a minimum of 40% of the total housing units in the project, including specifically a minimum of 20% of the total housing units for Large Households and a minimum of 20% of the total housing units for Persons with Disabilities .

- (6) When a project with any Special-Needs Housing Commitment is placed-in-service and ready for initial occupancy, each housing unit subject to such a Commitment must first be rented to and occupied by a resident who qualifies for the commitment (e.g., in the case of the Farmworker Housing Commitment, by a Farmworker household), or else the unit must be held unoccupied. Upon taking possession of an acquisition/rehabilitation project, the project owner may satisfy all Commitments, beyond any Federal minimums, through attrition.
- (7) If, after initial occupancy by a qualified resident, a housing unit subject to a Special-Needs Housing Commitment (other than Elderly Housing Commitment and the Housing for the Homeless Commitment) is subsequently vacated, the project owner shall actively market any vacant housing units that are necessary to comply with the applicable Commitment(s) for a minimum of 30-days. The owner shall not rent such units to anyone who is not eligible for the selected Commitment(s) during this 30-day period. More specifically, a housing unit in this Special-Needs Housing Commitment must remain vacant during this 30-day recruitment period until the Applicant can rent it to a person or household who meets the eligibility criteria for the Special-Needs Housing Commitment.

The minimum 30-day recruitment period begins when the housing unit becomes vacant and ready for occupancy and the Applicant begins to actively market the housing unit. The Applicant must document recruitment efforts (e.g., the active use of the project's referral and marketing agreements).

The Applicant cannot rent the housing units to a person or household who does not meet the eligibility criteria for the specific Commitment(s) during the minimum 30-day recruitment period. If the Applicant is unable to secure an individual or household who meets the eligibility criteria after 30 days of active marketing, the Applicant may rent the housing unit to another resident as applicable.

If the Applicant rents a housing unit to an individual or household who does not meet the eligibility criteria after completing the minimum 30-day recruitment period, the Applicant must actively market the next available housing units of

comparable size and type, following the same recruitment procedures, until all the Commitment(s) are achieved and maintained.

The recruitment requirements described in this subsection (7) apply to all housing units in the Farmworker Housing Commitment, the Housing for Large Households Commitment, and the Housing for Persons with Disabilities Commitment, including both low-income housing units and market rate housing units.

For the Elderly Housing Commitment or the Housing for the Homeless Commitment (both Options A and B), the Applicant must actively market and exclusively rent all the housing units for the duration of the Project Compliance Period to persons who meet the eligibility criteria of the applicable Special-Needs Housing Commitment.

In the event of reasonably unforeseen circumstances that prevent a project from fully meeting its Commitments, the project owner may seek a waiver or modification to any such Commitments. This request must be made in writing and approval is at the sole discretion of the Commission.

## **CHAPTER 7 CREDIT RESERVATION AND CARRYOVER ALLOCATION REQUIREMENTS**

Those projects selected by the Commission as eligible for Credit will be issued a Credit reservation and carryover allocation only if they meet the requirements set forth in this Chapter, the Application and the Program. The Credit reservation and carryover allocation is made pursuant to the terms of the Credit Reservation and Carryover Allocation Contract (RAC). The Commission will disqualify the project/Application and cancel the Credit reservation and carryover allocation for any project if any of these requirements are not met by the deadlines set by the Commission.

### **A. CREDIT RESERVATION AND CARRYOVER ALLOCATION CONTRACT (RAC)**

The Applicant must execute the RAC in a timely manner. The Commission anticipates that the RAC will be mailed to Applicants within thirty (30) days after the Commission's approval of the list of those projects eligible for Credit. The Applicant must execute the RAC in the form provided by the Commission.

### **B. DOCUMENTATION AND FEES REQUIRED UPON EXECUTION OF CREDIT RESERVATION AND CARRYOVER ALLOCATION CONTRACT (RAC)**

Before the Commission will execute a RAC for a project, an Applicant must satisfy each of the following requirements.

#### **(1) Payment of Fifty Percent (50%) of the Reservation Fee**

The Applicant must pay at least fifty percent (50%) of the reservation fee for the project when the RAC is signed by the Applicant and submitted to the Commission. **The reservation fee is nonrefundable and nontransferable.**

The Applicant must pay the reservation fee with a business or personal check, a money order, or a cashier's check. Cash is not accepted. A RAC submitted with a check that is returned for insufficient funds will not be executed, and the project may be disqualified.

#### **(2) Feasibility and Viability Analysis**

At the time of the carryover allocation and before signing the RAC, the Commission will perform a financial feasibility and viability analysis for each project (as described in Section G of Chapter 2 of these *Policies*). The Commission will advise the Applicant of documentation that must be submitted in order to allow the Commission to perform this analysis.

The Commission may issue a carryover allocation to a project for an amount of Credit that is less than the amount requested in the Application (and set forth in the Commission's initial project approval), if the project does not qualify for such Credit amount based on the Commission's feasibility and viability analysis or for other reasons. Under no circumstances will the amount of the carryover allocation exceed the amount requested in the Application. The excess credit amount will be deemed automatically returned to the Commission and the Applicant will have no further right to the Credit. The Credit will be available, at the discretion of the Commission, for reservation and/or allocation to other qualified projects.

### **C. DOCUMENTATION REQUIRED WITHIN 12 MONTHS OF CREDIT RESERVATION AND CARRYOVER ALLOCATION CONTRACT (RAC)**

Unless noted otherwise, the Applicant must meet each of the following requirements within 12 months of the date of the RAC. For Applicants who are able to meet each of the following requirements prior to the 12-month deadline, the Commission will endeavor to complete its review within 60 days of receipt of all requirements.

#### **(1) Ten Percent (10%) Carryover Test**

The Applicant must demonstrate to the satisfaction of the Commission that it has incurred more than ten percent (10%) of the reasonably expected basis of the project, as required by Section 42(h)(1)(E) of the Code and Treasury Regulation 42.6. Specifically, the Applicant must certify to the Commission that it has fulfilled this requirement and must also submit a CPA's certification that satisfies the requirements of Treasury Regulation 42-6(c)(2).

The CPA's certification should itemize all of the costs that have been incurred to satisfy the ten percent (10%) requirement. If the Applicant is itemizing any portion of the developer fee or consultant fees for purposes of satisfying the ten percent (10%) requirement, the certification must contain a detailed breakdown of the services performed by the developer and each consultant and the amount of the fees apportioned to each service. The Applicant must also submit a copy of all developer and consultant contracts as well as an itemized statement apportioning the fees earned to each service provided.

The Commission may require the Applicant to submit additional documentation of the costs reflected in the certifications and the Commission may limit or exclude certain costs if it cannot determine that they are reasonable and appropriate.

#### **(2) Payment of Balance of Reservation Fee**

The Applicant must pay the balance of the reservation fee by the deadline in the RAC.

### **(3) Other Supporting Documents**

The Commission may require additional supporting documentation on an as-needed basis.

## **D. COMPLIANCE WITH CODE AND COMMISSION REQUIREMENTS**

The Applicant, each Principal, each member of the Development Team, each Related Party to the project owner, and the Project must be in compliance with any requirements of the Code and any terms, conditions, or obligations of the Tax Credit Program with respect to the project before being issued a RAC. Further, the Commission may choose not to issue a RAC if the Applicant, a Principal or any member of the Development Team is in Noncompliance with any requirements under the Code and/or any terms, conditions, or obligations of the Tax Credit Program for any project. If the Commission decides to disqualify the project/Application and cancel the Credit reservation and carryover allocation, any Credit reserved to the project will be automatically returned to the Commission without further action of the parties and the Applicant will have no further right to such Credit. The Credit will be available for reservation and allocation to other qualified projects.

