MFA Housing New Mexico

MEMO

TO: Public Hearing Attendees

FROM: Jeanne Redondo, Tax Credit Program Manager

DATE: August 31, 2022

SUBJECT: 2023 Draft Qualified Allocation Plan

Recommendation

Staff recommends approval of the attached 2023 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 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:

One significant change is being considered for the Draft 2023 QAP:

In response to comments at the Developer's Forum, the draft 2023 QAP includes language addressing hybrid 9%/4% LIHTC projects (aka as "twinning"). Hybrid projects are actually two separate projects in which the excess eligible basis that ordinarily would go unused on a 9% project may be used to generate 4% non-competitive tax credits to increase the number of units that may be developed. Hybrid projects may be developed on two adjacent tracts of land or through a condominium plat of a building.

In addition, the following changes are proposed:

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

- Section II.J.1.a was updated to direct applicants to capital needs assessment requirements further down in the section. (*See* page 10)
- Section II.J.2.d was updated to clarify that the only projects placed in service and claiming points under Section III.E.3 are required to provide evidence that the project was placed in service more than 20 years ago. (*See* page 10)
- Section II.J.3 was updated to clarify when the Capital Needs Assessment is due based on the type of application. (*See* page 11)

Building Classification and Tax Credit Applicable Percentages – Section II.R (*See* page 14)

- Language referring to a fluctuating rate for 4% credits was removed. The Consolidated Appropriations Act of 2021 permanently fixed the floor of the 4% credit at 4%.

Hybrid 9%/4% Developments – Section II.U (starts on page 16)

- As mentioned above, a new section was inserted into the QAP describing the parameters under which developments that combine 9% and 4% LIHTC are acceptable. In addition to submitting two separate applications for the development, any reservation that is approved for a hybrid development that includes both 9% and 4% LIHTC in one building or on one parcel of land would be held until the 4% project receives an allocation of private activity bond volume cap from the state board of finance.

Allocation Set-Asides – Section III.D (*See* page 22)

- The requirements for permanent supportive housing under the Underserved Populations set-aside were expanded to require with the Application, a preliminary Memorandum of Understanding between the Project Owner and service providers describing service provider's expertise to provide the proposed services, the planned description and delivery of services, and the staff capacity to provide ongoing case management. This requirement was added in conjunction with parameters regarding MOUs that will be required at 50% construction (*See* Section III.E.8 below) to clarify the level of detail in the MOU at Application. (In past QAPs, MOUs have only been described in the Households with Special Needs Housing Priority scoring criterion.)

Project Selection Criteria to Implement Housing Priorities – Section III.E (starts page 22)

- **Tax-exempt bond financed projects** (*See* page 23) will, outside Urban Areas, be able to locate within five miles driving distance of a facility in which fresh produce is available rather than two miles driving distance, which will remain the requirement in Urban Areas.

1. ***Scoring Criterion no. 2*** – *Locational Efficiency* (*See* page 26)

- The criterion was updated to include "separate" maps for each amenity and public transportation claimed for points. This will make it simpler for Applicants to show the *actual walking distance* from the site that is required. The Locational Efficiency Scoring Worksheet will be updated to allow Applicants to describe the specific amenities claimed for points for which the maps are provided to support the claim for points. This will eliminate the need to describe every amenity within a radial distance from the project and provide staff with useful information to review this scoring criterion in applications.
- Additionally, the Rural/Tribal walking distance from facilities was increased to five miles driving distance to allow greater flexibility in site selection and correspond with the distance stipulated for non-Urban tax-exempt bond projects.

2. ***Scoring Criterion no. 3*** – *Rehabilitation Projects (See page 28)*

- The criterion was updated to remove the exception to the 20-year requirement from the threshold criteria to score under this scoring criterion because there are no points available to projects that don't meet this threshold. The requirement for projects not eligible for points under this scoring criterion to submit a capital needs assessment with the application was relocated to Section II.J.

3. ***Scoring Criterion no. 8*** – *Households with Special Housing Needs Housing Priority (See* page 35)

- The requirement for an MOU between the Project Owner and Qualified Service Provider was clarified. In addition, more detail regarding steps that need to be taken to plan the implementation of supportive services prior to 50% of construction completion were added, including a Service Coordination Checklist to assist developers to clarify the roles and responsibilities of property management versus service providers.

