



# MEMO

**TO:** Public Hearing Attendees

**FROM:** Jeanne Redondo

**DATE:** August 30, 2023

**SUBJECT:** **2024 Qualified Allocation Plan**

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## **Recommendation:**

Staff recommends approval of the attached 2024 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. This year, MFA held two Developer’s Forums to allow more opportunity for participants to share. In addition, MFA held smaller focus groups on construction costs, the non-profit right of first refusal, and rural development. A draft QAP is then composed and posted on MFA’s website and published in at least three 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:**

This year, staff focused on ways to improve the allocation process by removing barriers, where appropriate. Some highlights include allowing the use of the average income test permitted under IRC Section 42(g)(1)(C) in tax-exempt bond financed Projects, delaying

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the review of the property management agent until construction is underway, exempting volunteer board members from the requirement to execute a compliance affidavit for properties that are already certified as compliant by the developer or Project Principal, a streamlined application for Projects qualifying for supplemental tax credits in hardship situations, adding a policy regarding recycled tax credits (commonly known as credit swaps). These provisions are further explained below.

The following changes to the QAP are proposed. Page numbers below refer to the page numbers at the bottom of the page in the redline document (not the page of the pdf).

**Minimum Apartment Units Set-Asides – Section II.E.3.** (Begins on page 5)

- Staff recommends allowing 4% LIHTC Projects to use the Average Income Test as the minimum federal set-aside under IRC Section 42(g)(1)(C), that was previously prohibited through an ancillary Bond Checklist. Projects that receive an allocation of 4% LIHTC in conjunction with an issuance of tax-exempt bonds must meet the set-aside requirements of both Section 42 and Section 142 of the IRS Code. The language referring to these requirements was underlined for emphasis.

**General Public Use – Management Units - Section II.G** (See page 8)

- This section was updated to clarify that management units are requested through Asset Management after the Project is completed. This policy has been in place for several years but is sometimes misunderstood by Applicants.

**Eligible Projects – Section II.H** (See page 8)

- This section was updated to clarify that assisted living facilities are not eligible for LIHTC in New Mexico’s QAP. Treasury Regulation 1.42-11(b)(2) says that “if continual or frequent nursing, medical or psychiatric services are provided, it is presumed that the services are not optional and the building is ineligible for the credit, as is the case with a hospital, nursing home, sanitarium, life care facility, or intermediate care facility for the mentally or physically handicapped.” And while assisted living facilities can have a wide range of services, not necessarily all medical, the expectation of those services being utilized by residents is part of why the model of services in an assisted living facility being Medicaid reimbursable works. In contrast to that model, the LIHTC program requires services to be voluntary, not mandatory. Seniors who wish to age in place will still be able to bring in the services they require through Medicaid or other sources.

**Combined Rehabilitation and New Construction Projects and General Guidelines Around Rehabilitation Projects – Section II.J** (Beginning on page 9)

- Section II.J.1.a on page 10 was clarified to refer to the definitions of Moderate and Substantial Rehabilitation in the Glossary so Applicants properly classify their Project when claiming points in Section III.E.

- Section II.J.3 on page 11 was clarified that while the relocation plan for 9% Projects is due with the Carryover Allocation package, the relocation plan for 4% LIHTC Projects is due with the Initial Application because these Projects do not receive a carryover allocation.

**Building Classification and Tax Credit Applicable Percentages – Section II.R** (See page 15)

- This section was clarified to differentiate the minimum expenditure under the Internal Revenue Code (the “Code”) from the minimum expenditure needed for scoring in Section III.E.3.

**Needs Analysis – Section III.A** (See page 17)

- This section was updated to refer to the “current” New Mexico Consolidated Plan and Action Plan to ensure that Applicants always refer to the most recent plans.

**Site Control – Section III.C.1** (See page 19)

- Tax-exempt bond Projects will be required to provide the evidence of site control with the Initial Application that is already required for 9% Projects.

**Project Selection Criteria to Implement Housing Priorities – Section III.E** (Begins on page 23)

- The QAP was updated throughout to properly refer to MFA’s design requirements document by its title: *Mandatory Design Standards for Multifamily Housing*.
  - **Tax-exempt Bond Financed Projects** (See page 24) will be required to perform a Moderate Rehabilitation, at minimum, to qualify for tax credits under the QAP. The Private Activity Bond volume cap is limited. This will direct those resources to Projects that perform a threshold level of rehabilitation, where applicable.
1. **Scoring Criterion no. 1** – *Nonprofit, NMHA, TDHE, or THA Participation* (See page 25)
    - This scoring criterion was updated to add the requirement to enter into a right of first refusal agreement using MFA’s form of agreement. The misinterpretation of a nonprofit’s right of first refusal has been an ongoing issue causing litigation throughout the country.
  2. **Scoring Criterion no. 3** – *Rehabilitation Projects* (See page 27)
    - The criterion was updated to add a reference to the Glossary definitions of Moderate and Substantial Rehabilitation for clarity.
  3. **Scoring Criterion no. 8** – *Households with Special Housing Needs Housing Priority* (See page 35)