## **E. OTHER REQUIREMENTS**

If the Commission decides that additional Credit reservation and carryover allocation requirements are needed or appropriate to comply with federal or state law or the Program, it may add to or modify the Credit reservation and carryover allocation requirements for any project.

## **F. EXTENSIONS**

If the Applicant anticipates that it will be unable to complete all Credit reservation and carryover allocation requirements in the RAC, the Applicant may ask for an extension in writing no less than thirty days in advance of the specified dates in the RAC.

The Applicant's request will only be considered if it has demonstrated a strong probability that the credit reservation and carryover allocation requirements will be fulfilled within the additional requested time. The Commission may or may not grant the Applicant's request for an extension.

## CHAPTER 8 PLACED-IN-SERVICE ALLOCATION REQUIREMENTS

The Commission will accept and process Placed-In-Service documents and issue IRS Form 8609(s) throughout the year. However, a project owner must submit all Placed-In-Service documentation, including the Independent Certified Public Accountants Report (“Cost Certification”) and the certificates of occupancy for each building in the project at least 60 days prior to when they expect to receive the IRS Form 8609(s).

### A. PLACED-IN-SERVICE ALLOCATION REQUIREMENTS – WAC 262-01-130(11) AND (12)

#### (1) Compliance Training

The Applicant and the Applicant’s property management representative must attend a Commission Tax Credit compliance workshop or receive equivalent training by a Commission compliance officer by the earlier of:

- (i) at least 120 days before the first building is placed-in-service; or
- (ii) prior to commencement of initial rent-up activities for the project.

Certificates cannot be more than 18 months old by placed-in-service date. If the Applicant’s property management representative has attended a Commission Tax Credit compliance workshop within the 12 months previous to the placed-in-service date, the representative is not required to attend another workshop prior to commencement of the property’s initial rent-up activities. “Property management representative” is defined as someone who will be working directly with the project on a regular basis from the point of initial rent-up onward. In an effort to keep staff trained on the latest compliance issues, owners should also send new staff to the first available tax credit compliance workshop and senior staff every three years.

#### (2) Master Lease; Lease Rider

The Applicant must provide a copy of the master form of resident lease or rental agreement in a form acceptable to the Commission at least 60 days before the first building in the project is placed-in-service. The Lease Rider must be attached to the master lease or rental agreement.

#### (3) Election Regarding Calculation of Gross Rent Floor

If the Applicant desires to use the placed-in-service date of the building for purposes of calculating the gross rent floor under Section 42(g)(2)A of the Code and the Applicant did not make an effective election to do so as part of the RAC, the Applicant must affirmatively elect to use the placed-in-service date by giving written notice to the Commission. This notice should be received by the Commission no later than the date that the building is placed-in-service. Otherwise the IRS will treat the gross rent floor as

taking effect the date the Commission initially allocated Credit to the project.

(4) Property Management Agreement

The Applicant must provide an executed copy of the property management agreement or related documents. The agreement must include specific terms, conditions, and responsibilities. If the Applicant has previously submitted a property management agreement and amended it, the Applicant must provide a copy of the agreement.

(5) Long-term Lease Covenant

If the Applicant has established a long-term lease in lieu of ownership, the Applicant must execute, notarize, and record an agreement between the Applicant and the owner of the land. The owner must agree to allow the Applicant to record the Regulatory Agreement as a restrictive covenant on the land and all improvements on it that is binding upon the current owner and any successors in interest to the owner.

(6) Regulatory Agreement

The Applicant must execute, notarize, and record a Regulatory Agreement in each county where a building is located. See Section I of Chapter 2 for additional requirements with respect to the Regulatory Agreement.

(7) Subordination Agreement(s)

If financing is obtained for any building that is secured by a mortgage or deed of trust that is recorded before the Regulatory Agreement, the lien must be subordinated to the interests of the Commission as shown in the Regulatory Agreement. See Section I of Chapter 2 for additional requirements with respect to subordination agreements.

(8) Title Report

Provide current title evidence demonstrating that the Commission's Regulatory Agreement is in first lien position. For projects with recorded liens prior to the Commission's Regulatory Agreement, the project will need to subordinate those liens with the Commission's Subordination Agreement. The Title Report should reflect the recording of the Commission's Regulatory Agreement, Deeds of Trust, Subordination Agreements, and the legal description.

(9) Compliance with Code and Commission Requirements

Before the Commission will issue IRS Form 8609 to any building in a project, the project owner, each of the Principals, each member of the Development Team, all Related Parties to the project owner and the project must be in compliance with any requirements the Code and the terms, conditions, or obligations of the Tax Credit Program with respect to the project. Further, the Commission may choose not to issue IRS Form



8609 for a building if the project owner, a Principal, a member of the Development Team, or a Related Party to the Tax Credit project owner is in Noncompliance with respect to any project subject to the Tax Credit Program. In addition, the Commission may cancel any Credit reservation and carryover allocation for any Noncompliance, for example, the failure to pay any fee assessed by the Commission with respect to the project.

If the Commission decides to disqualify the project/Application and cancel the Credit reservation and/or the carryover allocation, the Credit will be available, at the discretion of the Commission, for reservation and/or allocation to other qualified projects.

(10) Approval of and Payment of Funds for Local Housing Needs

If the Applicant represented that it would provide funds for local housing needs, the Applicant must provide the Commission with a written request to approve a donation to a specific Nonprofit Organization that provides housing or housing-related services in the county where the project is located.

The Applicant must provide the Commission with certifications (in a form acceptable to the Commission) from both the Applicant/donor and the recipient confirming that the contribution will be made or received, respectively, without any favor, benefit, gift, or other consideration. The Applicant must provide a letter from the approved Nonprofit Organization acknowledging receipt of the proper contribution amount as well as a copy of the cancelled check from the transaction. The letter must show receipt of the proper contribution amount, identify the low-income housing program, and specify how the funds will be used. The amount of the donation cannot be included in the Project's Total Project Costs.

(11) Other Requirements

If the Commission decides that additional initial placed-in-service allocation requirements are necessary or appropriate, it may add to or modify such requirements for any project.

## **B. FINAL COST CERTIFICATION REQUIREMENTS**

(1) Program Requirements, Disclosures and Limits

All applicable Program requirements and disclosures set forth in Chapter 2 and the RAC and all applicable Program Limits must be met.

(2) Allocation Criteria Commitments

All Allocation Criteria Commitments must be satisfied.

- (3) Occupancy Permit  
The Applicant must get a certificate of occupancy or temporary certificate of occupancy for each building and provide a copy of each certificate to the Commission.
- (4) Placed-In-Service  
The Applicant must place each building in service by the deadlines set by the Commission. Generally, a building will be deemed to be Placed-In-Service when it is issued a certificate of occupancy by a governmental permitting agency or as otherwise defined by the Code.
- (5) Independent Certified Public Accountant's Certification of Eligible and Qualified Basis; Sources and Uses of Funds  
The Applicant must provide a certification, addressed to the Commission and prepared by an independent CPA, of the eligible basis<sup>7</sup> of each building and, based on the Applicant sworn representations about the low-income use of each building, its qualified basis<sup>8</sup>. The certifications must also list sources and uses of all funds for the project, for example, the proceeds from the sale of the Credit. The independent CPA's certification must be accompanied by executed copies of the developer agreement, each consultant contract, and an itemized statement earmarking the developer's fees and/or consultant fees earned for the services provided.
- (6) Partnership Agreement, Limited Liability Company Agreement, or Joint Venture Agreement  
If the Applicant is a partnership or a limited liability company, the Applicant must provide the most current Partnership Agreement.
- (7) Financing Documents  
The Applicant must provide financing documents, not previously submitted, for all loans or grants made to the project. For loans, a copy of the promissory note will fulfill this requirement.
- (8) Operating Pro Forma  
The Applicant must provide a copy of a current 15-year operating pro forma for the project.
- (9) Evergreen Sustainable Development Standard  
The Applicant must provide a copy of the Evergreen Final Architect Certification, the Evergreen Project Implementation Plan, and all required backup documentation. As much of the backup documentation as possible should be submitted in digital format on a compact disc. Emailed documentation will not be accepted.