4. ***Scoring Criterion no. 11*** – *Leveraging Resources* (begins on page 42)

- The scoring criterion was reorganized to clarify which forms of leverage are applicable to each potential source of leverage. This eliminates the need to wade through multiple paragraphs of information that may not apply to the project proposed.
- This scoring criterion was revised to clarify that any donated land and/or buildings must use the valuation based on the existing use of the property and donate the entire value of the vacant land or developed land with improvements that are being claimed for points under this scoring criterion.
- Donations of the proceeds of a loan of a capitalized lease payment was added to the list of unacceptable leverage under this scoring criterion.

5. ***Scoring Criterion no. 12*** – *Complete Applications* (starts on page 45)

- Complete Schedules was added as a criterion under this scoring criterion to clarify that the schedules that were included in the 2022 MFA Universal Rental Development Application must still be completed. Schedules A – F will be a separate document this year based on comments during the Developer Forum. Separating the schedules makes it more feasible to share that portion of the

Application with others who need to comment or work on the financial portion of the Application.

6. ***Scoring Criterion no. 18*** – *Efficient Use of Tax Credits* (starts page 49)
   - The limits on the Efficient Use of Tax Credits were increased by approximately 17.5% to reflect higher construction costs as documented by the Bureau of Labor Statistics residential construction goods index change from June 2021 to June 2022. This increase also reduces the burden on limited MFA gap financing resources.

7. ***Scoring Criterion no. 20*** – *Adaptive Reuse Projects (See page 51)*
   - This scoring criterion was clarified that adaptive reuse points are available for the conversion of non-residential buildings to residential rental units (as compared to conversion of a non-residential building to be used solely as common area in a residential rental project).

8. ***Scoring Criterion no. 22*** – *Other Scoring Points Available* (starts page 52)
   - Section III.E.22.iv - For Projects located in a town or municipality with no "active" LIHTC Projects, clarification of the acceptable criteria to be considered an "active" project were added as follows: "9% as evidenced by a reservation letter and inclusion of MFA's list of 9% projects on its website and/or 4% LIHTC as evidenced by issuance of a 42(m) letter and inclusion on MFA's list of 4% projects posted on its website on or before the Application Due Date." (*See* page 53)

   - Section III.E.22.vi – To clarify the minority or female participation for a non-profit entity that would be eligible for points under the scoring criterion, language specifying that minority or female individuals may comprise at least 50% of the board of directors was added. Additionally, the term "Minority" was added to the Glossary and referenced to add clarity. (*See* page 55)

Additional Supplemental Tax Credits for Cost Increases – Section III.G (*See* page 55)

- The provision to limit the amount of supplemental tax credits to the cost limits of the 2020 – 2022 round, as applicable to the project requesting supplemental credits is waived for the 2023 competition. This will provide the ability for projects with cost overruns to apply for additional tax credits if they are competitive in the 2023 round. The total tax credits a project would be eligible for, including tax credits awarded in a prior round, would be limited to the cap on tax credits in the 2023 round.

New Allocations to Projects Previously Subsidized with Tax Credits - Section IV.H (*See* page 56)

- This section was updated to clarity that the "as-is" appraisal used to support the proposed sale between related parties for properties previously subsidized with tax credits must be valued assuming that existing use restrictions will remain in place.

Submission Date(s) – Section IV.A.1 (*See* page 57)

- The submission deadline was moved forward to January 20, 2023 to provide an additional week for staff to review applications. The 2022 QAP had moved the deadline back two weeks to January 28, 2022. After considering how this impacted the review of the 2022 applications, staff is considering moving the deadline forward by one week. This still provides additional time to applicants so they don't have to prepare applications during the holidays.

Form of Submission and Content and Format: Complete Applications – Section IV.A.3-4 (*See* page 58)

- Schedules A - F that were included in the 2022 MFA Universal Rental Development Application are added as a separate document based on comments received during the Developer Forum. Separating the schedules makes it more feasible to share that portion of the Application with others who need to comment or work on the financial portion of the Application.

