



MEMORANDUM

TO: Public Hearing Attendees

FROM: Kathryn Turner, Tax Credit Program Officer

DATE: August 11, 2020

SUBJECT: 2021 Qualified Allocation Plan

Recommendation:

Staff recommends approval of the attached 2021 State of New Mexico Housing Tax Credit Program Qualified Allocation Plan (QAP).

Background:

The Low Income Housing Tax Credit (“LIHTC”) program was established in 1986 under Section 42 of the Internal Revenue Code (the “Code”). The Code sets the general program parameters including the requirement that each state adopt its own Qualified Allocation Plan (“QAP”), which sets forth specific project selection criteria and delineates other program rules. MFA revises the QAP annually.

While stakeholder feedback is encouraged throughout the year, MFA staff holds a “Developer’s Forum” focus group prior to beginning draft revisions and then presents a list of proposed changes to the Policy Committee and Finance Committee for discussion. A draft QAP is then composed and posted on MFA’s website and published in newspapers of general circulation. This posting and publication mark the beginning of a 21-day public comment period during which a public hearing is held. After the public comment period is concluded, a final QAP is composed and presented to Policy Committee, Finance Committee, and then the Board of Directors for approval. After Board approval, the QAP is sent to the Governor for final approval.

Discussion:

Several major changes are being considered for the Draft 2021 QAP. Policy and Planning researched needs of both indigenous populations and individuals that would benefit from Permanent Supportive Housing and found that both groups have high levels of housing need.

The unexpected rapid spread and devastating effects of COVID-19 expose the acute housing insecurities of indigenous communities and PSH populations. Certainly, the density of households has contributed to the devastating toll the Coronavirus has taken in tribal areas^{1 2}. For individuals experiencing homelessness not only are “stay at home” orders absurd, the challenge of maintaining basic hygiene become especially precarious. While shelters are operating at half capacity to allow for social distancing, homeless families are reluctant to

¹ [National Public Radio, April 2020](#)

² [Vox, March 2020](#)

risk entering group quarters. Expanding the set-aside program will ensure investment in the housing opportunities needed for New Mexico's most underserved and vulnerable residents.

Additionally, staff held a Focus Group with Policy and Planning and outside partners to discuss the Areas of Statistically Demonstrated Need scoring category, and a major policy change has resulted from that effort. The strong need for affordable housing across the state as supported by research by Policy and Planning, led to a re-balancing of focus towards new construction in the competitive, 9% LIHTC program. These policy changes are outlined more fully below:

1. Change to the Set-Aside

The 2020 QAP has a single 10% set-aside for new construction projects receiving USDA-RD funding. This has been an underutilized set-aside for several years, due to lack of available new USDA-RD funding. While staff has worked hard to eliminate barriers for Tribal and PSH projects to compete in the LIHTC program, they remain underserved and extremely vulnerable populations. By creating a larger, single, set-aside, the USDA-RD eligible projects would still be able to be prioritized, but MFA could add Tribal and PSH projects to the set-aside.

As there is a federal requirement to set aside 10% of each allocation of tax credits to qualified non-profits, we will be structuring this Underserved Population set-aside to be filled only following the fulfillment of the non-profit set-aside.

Policy Recommendation:

Language in the QAP in section III.D., would be:

Underserved Populations set-aside. Twenty percent (20%) of the annual credit ceiling will be set aside for the highest scoring project(s) that falls in any of the following categories:

- a. **USDA Rural Development** new construction Projects with direct USDA Rural Development (USDA-RD) financing (USDA-RD 514/515/516 and MPR programs) that meet the following requirements:
 - i. The initial Application for **new construction** Projects must include either:
 - ◆ A financing commitment for the direct USDA-RD financing. **Financing commitments and evidence of USDA-RD debt restructuring must include loan interest rate, term and repayment requirements, OR**
 - ◆ A letter from an authorized officer of the New Mexico USDA-RD office stating that:
 - a. The Project has been reviewed
 - b. USDA-RD favorably considers the proposed transaction
 - c. Upon approval of a complete Application to Rural Development and an award of tax credits, USDA-RD will submit the file to its national office in Washington, DC and recommend final approval of the transaction.

Please note that USDA will not approve an application for a Section 514 farm labor housing loan unless the Applicant is a non-profit.

b. Permanent Supportive Housing (PSH) projects that meet the following requirements:

- i. The project must meet threshold requirements within the Households with Special Housing Needs Housing Priority and agree to provide voluntary Case Management Services to residents.*
- ii. All service coordination and budget requirements must be sufficient to provide proposed services to all PSH residents,
- iii. PSH units have no time limits on occupancy,
- iv. PSH residents have the same rights and responsibilities as those occupying other low-income or market rate housing units**,
- v. PSH residents must have individual leases with identical requirements and protections as other low-income or market rate residents,
- vi. PSH units must cover 50% or more of the total unit count, and
- vii. Vouchers must be in place or secured for 75% or more of the PSH units in the project.

