

**STATE OF NEW MEXICO  
HOUSING TAX CREDIT PROGRAM**

**QUALIFIED ALLOCATION  
PLAN**

**Effective as of January 1, 2012**



**NEW MEXICO  
MORTGAGE FINANCE AUTHORITY**

## Table of Contents

<b>I. BACKGROUND AND PURPOSE OF THE QUALIFIED ALLOCATION PLAN .....</b>	<b>3</b>
A. GENERAL.....	3
B. PUBLIC HEARINGS.....	4
<b>II. LOW INCOME HOUSING TAX CREDIT PROGRAM SUMMARY .....</b>	<b>4</b>
A. GENERAL.....	4
C. NONPROFIT ALLOCATION SET ASIDE .....	5
D. MINIMUM APARTMENT UNIT SET ASIDES.....	5
E. RENT AND INCOME RESTRICTIONS .....	5
F. ELIGIBLE PROJECTS .....	6
G. COMPLIANCE PERIOD .....	6
H. COMPLIANCE MONITORING .....	6
I. ELIGIBLE BASIS ACCORDING TO TYPE OF ACTIVITY.....	7
J. TEN YEAR RULE.....	7
K. FEDERAL GRANTS AND FEDERAL SUBSIDY.....	7
L. QUALIFIED BASIS ACCORDING TO TYPE OF PROJECT.....	8
M. PLACED IN SERVICE REQUIREMENT.....	8
N. BUILDING CLASSIFICATION AND TAX CREDIT APPLICABLE PERCENTAGES .....	8
<b>III. HOUSING PRIORITIES AND PROJECT SELECTION CRITERIA .....</b>	<b>9</b>
A. NEEDS ANALYSIS .....	9
B. HOUSING PRIORITIES .....	9
C. MINIMUM PROJECT THRESHOLD REQUIREMENTS .....	10
D. ALLOCATION SET ASIDES.....	12
E. PROJECT SELECTION CRITERIA TO IMPLEMENT HOUSING PRIORITIES.....	12
F. ADDITIONAL CREDITS FOR PROJECTS WITH PARTIAL ALLOCATIONS .....	22
G. ADDITIONAL SUPPLEMENTAL TAX CREDITS FOR COST INCREASES .....	22
H. NEW ALLOCATIONS TO PROJECTS PREVIOUSLY SUBSIDIZED WITH CREDITS.....	22
I. PROPERTY STANDARDS.....	22
<b>IV. ALLOCATION PROCEDURE AND APPLICATION REQUIREMENTS .....</b>	<b>23</b>
A. ALLOCATION ROUNDS .....	23
B. MFA FEES AND DIRECT COSTS.....	25
C. STAFF ANALYSIS AND APPLICATION PROCESSING .....	26
D. FEASIBILITY ANALYSIS AND FINANCIAL CONSIDERATIONS.....	29
E. CREDIT CALCULATION METHOD .....	32
F. FINAL PROCESSING AND AWARDS .....	34
G. NOTIFICATION OF APPROVAL AND SUBSEQUENT PROJECT REQUIREMENTS .....	37
H. TERMINATION OF RESERVATIONS OR REJECTION OF APPLICATIONS .....	40
I. NOTIFICATION TO MFA OF CHANGES TO THE PROJECT.....	40
J. NOTICE PROVISIONS .....	41
K. APPLICATIONS ARE PUBLIC RECORDS .....	42
L. ATTORNEY FEES .....	42
<b>V. COST CERTIFICATION.....</b>	<b>42</b>
A. APPLICABILITY OF COST CERTIFICATION .....	42
B. REQUIREMENTS .....	42
C. AUTHORITY TO DETERMINE MAXIMUM QUALIFIED BASIS .....	42

<b>VI. AUXILIARY FUNCTIONS .....</b>	<b>43</b>
A. SUBSIDY LAYERING REVIEW .....	43
B. PROCESSING OF TAX EXEMPT BOND FINANCED PROJECT APPLICATIONS .....	43
<b>VII. AMENDMENTS TO THE ALLOCATION PLAN AND WAIVERS OF PLAN PROVISIONS.....</b>	<b>44</b>
<b>VIII. FUTURE YEAR'S BINDING COMMITMENTS.....</b>	<b>45</b>
<b>IX. DISASTER RELIEF ALLOCATIONS .....</b>	<b>45</b>
<b>X. MFA TAX CREDIT MONITORING AND COMPLIANCE PLAN SUMMARY.....</b>	<b>45</b>
A. GENERAL REQUIREMENTS .....	45
B. INSPECTIONS .....	45
C. RECORD KEEPING AND RECORD RETENTION .....	46
D. ANNUAL CERTIFICATION REVIEW.....	46
E. COMPLIANCE REVIEW.....	48
<b>XI. GLOSSARY .....</b>	<b>50</b>

## I. BACKGROUND AND PURPOSE OF THE QUALIFIED ALLOCATION PLAN

### A. General

The Low Income Housing Tax Credit (“HTC”, “Credits”, or “Tax Credit”) Program was created in the Tax Reform Act of 1986 as an incentive for individuals and corporations to invest in the construction or rehabilitation of low income housing. The Tax Credit provides the investor a dollar-for-dollar reduction in personal or corporate federal income tax liability for a 10-year period for Projects meeting the Program’s requirements.

New Mexico Mortgage Finance Authority (“MFA”) is the Housing Credit Agency (“HCA”) for the State of New Mexico, responsible for administering the Tax Credit Program and allocating Tax Credits to eligible New Mexico Projects.<sup>1</sup> Consequently, MFA awards Tax Credits to Projects meeting its Project Selection Criteria, including an annual population allocation, any subsequent carry-forward, and returned and national pool Credits, and monitors existing Projects for compliance with the Section 42 of the Internal Revenue Code of 1986, as amended (“Section 42 of the Code”<sup>2</sup>). **However, MFA does not make any representation to any party concerning compliance with Section 42 of the Code, Treasury Regulations or other laws or regulations governing Low Income Housing Tax Credits. Neither MFA, nor its agents or employees will be liable for any matters arising out of, or in relation to, the allocation of Low Income Housing Tax Credits. All organizations and individuals intending to utilize the HTC Program should consult their own tax advisors concerning the application of Tax Credits to their Projects, and the effect of Tax Credits on their federal income taxes.**

The federal laws governing the HTC Program are subject to change. Final interpretations of certain rules and regulations governing the Program may not yet have been issued by the U.S. Department of Treasury. In the event that any portion of this Qualified Allocation Plan (“QAP”) should conflict with Section 42 of the Code, amendments made thereto, or federal regulation promulgated thereunder, the federal regulation shall take precedence. If any portion of this QAP is invalid due to such conflict, the validity of the remaining portions will in no way be affected, prejudiced, or disturbed.

