

LOW INCOME HOUSING TAX CREDIT

**2005-2006**

**QUALIFIED ALLOCATION  
PLAN**

for the

STATE OF WISCONSIN

**September 12, 2004**

# 2005/2006 TAX CREDIT QUALIFIED ALLOCATION PLAN

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## I. INTRODUCTION

Thank you for your interest in the Low Income Housing Tax Credit Program. The Governor has appointed the Wisconsin Housing and Economic Development Authority (WHEDA) to administer this program in Wisconsin. In accordance with Section 42 of the Internal Revenue Code (the "Code"), WHEDA has developed this Qualified Allocation Plan (the "Plan") to establish the criteria and process for the allocation of the housing tax Credit (the "Credit") to qualified rental housing developments in Wisconsin. WHEDA will implement this Plan following a public hearing, approval of the Plan by the WHEDA Board of Directors, and final approval of the Plan by the Governor. This Plan shall govern calendar years 2005 and 2006 unless amended.

## II. THE CREDIT RESERVATION & ALLOCATION PROCESS

### A. Amount of Credit to be Allocated

The amount of annual Credit authority is based on \$1.75 per-capita derived from population estimates released by the Internal Revenue Service (the "IRS"). In calendar year 2004, WHEDA's per-capita Credit authority was **\$9,850,000** (rounded to the nearest one thousand). A CPI adjustment was awarded to WHEDA for 2004 increasing the per-capita figure to \$1.80. 2005 per-capita Credit is yet to be determined. In addition to per-capita Credit, WHEDA may have returned Credit from previous Credit years to allocate. WHEDA may also elect not to allocate remaining Credit.

There will be one pool of Credit divided into five set-asides in 2005 and 2006. These set-asides are General, Nonprofit, Preservation, Rural and Reserve. All set-asides are available at the opening of the application period. Because WHEDA intends to leverage this limited public resource to the furthest extent possible, the maximum Credit that will be awarded to any one development in *any Credit year* is **\$750,000**.

For **2005**, the set-aside percentages are:

1. **General Set-Aside. Forty percent (40%)**, or approximately **\$3,940,000**, of the State housing per-capita Credit will be made available in the General Set-Aside.
2. **Nonprofit Set-Aside. Ten percent (10%)**, or approximately **\$985,000**, of the State housing Credit ceiling must be set aside for qualified nonprofit organizations that have an ownership interest in a Credit development. This Credit amount cannot be used for any other purpose and any unused Credit may be carried over at the end of the allocation year.

If nonprofit applications score insufficient points to qualify for Credit in the Nonprofit Set-Aside, they will be transferred to the General Set-Aside to compete there.

The nonprofit must be a "qualified nonprofit organization" as defined in Section 42 of the Code.

3. **Preservation Set-Aside. Thirty-five percent (35%),** or approximately **\$3,447,500**, of the State housing per-capita Credit will be set aside for the preservation of qualifying housing units and the strengthening of neighborhoods experiencing extreme poverty and economic distress. Unused Credit remaining in the Preservation Set-Aside will be returned to the General Set-Aside. Developments must apply in one category only - a, b, or c.
  - a. Federally Assisted Housing Preservation. Low-income housing units subsidized under the following or similar programs: Section 236, Section 221(d)(3) Below Market Rate (BMIR), Section 221(d)(3) Market Rate with Section 8 rental assistance, Section 8 project-based new construction, Section 202, Section 811, Section 221(d)(4), and Section 515- Rural Rental Housing Program, Rural Development, USDA.
  - b. Neighborhood Preservation. The following Milwaukee census tracts are targeted for Neighborhood Preservation: 83, 84, 85, 86, 87, 100,101, 102, 103, 104, 115, 116, 117, 118, 119, 138, 139, 140 and 141. (Adaptive reuse and new construction development qualify in the Preservation set-aside only if the development is located within these census tracts.)
  - c. Preservation of Existing Multifamily Housing. Conversion of existing market rate developments to affordable housing.

***Note: Any building with current mixed use must have a minimum of 50% of total square footage in residential use at the time of application to qualify in the Preservation Set-Aside.***

4. **Rural Set-Aside. Ten percent (10%)** or approximately **\$985,000** of the State housing per-capita Credit will be reserved for developments in qualified rural counties. Unused Credit remaining in the Rural Set-Aside will be returned to the General Set-Aside.

If rural applications score insufficient points to qualify for Credit in the Rural Set-Aside, they will be transferred to the General Set-Aside to compete there.

- a. Qualified rural counties include all counties except: Brown, Calumet, Chippewa, Dane, Douglas, Eau Claire, Kenosha, La Crosse, Marathon, Milwaukee, Outagamie, Ozaukee, Pierce, Racine, Rock, Sheboygan, St. Croix, Washington, Waukesha, and Winnebago.
  - b. A development in a qualified rural county may apply either in the Rural Set-Aside or the General Set-Aside.
  - c. Applications for Rural Set-Aside Credit must be for developments consisting of 24 or fewer units.
  - d. Applications for Rural Set-Aside Credit are limited to new construction or adaptive reuse developments.
5. **Reserve Set-Aside. Five percent (5%),** or approximately **\$492,500**, of the State housing per-capita Credit will be reserved for Credit fluctuations and contingencies.