* Competing in the Underserved Populations set aside as a PSH project does not automatically result in points in the Households with Special Needs Housing Priority scoring category. Services must be selected and all required scoring items met in order to receive points in that category.

**All projects will be required to submit a PSH Commitment to Quality checklist with the Application and annually following the award.

c. Tribal Projects. Projects that are located within a Tribal Trust Lands boundary.

The application must indicate the desire for the Project to participate in the Underserved Populations Set-Aside, otherwise the Project will compete within the general round. The Project's score must be within 20% of the highest scoring Project to be awarded tax credits through the ranking process in the same funding round. The aggregate amount of tax credits allocated by MFA to projects meeting the above requirement may exceed this amount.

And:

Ranking to meet allocation set-asides. The highest scoring, qualified nonprofit organization eligible Project will be funded first. If there are insufficient qualified nonprofit organization eligible Projects to meet the nonprofit set-aside, the unallocated nonprofit set-aside tax credits cannot be allocated to other eligible Projects. A similar procedure will be used to meet the Underserved Populations set-aside, following the fulfillment of the nonprofit set-aside; however, if there are insufficient Underserved Populations eligible Projects to meet the Underserved Populations set-aside, any unallocated set-aside tax credits may be used for other eligible Projects.

2. Change to the Assessment of Need

The current QAP utilizes the Areas of Statistically Demonstrated Need (ASDN) scoring category to target certain areas of the state with credits. Developers have explained that projects without a Tier 1 or Tier 2 ranking are unlikely to be competitive, despite remaining community need. MFA engages market study analysts to develop market studies for the top scoring projects to confirm the presented need. While this process has been effective at ensuring projects are built across the state, it may not

accurately target need. Through the petition process, smaller jurisdictions or counties outside of the Tiers can provide additional materials, some of which might be more up to date or targeted and will thus result in a recategorization. Almost all petitions are successful, forcing staff to wonder about the effectiveness of the ASDN methodology to gauge need. New Mexico has a great need for affordable housing in almost all of its communities, and by eliminating the ASDN category, and replacing it with a required market study at application, which must meet certain levels of proof of demand, MFA would be opening up areas of the state that may not have been eligible for the ASDN points, but still have a high need for affordable housing.

Policy Recommendation:

In order to avoid a swift change to the QAP and scoring criterion, staff is proposing to maintain the ASDN scoring criterion for 2021, but adding the option for a Market Study to show high need (e.g. capture rates must be lower than the threshold market study level) instead of falling within the identified Tier locations. The proposal would be to eliminate the ASDN scoring category entirely in the 2022 QAP and rely solely on the Market Study to prove need (other state agencies are now requiring current capture rate data in market studies to assess the existing, more accurate need for affordable housing in the primary market area).

Language in the QAP would be:

Tier 1

Eligible Projects are located in the counties of: ____, ____, ____, ____, and ____. In addition, all Projects on Native American Trust Lands or Native American-owned lands within the tribe's jurisdictional boundaries are eligible for Tier 1 points.

Projects not falling in the above mentioned locations, may qualify for Tier 1 Status if their application contains a Market Study that shows an overall capture rate, as defined in the Glossary, of 8% or less overall (this may be subsidized capture rate, if subsidies are secured), and

Tier 2

Eligible Projects are located in the counties of: ____, ____, ____, ____, and ____.

These tier areas are subject to change based on any changes in the 2021 Action Plan.

*Indicates an area remains on the list for a second year even though it did not meet criteria in 2021.

The Market Study would be part of the threshold requirements and would have the following language in the QAP:

Market study. A Market Study must be submitted at application and completed by a vendor meeting the requirements agreed upon in the Market Study Professional Certification document, found at <http://housingnm.org/developers/low-income-housing-tax-credits-lihtc>. The market study itself must meet the requirements and follow the methodologies identified in the Market Study Parameters and

have been issued within 180 days of the application submission. All market studies must be issued to MFA as the designated user. The market study must address and meet the following requirement*:

Subject Capture Rate. The market study must provide a capture rate, as defined in the Glossary, for the proposed project overall, as well as capture rates for each targeted income level and bedroom count. The rent burden (rent plus utility allowance, if any) may not exceed 30% of gross income at each income strata proposed, and the overall capture rate for a project must not exceed 10%. This rate may be the subsidized rate if subsidies are secured at the time of application.