Administration of the Tax Credit Program, as outlined in this Qualified Allocation Plan, is consistent with the statutes creating MFA in 1975 [Chapter 303, Laws of New Mexico, 1975, known and cited as the New Mexico Mortgage Finance Authority Act, being Sections 58-18-1 through 58-18-27, inclusive], as supplemented in 1995, as follows:

*The legislature hereby finds and declares that there exists in the state of New Mexico a serious shortage of decent, safe and sanitary residential housing available at prices and rentals within the financial means of persons and families of low income. This shortage is severe in certain urban areas of the state, is especially critical in the rural areas and is inimical to the health, safety, welfare and prosperity of all residents of the state...The legislature hereby further finds and determines that to aid in remedying these conditions and to help alleviate the shortage of adequate housing, a public body politic and corporate, separate and apart from the state, constituting a governmental instrumentality, to be known as the New Mexico Mortgage Finance Authority should be created with power to raise funds from private investors in order to make such private funds available to finance the acquisition, construction, rehabilitation and*

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<sup>1</sup> Additional capitalized terms are defined in **Section XI**, the Glossary.

<sup>2</sup> Section 42 of the Code is found in the United States Code in Title 26, Subtitle A, Chapter 1, Subchapter A, Part 4, Subpart D, at Section 42 (26 U.S.C. § 42).

*improvement of residential housing for persons and families of low income within the state. The legislature hereby finds and declares further that in accomplishing this purpose, the New Mexico Mortgage Finance Authority is acting in all respects for the benefit of the people of the state in the performance of essential public functions and is serving a valid public purpose in improving and otherwise promoting their health, welfare and prosperity, and that the enactment of the provisions hereinafter set forth is for a valid public purpose and is hereby so declared to be such as a matter of express legislative determination.*

One of the obligations of the HCA is to prepare a Qualified Allocation Plan for allocating Tax Credits. Code Section 42(m) states that the HCA must make allocations of Tax Credits pursuant to a *Qualified Allocation Plan* which:

1. Sets forth Project Selection Criteria to be used to determine housing priorities of the Housing Credit Agency, which are appropriate to local conditions. These criteria must consider Project location, housing needs characteristics, Project characteristics, sponsor characteristics, participation of local tax-exempt organizations, public housing waiting lists, tenants with special housing needs including individuals with children, energy efficiency standards, historic character and Projects intended for eventual tenant ownership.
2. Gives preference in allocating housing credit dollar amounts among selected Projects to those which:
  - a) Serve the lowest income tenants;
  - b) Serve qualified tenants for extended periods of time; and
  - c) Are located in Qualified Census Tracts and the development of which contributes to a Concerted Community Revitalization Plan.
3. Provides a procedure that the agency will use in monitoring for noncompliance.

This document is intended to fulfill requirements 1 and 2 above for the MFA's Tax Credit allocation activity in the State of New Mexico, commencing on its effective date. The procedure required in item 3 above is summarized in **Section X** but published in full under a separate cover.

## **B. Public Hearings**

Following public notice, a draft Qualified Allocation Plan will be available to the public for comment for a period of thirty (30) days, during which time public hearing(s) will be held. MFA will accept written comments during this thirty-day period and will consider any comments presented at the public hearing, prior to completion of the plan.

## **II. LOW INCOME HOUSING TAX CREDIT PROGRAM SUMMARY**

### **A. General**

The Tax Reform Act of 1986 established the HTC Program to stimulate private sector investment in low income rental housing. In August of 1993, permanency was granted to the HTC Program after numerous temporary annual extensions.

There are numerous technical rules governing a Project's qualification for Tax Credits. The following is a summary of certain key provisions of Section 42 of the Code and regulations, and the HTC Program. Applicants are advised to review Section 42 of the Code directly for further detail, since this overview does not address all of the provisions. Capitalized terms, when not defined in the text of this document, are defined in **Section XI** or in Section 42 of the Code.

### **B. Amount of Tax Credit Available Statewide**

The State of New Mexico, for the calendar year 2012, will receive a population based Tax Credit allocation equal to \$2.15 (indexed for inflation) per resident. The current year's population estimates, as provided by the Internal Revenue Service, and the estimated Annual Credit Ceiling, including any carry-forward, returned or national pool Credits received by the State, may be found on the MFA web site.

### **C. Nonprofit Allocation Set Aside**

A minimum of 10 percent of the Annual Credit Ceiling must be allocated each year to Projects involving Qualified Nonprofit Organizations. MFA's Allocation Set Asides (**see Section III.D**) are intended to implement this requirement. However, Qualified Nonprofit Organizations may also apply for Credits in excess of these Set Asides.

For the purposes of identifying applicants eligible for this Allocation Set Aside, several requirements must be met, as described in Code Section 42(h)(5). A Qualified Nonprofit Organization is an organization described in Sections 501(c)(3) or 501(c)(4) of the IRS Code and exempt from tax under Section 501(a). The production of decent, safe and affordable housing must be one of the defined goals, objectives, or purposes of the nonprofit organization. The nonprofit organization must materially participate in the Project, meaning that the organization must be involved on a regular, continuous, and substantial basis in both the development and operation of the Project during the term of the Compliance Period. The nonprofit must also own an interest in the Project throughout the Compliance Period and may not be affiliated with or controlled by a for-profit organization.

### **D. Minimum Apartment Unit Set Asides**

In order for a Project to qualify for Credits, the Project Owner must rent at least 20 percent of the units in the Project to households with incomes at or below 50 percent of the Area Gross Median Income, or at least 40 percent of the units to households with incomes at or below 60 percent of the Area Gross Median Income. Projects eligible for the Tax Credit may exceed these limitations, but cannot fall below them, and the Set Aside Election must be made at the time the Application is submitted to MFA. Once an Application has been submitted to MFA, the Set Aside Election cannot change. Generally, all Units, including Set Aside Units, must be made available to the general public under an initial lease term of at least 6 months. However, exceptions are made for single room occupancy and transitional homeless facilities.

### **E. Rent and Income Restrictions**

Set Aside Units must only be rented to households meeting certain income restrictions. Furthermore, rents charged for Set Aside Units may not exceed 30 percent of the applicable income limit(s) designated by the Applicant. Gross rent limits provided annually by HUD (found on MFA's web site) must be reduced by a utility allowance that accurately reflects the cost of tenant-paid utilities by unit size. MFA's Land Use Restriction Agreement prohibits collection of Section 8 or other rent subsidy payments which, when added to the tenant payments, would

exceed the Tax Credit Ceiling Rents, except in Projects with project-based subsidies when the program governing the project-based subsidy allows higher rents. More detail regarding rental assistance payments and qualifying tenants can be found in the MFA Tax Credit Monitoring and Compliance Plan, which is issued under a separate cover and summarized in **Section X**.

#### **F. Eligible Projects**

The Tax Credit Program is intended for rental housing. Projects may include transitional housing for the homeless, Single Room Occupancy (SRO) projects, senior and other special needs projects. Dormitories, “trailer parks” and transient housing (e.g. emergency shelters for homeless persons and families) are ineligible.