MFA Fees and Direct Costs – Section IV.B (*See* page 61)

- The Direct Cost Deposit has been increased from $10,000 to $12,000 to cover the base portion of the design reviews for compliance with Design Standards. This section also clarifies that the cost of an MFA-ordered Market Study, if required during the application phase, will be taken from the Direct Cost Deposit. (If the project is selected for a reservation of tax credits, the Applicant will be invoiced for the cost of the market study to replenish the base portion of the design review.) Additionally, if the design review requires additional site visits and/or document reviews, they will be billed separately and above the $12,000 base fee.

Staff Analysis and Application Processing – Section IV.C (starts page 62)

- *Cost Limits – Section IV.C.2* (*See* pages 63-64)
  - The previous 9% round cost limit was added for reference, so developers can estimate where the cost limits may land in the current year.
- *Deficiency Correction Period – Section IV.C.5* (*See* page 64)
  - Language was clarified that neither MFA nor the Applicant may alter the original structure of the project during the deficiency correction period.
- *Supplemental Information Submission – Section IV.C.6* (*See* page 65)
  - Language was clarified that the original structure of the project may not be modified through a supplemental information request.

Feasibility Analysis and Financial Considerations – Section IV.D (starts page 66)

- *Development Team Review – Section IV.C.9* (*See* page 66)
  - This section now refers the Applicant to Schedule H to certify their experience. For consistency across policies, Schedule H will be modified to conform to the schedule provided pursuant to the Ownership Change Policy.
- *Developer Fees – Section IV.D.2.b* (*See* page 68)
  - The calculation of allowable developer fees was clarified to include construction management fees as a consultant fee. This change is also clarified throughout the draft QAP where it is referenced, including Sections III.E.1 and the Glossary definition of Total Development Cost.
  - Consistent with Section IV.H, the value in an "as-is" appraisal used to support a proposed sale must be valued assuming that existing use restrictions will

remain in place when calculating the amount of any donation of land and waived fees to be excluded from the calculation of developer fees.

- *Credit Calculation Method – Section IV.E.3* (*See* page 73)
  - The maximum allowable reservation has been increased 17.5% consistent with the increase in the efficiency of tax credits scoring criterion. The limit is increased from $1,380,213 to $1,622,805.

Final Processing and Awards – Section IV.F (starts on page 74)

- *Board of Directors – Section IV.F.5* (*See* page 76)
  - In lieu of a personal presentation to the board, a three-minute video has been added. Applicants will still be required to attend the board meeting to answer any questions the board may have. MFA will provide an outline of the presentation format so the videos are consistent.
  - This section also restates that reservation letters for hybrid 9%/4% projects with a pending allocation of private activity bond volume cap will be issued following receipt of approval from the state board of finance.

Notification of Approval and Subsequent Project Requirements – Section IV.G (starting on page 76)

- *August 31 of the year following Carryover – Section IV.G.6.c* (*See* page 79)
  - MFA's Compliance Addendum is now required to be included in the executed partnership agreement. The Compliance Addendum includes provisions that limit transfer of the partnership or member interests or other actions detrimental to the continued provision of affordable housing.
- *At or around the 50% construction completion mark – Section IV.G.7* (*See* page 79)
  - The MOU required under Section III.E.8 is referenced with the required meeting at this benchmark.

MFA Tax Credit Monitoring and Compliance Plan Summary – Section X (starts on page 88)

- *Annual Certification Review – Section X.D* (starts on page 90)
  - Provisions 19-24 were updated to be consistent with the Annual Owner's Certification required since December of 2021. (*See* pages 92-93)

Glossary – Section XI (starts on page 95)

- Adaptive Reuse was updated to be consistent with the description in Section III.E.20 (*See* page 95)
- Minority was added as a defined term (*See* page 103)
- Total Development Cost was updated to include construction management fees in the calculation of developer fees, consistent with Sections III.E.1 and IV.D.2.b. (*See* page 106)

List of Appendices – Section XII (*See* page 108)

This section was added to incorporate the ancillary documents by reference into the QAP.

Summary:

The proposed changes to the 2023 QAP continue to improve the allocation process. Staff conducted a Developer's Forum 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 other departments within MFA.