

## **NEW MEXICO MORTGAGE FINANCE AUTHORITY AFFORDABLE HOUSING TAX CREDIT RULES**

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**SECTION 1. AUTHORITY.** These Rules are issued under and pursuant to the Mortgage Finance Authority Act, NMSA 1978, §58-18-1 et seq. (the “MFA Act”) and pursuant to the Affordable Housing Tax Credit Act, NMSA 1978, §7-9I-1 et seq. (the “Act”). These Rules will become effective upon the approval of the New Mexico Mortgage Finance Authority’s (“MFA”) Board of Directors.

**SECTION 2. PURPOSE.** These Rules are established to effectuate issuance and administration of investment vouchers to a Donor who has made a Donation of land, Buildings, materials, cash or services for an Affordable Housing project approved by MFA and/or to a Donor who has made a Donation to the New Mexico Affordable Housing Charitable Trust. Investment vouchers may be used to apply for a State tax credit against the Donor’s modified combined tax liability, personal tax liability or corporate tax liability in order to produce significant additional investment in Affordable Housing in the State.

**SECTION 3. GENERAL DEFINITIONS.** The following words and terms shall have the following meanings:

3.1 “Act” shall mean the Affordable Housing Tax Credit Act, NMSA 1978, §7-9I-1 et seq.

3.2 “Affordable” shall mean consistent with maximum rent and/or income limitations established by MFA.

3.3 “Affordable Housing” means Residential Housing primarily for Persons or Households of Low or Moderate Income.

3.4 “Affordable Housing Tax Credits” shall mean any tax credits awarded or to be awarded under the Act.

3.5 “Affordability Period” shall mean such period of time as may be determined by MFA, in its discretion, during which any property which has benefited from an award of Affordable Housing Tax Credits must be maintained as Affordable Housing or be used for Affordable Housing purposes commensurate with the amount of tax credits awarded, the type of activity pursued with the tax credits, and the enforceability of the affordability period.

3.6 “Applicant” shall include, but is not limited to, a Builder, a governmental housing agency, a governmental entity, a governmental instrumentality, a housing authority, a tribe, a tribal housing agency, a for-profit organization, a non-profit organization, a corporation, limited liability company, partnership, joint venture, syndicate, association or such other entity as may be approved by MFA and which is preparing to submit or has submitted to MFA an Application for Affordable Housing Tax

Credits and is assuming contractual liability and legal responsibility by executing one or more written agreements entered into with MFA.

3.7 “Application” shall mean an application to receive Affordable Housing Tax Credits under the Act submitted by an Applicant to MFA.

3.8 “Builder” shall mean a person or entity licensed as a general contractor to construct Residential Housing or other Buildings in the State.

3.9 “Building” shall mean a structure capable of being constructed, renovated or converted into Affordable Housing or a structure that is to be demolished.

3.10 “Donor” shall mean either an individual or entity that contributes to the New Mexico Affordable Housing Charitable Trust; or an individual, tribal government, housing authority, corporation, partnership, joint venture, syndicate, association or nonprofit organization that contributes to an Affordable Housing project approved by MFA. All donors as defined herein are eligible for investment vouchers under the Act.

3.11 “Donations” shall mean irrevocable and unconditional contributions of land, Buildings, materials, cash or services.

3.12 “Eligible Activities” shall mean the activities defined in Section 5.2 of these Rules.

3.13 “Eligible Applicants” shall mean the applicants defined in Section 5.1 of these Rules.

3.14 “Federal Government” shall mean the United States of America and any agency or instrumentality, corporate or otherwise, of the United States of America.

3.15 “Household” shall mean one or more persons occupying a housing unit.

3.16 “MFA” shall mean the New Mexico Mortgage Finance Authority.

3.17 “MFA Act” shall mean the Mortgage Finance Authority Act, enacted as Chapter 303 of the Laws of 1975 of the State of New Mexico, as amended (being Sections 58-18-1 through 58-18-27 N.M.S.A. (1978), as amended).