## B. Steps in the Reservation & Allocation Process for Competitive Credit

<b>Step 1</b>	Tax Credit Application Submissions (see <a href="http://www.wheda.com">www.wheda.com</a> for application documentation)	January 17 - February 4, 2005
⇓		
<b>Step 2</b>	WHEDA Initial Application Review, Site Visit, Financial Feasibility, Market Approval Review	February 4 - March 14, 2005
⇓		
<b>Step 3</b>	WHEDA Scoring	March 14 – April 14, 2005
⇓		
<b>Step 4</b>	WHEDA Internet Publication of Preliminary Awards (see <a href="http://www.wheda.com">www.wheda.com</a> )	Approx. April 15, 2005
⇓		
<b>Step 5</b>	Multifamily Application Fees Due (If Application Was Submitted With Tax Credit Application)	Approx. April 29, 2005 (2 wks. after internet publication)
⇓		
<b>Step 6</b>	Submission & Review of Additional Documents to Complete Application	Due Approx. July 15, 2005 (90 days after internet publication)
⇓		
<b>Step 7</b>	WHEDA Credit Calculation & Reservation Issuance	Approx. July 2005
⇓		
<b>Step 8</b>	Submission of Second Application & WHEDA Issuance of Carryover Agreement	Due Approx. September 15, 2005 (60 days after Reservation issuance)
⇓		
<b>Step 9</b>	10% Test Deadline (see <a href="http://www.wheda.com">www.wheda.com</a> for documentation)	Due 30 days prior to the latter of: Six months after Carryover issuance or December 31, 2005
⇓		
<b>Step 10</b>	Begin construction	July 31, 2006
⇓		
<b>Step 11</b>	Submission of Third Review Documentation (see <a href="http://www.wheda.com">www.wheda.com</a> for documentation)	Due within 90 days after placing in service
⇓		
<b>Step 12</b>	WHEDA Issuance of 8609 Form(s) & mandatory 30-year Land Use Restriction Agreement (LURA)	After approval of satisfactory third review documentation
⇓		
<b>Step 13</b>	WHEDA Ongoing Compliance Monitoring Procedures	Post 8609 issuance for 30 years

## 1. Application Deadline

WHEDA will prepare and make an application available to all interested applicants. The application will include a prescribed form and a list of required additional documentation.

Completed applications must contain original signature(s) and include the nonrefundable application fee. WHEDA will also charge, at a later date, additional fees based on a percentage of the annual Credit dollar amount awarded to the development at the time of Reservation and again at Post-reservation or Carryover Allocation. WHEDA will charge a nonrefundable fee of \$500 for Assignments of Reservations or Carryover Allocations. Assignments will be thoroughly reviewed and WHEDA reserves the right to deny an Assignment of a Reservation or a Carryover Allocation.

WHEDA will accept applications for a two-week period beginning January 17 in 2005. Applications will be accepted by hand delivery or mail. If mailed, applications must be postmarked NO LATER THAN February 4, 2005. If hand or electronically delivered, the submission deadline is February 4, 2005, at 5:00 p.m. WHEDA may accept applications after that period should WHEDA determine it has not received an adequate quantity of quality applications. **Dates for the 2006 cycle are undetermined at this time.**

## 2. Initial Application Review & Site Visit

WHEDA will initially review all applications for completeness, including, but not limited to, the following:

- The application is complete with all additional documentation, including all threshold items. **See Application Submission Checklist accompanying the Application.**
- The development meets the basic occupancy and rent restrictions of Section 42 of the Code;
- The organization applying for the Credit will have an ownership interest in the development;
- If a nonprofit applicant is competing in the nonprofit set-aside, the nonprofit meets the "qualified nonprofit organization" requirements of the Code;
- The developments owned or operated by any member of the development team in the State of Wisconsin or any other state are in compliance with the Code and are operating in a manner acceptable to WHEDA;
- Environmental issues or administrative proceedings do not exist that would adversely affect the ability to timely proceed;
- The applicant is sufficiently ready to proceed based on site control; and
- Minimum requirements are met for RCAC and special needs developments, including service provider experience.

As required by the Code, WHEDA will also notify the appropriate official's office in the local jurisdiction of the proposed Credit development location and solicit comments. While Credit cannot be denied to a development based solely on such comment, WHEDA will consider this information, and in its sole discretion may utilize such comment in its decision-making process. WHEDA will evaluate all input received from the appropriate official(s) when deciding to award Credit to a particular development.

For applications deemed complete, a WHEDA representative will contact a member of the development team to discuss the proposed development, arrange a site/market visit, meet with representatives of the local municipality, and meet with representatives of the development team.

### **3. Market Approval Threshold**

WHEDA requires that applicants submit with the application a completed small-project market study for developments with 24 or fewer units, or a completed large-project market study for developments with 25 or more units. All market studies must be prepared by a WHEDA-approved third-party market analyst.

