**MEMORANDUM**

**TO:** Public Hearing

**FROM:** Susan H. Biernacki, Tax Credit Program Manager

**DATE:** October 2, 2017

**SUBJECT:** Proposed Changes to 2018-2019 Draft QAP

**Background:**

The Low Income Housing Tax Credit 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 periodically.

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 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 draft 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:**

Multiple changes are being considered for the Draft 2018-2019 QAP involving project selection criteria, application submission requirements, and to clarify various aspects of application processing. In addition, staff is proposing a multi-prong approach to containing costs and incentivizing lower tax credit requests on the part of applicants. A copy of the 2018-2019 Draft QAP is available on MFA’s website at: <http://www.housingnm.org/developers/low-income-housing-tax-credits-lihtc>. The list below of changes included in the 2018-2019 Draft QAP is not an exhaustive list of all changes. Rather it is a summary of what staff feels are the most significant changes proposed. Interested parties should refer to the 2018-2019 Draft QAP posted on MFA’s website. The 2018-2019 Draft QAP was made available on September 15, 2017 on MFA’s website at the address noted above. The 21 day public comment period began on September 16, 2017 and continues through 5:00 PM on October 6, 2017.

1. **Project Selection Criteria Modifications**- Proposed scoring changes or clarifications include the following:
2. ***Scoring Criterion no. 3- Rehabilitation Projects***

No scoring change. Draft QAP distinguishes between moderate and substantial rehabilitation cost thresholds and requires applicants requesting points under this scoring criterion to submit: (i) a detailed narrative discussing why rehabilitation is more appropriate than demolition, and (ii) a displacement/relocation plan. CNA must support a substantial or moderate rehabilitation.

1. ***Scoring Criterion no. 9- Projects Reserved for Special Needs Households***

No scoring change. Given funding cuts with the State of New Mexico Behavioral Health Services Division, the draft QAP deletes the requirement for execution of an agreement with a Local Lead Agency, and instead permits project owners to provide referral services directly. References to Section 811 funding deleted due to inapplicability of funds to new projects.

1. ***Scoring Criterion no. 10- Projects Reserved for Senior Housing***

No scoring change. Draft QAP updated to include Fair Housing Act requirements and require a Certification concerning compliance with this Act.

1. ***Scoring Criterion no. 12- Leverage***

The NCSHA, in its July 17, 2017 release of its *Recommended Practices in Housing Credit Administration*, is recommending that housing finance agencies “*not prioritize local contributions over any other source of outside funding.*” Given this draft recommendation, staff is proposing an expansion of the scoring criterion previously referred to as “Projects Receiving a Local Contribution”. The draft QAP provides 5, 10 or 15 scoring points will be available for a project that is leveraging its sources of funds appropriately and therefore requesting less tax credits. The thresholds are as follows:

1. The annual LIHTC funding request is 8 percent or less of Total Development Cost (5 points available); or
2. The annual LIHTC funding request is 7 percent or less of Total Development Cost (10 points available); or
3. The annual LIHTC funding request is 6 percent or less of Total Development Cost (15 points available).

MFA will set certain limits in terms of no more than 50 percent deferred developer fee. This scoring criterion will still permit local contributions, such as workforce housing grants and permit fee waivers, but local contributions, per se, will not be prioritized over other sources of outside funding such as GP contributions, third party mortgages, etc.

1. ***Scoring Criterion no. 13- Complete Applications***

No scoring change. Draft QAP includes examples of application deficiencies that will be viewed as incomplete items including, but not limited to, using prior year Schedules, not adhering to MFA’s published underwriting standards, inconsistent information within the application, etc.

1. ***Scoring Criterion no. 19- Projects Located in Areas of Statistically Demonstrated Need***

No scoring change. Tiers updated based on latest survey data for each county. Draft QAP proposes that a project to be located in a town or municipality that is not in a tier 1 or tier 2 county, may petition MFA, through a narrative discussion which includes verifiable data supporting inclusion of a town or municipality in a tier area, e.g. vacancy rates from a market study, waiting lists from the local PHA, etc.

1. ***Scoring Criterion no. 21- Non-Smoking Properties***

Points increased to either six or four, depending on the certification level selected. Draft QAP requires all projects to participate in the American Lung Association of NM *Smoke –Free at Home program*. This program offers three levels of certification (platinum, gold and silver). The silver standard mirrors HUD’s rule entitled “Instituting Smoke-Free Public Housing”, which has an effective date of February 3, 2017. This rule states that no later than 18 months from the effective date of the rule, each PHA must implement a “smoke-free” policy banning the use of prohibited tobacco products in all public housing living units, indoor common areas, and all outdoor areas up to 25 feet from the public housing. Projects agreeing to obtain either the platinum or gold certification (both standards prohibit smoking on the entire project) are eligible for six points and projects agreeing to obtain the silver certification (the equivalent of the HUD standard) are eligible for four points.