3.18 “Multi-Family Housing” shall mean Residential Housing that is designed for occupancy by five or more Households living independently of each other, a percentage of whom are Persons of Low or Moderate Income, including without limitation Persons of Low or Moderate Income who are elderly and handicapped as determined by MFA, provided that the percentage of low-income persons and Households shall be at least the minimum, if any, required by any applicable federal tax law. MFA, in its discretion, may increase or decrease the percentage of units that must be occupied by Persons of Low or Moderate Income in any agreement with an Applicant consistent with the purposes of the Act.

3.19 “New Mexico Affordable Housing Charitable Trust” shall mean the nonprofit organization for which MFA is Trustee, contributions to which are eligible for Affordable Housing Tax Credits and the federal deduction for charitable contributions.

3.20 “NOFA” shall mean Notice of Funding Availability.

3.21 “Persons of Low or Moderate Income” Low income shall mean persons and Households who earn up to 80 percent of local Area Median Income (AMI). Persons of moderate income shall mean persons and Households who earn up to 120 percent of local AMI.

3.22 “Rehabilitation” shall mean the renovation or reconstruction of existing Residential Housing, which complies with requirements established by MFA. Rehabilitation shall not include routine or ordinary repairs, improvements or maintenance, such as interior decorating, remodeling or exterior painting, except in conjunction with other renovation or reconstruction.

3.23 “Residential Housing” shall mean any Building, structure or portion thereof that is primarily occupied, or designed or intended primarily for occupancy, as a residence by one or more Households and any real property that is offered for sale or lease for the construction or location thereon of such a Building, structure or portion thereof. “Residential Housing” includes Single Family Housing, Multi-Family Housing, manufactured homes, and housing intended to provide or providing Transitional Housing or temporary housing for homeless persons.

3.24 “Residential Use” shall mean that the structure or the portion of the structure to benefit from Affordable Housing Tax Credits is designed primarily for use as the principal residence of the occupant or occupants and shall exclude vacation or recreational homes.

3.25 “RFP” shall mean Request for Proposals.

3.26 “Single Family Housing” shall mean Residential Housing that is designed for occupancy by one to four households living independently of each other.

3.27 “State” shall mean the State of New Mexico.

3.28 “Transitional Housing” shall mean Residential Housing that is designed for temporary or transitional occupancy by Persons of Low or Moderate Income or special needs.

3.29 “Trust Agreement” shall mean the written instrument approved and executed by the MFA Board of Directors in 2007, creating the New Mexico Affordable Housing Charitable Trust and establishing the MFA as Trustee.

3.30 “Trustee” shall mean the MFA, as Trustee of New Mexico Affordable Housing Charitable Trust.

**SECTION 4. DONATIONS TO THE NEW MEXICO AFFORDABLE HOUSING CHARITABLE TRUST.** Affordable Housing Tax Credits may be issued for Donations to the New Mexico Affordable Housing Charitable Trust.

4.1 Donations of Cash and Securities. To apply for Affordable Housing Tax Credits for Donations of cash, cash equivalents, stocks and bonds, a Donor shall complete an investment certification form and submit the form to MFA. MFA will issue investment vouchers directly to the Donor after reviewing and approving the investment certification form.

4.2 Other Donations. Donations of land, Buildings, materials and services are eligible for Affordable Housing Tax Credits if they are associated with an Affordable Housing project approved by MFA pursuant to these Rules.

**SECTION 5. APPLICATION PROCESS FOR THE AWARD OF AFFORDABLE HOUSING TAX CREDITS.** Affordable Housing Tax Credits may be awarded for Donations made to Affordable Housing projects approved by MFA. The award of Affordable Housing Tax Credits to Eligible Applicants shall be subject to the Act, these Rules, the Application guidelines and requirements established by MFA and applicable law.