#### **G. Compliance Period**

The initial Compliance Period is 15 years. An Extended Use Period also applies to the Project for a minimum 15 years subsequent to the initial Compliance Period, during which time transfers and tenant dislocation are limited. If the Project Owner chooses to transfer or sell the property during the Extended Use Period, the Project Owner must notify MFA in writing thirty (30) days prior to the transfer or closing date. By agreeing to an Extended Use Period, the Project Owner and its successors and assigns agree to maintain the Project as a Qualified Low Income Housing Project (as defined in Section 42(g) of the Code) for the entire Extended Use Period. During the Extended Use Period the Project Owner is prohibited from evicting or terminating tenancy of an existing tenant of any Low Income Unit other than for good cause and/or increasing the gross rent with respect to a Low Income Unit not otherwise permitted by Section 42 of the Code, as applicable throughout the entire commitment period. The Project Owner will not have the right to require the MFA to present a “qualified contract” in accordance with Code Section 42(h)(6), the Extended Use Period will not be terminated for any reason other than foreclosure, and existing Low Income Tenants will not be evicted or charged rents in excess of Tax Credit Rents for a period of three years after the Extended Use Period. Failure to comply with Set Asides, or any reduction in the number or floor space of the Set Aside Units during the Compliance Period, will result in recapture, with non-deductible interest, of at least a portion of the Tax Credits taken previously. MFA will notify the IRS if it learns of any noncompliance. A Project Owner may not begin to claim the Tax Credit until IRS Form 8609 is filed, and this form is considered to be a certification of initial compliance with the IRS requirements. The Project Owner must also make tenant income determinations and file an annual compliance statement with MFA.

#### **H. Compliance Monitoring**

As of January 1, 1992 the IRS required each HCA to write and implement a Monitoring and Compliance Plan (summarized in **Section X**). MFA’s monitoring procedure includes a combination of annual certifications and regular site visits (audits and inspections) for all completed Tax Credit Projects. The IRS has provided substantial penalties, including recapture of the Tax Credits plus interest, for non-compliance with the policies and procedures set forth in Section 42 of the Code and MFA’s Tax Credit Monitoring and Compliance Plan. Annual fees described in **Section IV. B**. will be assessed for each year of the Extended Use Period. Fees for monitoring and compliance will be billed annually before December 31 for the subsequent year. Owners of new Tax Credit Projects will also be given an option to pay the initial 15 years of compliance fees at the time of Final Allocation Application. Failure to pay these fees within the time frame specified in the invoice will result in MFA’s filing of a “Notice of Noncompliance” (IRS Form 8823) with the IRS and disallow the Principal(s) from applying for additional funding from MFA including tax credit applications for any Projects while the fees remain outstanding. All Tax

Credit Projects must submit their Annual Compliance Reports through the MFA's *WCMS On-Line* system. If the management company is new to New Mexico, representatives must attend a class on the online system prior to occupancy.

### **I. Eligible Basis According to Type of Activity**

The "Eligible Basis" is generally the same as a Project's adjusted depreciable basis for tax purposes. Fees or points charged to obtain long-term financing, syndication costs and fees, and marketing expenses are not included in Eligible Basis. These ineligible fees, costs, and expenses include credit enhancement, credit origination fees, bond issuance costs, reserves for replacement, start-up costs and future operating expenses. Costs related to the acquisition of land, costs attributable to any commercial portion of the property, and costs attributable to non-Set Aside Units that are above the average quality of the Set Aside Units in the Project are also ineligible. Additionally, Federal Grants shall not be included in a Project's Eligible Basis in accordance with Section 42 of the Code.

The Eligible Basis attributable to new construction or rehabilitation costs for a Project that scores at least 5 points under Project Selection Criteria #3 (*Projects that Benefit the Environment*), that has units set-aside for seniors, households with children, or residents with special needs, and that is not financed with Tax Exempt Bonds may, in MFA's sole discretion based upon a Project's financial need, be increased by up to 30 percent for the purpose of calculating Tax Credits. The Eligible Basis attributable to new construction or rehabilitation costs for a Tax Exempt Bond Financed Project may be increased by up to 30 percent for the purpose of calculating Tax Credits only if the Project is located in a HUD-designated Qualified Census Tract or a HUD-designated Difficult Development Area. In no case will a Project's Eligible Basis attributable to the acquisition of an existing building be increased.

### **J. Ten-Year Rule**

In order for the acquisition of an existing building to qualify for Tax Credits, the taxpayer must adhere to the "Ten-Year Rule," meaning that the Project Owner must acquire the building from an unrelated person who has held the building for at least ten years. The 10-year requirement shall not apply to Federally-Assisted Buildings and State-Assisted Buildings. In addition, the Secretary of the Treasury can waive the 10-year "Placed In Service" limitation for buildings acquired from a federally insured depository institution that is in default, as defined by Section 3 of the Federal Deposit Insurance Act, or from a receiver or conservator of such an institution. Please refer to Section 42(d) of the Code for exceptions to the Ten-Year Rule.

### **K. Federal Grants and Federal Subsidy**

The Eligible Basis of any building shall not include costs financed with a Federal Grant. Many federal operating and rental assistance funds are excluded from this provision, as are Native American Housing Self Determination Act (NAHSDA) funds. Please refer to Section 1.42-16(b) of the Treasury regulations for a complete list of federal assistance waived from this provision. For the purpose of determining a Project's Applicable Credit Percentage, Federal Subsidy means Tax Exempt Bond Financing. Tax Exempt Bond Financing does not require a reduction in Eligible Basis provided that the Tax Exempt Bond Financing is greater than fifty percent of the aggregate basis of the land and building(s).



## **L. Qualified Basis According to Type of Project**

The “Qualified Basis” is that portion of the Eligible Basis attributable to Low Income Units. It is calculated as the smaller of the percentage of Low Income Units in the building, or the percentage of floor space devoted to Low Income Units in a building.

## **M. Placed In Service Requirement**

The 10-year Credit Period, 15-year Compliance Period, and Extended Use Period begin with the taxable year in which the building is “Placed In Service” (the time at which a building is “suitable for occupancy,” which generally refers to the date of the issuance of the first certificate of occupancy for each building in the Project), or, at the Project Owner’s election, the following taxable year.

Section 42(h)(1)(E) of the IRS Code allows for the allocation or Carryover Allocation of Tax Credits to a building that is part of a new construction or rehabilitation Project, with the limitations described in Section 42(h)(1)(E), if an applicant’s qualified expenditures, or actual basis in the Project, as of 12 months after the date the allocation was made, is more than 10 percent of the taxpayer’s reasonably expected total basis in the Project as of the close of the second calendar year following the calendar year in which the allocation was made. MFA requires evidence of ownership and submission of a complete Carryover Allocation Application by November 15<sup>th</sup><sup>3</sup> of the year in which the Tax Credit award was made, and evidence of the expenditure of more than 10 percent of the expected basis in the Project by August 31<sup>4</sup> of the following year. A Cost Certification detailing the qualified expenditures, or actual basis, that make up 10 percent of the reasonably expected basis and a description of the Applicant’s method of accounting must be prepared by a Certified Public Accountant and submitted to MFA at that time. If the Carryover Allocation Application, the Certified Public Accountant’s Cost Certification, the Attorney’s Opinion regarding the qualification of the Project for Tax Credits, and any other required materials are not received on the appropriate dates noted above by 5:00 P.M., the Project’s Credit Reservation will be canceled. Section 42(h)(1)(E) further allows for a qualified building to be Placed in Service in either of the two calendar years following the calendar year in which the allocation is made. This paragraph does not apply to Tax Exempt Bond Financed Projects.