WHEDA will evaluate the market strength of all complete applications. This is a threshold determination based on the small-project or large-project market study provided in the application, the market visit by the WHEDA representative, and other sources. Both the small-project and large-project market studies must adhere to the market study standards published on [www.wheda.com](http://www.wheda.com). WHEDA may request additional information from the applicant during the market review process. All applications, including those financed with tax-exempt bonds (see section below regarding "Rules for Developments Receiving Non-Competitive Credit when Financed with Tax-Exempt Bonds"), must meet the market approval threshold as determined by WHEDA. WHEDA will make market decisions based on the application as submitted. WHEDA, at its option, may elect to contract its own third-party market study to evaluate information provided by the developer.

WHEDA reserves the right to reject applications at the Market Approval Threshold stage if, in its sole opinion, it believes that an insufficient market exists for the proposed development, or that the proposed development will have a significant impact on existing multifamily housing in the market.

### **4. Financial Feasibility Threshold**

WHEDA will evaluate the financial feasibility of all applications. This is a threshold item based on the information provided in the application. Feasibility is determined by taking into account a variety of factors including: projected operating expenses, replacement reserves, rents and other income, vacancy assumptions, debt service and expected equity proceeds.

WHEDA reserves the right to reject applications or reduce Credit requests /allocations at any stage of the allocation process per Section 42 requirements, based on financial infeasibility or excessive Credit request.

Developments with HUD or Rural Development financing and/or project-based subsidies have special application submittal requirements that may impact feasibility. See the Application Submittal Checklist and Appendix O of the 2005-2006 LIHTC application.

### **5. Application Scoring & Minimum Scoring Threshold**

Applications that are deemed complete and have passed the market approval, financial feasibility, and service provider threshold (See Self-Scoring Exhibit Category 7) are scored based on the criteria listed below. Applicants will self-score a portion of these criteria in the Application. However, WHEDA will make the final determination of the applicant's score.

### **6. Land Use Restriction Agreement (LURA)**

Owners of developments funded with **competitive** Low Income Housing Tax Credit will be required to enter into a Land Use Restriction Agreement (LURA) with WHEDA for a mandatory thirty-year period. No "opt-out" provision will be included.

## 7. 2005-2006 Scoring Categories:

### Location

**Category 1. Lower-Income Areas 15 points**  
Developments in a qualified census tract and in which the development contributes to a community revitalization or redevelopment plan.

**Category 2. Location 40 points**  
Developments in infill locations or demonstrating linkages with services, transportation and employment located in the surrounding neighborhood/community. Corroborating information must be provided with the application.

### Local Support

**Category 3. Local Support 27 points**  
Developments demonstrating community support of elected officials and other leaders or neighborhood groups. Additional consideration is given for indirect financial support.

### Resident Profile

**Category 4. Mixed-Income Incentive 35 points**  
Mixed-income developments will be awarded points.

**Category 5. Serves Large Families (3-bedroom or larger units) 12 points**  
Developments in which a minimum of 10% of the total units include three or more bedrooms.

**Category 6. Serves Lowest-Income Residents 45 points**  
The Plan gives priority to developments that serve the lowest-income residents when qualifying tax credit units are set aside for households with incomes and rents at or below the 50% County Median Income level required for Credit developments. Units serving the lowest-income residents shall be of comparable quality to other units in the development. The Owner will be required to maintain the stated set-aside through a Land Use Restriction Agreement (LURA).

Points will not be awarded in this category for projects with Federal operating or rental subsidies or Federal financing. Tax-exempt bond-financed projects are allowed to score points. In addition, points are not awarded for units with dedicated vouchers or certificates.

**Category 7. Resident Populations with Special Needs 20 points**  
Developments that provide units intended for immediate occupancy by residents with identified special needs including frail elderly in an RCAC facility. The applicant must document the experience of the service provider in the type of housing or service delivery proposed.



## **Building Size & Characteristics**

### **Category 8. Small Developments 24 points**

WHEDA will award 24 points to developments with 24 or fewer units.

### **Category 9. Rehabilitation 45 points**

Developments that rehabilitate, reuse or restore existing structures, including historic rehabilitation. Points will be awarded based on hard costs only. The minimum per-unit hard cost is \$12,000 for existing multifamily and \$60,000 for adaptive reuse.

Proposals (except for adaptive reuse developments) must provide a Capital Needs Assessment report (CNA) of the subject property. The CNA must be completed by a WHEDA approved third-party CNA provider. A list of approved CNA providers can be found on [www.wheda.com](http://www.wheda.com).

Developments that include a combination of “rehab” and “new construction” units may be eligible to score points in this category.

### **Category 10. Market Appeal 36 points**

Developments offering amenities that enhance market appeal and promote long-term development viability.

### **Category 11. Accessible Design 20 points**

Developments offering architectural features that increase accessibility will broaden the market for many units. An architect must specify and certify all items. The applicant must attach the specifications and certification to the application.

## **Financial Participation**

### **Category 12. Financial Participation 40 points**

Developments that have financial participation, supported by a written conditional financial commitment, from one or more of the following sources:

- (a) Federal, state, county or city governments;
- (b) Public housing authorities;
- (c) FHLB;
- (d) Tax-exempt bonding authorities;
- (e) Unaffiliated public or private foundations;
- (f) Unaffiliated nonprofits; and
- (g) Federal/State historic Credit.

If financial participation is in the form of a loan, the interest rate must be below the Applicable Federal Rate (AFR).