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<sup>7</sup> Within the meaning of Section 42(d) of the Code.

<sup>8</sup> Within the meaning of Section 42(c)(1)(A) of the Code.

(10) Other Requirements

If the Commission decides that additional final placed-in-service allocation requirements are necessary or appropriate, it may add to or modify such requirements for any project. For example, the Commission may require a project owner to provide legal opinions to the Commission with respect to certain matters.

## **CHAPTER 9 PROJECT TRANSFER OR ASSIGNMENT REQUIREMENTS**

### **A. OVERVIEW**

Generally, all direct and indirect project transfers or assignments require the prior written consent of the Commission. If the Applicant fails to obtain the Commission's prior written consent, the Commission may disqualify the project/Application and cancel the Credit reservation and/or carryover allocation. Further, a project transfer or assignment that occurs after a building is placed-in-service may result in Credit recapture under the tax law, regardless of the Commission's consent. The Applicant should consult the Applicant's legal counsel and/or tax advisor about the effect of a project transfer or assignment.

### **B. PROJECT TRANSFER OR ASSIGNMENTS REQUIRING COMMISSION CONSENT**

A project transfer or assignment means any direct or indirect sale, contribution, assignment, lease, exchange, or transfer of, or other change in:

- (1) an interest in the land, the project, or any building;
- (2) an ownership interest in the entity that is the Applicant or project owner (for example, a transfer of a partnership interest or, with respect to a limited liability company, a membership or managers interest); or
- (3) the rights, title, or interest of the Applicant or project owner in any agreement in which the Commission and the Applicant or project owner are parties.

Only a few types of project transfers or assignments do not require the prior written consent of the Commission. They include:

- (i) the grant of a security interest or lien junior to the interest of the Commission;
- (ii) the sale or transfer of, or change in, the interest of a limited partner (including the addition, removal, or withdrawal of a limited partner);
- (iii) in the case of a limited liability company, the sale or transfer of, or change in, the interest the investment member (unless the investment member actively participates in management of the company); or
- (iv) the issuance, redemption, or transfer of stock or shares of a corporation that is not a closely-held corporation.

### **C. PROCESS AND REQUIREMENTS FOR OBTAINING THE COMMISSION'S CONSENT**

The first step in obtaining the Commission's written consent is to advise the Commission staff in writing of the Applicant's proposed project transfer or assignment. At a minimum, the Applicant should describe: (1) the name of the

project; (2) the names of the project Applicant and/or the owner, the proposed transferor and transferee, and all other relevant parties; (3) a complete description of the proposed project transfer or assignment, including the proposed effective date; and (4) any special circumstances related to the proposed project transfer or assignment.

After receiving the Applicant's written request, the staff will advise the Applicant if Commission consent is necessary. If it is, the staff also will advise the Applicant of the Commission's requirements and conditions that must be satisfied in order to obtain the Commission's consent, including the payment of a nonrefundable transfer fee to the Commission.

If the Applicant made a Commitment to participate under the Credit Set-Aside category for, (a) Qualified Nonprofit Organizations, (b) Nonprofit Organizations, or (c) for-profit entities, any project transfer or assignment must be such that the project continues to qualify for applicable Credit Set-Aside category.

#### **D. FINAL CONDITIONS TO CONSENT BY COMMISSION**

The Commission will indicate its consent to the proposed project transfer or assignment by executing and returning to the Applicant a certain "Agreement Regarding Transfer of Project Consent." The Applicant may not complete the proposed project transfer or assignment until the Commission has executed and returned this agreement to the Applicant and until the Applicant has performed or satisfied any and all other requirements and conditions established by the Commission. If a Regulatory Agreement has been recorded for the project, the "Agreement Regarding Transfer of Project Interest" must be recorded in the office of the county auditor or recorder of each county where any building in the project is located.

Any project transfer or assignment made without the Commission's prior written consent (unless otherwise expressly permitted in this chapter) or otherwise in violation of the requirements or provisions of this chapter, the RAC, the Regulatory Agreement, or the Tax Credit Program will be:

- (1) ineffective to relieve or release the transferor, the land, the project, and/or any building from the obligations and provisions of the *Policies*, the RAC, the Regulatory Agreement, and/or the Tax Credit Program;
- (2) considered an event of default under the Application, the RAC, the Regulatory Agreement, and the Tax Credit Program, allowing the Commission to exercise any or all available remedies; and
- (3) considered an event of Noncompliance that may result in the cancellation or invalidation of the reservation and/or allocation of Credit for the project and/or any building.

The indemnity and hold-harmless provisions of the RAC, the Regulatory Agreement or any other Tax Credit Program agreement by the Applicant and/or a successor-in-

interest will survive the ending of such parties' interest in the project and will continue to be a personal obligation of such party.

## **CHAPTER 10 PROJECT MONITORING**

### **A. INTRODUCTION**

Pursuant to the *Qualified Allocation Plan* and WAC 262-01-130(16), the Commission has established certain compliance monitoring requirements for the owners of projects. These requirements, described in the *Qualified Allocation Plan* and in a project's Regulatory Agreement, specify:

- (1) the requirements and process an owner must follow to make sure the project is in compliance with Section 42 of the Code and the Tax Credit Program; and
- (2) the process the Commission or its representatives will follow in monitoring for compliance with the provisions of Section 42 of the Code and the requirements of the Tax Credit Program, and in notifying the IRS of any Noncompliance.

Federal and state laws, together with Commission policies, governing the compliance monitoring are frequently amended. It is the responsibility of the owner to make sure its project is in compliance throughout the Project Compliance Period.

### **B. OWNER'S RESPONSIBILITIES AND REQUIREMENTS**

The owner's responsibilities and obligations for maintaining project compliance are set forth in the *Qualified Allocation Plan* and the *Regulatory Agreement*. In addition, the Commission has prepared a Tax Credit compliance manual that will help an owner understand its responsibilities and obligations for compliance monitoring under the Tax Credit Program. The Commission also provides Tax Credit compliance workshops throughout the year for owners, managers, and on-site managers in order to support compliance monitoring.

In addition to such other rights the Commission may exercise in connection with compliance monitoring, as a condition of participation in the Tax Credit Program a project owner agrees that the Commission may perform an on-site review of any building in the project, interview residents, review residents' applications and financial information, and review an owner's books and records relating to the project. A project owner must provide the Commission reasonable access to the project and its books and records in order to allow the Commission to perform compliance monitoring. In connection with this obligation, an owner must take all action as may be reasonably necessary to allow the Commission to inspect housing units occupied by residents.

The Commission will report events of Noncompliance (whether the Noncompliance relates to a violation of federal or Tax Credit Program requirements) to the IRS regardless of whether the Noncompliance is corrected timely. Noncompliance may result in the loss and recapture of Credit, in addition to the Commission exercising its rights and remedies under the *Policies*, the RAC, the *Regulatory Agreement*, the Tax Credit Program, and law. The procedures set forth for the Commission to report

Noncompliance to the IRS are not intended to and will not limit or restrict any other rights and remedies available to the Commission under the *Policies*, the RAC, the Regulatory Agreement, the Tax Credit Program, or law.