## **N. Building Classification and Tax Credit Applicable Percentages**

The Tax Credit’s Applicable Credit Percentage (i.e., the “4 Percent” or “9 Percent” Credits for which a Project is eligible) is determined by the type of Project proposed, its use of Federal Subsidy or Federal Grants, and the amount of Credit necessary to reach feasibility and long-term viability. The rates of 4 Percent and 9 Percent are upper limits of available Credits, which fluctuate based on market conditions. The actual “Applicable Credit Percentages” are based on monthly prevailing interest rates that are calculated and published by the U.S. Treasury Department as the “Applicable Federal Rate” or “AFR.” The amount of the annual Credit is calculated to yield a present value of either 30 percent (in the case of 4 Percent Credits) or 70 percent (in the case of 9 Percent Credits) of Qualified Basis, as adjusted by MFA. Effective July 31, 2008 to December 31, 2013, the 70 percent (9 Percent Credit) is a minimum of 9 percent. The Applicable Credit Percentage may be locked in at the Developer’s option, at 1) the month in

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<sup>3</sup> November 15<sup>th</sup> is defined in the Glossary.

<sup>4</sup> If such date falls on a weekend or holiday, the deadline shall be the first working day following such date.

which the building is Placed In Service or 2) the month in which a Binding Commitment (Carryover Allocation) is made for an allocation or, in the case of Tax Exempt Bond Financed Projects, the month the tax exempt obligations are issued. Listed below are types of Projects, which could be considered eligible for the HTC and the Applicable Credit Percentage for each Project type.

1. **New Construction.** New Construction Projects that are not financed by Tax Exempt Bonds are eligible for 9 Percent Credits. Projects financed with Tax Exempt Bonds are eligible for 4 Percent Credits only.
2. **Rehabilitation of an Existing Building.** To qualify for Tax Credits, rehabilitation expenditures must exceed the greater of 1) at least 20 percent of the Qualified Basis of the building being rehabilitated, or 2) at least \$6,000 per Low Income Unit being rehabilitated. For Projects Placed In Service after 2009, the \$6,000 will be indexed for inflation. Rehabilitation Projects that are not financed by Tax Exempt Bonds are eligible for 9 Percent Credits. Projects financed with Tax Exempt Bonds are eligible for 4 Percent Credits only.
3. **Acquisition/Rehabilitation of an Existing Building.** The maximum Applicable Credit Percentage for acquisition of an existing building that will be subsequently rehabilitated is 4 percent. To qualify for Tax Credits for the acquisition, rehabilitation expenditures must exceed the greater of 1) at least 20 percent of the Qualified Basis of the building being rehabilitated, or 2) at least \$6,000 per Low Income Unit being rehabilitated. For Projects Placed In Service after 2009, the \$6,000 per Low Income Unit figure will be indexed for inflation. Rehabilitation expenditures associated with acquisition of an existing building can qualify for the 9 Percent Tax Credits as long as the rehabilitation expenditures are not funded with Tax Exempt Bonds. Projects financed with Tax Exempt Bonds are eligible for 4 Percent Credits only.
4. **Federal Grant Financed Projects with Reduction in Eligible Basis.** In the case of a Project financed with Federal Grants, whether a newly constructed or rehabilitated building, the Project Owner shall exclude the amount of the Federal Grants from Eligible Basis.

### **III. HOUSING PRIORITIES AND PROJECT SELECTION CRITERIA**

#### **A. Needs Analysis**

This plan is consistent with the Needs Analysis of the *State of New Mexico Consolidated Plan for Housing and Community Development and 2012 Action Plan*. Housing priorities stated in the Consolidated Plan include increasing the supply of decent, affordable rental housing, expanding housing opportunities and access for individuals with special needs, expanding the supply of housing and services to assist the homeless, and preserving the State's existing affordable housing stock.

#### **B. Housing Priorities**

The following priorities are to be used by MFA in the distribution of Tax Credits, and are reflected in the Allocation Set Asides and Project Selection Criteria used to rank competitive Projects. These priorities include the following:

1. Levels of affordability in excess of the minimum requirements, through one or more of the following:
  - a. Higher numbers of Set Aside Units; and /or
  - b. Rents set to serve lower income tenants, for example, tenants earning no more than 40 percent or 30 percent of median income; and/or
  - c. Extended Use Periods longer than the 30-year minimum.
2. Provision of affordable housing to households on public housing waiting lists;
3. Maximizing leverage by obtaining other public or private non-equity program resources;
4. An equitable distribution of Tax Credits throughout all parts of the state where affordable housing is needed;
5. Provision of housing to serve documented Senior and Special Needs Households, tenant populations of Individuals with Children, Projects intended for eventual tenant ownership, and under-served urban and rural areas;
6. Nonprofit development;
7. Production of housing with high quality design and construction;
8. Production of Projects that are located in Qualified Census Tracts;
9. Production of Projects which contribute to a Concerted Community Revitalization Plan;
10. Provision of housing that is energy efficient or historic in nature; and
11. Efficient use of scarce resources including Tax Credits, measured through lower Development Costs or other means.

### **C. Minimum Project Threshold Requirements**

All Tax Credit Applications must meet each of the following requirements. MFA will use the deficiency correction process as described in **Section IV.C.5** to allow Applicants to correct deficiencies related to Site Control, Zoning, and Fees (requirements 1-3 below). All other threshold requirements are not correctable and Initial Applications not meeting those requirements will be rejected. Applications not meeting Site Control, Zoning, and Fee requirements will be rejected if they are not corrected within the time period allowed in **Section IV.C.5**.

1. Site Control. Site Control for all of the land needed for the Project must be evidenced by a written governmental commitment to transfer the land to the Applicant, recorded deed or long term leasehold interest, or by a fully executed purchase contract or purchase option. If a contract or option is submitted, the agreement must provide for an initial term lasting at least until July 31 of the year in which the allocation is made. **This initial term must not be conditioned upon any extensions requiring seller consent, additional payments, financing approval, Tax Credit award or other such requirements.** If the purchase option

or agreement requires an escrow payment due after signing, evidence that payment was received must be included in the Initial Application. Site control evidence and the Application materials must show exactly the same names, legal description and acquisition costs. All signatures, exhibits, and amendments should be included to be considered complete.