**Category 13. Owner Characteristics**

**6 points**

- (a) Developments where the controlling entity (managing member or general partner) is at least 51% owned and at least 51% controlled by minority group members or tribal governments (for listing of minorities see: [www.commerce.state.wi.us/ED/ED-MBECertManualCover.pdf](http://www.commerce.state.wi.us/ED/ED-MBECertManualCover.pdf)); OR
- (b) The controlling entity (managing member or general partner) is at least 51% owned and controlled by a local tax-exempt organization (including local governments, public housing authorities, Indian housing authorities and tribally designated housing entities) with documented previous experience in the development and/or operation of housing similar to that proposed in the application; OR
- (c) Developments intended for eventual resident ownership.

**Category 14. Development Team**

**60 points**

Development team (Developer, Management Agent, and Consultant) will be evaluated based on past performance and previous Credit program participation.

**Readiness**

**Category 15. Readiness to Proceed**

**15 points**

Developments with permissive zoning in place, including any conditional use permit or other acceptable zoning.

**TOTAL POINTS: 440 points**

WHEDA calculates the score for each application and then determines which applications meet or exceed a minimum established scoring threshold. These are then ranked. First priority is given to reasonable requests for additional Credit for developments that received Credit in the previous application year. Remaining applications that meet or exceed the minimum scoring threshold are then ranked by score. Ranking results are published on WHEDA's website ([www.wheda.com](http://www.wheda.com)). WHEDA recognizes that its decisions, or other events beyond the developer's control, may affect the development and potentially change its score. ***WHEDA, at its discretion, may allow changes in scoring. Whether the development receives Credit in such a circumstance will depend on its new score and ranking within its respective set-aside category.***

**WHEDA requires a minimum threshold point score for all applications of 175.**

**8. Submission & Review of Additional Documents**

The highest-ranking applicants within each set-aside and for which Credit is deemed likely to be available are able to continue in the process. Additional required application materials must be submitted to WHEDA within **90 days** of the awards/rankings announcement on [www.wheda.com](http://www.wheda.com). Failure to meet all threshold requirements within the 90-day period **will render applications ineligible for further evaluation.**

At its sole discretion, WHEDA may approve a written request for an extension beyond the 90-day period, WHEDA will charge a fee of three-quarters of one percent (.75%) of the total annual development Credit amount for each 30-day extension period. In the event an application is unable to proceed in the Credit process, the next highest-ranked scored application that meets or exceeds the minimum scoring threshold will continue in the process.

## 9. Credit Calculation & Reservation

### a. Credit Calculation:

WHEDA will reserve the calculated Credit amount after the development has received market approval, received financial feasibility approval, achieved sufficient scoring rank, and has satisfactorily submitted all requested additional documentation. WHEDA determines the amount of Credit reserved through information received and the amount requested in the application. The actual reservation amount may not equal the dollar amount requested in the application. The Code requires that WHEDA determine that *"the housing Credit dollar amount allocated to the development does not exceed the amount the housing Credit agency determines is necessary for the financial feasibility of the development and its viability as a qualified low-income housing project throughout the Credit period."* In making this determination, WHEDA will consider the following:

- The sources and uses of funds and the total financing planned for the development;
- Any proceeds or receipts expected to be generated by tax benefits;
- Percentage of the housing Credit dollar amount used for development costs other than the cost of intermediaries;
- The reasonableness of operating expenses, rent and vacancy assumptions, and proposed debt service coverage, the development and operational costs of the proposed development; and
- An analysis of the appropriate Credit amount based on an "equity gap" model.

The Code allows the possibility of receiving a Credit reservation equal to 130 percent of qualified expenditures. The increased basis is allowed in areas defined by HUD as "qualified census tracts" ("QCT") or "difficult development areas" ("DDA"). There are no HUD-designated DDA's in Wisconsin. Applicants may request the higher basis, but WHEDA reserves the right to determine the Credit allocation amount required for feasible development. A map of the census tract showing the project location must be submitted with the application for Credit. See Appendix F of the 2005-2006 LIHTC Application for a list of qualified census tracts.

Credit may be awarded to that portion of a building used as a community service facility not in excess of 10% of the total eligible basis, if the building is located within a qualified census tract. "Community service facility" may include childcare, workforce development, healthcare, etc., and must be designed primarily to serve individuals whose income is 60% or less of area median income.

Under certain circumstances described in the Code, buildings financed under the Native American Housing Assistance and Self-determination Act of 1996 (NAHASDA) are eligible for the 9% Credit.

Developments receiving assistance under the HOME Investment Partnerships Act are considered Federally subsidized unless certain rent requirements are met for a portion of the residential rental units in each building and those units are occupied by income-eligible households. These requirements and restrictions may conflict with eligibility for HOME funds under rules promulgated by the State of Wisconsin and may affect the ability of a development to use 9% credits and/or receive the "high cost" increase in basis. HOME grants are subtracted from eligible basis. Please consult with a competent professional as to the interplay of these rules and their impact on tax credits.

**b. Reservation of Credit**

WHEDA will issue a letter reserving the determined Credit amount to qualifying applicants. An applicant may not transfer Credit to another development or another development site.