5.1 Eligible Applicants. To be eligible to receive Affordable Housing Tax Credits, an Applicant shall:

- (A) Meet the definition of “Applicant” in these Rules;
- (B) Satisfy any eligibility requirements that may be established MFA and applicable law;
- (C) To the extent applicable, for any Applicant:
  - (1) Be organized under state, local, or tribal laws and provide proof of such organization and that Applicant is in good standing, as applicable;
  - (2) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles or has designated an entity that will maintain such an accounting system consistent with generally accepted accounting principles;
  - (3) Have (a) no significant financial audit findings, and (b) no significant outstanding or unresolved monitoring findings from the MFA, or if it has any such findings, it has a

certified letter from the MFA, stating that the findings are in the process of being resolved;

- (4) Such Applicant has not been suspended, debarred or otherwise restricted by any department or agency of the Federal Government or any State government from doing business with such department or agency because of misconduct or alleged misconduct; and
- (5) Such Applicant has not defaulted on any obligation covered by a surety or performance bond.

(D) If a non-profit organization:

- (1) Provide MFA proof of its 501(c)(3) tax status;
- (2) Have no part of its net earnings inuring to the benefit of any member, founder, contributor or individual; and
- (3) Provide MFA with proof of its compliance with the Charitable Solicitations Act, NMSA 1978, §57-22-1 et seq. and the filing requirements of the New Mexico Attorney General's Office under that Act.

5.2 Eligible Activities. Subject to the Act, the Eligible Activities for which an Applicant may submit an Application to receive Affordable Housing Tax Credits are land acquisition, construction, Building acquisition, remodeling, improvement, Rehabilitation, conversion or weatherization for Residential Housing. All Affordable Housing Tax Credits awarded to Eligible Applicants for Eligible Activities shall be subject to an Affordability Period as shall be established by MFA.

5.3 Application Process. Subject to the Act, these Rules, applicable law, and the Application guidelines and submission requirements established by MFA, Affordable Housing Tax Credits shall be awarded to Eligible Applicants for use in Eligible Activities through a formal competitive Application process as determined by MFA.

- (A) Receipt of Applications. MFA will accept Applications received before such deadlines as are set forth in any NOFA, RFP or other solicitation of Applications as may be released or issued by MFA.
- (B) Award Priorities. MFA may establish award priorities in its NOFA, RFP or other solicitation of Applications. Award priorities shall be consistent with Affordable Housing needs as documented in the current New Mexico Consolidated Plan, New Mexico Annual Action Plan or other MFA plans.

- (C) Selection Criteria. MFA shall establish selection criteria in its NOFA, RFP or other solicitation of Applications. Selection criteria may include threshold and ranking criteria as well as point scoring systems.
- (D) Contents of Applications. Each Application must contain such information as is required by MFA in any NOFA, RFP, or otherwise, together with verification signed by the Applicant that the information provided, upon penalty of perjury, is true and correct to the best of the Applicant's information, knowledge, and belief.
- (E) Application Fee. MFA, in its discretion, may charge Applicants an Application fee.

5.4 Review of Applications. On receipt of an Application, MFA shall:

- (A) Determine whether the Application submitted by the Applicant is timely, complete and responsive;
- (B) Determine whether the Applicant is an Eligible Applicant;
- (C) Determine whether the project proposed by the Applicant is an Eligible Activity;
- (D) Determine whether the Application satisfies any Award Priorities or Selection Criteria established by MFA;
- (E) Determine whether the amount of Affordable Housing Tax Credits requested is justified given the number of housing units designated Affordable;
- (F) Determine whether the Affordable Housing project is financially feasible by underwriting the project to MFA standards for project type. Underwriting considerations may cause the tax credit award amount to be adjusted based on the project's financing gap, committed or anticipated Donations, and affordability.
- (G) Determine the organizational and financial capacity of the Applicant, including administrative procedures in place to operate the program;
- (H) Determine whether any matching, local, private, or Federal Government funds will be used by the Applicant in connection with the Affordable Housing Tax Credits for which the Applicant is applying;

- (I) Verify and make final determination of the value of non-cash Donations, including land, Buildings, materials and services. MFA may utilize third parties, such as appraisers, to verify the value of non-cash Donations and may request reimbursement from or charge a fee to the Applicant for such third-party services; and
- (J) Determine whether the requirements of the Act, these Rules, and any requirements established by MFA have been satisfied.

5.5 Review and Approval of Applications. MFA's Housing Development Department shall review and score Applications and make award recommendations. Within the parameters of MFA's Delegations of Authority, MFA may approve Affordable Housing Tax Credit awards and make modifications to the awards, including increases and decreases in amount and changes to terms.

