



## MEMORANDUM

**TO:** Public Hearing  
**FROM:** Isidoro Hernandez, Deputy Director of Programs  
**DATE:** October 1, 2019  
**SUBJECT:** Proposed Changes to the 2020 Qualified Allocation Plan

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### **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 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. 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:**

Several changes are being considered for the Draft 2020 QAP, including 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 copy of the Draft QAP is available on MFA's website at <http://www.housingnm.org/developers/low-income-housing-tax-credits-lihtc>. The list below is not an exhaustive list of all changes. Rather it is a summary of what staff feels are the more notable proposed changes. Interested parties should refer to the 2020 Draft QAP posted on MFA's website. The 2020 Draft QAP was made available September 17, 2019 on MFA's website at the address noted above. The 21-day public comment period began on September 18, 2019 and continues through 5:00 PM on October 8, 2019.

- A. **Equalization of New Construction and Rehabilitation Projects – Section II.C.** (starts page 4)  
The language regarding the subsequent awarding of projects in each category was not how forward allocation was being administered in practice. This language was clarified to reflect the way MFA has been administering those credits.
- B. **Nonprofit Set-Aside – Section II.D.** (starts page 5)  
Language was added to allow MFA to request an opinion of counsel if there are concerns regarding the control of the nonprofit by a for-profit.
- C. **Minimum Apartment Unit Set-Asides – Section II.E.** (starts page 6)  
Last year we did not allow existing LIHTC projects to utilize the Average Income set-aside. Now that we have a better sense of how this set-aside will work with compliance, this is proposed to be allowed, however the project must meet both the existing set-aside and the new Average Income set-aside requirements.
- D. **General Public Use – Section II.G.** (starts page 8)  
Per IRS guidance, any unit utilized by a manager may have rent collected, or be at any income level, and will still be considered common space in the eligible basis calculation. Language has been clarified to address this change.
- E. **Combined Rehabilitation and New Construction Projects and General Guidelines Around Rehabilitation – Section II.J.** (starts page 9)  
This section header has changed to incorporate general guidelines on rehabilitation projects, that formerly was only held within the Rehabilitation Point category.
- F. **Building Classification and Tax Credit Applicable Percentages – Section II.R.** (starts page 14)  
In 2015, the PATH Act permanently fixed the floor of the 9% credit at 9%. This is clarified in this paragraph.
- G. **Audit Requirements – Section II.S.** (starts page 16)  
Language was added to require all bid records be maintained.
- H. **Minimum Project Threshold Requirements – Section III.C.** (starts page 17)
  - 1. Following 2019 projects not meeting threshold requirements and one project not meeting the minimum score, it was suggested by counsel to move the minimum score requirement out of threshold criteria and into scoring criteria. In other words, threshold issues prevent an application from being scored, and that application is rejected for that reason. However, if a project meets all threshold requirements, it also must meet the minimum scoring requirement of 85 to qualify for the waitlist or an award. The minimum score threshold requirement has been taken out of the threshold section and reinforced in the scoring section.
  - 2. Under the Pre-Application Requirements, attendance at the most recent QAP training was added. Previously this requirement was only a part of the Nonprofit scoring criteria. Now it is required for all applicants AND any nonprofit partners if they want to claim points under that scoring item. We also are adding a note for 4% applications to allow them to take the “training” online.
- I. **Allocation Set-Asides – Section III.D.** (starts page 19)

Language in the USDA Rural Development set-aside was clarified to accurately reflect the requirements per conversations with USDA.

J. **Project Selection Criteria to Implement Housing Priorities – Section III.E.** (starts page 20)  
Proposed scoring changes or clarifications include the following:

1. **Scoring Criterion no. 2- Locational Efficiency** (starts page 22)  
No scoring change. Previously, the Locational Efficiency point detail was contained in a supplement. In an effort to streamline the application process, this detail was moved to the QAP itself.
2. **Scoring Criterion no. 3 – Rehabilitation Projects** (starts page 24)  
The point categories were amended to allow projects at 21 years to score in this category.
3. **Scoring Criterion no. 4- Sustaining Affordability** (starts page 25)  
No scoring change. Language was added to clarify the requirements to receive points in this category, and made consistent with language in the application checklist and our underwriting guidelines.
4. **Scoring Criterion no. 5- Income Level of Tenants** (starts page 26)  
Percentages required were amended to allow for projects utilizing the 20/50 set aside to not have an unfair advantage (two percentage levels in Rural areas are not available to those choosing the 20/50 set aside. Also, language was added to close the loophole of projects electing to utilize the Average Income set aside, but only have units under 60% AMI in order to receive maximum points in this category.
5. **Scoring Criterion nos. 8-10- Housing Priorities** (starts page 28)  
No scoring change. Details on these scoring criterion were pulled out of application materials and incorporated into these sections to ensure clarity. Additionally, language making sure any units set aside for management were not utilized in the calculation of the targeted percentage of units for the Housing Priorities.
6. **Scoring Criterion no. 12- Complete Applications** (starts page 39)  
Points were dropped from 5 to 3, recognizing the new scoring from 2019 made this category proportionally high.
7. **Scoring Criterion no. 14 – QCT/Concerted Community Revitalization Plan** (starts page 40)  
No scoring change. Language and format was clarified.
8. **Scoring Criterion no. 17 – Blighted Building and Brownfield Site Reuse** (starts page 41)  
No scoring change. Clarification on requirements that was made through the FAQ process was added.
9. **Scoring Criterion no. 20 – Non-Smoking Properties** (starts page 43)  
No scoring change. Additional information was added on how to receive certification and language was clarified regarding the use of electronic cigarettes in properties.

K. **Content and Format: Complete Applications – Section IV.A.4.d.** (page 49)

MFA will no longer require hard copies to be contained in brown classification folders. Three-ring binders will be accepted.

- L. **MFA Fees and Direct Costs - Section IV.B.** (starts page 51)  
Fees have been increased slightly and 4% applications and 9% applications require the same fee.
- M. **Staff Analysis and Application processing – Section IV.C.** (starts page 53)  
An additional hard construction cost per square foot requirement was added, mirroring the total development cost per unit requirement. A waiver was also outlined, if there were extenuating circumstances that drove up cost per square foot. There is no waiver process for the total development cost per unit.
- N. **Feasibility Analysis and Financial Considerations – Section IV.D.** (page 60)  
Language was added to explain the rent levels MFA will underwrite to for projects expecting a future project-based voucher award.
- O. **Credit Calculation Method – Section IV.E.3.** (page 61)  
Language was clarified and updated.
- P. **Notification of Approval and Subsequent Project Requirements – Section IV.G.3.c., Section IV.G.3.d., Section IV.G.7., and Section IV.G.8.a.** (pages 66 , 67, and 68)
- Language was added to ensure any changes at carryover are highlighted and described, as well as ensuring that any changes following carryover are communicated with MFA.
  - A 12 month age limit for the CNA for rehabilitation and adaptive reuse projects was imposed.
  - A requirement to meet with MFA (both Asset Management and Housing Development staff) ahead of lease-up to confirm requirements with both development and management staff was added.
  - The 60 day requirement to receive the final cost certification following Placed-in-Service was removed.
- Q. **Processing of Tax-Exempt Bond Financed Project Applications – Section VI.B.** (starts page 73)  
Language was added to this section detailing the narrative required, which was previously only in the application materials.
- R. **Annual Certification Review – Section X.D.18.** (page 79)  
An additional requirement of compliance with VAWA was added to the Review.
- S. **Glossary – Section XI.** (pages 87 and 89)  
The terms “Hard Construction Costs” and “Management Units” were added.
- T. **Other updates**
- U. *Project Selection Criteria to Implement Housing Priorities – Section III.E. (starts page 21)*  
Scoring items have been reformatted for clarity.
- V. *Efficient Use of Tax Credits Scoring Criteria – Section III.E. (starts page 42)*  
Once September Bureau of Labor Statistics are released, the parameters will be increased to address the construction price increases.

*W. Limitation on tax credit awards to a single Project or Principal - Section IV.E.4. (page 61)*  
Once September Bureau of Labor Statistics are released, the limitation will be increased to address the construction price increases.

**Summary:**

The proposed changes to the Draft 2020 QAP continue to improve the allocation process. Staff conducted a Developer's Forum wherein we discussed the significant changes (some of which are incorporated in Items A-P). New ideas were raised by attendees at the Forum, which will be carefully considered for the 2021 QAP. In addition, staff has solicited input from staff from departments other than Housing Development. Upon approval by Policy Committee, the 2020 Draft QAP will be published/posted and a 21-day comment period will commence. A public hearing will be conducted during this 21-day publication period for the purpose of accepting oral comments. Upon completion of the public comment period, staff will consider all comments and make appropriate changes to the Draft 2020 QAP. The revised documents will then be brought before Policy Committee, with the final 2020 QAP brought before Finance Committee and the Board for approval in November. Thereafter, MFA will seek the Governor's approval.