**WHEDA will not allow changes to the development that affect scoring after the reservation letter has been issued without its written approval. All developments receiving a reservation of Credit will be required to erect a WHEDA construction sign meeting specifications outlined in Appendix S of the 2005-2006 LIHTC Application.**

**10. Second & Third Application Reviews & Credit Allocation**

Federal law requires that WHEDA evaluate the application three times: a) at initial application; b) at carryover allocation/post-reservation application; and c) at the time the building(s) is (are) placed in service. On each occasion, the applicant must submit a complete Credit application, including a financial feasibility threshold test and certify to all Federal, State, and local subsidies expected to be available to the development. The process requires that applicants provide detailed and accurate information concerning all development costs at each evaluation. Applicants with reservations will be subject to cancellation of the reservation if they are unable to provide WHEDA with satisfactory evidence of progress toward timely completion of the proposed development, or if there are significant changes to the proposed development from the approved application.

**The second review** is due from the applicant no later than **60** days after the date of the Reservation issuance. Provided the second evaluation is in order, WHEDA will issue either a Carryover Agreement or a Post-Reservation letter at the time of completion of the second evaluation. Developments eligible for 2005 Credit must be placed in service during the calendar year 2005 - **OR** – apply for a Carryover Agreement prior to December 1, 2005. WHEDA must **receive** the fully executed Carryover Agreement on or before December 30, 2005.

A valid Carryover Allocation Agreement requires that the taxpayer incur costs that exceed 10% of the taxpayer's "reasonably expected basis" or total development cost by the later of: a) December 31, 2005 or b) six months after the date the carryover allocation is issued. The owner must submit a third-party accountant's review certifying that the required 10% expenditure has occurred, or is likely to occur as of either a) or b), above. WHEDA requires a breakdown of expenditures as well as proof of expenditure by the specified deadline. Developments eligible for 2005 Credit must meet the specified requirements by the applicable date in 2005.

**Developments receiving Carryover Allocations must begin construction by July 31<sup>st</sup> of the calendar year following the year in which Credits were first allocated. The Carryover Agreement will be void unless an extension has been approved by WHEDA and an extension fee has been received prior to July 31<sup>st</sup>. If the Owner does not comply with this requirement, WHEDA reserves the right to revoke the Credit allocation.**

**The third and final review** is conducted after the development has been placed in service. WHEDA will again review financial feasibility, revised costs and the equity requirement based on information provided by the applicant in a third updated application to determine the appropriate amount of Credit to be allocated. At the third application, the Owner is required to submit an ACH (Automated Clearing House) form. The Owner must certify that the management agent identified on the initial application will continue to manage the property. Submission of a third application for final allocation must be made within **90 days** of the placed-in-service date or an extension must be requested.

A final allocation of Credit cannot be made until the development building(s) has/have been placed in service and the owner has provided a third-party cost certification to actual development costs. Awarding of the actual Credit will be contingent upon:

- Developer's ability to meet its proposed time schedule;
- Approved occupancy permit(s) for new construction and adaptive re-use developments;
- Architect's certification of substantial completion for new construction, adaptive re-use and substantial rehabilitation developments;
- One Allocation Certification Request ("ACR") form for each building, Credit percentage and allocation of Credit, originally signed by Owner stating the development is in compliance with Section 42 of the Code and will remain in compliance for the Credit period specified in the Code. In addition, this ACR will certify that the management agent identified on the initial application will continue to manage the property;
- An Owner/Taxpayer-certified current rent roll;
- Complete and accurate final legal description of the property;
- Tax parcel identification number(s) for the development;
- Third-party cost certifications (for those developments of 10 units or less, a cost review is required; for developments consisting of 11 units or more, an audited third-party cost certification must be submitted);
- Completion by the applicant of all required agreements, including certification of all Federal, State, and local subsidies that apply; reporting and record keeping requirements; nondiscrimination regulations and any special conditions imposed by WHEDA or the U.S. Department of Treasury;
- Execution of a Land Use Restriction Agreement (LURA) mandated under Section 42 of the Code that commits to extend use for low-income housing for a **mandatory thirty-year period with no "opt-out" provision for developments funded with competitive Low Income Housing Tax Credits**;
- One exterior photograph for each building of the completed development;
- ACH form if one is not currently on file with WHEDA;
- Energy-efficiency documentation required in Appendix M of the 2005-2006 LIHTC application;
- If there has been a change in Owner entity since the "Carryover Allocation" letter, include a photocopy of the original signed and dated organizational documents filed with the Wisconsin Department of Financial Institutions; change the Owner information on the application for Credit and note the correct Federal Identification number on the application for Credit; and
- Submission of any other documents WHEDA may require to carry out the requirements of the application, the Qualified Allocation Plan for the State of Wisconsin, or IRS regulations.

The above requirements must be submitted in an acceptable form to WHEDA. WHEDA will then allocate Credit and send a completed photocopy of IRS Form(s) 8609 to the owner. WHEDA will forward the **original** Form(s) 8609 to the IRS. **WHEDA will assess fees for the re-issuance of 8609 form(s) at the Owner's request for non-WHEDA errors. This fee shall not exceed \$500 and must be paid in full prior to WHEDA mailing or faxing the revised/corrected 8609 form(s) to the Owner.**

**If WHEDA at any time has reason to believe that the development: 1) will not be placed in service in a timely fashion; 2) fails to comply with the requirements for a carryover allocation; 3) is not in compliance with Section 42 of the Code; or 4) that the application contains misrepresentations, WHEDA may revoke the Credit allocation.**

## **11. Rules for Developments Receiving Non-Competitive Credit when Financed with Tax-Exempt Bonds**

Applicants applying for Credit for a development financed by WHEDA or locally issued tax-exempt bonds must follow a two-tier application process.