5.6 Notification of Acceptance. MFA shall notify each Applicant in writing of its approval or disapproval of the Application within forty-five (45) days of its final decision. MFA's determination on any Application shall be conclusive, but is subject to protest as set forth in Section 8 of these Rules.

5.7 Reservation and Issuance of Affordable Housing Tax Credits.

- (A) If an Application for Affordable Housing Tax Credits is approved, MFA will issue a reservation contract to the Applicant. The reservation contract shall authorize the Applicant to solicit Donations eligible for Affordable Housing Tax Credits up to the amount authorized in the letter. MFA may reserve no more than one million dollars (\$1,000,000.00) in Affordable Housing Tax Credits per Donation or project in a calendar year.
- (B) The Applicant is required to sign and return the reservation contract within the timeframe specified in the contract, pay a reservation fee and provide commitments from Donors demonstrating full utilization of awarded credits and the value of the Donations.
- (C) MFA will issue an investment voucher certification to the Applicant only after the Applicant meets all MFA requirements, as applicable, including site control, zoning approval, compliance with MFA's design guidelines, documentation of other financing commitments and a recorded Land Use Restriction Agreement.
- (D) The Applicant shall complete the Donor and Donation information on the investment voucher certification and return the certification and supporting documentation to MFA. Individual investment voucher certifications are required for each Donor.

- (E) Upon approval of the investment voucher certification, MFA shall issue a voucher certification number and send copies of the approved certification to the Applicant and Donor. Investment vouchers are valid for five (5) years from date of issuance. Investment vouchers may be sold, exchanged or otherwise transferred in whole or in part to one or more persons.
- (F) The Donor shall complete the Affordable Housing Tax Credit Claim Form, RPD-41301 and submit the form to the New Mexico Taxation and Revenue Department to obtain credits against the Donor's tax liability.
- (G) MFA shall notify the New Mexico Taxation and Revenue Department within 20 days of the issuance of an investment voucher certificate.

5.8 Conditions of Award of Affordable Housing Tax Credits. MFA, in its discretion, may establish conditions that must be satisfied by the Applicant and Donor in conjunction with an award of Affordable Housing Tax Credits. These conditions may include, but are not limited to:

- (A) Except for Donations of cash to the New Mexico Affordable Housing Charitable Trust, which can be made in any amount, Donations must total at least two hundred dollars (\$200.00) to be eligible for Affordable Housing Tax Credits;
- (B) The Applicant may return all or some of the reserved credits to MFA anytime during the calendar year of the award. If the Applicant is unable to obtain Donations sufficient to utilize the total amount of reserved credits, the balance must be returned to MFA. MFA may re-award returned credits within the same calendar year in an effort to utilize that year's full allocation of Affordable Housing Tax Credits. Credits returned after the calendar year in which they were reserved, or unused credits, cannot be re-awarded in subsequent years;
- (C) If a Donor transfers all or a fraction of the certificate to an eligible individual or business, the Donor shall provide notification to MFA and the New Mexico Taxation and Revenue Department within ten (10) days of such transfer;
- (D) The Applicant shall abide by a reasonable performance schedule and performance criteria, as well as a monitoring and review process;



- (E) An Affordable Housing project shall constitute or provide Affordable Housing for the applicable Affordability Period, as defined in the NOFA, RFP or otherwise. Requirements will be enforced with a Land Use Restriction Agreement (or an acceptable alternative) for a minimum period of five (5) years for Single Family Housing and ten (10) years for Multi-Family Housing and Transitional Housing. The Affordability Period is defined as follows: If the amount of Affordable Housing Tax Credit allocation is between \$1 to \$14,999 per housing unit, the Affordability Period shall be not less than five (5) years. If the amount is between \$15,000 and \$40,000 per housing unit, the Affordability Period shall be not less than ten (10) years. If the amount is greater than \$40,000 per housing unit, the Affordability Period shall be not less than thirty (30) years.
- (F) The Applicant shall maintain its books and records of its use and disposition of any Affordable Housing Tax Credits, shall allow MFA to examine such books and records and shall provide an audit of such books and records on not less than an annual basis or as otherwise may be required MFA; and
- (G) The Applicant shall comply with applicable Federal, State and local law, ordinances, rules, and regulations.