*Tribal projects are exempt from meeting the Capture Rate level, but they must submit a Market Study meeting the requirements outlined in the Market Study Parameters document within the application materials, and the Market Study must indicate a need for the type and quantity of housing proposed.

If the Market Study as submitted is not sufficient, there may be an additional Market Study ordered by MFA. The cost of this MFA-ordered Market Study will be covered by the applicant through the design deposit submitted at application. It is MFA's sole discretion whether or not the Market Study is sufficient.

The Glossary definition would be:

Capture Rate – Ratio of the total units proposed to the number of income qualified households in the Primary Market Area (PMA). This ratio is calculated by dividing the total number of proposed units by the total number of age, size and income qualified renter households in the PMA.

3. Change to the balance of New Construction versus Rehabilitation Projects awarded

In order to address the need for additional affordable housing across the state of New Mexico, staff is proposing to eventually move towards a 9% LIHTC program that focuses on new construction projects, and potentially move the rehabilitation projects to the 4% program. This 2021 QAP moves in that direction by proposing to change the way credits are allocated in the competitive 9% program:

The two highest scoring new construction Projects will be awarded first, followed by the highest scoring rehabilitation Project. The target pattern of two new construction Projects followed by one rehabilitation Project will be followed until all credits are allocated, or until the last project in a track has been awarded. Projects awarded in the Nonprofit or Underserved Population set-asides will be considered in achieving this target. Forward allocations may be made following the same process, however any decision to forward allocate tax credits lies solely within MFA's inherent discretion and is not subject to further review.

Below is a summary of other notable proposed changes and attached is the redlined draft. Other changes found in the draft are clarifications of existing policies/terms in the QAP i.e. insertion of answers/clarifications generated during last year's FAQ period, which become a part of the QAP by reference.

A. Allocation to New Construction and Rehabilitation Projects – Section II.C. (starts page 4)

As discussed above, new construction projects will be awarded in favor of rehabilitation projects to a ratio of 2:1.

- B. **General Public Use – Section II.G.** (starts page 8)
Per Code, language was added to allow that projects “favor tenants... of indigenous populations for those Projects located on Tribal Lands.”
- C. **Combined Rehabilitation and New Construction Projects and General Guidelines Around Rehabilitation – Section II.J.** (starts page 10)
This section was clarified to explain how MFA would treat mixed new construction and rehabilitation projects in terms of cost limits, track for allocation purposes, and other requirements.
- D. **Compliance Period and Extended Use Period – Section II.K.** (starts page 12)
This section was clarified to better reflect the language in the Code.
- E. **Eligible Basis According to Type of Activity – Section II.M.** (starts page 13)
Language was clarified around the application of the 30% basis boost for QCTs (Qualified Census Tracts) and DDAs (Difficult to Develop Areas) versus the state-designated boost.
- F. **Subsidy Layering Review – Section II.T.** (starts page 17)
This section was moved to the general program information section and was updated to reflect the current responsibility of MFA with regards to Subsidy Layering Reviews.
- G. **Minimum Project Threshold Requirements – Section III.C.** (starts page 19)
A market study that sufficiently proves need and meets specific guidelines and parameters is now required as a minimum threshold requirement at application (*see above discussion for exact policy language.*)
- H. **Allocation Set-Asides – Section III.D.** (starts page 22)
The USDA Rural Development set-aside was expanded to become an Underserved Population set-aside and the treatment of both set-asides was detailed out (*see above discussion for exact policy language.*)
- I. **Project Selection Criteria to Implement Housing Priorities – Section III.E.** (starts page 25)
The threshold score for 4% projects was lowered by 5 points to 58. Additional proposed scoring changes or clarifications include the following:
 - 1. **Scoring Criterion no. 2- Locational Efficiency** (starts page 26)
 - The requirement of proximity was changed to be walking distance instead of perimeter ring distance to amenities and transportation.
 - Clarification of various categories, ensuring the definitions were consistent throughout QAP (i.e. Rural is defined as those sites not located within the boundaries of Urban areas defined in the Glossary).
 - One of the amenities within the “Proximity to Services” section must be a store with fresh produce.
 - A new option was added within the “Access to Public Transportation” section of the category. If a site is located within .25 mile walk of a frequent urban transportation site, four points are available.