Applicants must submit the first application prior to commencing construction of the development. WHEDA will review the application to confirm that the development meets the requirements of the Plan, including a determination that the application meets both the market threshold, financial feasibility threshold, and minimum-scoring threshold. Developments may rely on the Plan and form of application in effect for the year in which they make their first application. In its review of the first application, WHEDA also confirms that 50% or more of the aggregate basis of building(s) and land is being financed with tax-exempt bonds. **Since all tax Credit applications must meet the market threshold, financial feasibility threshold, and minimum-scoring threshold, developers are encouraged to make the first application for Credit as early in the development process as possible.**

Applicants submit the second application at the time of request for Credit allocation (assignment of the building identification numbers ["BINs"] and Form 8609). In addition to the approval of the first and second tax Credit applications, Applicants must meet the following requirements to qualify for the final allocation of Credit:

- The governmental unit that issues the bonds must make a determination of allowable Credit under rules similar to those required in Section 42(m)(2)(A)&(B), and will be required to provide an affidavit in a form acceptable to WHEDA that it has made this determination.
- If there has been a change in Owner entity since the "Tier One" letter, include a photocopy of the original signed and dated organizational documents filed with the Wisconsin Department of Financial Institutions; change the Owner information on the application for Credit and note the correct Federal Identification number on the application for Credit.
- Applicants must submit evidence of applicable tax Credit percentage election in accordance with Section 42(b)(2). If no such election is submitted, WHEDA will issue an allocation based on the appropriate percentage prescribed by the law.
- Submit all items required for "The third and final review" in Section 10 above.

WHEDA will charge an application fee and additional review fees for all tax-exempt bond financed developments. The fees are based on a percentage of the annual allowable Credit.

## **12. Compliance Monitoring Procedures**

The Code requires housing Credit agencies to monitor all Credit developments to determine whether they are complying with the requirements of the Credit program. The monitoring requirement applies to all buildings placed in service for which the Credit is, or has been, allowable at any time.

WHEDA's internal monitoring process is outlined in the Tax Credit Program Compliance Monitoring Manual, which is provided on the Internet at [www.wheda.com](http://www.wheda.com).

Once the Form(s) 8609 is (are) issued, WHEDA will only allow changes to the development affecting the selection criteria on which the allocation of Credit was awarded upon satisfactory evidence that the change is necessary for the ongoing financial viability of the development. WHEDA will consider no change within the first three years of the Credit period.

All Credit developments are required to comply with the following regulations: The owner of a Credit development must keep records for each qualified building that show for **each year** in the compliance period:

- a. The owner of a Credit development must certify annually to WHEDA under penalty of perjury, on forms and in a manner prescribed by WHEDA, that:
- The development meets the minimum set-aside test applicable to the development;
  - The owner has received an annual Resident Income Certification from each qualifying resident and documentation to support that certification;
  - Each qualifying unit in the development is rent restricted under Section 42(g)(2) of the Code;
  - All units in the development are for use by the general public (as defined in §1.42-9), including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, occurred for the development. A finding of discrimination includes an adverse final decision by the Secretary of the Department of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent State or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgement from a Federal court;
  - The buildings and each residential unit in the development are suitable for occupancy (taking into account applicable health, safety, accessibility, building codes and regulations or other habitability standards), and the government unit responsible for making health, safety, or building code inspections did not issue a violation report for any building or residential unit in the development;
  - Either there has been no change in the eligible basis as defined in Section 42(d) of any building, or there has been a change, and the nature of the change, including any new Federal funds received;
  - All resident facilities included in the eligible basis under Section 42(d) of the Code of any building in the development, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances, are provided on a comparable basis without a separate fee to all residents in the buildings;
  - If a qualifying unit in the development becomes vacant during the year, reasonable attempts are made to rent that unit to residents having a qualifying income and while the unit is vacant, no units of comparable or smaller size are rented to residents not having a qualifying income;
  - If the income of residents of qualifying units increases above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project will be rented to residents having a qualifying income;
  - Either there has been no change in the applicable fraction as defined in Section 42 (c)(1)(B), or there has been a change, and the nature of the change;
  - The development complies with the requirements or special provisions on which the allocation was based as outlined in the allocation documents, including, but not limited to, special set-asides and the requirement under Section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1927, 42 U.S.C. 1437s (for buildings subject to Section 13142(b)(4) of the Omnibus budget Reconciliation Act of 1993, 107 Stat. 312, 438-439);
  - All qualifying units in the project are used on a nontransient basis (except for transitional housing for the homeless provided under Section 42 (i)(3)(B)(iii) or single-room-occupancy units rented on a month-by-month basis under Section 42(i)(3)(B)(iv) of the Code);
  - The development complies with the requirements for all Federal or state housing programs (e.g.) RHS assistance, HOME assistance, Section 8, FHA, tax-exempt financing or other programs), as applicable.