- The section on coordinated services was updated to clarify that the services must be implemented immediately following the issuance of a certificate of occupancy. This does not change policy, but merely states it expressly in the QAP.
- 4. **Scoring Criterion no. 9** – *Projects Reserved for Seniors Housing Priority* (See page 36)
  - The section on coordinated services was updated to clarify that the services must be implemented immediately following the issuance of a certificate of occupancy. This does not change policy, but merely states it expressly in the QAP.
- 5. **Scoring Criterion no. 10** – *Households with Children Housing Priority* (See page 39)
  - The scoring criterion was updated to clarify that services must be implemented immediately following the issuance of a certificate of occupancy.
  - It was also updated to reiterate that services offered on-site for scoring purposes are for the Project’s residents rather than the general public, as they must be actively linked to the Project.
- 6. **Scoring Criterion no. 17** – *Blighted Buildings and Brownfield Site Reuse* (See page 47)
  - After receiving a developer concern that it was inconsistent, this scoring criterion was clarified for consistency with the definitions in the Glossary and the Application Checklist of exhibits.
- 7. **Scoring Criterion no. 18** – *Efficient Use of Tax Credits* (Begins on page 49)
  - Prior to release of the final draft QAP for Board approval, the limits on the Efficient Use of Tax Credits will be increased as necessary to reflect higher construction costs as documented by the Bureau of Labor Statistics residential construction goods index or other appropriate source by the time the QAP is finalized. An increase also reduces the burden on limited MFA gap financing resources.

**Additional Supplemental Tax Credits for Cost Increases – Section III.G** (See pages 52-53)

- This scoring criterion was updated to remove the requirement that Projects requiring supplemental credits for feasibility need to compete in the current round.
- The number of credits available was reduced to 10% of the original award.
- The Application was streamlined to only include what is needed to determine whether the application for supplemental credits qualifies.
- The Project must demonstrate hardship and that other financing sources have been exhausted.

- If the score in the original round would have changed based on the additional credits, the Project's score after the increase would still need to have qualified for an award in that original round.
- Once supplemental credits are determined, MFA staff will recommend 2024 LIHTC awards to the Allocation Review Committee based on the balance of the remaining tax credits in the tax credit ceiling plus any forward allocations that it feels are appropriate.
- Projects that do not meet the criteria for supplemental credits may return the previous valid allocation and compete in the current 9% LIHTC round.

**New Allocations to Projects Previously Subsidized with Tax Credits – Section III.H** (See page 54)

- The second and third paragraphs were deleted, as they are redundant. This information is found in Section IV.D.2.b where Developer Fees are described.

**Recycled Allocations – Section III.I** (See pages 54-55)

- This section was added to the QAP to implement a policy under which MFA would consider a return of a valid tax credit allocation in exchange for an allocation of credits from the current year. It is also known as a credit swap in the industry.
- The return of tax credits would need to occur between October 1<sup>st</sup> and December 31<sup>st</sup> because the Code allows the credits to be added to the following year's tax credit ceiling.
- The new allocation of tax credits would be issued in January of the following year and the Project would need to be placed in service during that year. For example, a return of tax credits in November 2023 would receive 2024 tax credits and be required to be completed by December 31, 2024.
- Credit swaps are not done lightly and therefore the Principals involved in the Project would not be eligible to compete in the year following the return of credits. For example, a Principal who returns credits in November 2023 would be ineligible to compete in the 2024 9% LIHTC round.

**Submission Date(s) – Section IV.A.1** (See page 55)

- The period to submit 9% Applications was expanded; they will be accepted from January 5, 2024 until January 22, 2024 at noon because the previous opening and closing dates fall on weekends in 2024.

**Form of Submission and Content and Format: Complete Applications – Section IV.A.4** (See page 56)

- This section was updated to require that voluminous documents that interfere with the ability to work with the pdf Application, be uploaded separately. These documents include, as applicable, the market study, architectural plans and specifications, capital needs assessment, and appraisal.

**MFA Fees and Direct Costs – Section IV.B** (See pages 60-61)

- The processing fee was increased from 7.75% to 8.5% of the tax credit allocation amount (i.e., the fee would increase by \$7,500 for a \$1M allocation). The average fee reported to the National Council of State Housing Agencies for the 2021 tax year is 8.56% (when the highest and lowest fees are removed from the calculation).
- The \$500 fee for increases in tax credits and requests for changes was clarified that the changes anticipated are prior to issuance of Forms 8609.
- A new \$250 fee per Form 8609 with a maximum fee of \$2,500 for multiple forms was implemented for changes requested after MFA has provided the opportunity for the Project Owner and their professionals to review and sign off on the forms.
- Existing fees for ownership changes and Land Use Restriction Agreement (LURA) modifications were added to the QAP to make current applicant aware of these fees.