## CHAPTER 11 FEE SCHEDULE

The Commission has set the fee schedule listed below for the Tax Credit Program. The Commission may make additions or modifications to the fee schedule.

### A. APPLICATION FEE – WAC 262-01-130(1) and (14)

The Application fee is the greater of:

- (1) \$26 per housing unit (based on the total housing units in the project, including both low-income and market rate housing units, but excluding any common area units); or
- (2) \$1,265.

The Application fee is nonrefundable and must be paid upon submission of the Application. A new Application fee must be paid each time a new Application is submitted, regardless of whether that Application is for the same building(s) or project.

### B. RESERVATION FEE – WAC 262-01-130(14)

The reservation fee is the greater of:

- (1) \$3,795; or
- (2) Either:
  - (i) 9.50% of the total (i.e., first year) Credit reservation amount for a project that selects an Additional Low-Income Housing Commitment of at least 50% of the total low-income housing units at 50% or less of the area median gross income; or
  - (ii) 12.53% of the total (i.e., first year) Credit reservation amount for any other project.

An Applicant must pay at least 50% of the reservation fee when the RAC is signed by the Applicant and submitted to the Commission, and the Applicant must pay the balance of the reservation fee by the deadline in the RAC. If the Commission does not receive the balance of the reservation fee within five business days of the deadline in the RAC, and the Commission determines that it will accept a late payment, the balance of the reservation fee must be accompanied by a late charge of 1.5% per month accruing from the RAC deadline.

The reservation fee is nonrefundable. If a RAC is canceled, the Commission will keep all of the reservation fee. Also, no adjustment of the reservation fee will be made if the final Credit allocated to a project is less than the Credit reserved to it.

**C. ANNUAL COMPLIANCE MONITORING FEE –**  
WAC 262-01-130(14)

The Commission is required to monitor compliance of projects with applicable laws, regulations, and agreements. The annual compliance monitoring fee for projects placed-in-service prior to March 31, 2001 is \$350 for projects with 10 or fewer low-income housing units and \$35.00 per low-income housing unit for projects with 11 or more low-income housing units. The annual compliance monitoring fee for projects placed-in-service after March 31, 2001 is \$450 for projects with 10 or fewer low-income housing units and \$45.00 per low-income housing unit for projects with 11 or more low-income housing units. These fees are nonrefundable. The annual compliance monitoring fee may be increased to cover increased compliance monitoring costs in the future.

If the first year of the credit period for a project begins with the taxable year when a building is placed-in-service, the owner must pay the annual compliance monitoring fee for the first Credit year for the entire project by the deadline in the RAC, and in any event no later than the first Monday in November of the year that the first building is placed-in-service.

The full annual compliance monitoring fee must be paid annually by the Commission deadline. The current deadline for the full fee for all projects is January 31 of each year, although the Commission may change the date. If the full fee is not paid within 30 days and the Commission determines that it will accept a late payment, the payment must be accompanied by a late fee of 1.5% per month on any unpaid amounts.

The full fee is due for a project when it is placed-in-service and is subject to compliance monitoring for a given year, regardless of the number of days a project is subject to compliance within a given year.

The Commission may enter into agreements with various government agencies and delegate its compliance monitoring functions to those agencies. If the Commission enters into such an agreement and the other agency monitors a project, the Commission may allow the project owner to substitute a certification prepared for the other agency for the certification required by the Commission. Additionally, if the other agency's monitoring of the project results in a reduction in the Commission's costs of monitoring that project, it may reduce the fee (but is under no obligation to do so).

Unless the Commission notifies a project owner in writing, the project owner is required to pay the full amount of the annual compliance monitoring fee, regardless of whether the Commission allows the project owner to use the forms, reports, or certifications prepared for any other agencies rather than the Commission's forms or reports.

**D. TRANSFER FEE –**

WAC 262-01-130(13) and (14)

The fee for any project transfer or assignment requiring the written consent of the Commission is \$3,162. The transfer fee applies to any project transfer or assignment occurring after an Application is submitted and is not refundable.

**E. DISQUALIFICATION, CANCELLATION, NOTIFICATION TO IRS OF NONCOMPLIANCE, AND DEBARMENT**

If an Applicant or project owner fails to pay any Tax Credit Program fee on time and in full, the Commission may disqualify the project and Application, cancel the Credit reservation and carryover allocation, assess a late charge, report the Noncompliance to the IRS, or prevent the Applicant, project owner, and parties associated with the project from any participation in the Tax Credit Program pursuant to the debarment rules found in WAC 262-03-040.

## **CHAPTER 12 DECISIONS AND REVIEWS**

### **A. INITIAL DETERMINATION**

The Tax Credit Program Director is responsible for determining whether a project meets the Minimum Threshold Requirements set forth in Chapter 4, whether a project qualifies for a Credit Set-Aside category as set forth in Chapter 5, and whether the project qualifies for an award of Allocation Criteria points as set forth in Chapter 5, Chapter 6, and the Application. Any person who has a question about this process, or who believes that the Policies have been violated or misapplied, should contact the Tax Credit Program Director and attempt to resolve the matter.

Following submission of the Application, the Tax Credit Program Director will notify an Applicant whether its project meets the Minimum Threshold Requirements and, if so, whether the project qualifies for a Credit Set-Aside category and the number of Allocation Criteria points awarded to the project. The notice may be given by any reasonable method as determined by the Commission, including posting the results on the Commission's website ([www.wshfc.org](http://www.wshfc.org)) and notifying each Applicant by email that the results are so available. Except for extraordinary circumstances, the Tax Credit Program Director will not change a determination as to eligibility, qualification, satisfaction of conditions or requirements, including Credit Set-Asides, or an award of allocation Criteria points after posting the results.

### **B. REVIEW BY THE EXECUTIVE DIRECTOR**

If an Applicant believes it has been treated unjustly by a determination that (and only that): (i) the project does not satisfy the Minimum Threshold Requirements, (ii) the project does not qualify for a Credit Set-Aside category, or (iii) the project is not entitled to an award of Allocation Criteria points, the Applicant may ask the Executive Director to review that determination. To be considered, the request must be:

- (1) In writing;
- (2) Signed by the Applicant; and
- (3) Received by the Executive Director no later than five business days after the Commission notifies the Applicant that the results are available.

A request for review may be filed by facsimile (fax number 206-587-5113) and will be deemed filed on the day transmitted if it is simultaneously sent to the Commission by registered or certified mail. The request should be addressed to the Washington State Housing Finance Commission, 1000 Second Avenue, Suite 2700, Seattle, Washington 98104-1046, attention Executive Director. A copy should be sent to the Tax Credit Program Director.

### **C. PERMISSIBLE BASIS FOR REVIEW**

A determination that a project does not meet the Minimum Threshold Requirements or does not qualify for a Credit Set-Aside category or an award of certain allocation Criteria points, may be reviewed only if the Applicant can show that:

- (1) The Tax Credit Program Director erred in applying the *Policies* to the Applicant's project, or
- (2) Extraordinary circumstances exist such that:
  - (a) It is unreasonable and unjust to apply the *Policies* to the project, and
  - (b) Making an exception will not detract from the integrity and fairness of the Tax Credit Program.

An Applicant may seek a review only with respect to the determination or award that has been made regarding the Applicant's project. No party may intervene or otherwise participate in another party's review. An Applicant may not challenge the ranking of its project relative to others. The deadlines in the *Policies* are not subject to review.

### **D. CONTENT OF A REQUEST FOR REVIEW**

A request for review must state all objections to the Tax Credit Program Director's determination or award, give specific reasons for the contention that the Tax Credit Program Director erred or that extraordinary circumstances exist, and specify the desired remedy. The request must identify all information the Applicant wants the Executive Director to consider in the review. Although a request for review may include supporting documents, an Applicant may not use the review procedure to supplement the existing record.