- If the owner received its Credit allocation from the portion of the State ceiling set-aside for a development involving “qualified non-profit organizations” under Section 42(h)(5) of the Code, the nonprofit entity materially participates in the operation of the development within the meaning of Section 469(h) of the Code, as applicable;
- The development is otherwise in compliance with the Code, including any Treasury Regulations, the applicable State Allocation Plan, and all other applicable laws, rules and regulations;
- There has been no change in the ownership or management of the project or any such changes have been reported to the State Monitoring Agency; and,
- The applicable fraction as reported to the IRS for each building in the development at the close of the most recent tax year.

b. WHEDA requires that an owner of a Credit development submit to WHEDA during the compliance period, at times and in a manner prescribed by WHEDA, which may include transmission via e-mail or through a website, the following information:

- The Form 100 owner's certification as described in Section (a) above;
- Unit event information including data as described in Section (a);
- Utility documentation as required by the Code of Federal Regulations (26 CFR §1.42-10) and described in WHEDA's Tax Credit Program Compliance Monitoring Manual;
- Copy of signed 8609's the owner submits in the first year Credit is claimed; and
- Other documentation as required.

c. WHEDA has the right to perform inspections of any Credit development through the end of the compliance period, including any extended use period. IRS regulations mandate that at least once every three (3) years, WHEDA must conduct on-site inspections of all buildings in the project and review at least 20 percent (20%) of the project's low-income units. An inspection includes a physical inspection of any building and units in the development, as well as a review of the records described in Section (a) above.

As provided in the Code, WHEDA and Rural Development have entered into a Memorandum of Understanding ("MOU") whereby developments financed by Rural Development will be inspected by Rural Development. Rural Development will provide the result of such reviews to WHEDA.

d. WHEDA will provide prompt written notice to the owner of a Credit development if WHEDA does not receive the required certifications or discovers through inspection, review or any other manner, that the development is not in compliance with the provisions of Section 42. In general, the owner will have an opportunity to correct noncompliance within **90 days** from the date of notice to the owner and to submit missing documentation within 30 days. During the correction period, an owner must supply any missing certifications and bring the project into compliance with the provisions of Section 42. WHEDA may extend the correction period for up to six (6) months if it determines there is good cause for granting an extension.

e. WHEDA is required to file Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance, with the Internal Revenue Service no later than 45 days after the end of the correction period described above, including any extension, whether or not the noncompliance or failure to certify is corrected.



f. Compliance with the requirements of Section 42 is the responsibility of the owner of the development for which the Credit is allowable. WHEDA's obligation to monitor for compliance does not make WHEDA liable for an owner's noncompliance. WHEDA will charge an annual fee to the development for conducting compliance monitoring. The annual fee is due March 15 of each year during the 15-year compliance period. WHEDA will also charge an initial compliance monitoring fee payable when the Form 8609 is issued. This initial compliance monitoring fee shall apply to all buildings placed in service after January 1, 2001. A late charge will be assessed for documentation or fees that are not received within 30 days of the due date. WHEDA's "Compliance Monitoring Fee Schedule" and "Compliance Monitoring Fee Policy" is included in WHEDA's "Tax Credit Program Compliance Monitoring Manual" and the Qualified Allocation Plan. Fees will be charged on all units within each project and drawn via ACH agreement. Monitoring fees are as follows:

Initial compliance fees for all buildings placed in service after January 1, 2001:

The initial compliance fee for developments of 15 or fewer units is \$750. For developments of 16 or more units, the fee is \$50 per unit with a maximum of \$5000.

Paper Unit Status Reports:

Rural Development	\$25/ per unit per annum
WHEDA-financed	\$25/ per unit per annum
All Other	\$40/ per unit per annum

Electronic Unit Status Reports:

Rural Development	\$20/ per unit per annum
WHEDA-financed	\$20/ per unit per annum
All Other	\$35/ per unit per annum

### **III. PUBLIC REVIEW PROCESS FOR THE QUALIFIED ALLOCATION PLAN**

WHEDA will convene public hearings to receive oral and/or written comments regarding this Plan. After the hearings, the Plan will be presented to the WHEDA Board Members or their Assignees and the Governor of the State of Wisconsin for approval.

### **IV. MODIFICATIONS TO THE QUALIFIED ALLOCATION PLAN**

WHEDA may modify this Plan to facilitate the allocation of Credit. WHEDA's Executive Director may make modifications deemed necessary to facilitate the administration of the Credit program or to address unforeseen circumstances. The Executive Director is also authorized to waive any conditions not mandated by Section 42 of the Code on a case-by-case basis for good cause. To the extent that anything contained in this Plan does not meet the minimum requirements of Federal law or regulation, such law or regulation shall take precedence over this Plan. WHEDA reserves the right and shall have the power to allocate Credit to a development irrespective of points scored, if such intended allocation is: 1) in compliance with the Code; 2) in furtherance of the housing priorities stated herein; and 3) determined by WHEDA to be in the best interests of the citizens of the State of Wisconsin.