**Staff Analysis and Application Processing – Section IV.C** (Begins on page 61)

- *Design Review and Construction Start – Section IV.C.7* (See page 64)
  - This section was reformatted for clarity and now includes the services that are included in the base \$12,000 design review fee.
- *Other Project Compliance – Section IV.C.7* (See page 65)
  - This section was updated to refer to the specific documents that are required to demonstrate compliance.
  - The requirements in this section were reduced to exempt volunteer board members from the requirement to execute a compliance certificate, since the organization itself still testifies to the compliance that is covered.
  - The specific format of the schedule demonstrating experience is now less restricted, so Applicants may submit other documents with the same information that is normally included in a Real Estate Owned schedule or HUD Form 2530.
- *Development Team Review – Section IV.C.9* (See page 66)
  - This section was clarified to refer to the specific documents that are reviewed.
  - It is not uncommon for developers to request a change in management agent during development, so the review of the property management agent is deferred until MFA meets with the development team when the Project is 50% complete.

**Developer Fees – Section IV.D.2.b** (See page 69)

- The last sentence of the first paragraph on the page was removed so the methodology to calculate the maximum 14% of Total Development Costs is the same for both 9% and 4% Projects. This change primarily affects 4% acquisition/rehabilitation Projects where the transaction is between parties

with an identity of interest; the acquisition costs will not be included in the calculation of developer fee.

**Notification of Approval and Subsequent Project Requirements – Section IV.G** (Begins on page 77)

- *Carryover Allocation requirements – Section IV.G.3.c* (See page 78)
  - The reference to the qualifications of the professional performing the capital needs assessment (CNA) was removed; Section II.J includes all CNA requirements in one place.
- *No later than June 30 of the year following Carryover – Section IV.G.5* (See page 79)
  - Information regarding the design review process that is already included in Section IV.C.7 was removed, and a reference to Section IV.C.7 was added.
- *August 31 of the year following Carryover – Section IV.G.6* (See page 79)
  - The requirement for Projects included in the federal nonprofit set-aside to enter into the right of first refusal agreement in MFA’s format was added. Projects that do not wish to compete for points and that do not wish to be included in the federal set-aside are not required to enter into this agreement.
- *At or around the 50% construction completion mark – Section IV.G.7* (See page 80)
  - The materials required to review the property management agent (that were deferred) were added to the information regarding the meeting at or around the 50% construction completion mark were moved to this section.
- *November 15th of the second year following the initial allocation – Section IV.G.8* (See page 80)
  - The *Final Allocation and Placed in Service requirements* were updated to add a requirement that the Project Owner notify MFA, by February 15th of the year following the year the Project is placed in service, if the Project Owner reasonably anticipates that a portion of the tax credits will need to be returned. This ensures that the tax credits can be reallocated to another project if the credits are not required for feasibility. If the Project Owner causes New Mexico to lose tax credits due to their failure to timely notify MFA, the Principals involved in the Project will be ineligible to compete in the 9% LIHTC round during the year following the submission of the Final Allocation package.
- *Cost Certification – Section IV.G.8.a* (See page 80)
  - A reference to Section V entitled Cost Certification was added to direct Project Owner’s to the portion of the QAP where cost certifications are explained in more detail. Information that is repetitive was removed from this section.

**Processing of Tax-Exempt Bond Financed Project Applications – Section VI** (Begins on page 86)

- This section was updated to add a provision allowing MFA to implement a schedule to accept applications and/or implement ranking criteria if private activity bond volume cap becomes constrained during the year.
- A reference to the ancillary Bond Checklist and separate 4% LIHTC Application was added. MFA prepared these documents for the first time in 2023 to make it easier for 4% LIHTC Applicants to follow the requirements of this program.
- The private activity bond volume cap on page 88 was limited to 55% of the Project’s Eligible Basis (used to calculate the tax credits) plus the land. It was formerly 75% of the Project’s Total Development Cost, which exceeded the amount necessary for Projects to meet the 50% test to qualify for the tax credits. The 50% test is calculated as follows: the numerator in the fraction is the amount of tax-exempt bonds and the denominator is the aggregate basis of the building and land.

**MFA Tax Credit Monitoring and Compliance Plan Summary – Section X** (Begins on page 89)

- *General Requirements – Section X.A* (See page 89)
  - A provision was added that requires Project Owners to notify tenants regarding the expiration of the LIHTC rent restrictions. Tenants residing at the Project as of the date that is three years prior to the expiration of the rent restrictions would receive three years notice. Tenants who move in after that date would be notified when they sign a lease to move in. Failure to provide the notices timely would extend the rent restrictions for the applicable tenants until they receive the time required (either three years or the remaining restriction period that was in effect at the time the lease was signed).

**Glossary – Section XI** (Begins on page 95)

- Management Units was updated to include the potential that the IRS will disallow an employee unit that is occupied by an employee who is not employed full time by the property in question. (See page 104)
- Substantial Rehabilitation was updated to clarify the portion of the Project that must be modified to meet the threshold of this standard. (See page 107)

**Summary:**

The proposed changes to the 2024 QAP continue to improve the allocation process. Staff conducted two Developer’s Forum sessions and three additional focus groups wherein we gathered input to the QAP. New ideas were raised by attendees at the Forum, which were carefully considered. In addition, staff solicited input from staff from the Asset Management Department.