### **E. EXECUTIVE DIRECTOR'S DECISION ON REVIEW**

The Executive Director (or the Executive Director's designee) will review each request for review based upon the Application and materials in the Commission's file for the project when the Tax Credit Program Director made a determination or award.

The Executive Director or designee may also conduct an investigation and talk to or meet with the Applicant. The Executive Director will grant relief only if the Applicant has met the burden of showing that the Tax Credit Program Director erred in applying the *Policies* to the Applicant's project, or that extraordinary circumstances exist such that applying the *Policies* as written to the project is unreasonable and unjust, and making an exception in this case will not detract from the integrity and fairness of the Program.

The Executive Director will issue a written decision within 10 business days after receiving a request for review or notify an Applicant within that period that more time is needed to respond. The Executive Director's decision will be sent by facsimile (if possible) and U.S. mail.

## **F. JUDICIAL REVIEW**

Judicial review of any decision of the Commission is governed by RCW 34.05.510 et seq. In accordance with RCW 34.05.534, any person seeking judicial review must first have exhausted administrative remedies.

## **G. GENERAL**

The Commission administers the Tax Credit Program under strict deadlines set by the Internal Revenue Code. These deadlines may make it difficult or impossible to complete the review by the Executive Director. Any reviews that remain unresolved as of a carryover allocation or final allocation deadline set by the Code will be deemed of no practical importance.

This chapter does not apply to any decision made by the Commission relating to a project after you sign a RAC. The rights and remedies of the parties to that contract will be as set forth in it.

## **CHAPTER 13**

### **QUALIFIED TAX-EXEMPT BOND-FINANCED PROJECTS**

#### **A. INTRODUCTION**

As provided in WAC 262-01-130(15), projects financed with tax-exempt bonds may be eligible for Credit without participating in the competitive Credit allocation process. Qualified tax-exempt bond-financed projects are projects in which some portion of eligible basis is financed with the proceeds of tax-exempt obligations. These tax-exempt obligations are subject to the bond volume cap limitation of Section 146 of the Code and further described in Section 42(h)(4)(A) and (B) of the Internal Revenue Code. The Commission or another issuer may provide the bond financing.

For the purposes of the Tax Credit Program, bond projects may be one of two types. If 50% or more of the combined basis of the building and the land is financed with tax-exempt bonds, the entire building is eligible for Credits. If less than 50% of the combined basis is financed with tax-exempt bonds, only that portion of the building that is financed with the tax-exempt bonds is eligible for Credit.

The Applicant must select Allocation Criteria totaling at least 50 Allocation Criteria points. Projects financed by the Commission will need to meet additional bond program requirements as determined by the Commission.

The Applicant must comply with all of the Policies for bond projects and enter into a Regulatory Agreement with the Commission. The Applicant must record the executed Regulatory Agreement in first lien position as a restrictive covenant that affects any subsequent owners.

Applicants of bond projects should refer to the Section 42 of the Internal Revenue Code and the Treasury Regulations for additional requirements, conditions, definitions, and restrictions. The Commission recommends that the Applicant consult with a tax advisor, legal counsel, accountant, and their financial advisor.

Projects financed with RD funds must submit a fully-executed Letter of Conditions along with the Application. Applications missing this item will not be reviewed

## **B. APPLICATION OF THE POLICIES TO QUALIFIED TAX-EXEMPT BOND-FINANCED PROJECTS**

All Policies described in Chapters 1-12, and the Glossary are applicable to bond projects except as described below.

### **CHAPTER 1 OVERVIEW**

*All material in Chapter 1 applies to bond projects, unless noted below.*

#### Application Schedule and Deadline (Section G)

The Commission will accept an Application for Credit for a bond project at any time during the year. However, the Commission requests that an Application for Credits be made:

- (i) At least 60 days before the tax-exempt bond closing or in the case of Commission issued bonds, 60 days before adopting the financing resolution, or
- (ii) September 1 of the year that the first building in the project is placed-in-service; or
- (iii) 120 days before the Applicant needs the Commission to issue IRS Form 8609.

### **CHAPTER 2 GENERAL REQUIREMENTS AND DISCLOSURES**

*All material in Chapter 2 applies to bond projects, unless noted below.*

#### Feasibility and Viability Analysis (Section G)

All of the material in this section applies subject to the discussion.

Under Section 42(m)(2)(D) of the Code, the issuer of the tax-exempt bonds is required to determine the amount of Credit. However, under the *Qualified Allocation Plan* for the State of Washington, the Commission, whether or not it is the issuer of the tax-exempt bonds, is required to determine the amount of Credit necessary for a project's financial feasibility and viability. The Commission will not allocate or award to a bond project more than the minimum amount of Credit needed. Further, the *Qualified Allocation Plan* states that if a project is financed in part with tax-exempt bonds from an issuer that is not the Commission, the responsibility to determine the financial feasibility and viability of a project will be shared.

When the Commission issues tax-exempt bonds or determines the initial Credit for a bond project that receives tax-exempt bonds from an issuer other than the Commission, it will determine the appropriate Credit amount at the time of the Application and again prior to the issuance of IRS Form 8609. The Commission will review all representations made by the Applicant in the Application regarding the project's eligible basis, qualified basis, projected sources and uses of funds and will use the Tax Credit Factor selected by the Applicant. In determining the amount of



Credit for IRS Form 8609, the Commission will review all representations made by the Applicant as well as the Independent CPA's certification regarding the project's eligible basis, qualified basis and the sources and uses of funds.

The Commission will evaluate projects based upon their long-term feasibility, viability, development and operational costs, as well as the market study outlining the market need and demand.

Credit Reservation and Carryover Allocation (Section H)

None of the material in Section H applies to bond projects.

### **CHAPTER 3 PROGRAM LIMITS**

*All material in Chapter 3 applies to bond projects, unless noted below.*

Maximum Credit Per Low-Income Housing Unit (Section D)

None of the material in Section D applies to bond projects.

Maximum Credit Per Applicant (Section F)

None of the material in Section F applies to bond projects.

Maximum Credit Per Project (Section G)

None of the material in Section G applies to bond projects.

### **CHAPTER 4 MINIMUM THRESHOLD REQUIREMENTS**

*All material in Chapter 4 applies to bond projects, unless noted below.*

Minimum Number of Allocation Criteria Points (Section Q)

The Applicant must select Allocation Criteria that total at least 50 Allocation Criteria points.

### AFFIRMATIVE MARKETING PLANS (AMP)

For Projects that receive tax-exempt bond-financing from the Commission, Applicants must provide the AMP with the bond application as part of the Multifamily Housing Program Threshold Requirements.

For Projects that receive tax-exempt bond-financing issued by a party other than the Commission, Applicant must provide an AMP with the Tax Credit Application.

## CHAPTER 5 CREDIT SET-ASIDES AND PROJECT RANKING PROCEDURES

*All material in Chapter 5 applies to bond projects, unless noted below.*

### Implementation and Interpretation of the Allocation Criteria (Section A2)

The Applicant is required under WAC 262-01-130(1) and (14) to submit a complete Application, including all attachments and the proper Application fee, by the appropriate deadline. The Tax Credit Program Director will consider the information in determining whether the Applicant and/or the project:

- (i) Meets the Minimum Threshold Requirements; or satisfy the Allocation Criteria and Allocation Criteria points, in Chapter 6 selected for the project.

### Fully-Funded Projects (Section A3)

This material does not apply to bond-financed projects.