Though WHEDA anticipates no changes from 2005 to 2006, it reserves the right to make changes as it deems necessary, including changes to fee structure. Such changes will be available for public comment and approved by WHEDA's board.

## **V. STATEMENT OF POLICY**

The Code requires that the Plan provide selection criteria that include: (i) project location, (ii) housing needs characteristics, (iii) project characteristics, including whether the project includes the use of existing housing as part of a community revitalization plan, (iv) sponsor characteristics, (v) tenant populations with special housing needs, (vi) public housing waiting lists, (vii) tenant populations of individuals with children, and (viii) projects intended for eventual tenant ownership.

The Plan must: (i) set criteria used to determine housing priorities which are appropriate to local conditions, (ii) give preference to: (I) projects serving the lowest-income tenants, (II) projects obligated to serve qualified residents for the longest period, and (III) projects located in qualified census tracts, the development of which contributes to a concerted community revitalization plan. The Agency must provide a procedure to monitor for noncompliance, notify the IRS of noncompliance and monitor for noncompliance with habitability standards through regular site visits.

The Plan may also include other criteria WHEDA deems appropriate, and except for the inclusion of the specified preference items, WHEDA has discretion with regard to the relative weight of these criteria. WHEDA is also given the discretion to determine the appropriate amount of Credit allocated to developments selected under the plan. In developing this Plan, WHEDA considered the Wisconsin Consolidated Plan as well as its experience in creating affordable housing throughout Wisconsin.

WHEDA is responsible for allocating only the amount of Credit to a given development required to make that development economically feasible. This decision shall be made solely at the discretion of WHEDA, but in no way represents or warrants to any person that the development is, in fact, feasible or viable.

WHEDA review of documents submitted in connection with this allocation is for its own purposes. By allocating the Credit, WHEDA makes no representations to the applicant, owner, or any other entity regarding adherence to the Code, Treasury regulations, or any other laws or regulations governing low-income housing tax Credit.

No member, officer, agent, or employee of WHEDA shall be personally liable concerning any matters arising out of, or in relation to, the allocation of the Credit. WHEDA reserves the right to revoke Credit in the case of misrepresentations made to WHEDA by any member of the development team.

## **VI. NONCOMPLIANCE & PREVIOUS PERFORMANCE**

WHEDA will review the compliance history and overall performance of members of the development team. The development team is defined as the developer, applicant, owner, management agent, contractor, general partner or managing member of the ownership entity, or any related entity which controls, is controlled by, or under common control with any of the foregoing. Noncompliance may result in any member of the development team being denied participation in the Credit Program. All compliance fees owed by any member of the development team must be paid in full and compliance reports must be current before WHEDA will process an application. WHEDA will reject applications and bar the development team from program participation for at least one year if the development team has submitted information to

WHEDA, that when verified by WHEDA or other third-party review, is found to materially affect the qualified basis of the building. **A development team is ineligible to compete for Credit in 2005/2006 if they have: 1) failed to make the required 10% expenditure for two or more allocations in the five calendar years preceding the application; 2) returned Credit for two or more allocations in the previous five calendar year period(s); 3) not made satisfactory progress on existing allocations; or 4) been issued an IRS form 8823 with line 10(j) marked as "out of compliance." Line 10(j) states: "Project is no longer in compliance nor participating in the low-income housing tax Credit program (attach explanation)".**

## **VII. WHEDA EMERGING BUSINESS PROGRAM**

The WHEDA Emerging Business (WEB) Program encourages involvement of small businesses owned, operated, and controlled by persons who are at an economic disadvantage. For low income housing tax Credit developments in the counties of Brown, Dane, Dodge, Fond du Lac, Jefferson, Kenosha, Milwaukee, Outagamie, Ozaukee, Racine, Rock, Sheboygan, Walworth, Washington, or Waukesha, the WEB participation goal for all work (planning, design, and construction) is set at 25 percent of hard costs. Developers of tax Credit developments in these counties must use their best efforts to meet the WEB participation goal and report to WHEDA their results. **Failure to use best efforts to meet these goals may result in being barred from participating in the program.** WHEDA encourages developers in other counties to include WEB participation in their tax Credit developments. A business qualifies for WEB participation if it is certified as: 1) a Disadvantaged Business Enterprise by the Wisconsin Department of Transportation; 2) an Emerging Business Enterprise by the City of Milwaukee; 3) a Minority Business under the Minority Business Certification Program by the Wisconsin Department of Commerce; or 4) has a comparable certification acceptable to WHEDA from a state or local government or agency. WHEDA will provide a facilitator, at its expense, to help the developer meet these goals.

## **VIII. WHEDA INTERNET SITE**

The following materials will be made available on WHEDA's Internet site at [www.wheda.com](http://www.wheda.com):

- Amended 2005/2006 Qualified Allocation Plan
- 2005 Low Income Housing Tax Credit Application and Attachments
- Market Study Guidelines
- Approved List of Market Study Providers
- Approved List of Capital Needs Assessment Providers
- Wisconsin's Tax Credit Projects listed by County from 1987 forward
- Updates on Wisconsin's Tax Credit Program
- List of Reservations for the Current Year
- List of Applicants for the Current Year
- Income and Rent Limits
- Applicable Federal Tax Credit Percentages
- Archived Documents from previous tax Credit cycles