2. Zoning. Evidence of approved zoning of the proposed site must be submitted. This requires that multifamily Projects are not prohibited by the existing zoning of the proposed site. Projects sited on land which is not zoned or which is zoned agricultural, are exempt from this threshold test, but must obtain zoning approval and deliver evidence of it to MFA no later than November 15<sup>th</sup> of the year of the Reservation.
3. Fees. All fees owed to MFA for all Tax Credit Projects in which Principal(s) of the proposed Project participate must be current. Fees currently due and owing must be received by MFA by the date due to be considered current.
4. Minimum Project Score. The Project must achieve at least the Minimum Score established in the Project Selection Criteria established in accordance with **Section III.E**, below.
5. Applicant Eligibility. All Principals of the proposed Project must be in good standing with MFA and all other state and federal affordable housing agencies. For example, debarment from HUD or other federal housing programs, bankruptcy, criminal indictments or convictions, poor performance on prior MFA or federally financed Projects (for example, late payments within the 18 month period prior to the Application deadline, misuse of reserves and/or other Project funds, default, fair housing violations, non-compliance, or failure to meet development deadlines or documentation requirements) on the part of any proposed development team member or Project Owner or other Principal may result in rejection of an Application by MFA. In addition, MFA will consider a Principal's progress made with previous Tax Credit reservations, including timeliness in delivering required documents and fees, and meeting all required deadlines.
6. Financial Feasibility. Applications must demonstrate, in MFA's reasonable judgment, the Project's financial feasibility. Please refer to **Section IV.C.2**, **Section IV.D**, and **Section IV.E**. requirements pertaining to MFA's financial feasibility considerations.

Additional minimum Project Threshold Requirements apply to Tax Exempt Bond Financed Projects, as described in **Section VI.B**.

#### **D. Allocation Set Asides**

1. Nonprofit Set Aside. Ten percent of the Annual Credit Ceiling for each calendar year will be reserved for Projects sponsored by Qualified Nonprofit Organizations as defined in IRS Code Section 42(h)(5)(C). For purposes of this set aside, only federal requirements identified in IRS Code Section 42(h)(5) will apply. The aggregate amount of Tax Credit allocated by MFA to nonprofit organizations may exceed this amount.
2. USDA Rural Development Set Aside. Ten percent of the Annual Credit Ceiling will be set aside for Projects with USDA Rural Development (USDA-RD) Financing Commitment(s) for the proposed Project. Existing properties must also have all USDA-RD approvals required for the new Project Owner to assume existing USDA-RD assistance in addition to commitments for any new USDA-RD financing. To be eligible for the USDA-RD Set Aside a Project's score must be within 10 percent of the lowest scoring Project to be awarded Tax Credits through the ranking process. The Initial Application must include evidence of all required USDA-RD approvals to be considered for this set-aside.
3. Ranking to Meet Allocation Set Asides. If the scoring and ranking process without regard to the Nonprofit Set Aside does not result in awards to Projects sponsored by Qualified Nonprofit Organizations sufficient to fill the Nonprofit Set Aside requirement, the next highest scoring, Qualified Nonprofit Organization Eligible Projects will receive awards sufficient to fulfill that requirement ahead of the lowest scoring Projects that would otherwise have received an award. If there are insufficient Qualified Nonprofit Organization Eligible Projects to meet the Nonprofit Set Aside, the unallocated Nonprofit Set Aside Tax Credits cannot be allocated to other Eligible Projects. A similar procedure will be used to meet the USDA-RD Set Aside; however, if there are insufficient USDA-RD Projects to meet the USDA-RD Set Aside, any unallocated USDA-RD Tax Credits may be used for other Eligible Projects.

Tax Exempt Bond Financed Projects are not subject to the above Set Aside considerations.

#### **E. Project Selection Criteria to Implement Housing Priorities**

The criteria shown below are the basis for the awarding of points to a particular proposed Project during the Application round(s) conducted by MFA. Tax Credit reservations will not be awarded to Projects achieving fewer than 130 points (the "Minimum Score") unless too few Projects score above this level and MFA, in its reasonable judgment, decides to reduce the Minimum Score. Projects scoring 130 or more points will be ranked according to their scores, subject to Allocation Set Aside requirements, and Reservations will be made to these Projects, unless they are eliminated under Threshold Review or subsequent processing, starting with the highest scoring Projects until all available Credits are used. Tax Exempt Bond Financed Projects will also be scored and must obtain a score of at least 80 points in order to obtain a Letter of Determination that they are consistent with the QAP. Included in these 80 minimum points, Tax Exempt Bond Financed Projects must also include points for serving a targeted population (Project Selection Criteria #11, #12, or #13 - special needs, seniors or individuals with children) and scoring for *Projects that Benefit the Environment* (Project Selection Criteria #3).

Although some criteria include scaled point structures, partial points will not be otherwise awarded. If two or more Projects with equal scores (“Tied Projects”) would require more than the available Credits, the Tied Project with the lower Total Development Cost per Unit will be selected first for an award of Credits. If too few Credits are available to make a full award of Credits to the any Tied Project, MFA will determine in its discretion whether to award a partial allocation, to commit future year’s Credits to the Project, in accordance with **Section VIII**, to award no Credits at all, or to choose some combination of these options.

*Regardless of strict numerical ranking, the scoring does not operate to vest in an Applicant or Project any right to a Reservation or Tax Credit Allocation in any amount. MFA will, in all instances, reserve and allocate Tax Credits consistent with its sound and reasonable judgment, prudent business practices, and the exercise of its inherent discretion.*