### Waiting Lists (Section A6)

The Commission may accept additional Applications and reserve and allocate Credit for bond projects within the meaning of Section 42(h)(4)(A) and (B) of the Code if:

- (i) There are no remaining qualified projects on the waiting list;
- (ii) There is no volume cap in effect that allows a bond project to receive Credit without a Credit allocation; and
- (iii) There is Annual Authority available.

### Forward Credit Commitment (Section A7)

None of the material in *Section A7* applies to bond projects.

### Rural Development Projects (Section B6)

All projects financed with funds from Rural Development must provide a fully-executed Letter of Conditions along with the Application. The Application will not be considered without this item.

None of the material described in Sections C or D applies to bond projects.

## **CHAPTER 6 ALLOCATION CRITERIA AND POINTS**

*All material in Chapter 6 applies to bond projects, **unless noted below.***

### Introduction (Section A)

The Applicant must select Allocation Criteria for a bond project that totals at least 50 Allocation Criteria points.

### Allocation Criteria and Points (Section C)

(3) HOUSING NEEDS – In order to receive points under this Allocation Criterion, the project must commit a minimum of 50% of the total low-income housing units to serving 50% of the AMGI. This Commitment must be reflected under the Additional Low-Income Housing Allocation Criterion.

(4) NON PROFIT SPONSOR – Tax-exempt bond financed projects are not eligible for these points.

(11) LEVERAGING OF PUBLIC RESOURCES – *For the purposes of this Allocation Criterion, tax-exempt bond financing does not qualify as public leveraging*

(12) DONATION IN SUPPORT OF LOCAL HOUSING NEEDS – *This selection is independent from any election on the Commission Bond side. Two separate payments must be made..*

## **CHAPTER 7 CREDIT RESERVATION AND CARRYOVER ALLOCATION REQUIREMENTS**

*None of the material in this Chapter applies to bond projects.*

### Election of Applicable Percentage

The Commission must receive an executed election of applicable percentage no later than the fifth day of the month following the month in which the bonds are issued. If the Commission does not receive the Applicant's election, the applicable percentage will be the month(s) that the building(s) are placed-in-service.

## **CHAPTER 8 PLACED-IN-SERVICE ALLOCATION REQUIREMENTS**

*All of the requirements in Chapter 8 apply to bond projects.*

## CHAPTER 9 PROJECT TRANSFER OR ASSIGNMENT REQUIREMENTS

*All the material in Chapter 9 applies to bond projects.*

## CHAPTER 10 PROJECT MONITORING

*All the material in Chapter 10 applies to bond projects.*

## CHAPTER 11 FEE SCHEDULE

### Application Fee (Section A)

*All material in Section A of Chapter 11 applies to bond projects.*

### Reservation Fee (Section B)

None of the material in Section B applies to bond projects. Instead, an Applicant must pay a Credit Issuance Fee as described below.

### Credit Issuance Fee

For bond projects where the Commission is the issuer, the Credit Issuance fee is the greater of:

- (i) \$3,797; or
- (ii) 6.02% of the total (i.e., first year) Credit amount.

For bond projects where the tax-exempt bonds are issued by a party other than the Commission, the Credit issuance fee is the greater of:

- (i) \$3,797; or
- (ii) Either:
  - (a) 9.49% of the total (i.e., first year) Credit amount for a project that selects an Additional Low-Income Housing Commitment of at least 50% of the total low-income housing units at 50% or less of the area median gross income;
  - or
  - (b) 12.65% of the total (i.e., first year) Credit amount for any other project.

The Applicant must pay at least 50% of the anticipated total Credit issuance fee (based on the Applicant's projected total first year Credit amount) by the later of:

- (i) The date the Application is submitted to the Commission; or
- (ii) Within five business days of the bond closing.<sup>9</sup>

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<sup>9</sup> For bond projects where the Commission is the issuer of tax-exempt bonds, the initial portion of the Credit issuance fee will be included as part of the cost of issuance at bond closing if the Applicant has already submitted an Application for Credit.

The balance of the actual total Credit issuance fee is due when the Commission determines the final Credit amount for the project, and in no event later than the issuance of Form 8609.

*The Credit issuance fee is nonrefundable. If a bond project is disqualified or canceled, the Commission will keep the entire Application fee and the Credit issuance fee the Applicant paid.*

#### Annual Compliance Monitoring Fee (Section C)

For projects placed-in-service after March 31, 2001, that received tax-exempt bond financing from the Commission the annual compliance monitoring fee is \$45.00 per low-income housing unit for projects with 11 or more low-income housing units. For projects with 10 or less low-income housing units, the annual compliance fee is \$450.

For projects placed-in-service after March 31, 2001, that received tax-exempt bond-financing issued by a party other than the Commission, and are owned and controlled by a Housing Authority or a Public Development Authority the annual compliance monitoring fee is \$45.00 per low-income housing unit for projects with 11 or more low-income housing units. For projects with 10 or less low-income housing units, the annual compliance fee is \$450.

For projects placed-in-service after March 31, 2001, that received tax-exempt bond-financing issued by a party other than the Commission, and are not owned and controlled by a Housing Authority or a Public Development Authority, the annual compliance monitoring fee is \$58.00 per low-income housing unit for projects with 11 or more low-income housing units. For projects with 10 or less low-income housing units, the annual compliance fee is \$580.

For projects that received tax-exempt bond financing from the Commission and were placed-in-service prior to March 31, 2001, there is no separate annual compliance monitoring fee. For these projects, after the tax-exempt financing compliance period ends, the owner will be required to begin paying the current applicable annual compliance monitoring fee.

For projects that received tax-exempt bond-financing issued by a party other than the Commission and were placed-in-service prior to March 31, 2001, the annual compliance monitoring fee is \$35.00 per low-income housing unit for projects with 11 or more low-income housing units. For projects with 10 or less low-income housing units, the annual compliance fee is \$450. These fees are nonrefundable.

If the Applicant's first year of the Credit monitoring period begins with the taxable year when a building is placed-in-service, the Applicant must pay the annual compliance monitoring fee for the first year for the entire project by November 1 of the year that the first building in the project is placed-in-service.

The full annual compliance monitoring fee must be paid annually by the Commission deadline. The current deadline for this fee is January 31 of each year.

The full fee is due for a project when it is placed-in-service and is subject to compliance monitoring for a given year, regardless of the number of days a project is subject to compliance within a given year.

Transfer Fee (Section D)

*All material in Section D of Chapter 11 applies to bond projects.*

Disqualification, Cancellation, Notification to IRS of Noncompliance, and Debarment (Section E)

*All material in Section E of Chapter 11 applies to bond projects.*

## **CHAPTER 12 DECISIONS AND REVIEWS**

All material in Chapter 12 applies to bond projects.

## **GLOSSARY**

Definitions in the Glossary apply as appropriate.

## GLOSSARY

### Note:

The following definitions are used in the *Policies* and in other documents that relate to the Tax Credit Program. Capitalized terms in the *Policies* bear the meaning given them in the definitions in this Glossary.

The definitions in this Glossary may be amended by the Commission to comply with federal or state law. If there is a conflict between an Internal Revenue Code and a Tax Credit Program definition, restriction, or requirement, the more restrictive one will apply, as determined by the Commission.

**Additional Low-Income Housing Commitment** means the specified percentage of housing units that are both rent-restricted and occupied by residents whose Income is at or below the selected percentage of the area median gross Income, which is at or below the level of the minimum low-income housing set-aside. The percentages referred to are the applicable Commitments made in the Application to receive Allocation Criteria points.

**Additional Low-Income Housing Use Period** means the period of years (commencing after the close of the compliance period) that an Applicant made a Commitment in the Application to maintain the low-income housing units and all of the applicable Commitments made to receive Allocation Criteria points and to comply with all the terms and conditions of the Regulatory Agreement, as well as the requirements of Section 42 of the Code and the Tax Credit Program. The period of years refers to the applicable Commitment made in the Application to receive Allocation Criteria points.