2. **Scoring Criterion no. 3** – *Rehabilitation Projects (starts page 28)*
No scoring change. The treatment of combined new construction and rehabilitation projects was taken out, as this has been clarified in Section II.J. (as discussed above.)
 3. **Scoring Criterion no. 4**- *Sustaining Affordability (starts page 29)*
No scoring change. Language was clarified to include projects that are converting existing federal rental assistance contracts and that any affordable project that is at imminent risk of changing to market rate would be eligible for points in this category.
 4. **Scoring Criterion nos. 8-10**- *Housing Priorities (starts page 32)*
No scoring change.
 - Language was added to ensure the property management staff was not the same as the service coordinator for Households with Special Housing Needs Housing Priority.
 - Requirements for compliance were made uniform across all three priorities.
 - Social distancing options for socializing were added to the service options.
 - The necessary bathroom configuration was clarified in the Households with Children Housing Priority.
 5. **Scoring Criterion no. 14** – *QCT/Concerted Community Revitalization Plan (starts page 45)*
No scoring change. Language from the glossary was moved up for clarity.
 6. **Scoring Criterion no. 15** – *Projects with Units Intended for Eventual Tenant Ownership (starts page 46)*
No scoring change. Requirement details were added and pulled up from the glossary for clarity.
 7. **Scoring Criterion no. 18** – *Projects Located in Areas of Statistically Demonstrated Need or Market Study Supported Area (starts page 47)*
Market Studies meeting a deeper threshold for need were added as an option to meet the Tier 1 point status and the option for petitions was eliminated (*see above discussion for exact policy language.*)*

*Accurate data to identify the ASDN tiers is not currently available, partially due to COVID. We will update this section as soon as we can.
 8. **Scoring Criterion no. 22** – *Other Scoring Points Available (starts page 51)*
If the project has a principal that is a woman or minority owned business, there is an option for three points in this section.
- J. **Submission Date(s) and Place of Submission – Section IV.A.1-2.** (starts page 53)
The submission deadlines and locations of both the hard copy and electronic applications were clarified, and the hour was moved up to 4 p.m. for the submission deadline.
- K. **Content and Format: Complete Applications - Section IV.A.4.** (starts page 55)
- The treatment of discrepancies between electronic and hard copies was described.
 - Confidential information and record inspection procedures were outlined.
- L. **MFA Fees and Direct Costs – Section IV.B.** (starts page 58)
The Market Study and Design Review Deposit was changed to cover just the design review, and was increased to \$10,000, to more accurately reflect the cost of those reviews.

- M. Feasibility Analysis and Financial Considerations – Section IV.D.** (starts page 63)
- Language around locking the maximum builder fees in at application was eliminated.
 - Developer fees are locked at application for 9% projects and at 8609 issuance for 4% projects.
 - Language was clarified to refer to Underwriting Guidelines.
- N. Credit Calculation Method – Section IV.E.3.** (starts page 68)
Language was clarified and updated in the following sections:
- Amount of tax credits for reservation or Carryover Allocation
 - Tax credit proceeds
 - Increased basis for high cost areas
- O. Final Processing and Awards - Board of Directors – Section IV.F.5.** (starts page 72)
A brief presentation to the board of directors was added as a requirement for each application up for an award.
- P. Notification of Approval and Subsequent Project Requirements – Section IV.G.** (starts page 72)
Requirements for quarterly reports were clarified.
- Q. Notification to MFA of Changes to the Project – Section IV.I.** (starts page 78)
Changes to 4% applications were included in this section.
- R. Attorney Fees – Section IV.L.** (page 80)
Activities requiring reimbursement were expanded and clarified.
- S. Ancillary Functions – Section V.** (starts page 81)
The Subsidy Layering information was moved up to the general information about the program, as it is not a function of MFA. This section only covers Tax Exempt Bond Processing, so the section header was changed to accurately reflect this.
- T. Processing of Tax-Exempt Bond Financed Project Applications – Section VI.B.** (starts page 82)
Language was clarified to reflect prior changes in the QAP.
- U. Inspections – Section X.B.** (starts page 85)
Per IRS regulations, the inspection frequency has changed. Additionally, language was added to reflect inspections to service plan delivery.
- V. Annual Certification Review – Section X.D.** (starts page 87)
Additional documentation is required annually.
- W. Glossary – Section XI.** (pages 94 and 103)
The term “Capture Rate” was added, and Tenant Conversion Plan was modified.

Other updates

All dates have been pushed up by one month, to ensure New Mexico’s credit pricing is as robust as possible.

Summary:

The proposed changes to the 2021 QAP continue to improve the allocation process. Staff conducted a Developer's Forum wherein we discussed significant changes to the QAP. New ideas were raised by attendees at the Forum, which were carefully considered. In addition, staff solicited input from staff from departments other than Housing Development.

An initial draft of the 2021 QAP was approved by the Policy Committee and following approval from this committee, will be posted for public comment. Notice of the public hearing will be published in three newspapers of general circulation. A 21-day public comment period will commence on August 17, 2020 and close on September 8, 2020. A public hearing will also be held on September 2, 2020 for the purpose of accepting oral comments.