**Project Selection Criteria**

1.	<p><b>Nonprofit, New Mexico Housing Authority (NMHA), or local Tribally Designated Housing Entity (TDHE) Participation</b></p> <p><u>Tier 1:</u> Local Nonprofits (as that term is defined in this criterion below), NMHAs and TDHEs that which demonstrate financial capacity by having net worth/net assets of at least \$1,000,000 will qualify for 10 Points. Nonprofits, NMHAs and TDHEs with net worth/net assets below \$1,000,000 may partner with another entity to increase the General Partner’s combined net worth above this threshold.</p> <p><u>Tier 2:</u> Local Nonprofits, NMHAs and TDHEs which have net worth/net assets of at least \$250,000 will qualify for 5 Points. In addition, Qualified Nonprofit Organizations that do not meet this criterion’s definition of “Local” but demonstrate strong financial capacity by having net worth/net assets of at least \$2,000,000 will qualify for 5 Points.</p> <p>For any entity to claim points under this scoring criterion, the Qualified Nonprofit Organization, NMHA, or TDHE must own at least 51% of the General Partner interest and be receiving a minimum of 10 percent of the developer fee as identified in the Project Application. The developer fee calculation is made before any reduction for consultant fees. When more than one entity is receiving a portion of the developer fee, documentation will be required evidencing the agreement among the entities as to the fee split arrangement. Also, the Application must include evidence that a representative of the Qualified Nonprofit Organization, NMHA, or TDHE (board member, officer, director, commissioner, or staff) has attended the MFA QAP training and/or other MFA approved Tax Credit training prior to submitting the Application. This approved training must have been completed within the six months prior to submittal of the Application.</p> <p>Net worth/net assets must be substantiated by accountant reviewed or audited year-end financial statements for each General Partner.</p> <p>“Local Nonprofit” means a Qualified Nonprofit Organization that has a board that is comprised of a majority of New Mexico residents at the time the Application is submitted and was incorporated in New Mexico before January 1 of the year in which the Application is submitted.</p>	<p>Tier 1: 10 Points</p> <p>Tier 2: 5 Points</p>
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2.	<p><b>Tax Credit Design Competition Winners</b></p> <p>MFA will hold a juried competition emphasizing high quality design and construction. The competition is optional, and up to three winning Projects may receive points under this criterion at the committee's discretion. See Attachments Checklist in Application Package for additional materials needed to participate in the Design Competition.</p>	<p>1<sup>st</sup> place – 10 Points</p> <p>2<sup>nd</sup> Place – 7 Points</p> <p>3<sup>rd</sup> place – 4 points</p>
3.	<p><b>Projects that Benefit the Environment</b></p> <p>These points will be awarded to Projects meeting minimum requirements in incorporating green building, energy efficiency, water conservation, healthy materials, and sustainability in the design and construction or rehabilitation of the Project. Projects seeking points in this scoring criterion must make one of the following:</p> <ol style="list-style-type: none"> <li>1) Option A: Commitment to obtain LEED Certification, with a rating of Silver or better, or Enterprise Green Communities Green Criteria certification;</li> <li>2) Option B: Commitment to obtain basic LEED Certification or Build Green NM Certification; or</li> <li>3) Option C: Commitment to meet the MFA Green Building Criteria.</li> </ol> <p>See Application Attachments Checklist and 2012 Green Building LIHTC Scoring supplemental document in Application Package for additional materials needed to obtain points in this Project Selection Criterion.</p>	<p>Option A: 20 Points</p> <p>Option B: 18 Points</p> <p>Option C: Range of 5 to 15 Points</p>
4.	<p><b>Rehabilitation and Adaptive Reuse Projects</b></p> <p>These points will be awarded to all Projects incurring average rehabilitation/conversion hard costs of \$15,000 per Unit or more. In combined new construction and rehabilitation or Adaptive Reuse Projects, rehabilitated/converted Units must account for at least 20 percent of the total Units and the separation of rehabilitation/conversion costs and new construction costs must be designated in the Application on separate Schedule As and Ds (i.e., the Application must include a Schedule A and D for the entire Project, a Schedule A and D for the rehabilitation/conversion costs, and a Schedule A and D for the new construction costs). All schedules must reconcile. The addition of common space to an existing Project is not considered new construction.</p> <p>These points can be awarded in conjunction with points under Project Selection Criteria #5 or #6 below, but not with both.</p>	<p>15 Points</p>
5.	<p><b>Conversion plus Rehabilitation</b></p> <p>These points will be awarded to existing multifamily Projects that are occupied, meet the rehabilitation requirements of Project Selection Criterion #4 above, and convert at least 50 percent of the existing Market Rate Units to Low Income Units.</p>	<p>5 Points</p>

6.	<p><b>Preservation of Affordable Housing</b></p> <p>These points will be awarded to previously subsidized Projects for which use restrictions are to expire on or before December 31, 2016. Projects that are currently subsidized and eligible for prepayment and termination of their use agreement, or are able to make a qualified contract request on or before December 31, 2016, are also eligible. (See Attachments Checklist for additional materials required to obtain these points.)</p>	15 Points												
7.	<p><b>Projects with the Following Average Gross Median Income (AGMI) Levels:</b></p> <p>To determine the AGMI, calculate a weighted average based on the number of units Set Aside at each income level. Market Rate Units will be treated as if they were Set Aside at 100 percent of Area Gross Median Income (AMI). When calculating AGMI, round to the nearest whole number, following the example in the Glossary definition of “AGMI.”</p> <table border="1" data-bbox="334 772 1166 961"> <thead> <tr> <th>AGMI Percentage</th> <th>Counties w/AMI less than or equal to \$50,000</th> <th>Counties w/AMI greater than \$50,000</th> </tr> </thead> <tbody> <tr> <td>50 percent or less</td> <td>40 Points</td> <td>35 Points</td> </tr> <tr> <td>51-59 percent</td> <td>35 Points</td> <td>30 Points</td> </tr> <tr> <td>60-69 percent</td> <td>30 Points</td> <td>25 Points</td> </tr> </tbody> </table> <p>Maximum points that will be awarded for rent and income targeting in Project Selection Criteria #7, #8, and #9 combined is 65.</p>	AGMI Percentage	Counties w/AMI less than or equal to \$50,000	Counties w/AMI greater than \$50,000	50 percent or less	40 Points	35 Points	51-59 percent	35 Points	30 Points	60-69 percent	30 Points	25 Points	<p>See Chart</p> <p>50% or less: 35-40 Points</p> <p>51 – 59%: 30-35 Points</p> <p>60 – 69%: 25-30 Points</p>
AGMI Percentage	Counties w/AMI less than or equal to \$50,000	Counties w/AMI greater than \$50,000												
50 percent or less	40 Points	35 Points												
51-59 percent	35 Points	30 Points												
60-69 percent	30 Points	25 Points												
8.	<p><b>Projects with the following Average Gross Median Rent (AGMR) Levels:</b></p> <p>To determine the AGMR, calculate a weighted average based on the number of units Set Aside at each rent level. Market Rate Units will be treated as if they were Set Aside at 100 percent of AMI. When calculating AGMI, round to the nearest whole number, following the example in the Glossary definition of “AGMR.” A Project can opt to restrict rents at a lower level than the targeted income level for any given unit(s), but in no case can the rent levels exceed the income levels.</p> <p>Maximum points that will be awarded for rent and income targeting in Project Selection Criteria #7, #8, and #9 combined is 65.</p>	<p>60 – 69%: 20 Points</p> <p>51 – 59%: 25 Points</p> <p>50% or Less: 30 Points</p>												
9.	<p><b>Projects that incorporate Market Rate Units</b></p> <p>Projects that incorporate Market Rate Units equal to at least 15 percent of the total Units.</p> <p>Maximum points that will be awarded for rent and income targeting in Project Selection Criteria #7, #8, and #9 combined is 65.</p>	10 Points												