**Affiliated With** means a relationship that permits a person to, directly or indirectly, materially and unduly influence the policies and decisions of an organization or entity, regardless of whether the influence is exercised or merely exercisable. In the case of an individual, material and undue influence exercised or exercisable by the individual's family shall be taken into account. The Commission shall have the sole discretion to interpret and apply this definition in its broadest sense, and the Commission's determination shall be based on all relevant facts and circumstances. The following relationships are presumed, unless determined otherwise by the Program Director, to permit a person to materially and unduly influence the policies and decisions of an organization or entity:

- (1) A single for-profit organization owns, directly or indirectly,
  - (i) 33 1/3 % or more of the total combined voting power of all classes of stock or membership interests of the Nonprofit Organization; or
  - (ii) 33 1/3% or more of the total number of shares or membership interests of all other classes of stock or interests of the Nonprofit Organization; or
- (2) A single for-profit organization has the power, directly or indirectly, to:

- (i) Elect 33 1/3% or more of the members of the board of directors (or similar governing body) of the Nonprofit Organization, or
  - (ii) Remove 33 1/3% or more of the members of the board of directors (or similar governing body) of the Nonprofit Organization; or
- (3) 33 1/3% or more of the board of directors (or similar governing body) of the Nonprofit Organization are officers, directors, employees, or agents of a single for-profit organization.

For the purposes of the above, a for-profit “organization” may be a sole proprietorship or individual.

**Allocation Criteria** means the allocation criteria set forth in Chapter 6 and the Application used by the Commission to assess the degree to which a proposed project promotes the Commission’s Housing Priorities set forth in Chapter 5.

**Annual Authority** means the total state housing Credit dollar amount that the Commission may allocate for any calendar year, equal to the state housing Credit ceiling. Whether Annual Authority will be available in a given year depends on the status of federal legislation and the Commission’s actions.

**Applicant** means the party that submits an Application to the Commission for a Credit reservation and/or allocation, including its successors in interest.

**Application** means the Tax Credit Program Application and amendments thereto, if any, submitted by an Applicant for a project.

**Certification Period** means the 12 month period preceding the date that the Owner is required to give the Annual Certification in accordance with the reporting requirements of the Regulatory Agreement and Section 42(m) of the Code.

**Code** means the Internal Revenue Code of 1986, as amended, together with corresponding and applicable temporary, proposed, and final Treasury Regulations, and Revenue Rulings and pronouncements issued or amended regarding it by the U.S. Department of the Treasury or IRS to the extent applicable to the project.

**Commission** means the Washington State Housing Finance Commission, a public body corporation and politic in the State of Washington.

**Commissioners** means the eleven member board of Commissioners of the Commission, composed of nine members appointed by the governor and two ex officio members.

**Commitment** means a representation or agreement by an Applicant in the Application that is binding upon the owner of a project throughout the project Compliance Period unless otherwise noted in the *Policies*, the Application, or agreements in connection with the Tax Credit Program.



**Community Revitalization Plan** means a plan that is (1) a published document, approved and adopted by a governing body, by ordinance, resolution, or other legal action; and (2) targets funds or tax incentives to specific geographic areas for either of the following: economic development, including economic related initiatives; and/or commercial/retail development, including infrastructure and community facility improvement.

**Controlled By or In Control Of** means any kind of control, direct or indirect, by means of which a person in fact controls an organization or another person, whether or not the control is legally enforceable and regardless of the method control is exercised or merely exercisable. In the case of an individual, control possessed by the individual's family shall be taken into account. The Commission shall have the sole discretion to interpret and apply this definition in its broadest sense and the Commission's determination shall be based on all relevant facts and circumstances.

**Correction Period** has the meaning set forth in Section B of Chapter 4 of the *Policies*.

**Credit Set-Asides** means, as more fully set forth in Chapter 5, the specified percentages of the Annual Authority set aside for:

- (1) Projects sponsored by Qualified Nonprofit Organizations;
- (2) Projects sponsored by Nonprofit Organizations;
- (3) Projects sponsored by for-profit entities or individuals;
- (4) Rural housing projects;
- (5) RD projects; and/or
- (6) Other set-asides established by the Commission.

**Development Team** means the Applicant, the developer, the project management consultant, the general contractor and includes all persons or organizations materially involved in the acquisition, construction, rehabilitation, development, or improvement of the project.

**Disabilities** means a physical or mental impairment that substantially limits one or more of the major life activities of an individual, such as not being able to care for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, or learning.

**Elderly Housing Commitment** has the meaning set forth in Section C(5) of Chapter 6 the *Policies*.

**Elderly Housing Project** means a project that conforms to the Fair Housing Act, as amended, and:

- (1) A project in which all housing units are intended for and solely occupied by residents who are 62 or older;
- (2) A project in which all housing units are each intended and operated for occupancy by at least one resident who is 55 or older, and where at least 80% of the total housing units are in fact occupied by at least one resident who is 55 or older; or
- (3) A project which is financed, constructed, and operated under the RD Section 515 program for the elderly or a HUD elderly program (i.e., where each resident is either 62 or older or is a person with handicaps or disabilities regardless of age, as such terms are defined in the RD and HUD programs).

**Equity Gap** has the meaning set forth in the Application.

**Executive Director** means the Executive Director of the Commission.

**Farmwork** means services in connection with cultivating the soil, raising or harvesting, or in catching, netting, handling, planting, drying, packing, grading, storing, or in preserving in its unmanufactured state any agriculture or aquaculture commodity; or delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aquacultural commodity; or working in a processing plant and directly handling agricultural or aquacultural product.

**Farmworker** means a household whose Income is derived from *farmwork* (as defined above) in an amount not less than \$3,000 per year and which, at the time of initial occupancy at the project, has an Income at or below 50% of the area median gross income.

**Farmworker Housing Commitment** has the meaning set forth in Section C(5) of Chapter 6 of the *Policies*.

**Federally Assisted Building** means any building that is substantially assisted, financed, or operated under:

- (1) Section 8;
- (2) Section 221(d)(3) or Section 236 of the National Housing Act; or
- (3) Section 515 of the Housing Act of 1949.

**Forward Credit Commitment** means the reservation and/or allocation of credit of a portion of the Annual Authority available in a subsequent year to a qualified project during a calendar year when there is not enough Annual Authority available for that project.

**Homeless** has two meanings:

1. The meaning set forth in the Stewart B. McKinney Homeless Assistance Act
2. RCW 43.185C010(3): "Homeless person" means an individual living outside or in a building not meant for human habitation or which they have no legal right to occupy, in an emergency shelter, or in a temporary housing program which may include a transitional and supportive housing program if habitation time limits exist. This definition includes substance abusers, mentally ill people, and sex offenders who are homeless.

**Housing for Large Household Commitment** has the meaning set forth in Section C(5) of Chapter 6 of the *Policies*.

**Housing for the Homeless Commitment** has the meaning set forth in Section C(5) of Chapter 6 of the *Policies*.

**Housing for Persons with Disabilities Commitment** has the meaning set forth in Section C(5) of Chapter 6 of the *Policies*.

**Housing Unit** means a low-income housing unit and/or market rate housing unit in a building that is available for rent or rented by residents. A common area unit is not a Housing Unit. "Housing Unit" refers to all the Housing Units in a Project, unless the context clearly means all the Housing Units in a Building.

**Identity of Interest** means a financial, familial, or business relationship that permits less than arm's length transactions. For example: Related Parties; persons, entities, or organizations Affiliated With or Controlled By or In Control Of another; existence of a reimbursement program or exchange of funds; common financial interests; common officers, directors, stockholders, or managers; or family relationships between officers, directors, or stockholders.