**SECTION 6. ADMINISTRATION.** MFA shall administer Affordable Housing Tax Credits in accordance with provisions of the Act, these Rules, any criteria or priorities established by MFA, and applicable law, all of which may be amended or supplemented from time to time.

6.1 Administration Fee. MFA shall cover its costs for administering Affordable Housing Tax Credits through application fees and reservation fees paid by the Applicant.

6.2 Limitations on Affordable Housing Tax Credits. MFA, in its discretion, may set limits on the amount of Affordable Housing Tax Credits to be awarded per Application, per NOFA, per RFP or otherwise. MFA, in its discretion, also may set limits on the total amount of Affordable Housing Tax Credits to be awarded per quarter, per year or otherwise.

- (A) Any award of Affordable Housing Tax Credits is also contingent upon the amount of Affordable Housing Tax Credit allocating authority available through the State of New Mexico and is further subject to applicable law. If the State's allocating authority is insufficient, a tax credit reservation letter or investment voucher certification from MFA to any successful, Eligible Applicant shall terminate upon written notice being given by MFA to the Applicant. MFA's decision as to whether sufficient allocating

authority exists or whether Affordable Housing Tax Credits may be awarded subject to applicable law shall be final.

- (B) To provide that sufficient Affordable Housing Tax Credit allocating authority is available for multiple projects and Donors each year, MFA shall reserve no more than one million dollars (\$1,000,000.00) in Affordable Housing Tax Credits per Donation or project in the same calendar year.

6.3 Records and Accounting. In addition to records required by applicable law, MFA shall maintain records to track Donations and the availability and transfer of Affordable Housing Tax Credits and the issuance investment voucher certifications for each calendar year.

6.4 Conflict of Laws. MFA, in administering Affordable Housing Tax Credits for Affordable Housing projects and programs and by making, executing, delivering and performing any award or any other activity or transaction contemplated by the Act, shall not violate any provision of law, rule or regulation or any decree, writ, order, injunction, judgement, determination or award and will not contravene the provisions of or otherwise cause a default under any of its agreements, indentures, or other instruments to which it may be bound. If, however, any part of the Act or these Rules is found to be in conflict with any federal requirements that are a prescribed condition to the allocation of federal funds to the State, the conflicting part of the Act or these Rules shall be inoperative solely to the extent of the conflict and with respect to the agencies directly affected. However, such a conflict shall not affect the remainder of the Act or these Rules in its Application.

**SECTION 7. DISCRIMINATION PROHIBITED.** All awards of Affordable Housing Tax Credits shall be utilized by Applicants in a manner consistent with principles of non-discrimination and equal opportunity, and MFA shall require compliance by all Applicants with all applicable Federal and State laws and regulations relating to affirmative action, non-discrimination, and equal opportunity.

**SECTION 8. PROTEST.** Any Applicant who is aggrieved in connection with any award of Affordable Housing Tax Credits made or to be made by MFA pursuant to an RFP, NOFA, or otherwise may protest to MFA. The protest must be delivered to the MFA within fifteen (15) calendar days after the notice of award. Upon the timely filing of a protest, MFA shall give notice of the protest to all Applicants who appear to have a substantial and reasonable prospect of being affected by the outcome of the protest. The Applicants receiving notice may file responses to the protest within seven (7) calendar days of notice of protest. The evaluation committee of the MFA's Board of Directors shall review the protest and responses to the protest and shall make a recommendation to the MFA's Board of Directors regarding the disposition of the protest. The MFA's Board of Directors shall make a final determination regarding the disposition of the protest.

**SECTION 9. MISCELLANEOUS.** Capitalized terms not otherwise defined in these Rules have the same meaning as defined in the Act.

**SECTION 10. AMENDMENT TO RULES.** These Rules may be amended or supplemented by MFA at any time.

Adopted by MFA's Board of Directors on September 21, 2016.

These Rules supersede and replace all prior New Mexico Mortgage Finance Authority Affordable Housing Tax Credit Rules in their entirety.