10.	<p><b>Projects committed to an Extended Use Period of the Following:</b></p> <p>35 Years...5 Points    40 Years...10 Points    45 Years...15 Points</p> <p>This period includes the 15 Year IRS Compliance Period.</p>	<p>35 Yrs – 5 Points 40 Yrs - 10 Points 45 Yrs - 15 Points</p>				
11.	<p><b>Projects in Which Units are Reserved for Special Needs Households</b></p> <p>“Reserved” for Special Needs Households (see definitions of Special Needs Household and Reserved in Glossary) will mean that the units may not be rented to other households unless the unit has been marketed for 30 days and no qualified households have been referred by the Local Lead Agency (LLA). To receive these points, the Applicant will need to submit with its Application a copy of the signed MFA-approved agreement (form provided with Application) with the LLA for the geographic area where the Project is to be located. The Applicant will provide notice of available units to the LLA. The LLA will be responsible for providing services for the duration of the Project and for referring qualified tenants as soon as Set Aside Units become available. Projects in areas without a LLA will commit to signing an agreement with the LLA as soon as one is identified.</p> <table border="1" data-bbox="358 961 1141 1241"> <tr> <td data-bbox="365 970 930 1146">20 percent of Units Set Aside, signed Agreement with LLA (or signed commitment to enter agreement), and 50 percent of Special Need units rent restricted at 30 percent of AMI, or at 30 percent of tenant’s income via rental assistance contract.</td> <td data-bbox="937 970 1141 1146">20 points</td> </tr> <tr> <td data-bbox="365 1150 930 1236">5 percent of Units Set Aside and signed Agreement with LLA (or signed commitment to enter agreement).</td> <td data-bbox="937 1150 1141 1236">5 points</td> </tr> </table> <p>The 5 points for a 5 percent Set Aside for Special Needs Households can be combined with the scoring for Senior Households or Households Comprised of Individuals with Children (maximum of 20 points combined).</p>	20 percent of Units Set Aside, signed Agreement with LLA (or signed commitment to enter agreement), and 50 percent of Special Need units rent restricted at 30 percent of AMI, or at 30 percent of tenant’s income via rental assistance contract.	20 points	5 percent of Units Set Aside and signed Agreement with LLA (or signed commitment to enter agreement).	5 points	<p>Up to 20 Points (see chart)</p>
20 percent of Units Set Aside, signed Agreement with LLA (or signed commitment to enter agreement), and 50 percent of Special Need units rent restricted at 30 percent of AMI, or at 30 percent of tenant’s income via rental assistance contract.	20 points					
5 percent of Units Set Aside and signed Agreement with LLA (or signed commitment to enter agreement).	5 points					

12.

**Projects Reserved for Senior Households**

Up to 15 Points (see chart)

These points benefit Projects specifically designated for exclusive use by senior residents. The Projects should feature independent living and an appropriate management arrangement. New construction Projects must include central common areas that can be used for resident activities and serving meals with an adjoining kitchen area. "Senior Household" is defined as a household including at least one person 55 years of age or older.

Set Aside points will be awarded based on the Project meeting the requirements above. Additional points may be awarded for service enrichment activities as listed below. To receive additional points under this category, the Project must include a Service Enrichment Plan (see definition in Glossary). Enrichment services must be provided on-site, at no charge to residents, and be actively linked to the Project, not simply available to the community at-large.

These points are not available if 20 points are awarded under Project Selection Criteria #11 or #13.

Set Aside and design requirements met	7 points
Service Enrichment Scoring	
Community building and all Units incorporate Universal Design (must be evidenced in plans and specifications)	3 points
The Project Owner must certify that a service coordinator will be on site a minimum of two days per week for a cumulative minimum of 10 hours per week. The social service coordinator must be in addition to the property manager.	1 point
Providing one prepared meal on a daily basis available to all tenants	2 points (congregate meals) 1 point (meal service)
Monthly housekeeping services	2 points
Bi-monthly health and nutrition education	1 point
Quarterly blood pressure or other health screening	1 point
Quarterly computer training	1 point
Social events such as movie nights, holiday dinner parties, etc. Bi-monthly or 6 per year (Service provider not required)	1 point
Other - MFA approved service. Must be approved by MFA in writing one month before Application due date	1-2 points each as deemed appropriate

*The Set Aside requirement and any additional enrichment services committed to will be enforced through a provision in the Land Use Restriction Agreement, which will require notification of any termination in service contracts, and no more than a 30 day gap in service provided. The Project will be determined out of compliance if a new service contract is not executed. Project Owner will be required to maintain a file containing contracts with service providers, documentation of when and where services were provided, and documentation of time spent on-site by the service coordinator.*

13.	<p><b>Projects in which 25 Percent of All Units are Reserved for Households Comprised of Individuals with Children</b></p> <p>“Reserved” for Households Comprised of Individuals With Children means that these units will not be rented to other households unless the Project Owner demonstrates to MFA a change in the level of demand for such units and a good faith effort to obtain the originally targeted tenants, and MFA determines in its discretion that the change in the level of demand for such units is justifiable. The Applicant must provide a description of the Project’s specific design elements that serve the needs of families with children. For Projects that involve new construction, at least 15 percent of all the Units must have 3 or more bedrooms, and a further 15 percent of all Units must have 2 or more bedrooms with at least 1.75 bathrooms.</p> <p>Set Aside points will be awarded based on the Project meeting the requirements above. Additional points may be awarded for service enrichment activities as listed below. To receive additional points under this category, the Project must include a Service Enrichment Plan (see definition in glossary). Enrichment services must be provided on-site, at no charge to residents, and be actively linked to the Project, not simply available to the community at-large.</p> <p><b>These points are not available if 20 points are awarded under Project Selection Criteria #11 or #12.</b></p> <table border="1" data-bbox="285 947 1143 1650"> <tr> <td>Set Aside and design requirements met</td> <td>7 points</td> </tr> <tr> <td colspan="2">Service Enrichment Scoring</td> </tr> <tr> <td>The Project Owner must certify that a service coordinator will be on site a minimum of two days per week for a cumulative minimum of 10 hours per week. The social service coordinator must be in addition to the property manager.</td> <td>1 points</td> </tr> <tr> <td>Daily on-site Childcare (fees may be charged in accordance with Children, Youth, and Families Department requirements)</td> <td>2 points</td> </tr> <tr> <td>Weekly on-site Childcare</td> <td>1 point</td> </tr> <tr> <td>Bi-monthly health and nutrition education</td> <td>1 point</td> </tr> <tr> <td>Bi-annual CPR training</td> <td>1 point</td> </tr> <tr> <td>Quarterly blood pressure or other health screening</td> <td>1 point</td> </tr> <tr> <td>Quarterly computer training</td> <td>1 point</td> </tr> <tr> <td>Weekly tutoring during school year</td> <td>1 point</td> </tr> <tr> <td>Quarterly job training, search assistance, and/or placement</td> <td>1 point</td> </tr> <tr> <td>Other - MFA approved service. Must be approved by MFA in writing one month before application due date</td> <td>1-2 points each as deemed appropriate</td> </tr> </table> <p><i>The Set Aside requirement and any additional enrichment services committed to will be enforced through a provision in the Land Use Restriction Agreement, which will require notification of any termination in service contracts, and no more than a 30 day gap in service provided. The Project will be determined out of compliance if a new service contract is not executed. Project Owner will be required to maintain a file containing contracts with service providers,</i></p>	Set Aside and design requirements met	7 points	Service Enrichment Scoring		The Project Owner must certify that a service coordinator will be on site a minimum of two days per week for a cumulative minimum of 10 hours per week. The social service coordinator must be in addition to the property manager.	1 points	Daily on-site Childcare (fees may be charged in accordance with Children, Youth, and Families Department requirements)	2 points	Weekly on-site Childcare	1 point	Bi-monthly health and nutrition education	1 point	Bi-annual CPR training	1 point	Quarterly blood pressure or other health screening	1 point	Quarterly computer training	1 point	Weekly tutoring during school year	1 point	Quarterly job training, search assistance, and/or placement	1 point	Other - MFA approved service. Must be approved by MFA in writing one month before application due date	1-2 points each as deemed appropriate	Up to 15 Points (see chart)
Set Aside and design requirements met	7 points																									
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	<i>documentation of when and where services were provided, and documentation of time spent on-site by the service coordinator.</i>	
14.	<p><b>Projects with 60 or fewer Set Aside Units</b></p> <p>For purposes of scoring, Projects to be located on adjacent sites proposed by the same Applicant in the same allocation round will be treated as a single Project, regardless of the tenant populations being served.</p>	5 Points
15.	<p><b>Projects Receiving a Local Contribution</b></p> <p>Projects in which at least 10 percent of the Total Development Cost is to be made permanently available to the Project or endowed by formal resolution of a state, local, or tribal government entity are eligible for 10 points. Projects in which at least 5 percent of the Total Development Cost is to be made permanently available to the Project or endowed by formal resolution of a state, local, or tribal government entity are eligible for 5 points. The value of the contribution must be listed as a source on Schedule A-1 and, when not a cash contribution, as a cost on Schedule A.</p> <p>The commitment from a state, local, or tribal government entity may be made in the form of cash, land, and/or buildings. Tax Exempt Bond Financing, HOME funds awarded by MFA, non-verifiable sources, or sources available to the Project for less than ten years will not be counted in meeting this criterion. Appraisals dated no earlier than six months prior to the Application date and completed by MAIs licensed in New Mexico must be submitted for all Applications in which land or building values are counted toward the local contribution, unless the land is Native American Trust Land. For Native American Trust Land donations, a certified copy of the tribal resolution will be required.</p> <p>Contributions made to a Project by an entity that has an ownership interest in that Project will not be considered contributions for this Project Selection Criterion.</p>	<p>10% - 10 Points</p> <p>5% - 5 Points</p>
16.	<p><b>Complete Applications</b></p> <p>Points are awarded to Initial Applications that meet all the standards described in <b>Section IV.A.4</b> under “Content and Format” when initially submitted and that do not require any deficiency corrections.</p>	5 Points
17.	<p><b>Marketing Units to Households Listed On Public or Indian Housing Agency Waiting Lists</b></p> <p>Projects providing a commitment to market the units to households listed on public or Indian housing agency waiting lists are eligible for points under this criterion. A letter to the PHA or Tribally Designated Housing Entity, which serves the jurisdiction of the proposed site verifying this commitment, will be required to obtain points for this criterion.</p>	2 Points
18.	<p><b>Projects Located in QCTs</b></p> <p>Projects located in Qualified Census Tracts (“QCT’s”) are eligible for points under this criterion. A chart of HUD designated QCT’s may be found on the MFA web site.</p>	5 Points