**Investor and Lender Notice** means the notice that must be included in any loan application, syndication agreement, offering circular, prospectus, or other information given to potential lenders or investors.

**Large Household** means a group of four or more income qualified residents who are not necessarily related and who live together in a low-income housing unit containing three or more bedrooms.

**Lease Rider** means the disclosure statement required by the Commission which is to be attached by the owner to each resident lease and rental agreement for all Low-Income Housing Units and all market rate housing units in a project. The Lease Rider describes in general the rights of the residents of a project.

**Low-Income Housing Unit** means a Housing Unit that meets the definition of a Qualified Low-Income Housing Unit. In addition, all Housing Units in the Additional Low-Income Housing Set-Aside are Low-Income Housing Units. Common area units are not included.

**Minimum Threshold Requirements** means the requirements that must be met by the Application deadline in order for a project to be considered for a Credit reservation and allocation, all as set forth in Chapter 4 of the *Policies*.

**Noncompliance** means a failure to observe or perform any covenant, condition or term of any agreement between the Applicant or project owner and the Commission, or failure to meet the requirements of Section 42 of the Code, *the Policies*, or the Tax Credit Program.

**Nonprofit Organization** means an organization organized and operated exclusively for Charitable Purposes and that is tax-exempt under Section 501(a) of the Code. Examples of these are organizations described in Sections 501(c)(3) and 501(c)(4) of the Code. A Nonprofit Organization also includes public housing authorities, public development corporations, Tribes, and Tribally Designated Housing Entities.

**Placed-In-Service Allocation Requirements** means the terms, conditions, obligations, and restrictions of the Tax Credit Program that are in the RAC that must be satisfied for a project to receive an allocation and for the Commission to issue IRS Form 8609.

**Preservation of Federally Assisted Low-Income Commitment** has the meaning set forth in Section C(6) of Chapter 6 the *Policies*.

**Principal(s)** means (1) with respect to a project owned by a partnership, the partners; (2) with respect to a project owned by a limited liability company, the members and managers; and (3) with respect to a closely-held corporation, the shareholders.

**Program Limits** has the meaning set forth in Chapter 3 of the *Policies*, that is, the limits established by the Commission and set forth in Chapter 3 to be used for selecting projects for Credit reservations and allocations.

**Project Compliance Period** means the period beginning with the year a building in a project is placed-in-service and continuing until the latest of the following periods for each building in the project:

- (1) The compliance period;
- (2) The extended low-income housing use period;
- (3) The Additional Low-Income Housing Use Period; or
- (4) The Three-Year Period.

**Qualified Allocation Plan** means the plan adopted by the Commission pursuant to Internal Revenue Code Section 42(m)(1)(B), as more fully described in Chapter 1, Section B of the Policies.

**Qualified Nonprofit Organization** means a nonprofit organization described in Section 501(c)(3) or Section 501(c)(4) of the Code or that is tax-exempt under Section 501(a) of the Code and that is determined by the Commission not to be Affiliated With or Controlled By a for-profit organization, entity, or individual.

**RAC** means the Credit Reservation and Carryover Allocation Contract.

**Regulatory Agreement** means the Commission's Regulatory Agreement and amendments thereto, if any, that is required to be executed by the owner and recorded in first lien position. See Section I(1) of Chapter 2 for a discussion of the Regulatory Agreement.

**Related Buyer or Related Seller** has the meaning set forth in Section H of Chapter 3.

**Related Party** means:

- (1) the brothers, sisters, spouse, ancestors, and direct descendants of a person;
- (2) a person and corporation where that person owns more than 50% in value of the outstanding stock of that corporation;
- (3) two or more corporations that are connected through stock ownership with a common parent with stock possessing:
  - (i) at least 50% of the total combined voting power of all classes that can vote, or
  - (ii) at least 50% of the total value of shares of all classes of stock of each of the corporations, or
  - (iii) at least 50% percent of the total value of shares of all classes of stock of at least one of the other corporations,

excluding in computing that voting power or value stock owned directly by the other corporation;

- (4) a grantor and fiduciary of any trust;
- (5) a fiduciary of one trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
- (6) a fiduciary of a trust and a beneficiary of that trust;
- (7) a fiduciary of a trust and a corporation where more than 50% in value of the outstanding stock is owned by or for the trust or by or for a person who is a grantor of the trust;

- (8) a person or organization and an organization that is tax-exempt under Section 501(a) of the Code and that is Affiliated With or Controlled By that person or the person's family members or by that organization;
- (9) a corporation and a partnership, limited liability company, or joint venture if the same persons own more than:
  - (i) 50% in value of the outstanding stock of the corporation; and
  - (ii) 50% of the capital interest or the profits' interest in the partnership, limited liability company, or joint venture;
- (10) one S corporation and another S corporation if the same persons own more than 50% in value of the outstanding stock of each corporation;
- (11) an S corporation and a C corporation, if the same persons own more than 50% in value of the outstanding stock of each corporation;
- (12) a partnership, limited liability company, or joint venture and a person or organization owning more than 50% of the capital interest or the profits' interest in that partnership, limited liability company, or joint venture; or
- (13) two partnerships, limited liability companies, or joint ventures, or a combination thereof, where the same person or organization owns more than 50% of the capital interests or profits' interests.

For purposes of (1) through (13) above, the constructive ownership provisions of Section 267 of the Code apply.

**Reservation and Carryover Allocation Requirements** means the terms, conditions, obligations, and restrictions of the Tax Credit Program, the RAC, together with the satisfaction of the requirements under Section 42(h)(l)(E) and/or Section 42(h)(l)(F) of the Code and Treasury Regulation Section 1.42-6.

**Rules** means those rules adopted by the Commission and codified in Washington Administration Code 262-01-130 governing the Tax Credit Program.

**Special-Needs Housing Commitment(s)** means the Farmworker Housing Commitment, the Housing for Large Households Commitment, the Elderly Housing Commitment, the Housing for Persons with Disabilities Commitment and Housing for the Homeless Commitment.

**Tax Credit Factor** means the factor selected by the Applicant that represents, on a percentage basis, the net value of the tax Credit dollar amount available for Total Project Costs which excludes intermediary costs, any amounts set aside for reserves and any amounts attributed to commercial areas or other non-residential areas.

**Tax Credit Program** means the Commission's program for awarding, reserving and allocating Credit and monitoring projects for compliance with the Tax Credit Program and Section 42 of the Code, as set forth in the QAP, the Rules, the *Policies*, and the Commission's agreements, contracts, manuals, guides and documents.

**Tax Credit Program Documents** has the meaning set forth in Chapter 2, Section N.

**Total Project Costs** means the total costs incurred in acquiring and developing the project as set forth in the proposed budget in the Application and/or in an Independent CPA's report of sources and uses of funds given to the Commission. Total Project Costs excludes intermediary costs, any amounts set aside for reserves and any amounts attributed to commercial areas or other non residential areas.

**Transient/Transient Basis** means a housing unit that does not have a minimum initial lease term of six months or that does not meet the definition of Transitional Housing. A single-room occupancy unit shall not be treated as used on a Transient Basis merely because it is rented on a month-by-month basis.

**Transitional Housing** means a housing unit that contains sleeping accommodations, kitchen and bathroom facilities and is located in a building:

- (1) That is used exclusively to facilitate the transition of homeless individuals<sup>10</sup> to independent living within 24 months, and
- (2) Where a governmental body or Qualified Nonprofit Organization provides those individuals with temporary housing and supportive services to assist them in finding and keeping permanent housing.

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<sup>10</sup> Within the meaning of Section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302), as in effect on November 5, 1990.