1. ***New Scoring Criterion for “Other” Projects***

Up to 6 scoring points available for projects that satisfy up to two of following: (i) contains deep rent skewing , i.e. 5 percent of units are made available to residents earning 30 percent or less of area median income; (ii) new construction of 35 units or less; (iii) located in a town or municipality with less than 16,000 people; (iv) located in a town or municipality that has not received a LIHTC award in the last five calendar years; or (v) the project provides a preference for active duty or US military veterans. Each category is worth three points and an applicant may select up to two categories for a maximum of six additional points.

1. **Other Proposed Substantive Changes, generally**
2. ***Two year QAP***

Draft QAP proposes to govern both the 2018 and 2019 allocation rounds.

1. ***Audit Requirements, Section II.S.***

Draft QAP includes a new Section II.S which permits MFA to perform an audit from the time of carryover and continuing throughout the entire term of the extended use period of any project that has received an allocation of tax credits. Records to be reviewed may include, but are not limited to, all costs of the project, including invoices, all third party contracts, e.g. construction contracts, management contracts, architect and other professional contracts, all construction pay applications and back up documentation (including subcontractor invoices) and any other documents necessary to audit a project.

1. ***Pre-Application Meeting- Section III.C.7***

Draft QAP includes a new Section III.C.7 that requires, beginning with the 2019 allocation round, all 9% tax credit applicants meet with MFA staff to review and discuss their proposed project. Meetings will occur between 8/1/2018 and 11/21/2018 and applicants must be prepared to discuss threshold items, as well as estimated sources and uses (costs), scoring criteria, and design issues. Tax exempt bond financed projects (4% tax credit projects) must meet with MFA staff at least 30 days prior to submission of their application.

1. ***Developer Fees- Section IV.D.2.b***

Draft QAP reduces developer fee when there is an identity of interest in any principal(s) of the seller and buyer and states that developer fee will be calculated on total development cost less acquisition costs. An appraisal will be required at application in this limited instance to confirm the value of the acquisition.

1. ***Architect & Engineering Fees- Section IV.D.2.c***

Draft QAP includes a new Section IV.D.2.c that proposes to cap architect and engineering fees to 3.3% of Total Development Cost. Architect fees may be further reduced when the same design has been used in previous developments. This fee limit is a soft cap and any amounts in excess of this cap will not be included in eligible basis.

1. ***Other Fees- Section IV.D.2.d***

Draft QAP includes a new Section IV.D.2.d which gives MFA the authority to re-categorize or allocate costs differently if it is determined costs have been categorized incorrectly. Applicants shall describe “other” costs with sufficient specificity so it is clear what these costs encompass.

1. ***Semi Annual Progress Reports- Section IV.G.2***

Draft QAP includes a new Section IV.G.2 that requires projects receiving an award to submit semi-annual progress reports to MFA on or before June 30th and December 31 each year, beginning with June 30th after the allocation year and continuing until the final allocation application has been submitted. The required format for the semi-annual report will be posted to MFA’s website.

1. ***Cost Certifications- Section IV.G.7***

Draft QAP requires two cost certifications at final allocation: (i) a cost certification prepared by a CPA, with a minimum of 20 percent of costs tested, and executed by both the CPA and project owner; and (ii) a cost certification prepared and executed by the general contractor. Further, each cost certification must specifically identify those costs listed in any general or “other” category.

**Summary:**

The proposed changes to the Draft 2018-2019 QAP continue to refine cost containment and improve the allocation process. Staff conducted a Developer’s Forum wherein many of the above proposed changes were discussed and new ideas were raised by attendees at the Forum. In addition, staff has received written comments from developers, solicited input from outside counsel and staff from departments other than Housing Development. This 2018-2019 Draft QAP was approved by MFA’s Policy Committee and Finance Committee and a 21 day public comment period commenced on September 16, 2017 and will close on October 6, 2017. A public hearing will be conducted on October 2, 2017. Upon completion of the public comment period, staff will consider all comments and make appropriate changes to the Draft 2018-2019 QAP. The revised 2018-2019 Draft QAP will then be brought before Policy Committee, with the final 2018-2019 QAP brought before Finance Committee and the Board for approval in November. Thereafter, MFA will seek the Governor’s approval.