19.	<p><b>Concerted Community Revitalization Plan</b></p> <p>Projects located in and contribute to a Concerted Community Revitalization Plan by engaging in a housing activity promoted in the plan are eligible for points under this criterion.</p>	2 Points
20.	<p><b>Projects with Units Intended for Eventual Tenant Ownership</b></p> <p>Projects in which at least half of the Units are intended for eventual tenant ownership are eligible for points under this criterion. The Project design must be conducive to this purpose, using single family homes, duplexes, and/or townhomes that have individually metered utilities and public streets. This commitment will be evidenced by submission of a long-range Tenant Conversion Plan and will be documented in the Land Use Restriction Agreement. These points may not be awarded in combination with points under Project Selection Criterion #10.</p>	5 Points
21.	<p><b>Resident Financial Literacy Training</b></p> <p>Projects that will provide quarterly financial literacy training to residents are eligible for points under this criterion. Classes must be offered on-site at no charge to all interested residents. The commitment must be evidenced by a certification from the Project Owner and a Memorandum of Understanding for the service with a qualified service provider. The Memorandum of Understanding must indicate or specify: 1) a description of the service to be provided including frequency, 2) that services will be provided on-site, and 3) any fee for services provided. The Project must include space appropriate for the provision of this service and must also maintain a list of homebuyer counseling agencies serving the community in which the Project is located.</p>	2 Points
22.	<p><b>Projects with Historic Significance</b></p> <p>Projects certified on the National Register of Historic Places (i.e., meeting the criteria for Part 1 Approval for Historic Tax Credits) are eligible for points under this criterion.</p> <p>If Federal Historic Tax Credits are included in the financing structure of the Project, evidence that the National Park Service has received a complete Historic Certification Application - Part 2 for the Project must be included in the Project Owner's Carryover Allocation Package.</p>	5 Points
23.	<p><b>Blighted Buildings and Brownfield Site Reuse</b></p> <p>New construction Projects which include the demolition of Blighted Building(s) or the remediation and reuse of a Brownfield site are eligible for points under this criterion. Points in this criterion cannot be combined with points under Project Selection Criteria #4 or #5.</p>	5 Points

24.	<p><b>Projects Located in Areas of Statistically Demonstrated Need</b></p> <p><u>Tier 1 Areas – New Construction and Adaptive Reuse Projects</u> Eligible Projects are located in the counties of: Bernalillo, Chaves, Cibola, Curry, Dona Ana, Eddy, Lea, Roosevelt, Sandoval, San Juan, Taos, and Valencia. In addition, all Projects on Native American Trust Lands or Native American-owned lands within the tribe’s jurisdictional boundaries are eligible for Tier 1 points.</p> <p><u>Tier 2 Areas – New Construction and Adaptive Reuse Projects</u> Eligible Projects are located in Grant County.</p> <p><u>Tier 1 Areas – Acquisition and Rehabilitation Projects</u> Eligible Projects are located in the counties of: Bernalillo, Dona Ana, Luna, Roosevelt, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, and Valencia. In addition, all Projects on Native American Trust Lands or Native American owned lands within the tribe’s jurisdictional boundaries are eligible for Tier 1 points.</p> <p><u>Tier 2 Areas – Acquisition and Rehabilitation Projects</u> Eligible Projects are located in Lincoln, Los Alamos, and Sandoval counties.</p> <p>The proposed Project must include the greater of at least 15 Units of new construction or 20% of the total Units to qualify as new construction for this criterion. To qualify as rehabilitation for this criterion, the majority of the Units in the proposed Project must be rehabilitation Units and the existing Project must be in-service and occupied. Rehabilitation Projects that are not in-service and occupied will be classified as Adaptive Reuse/New Construction for this criterion.</p> <p><b><i>These tier areas are subject to change based on any changes in the 2012 Action Plan.</i></b></p>	<p>Tier 1: 15 Points</p> <p>Tier 2: 10 Points</p>
25.	<p><b>Failure to Meet Development Deadlines</b></p> <p><b>This criterion will begin to apply to applications starting in the 2013 round.</b> Any Application submitted by a General Partner or Developer of a Project awarded Tax Credits in 2012 or after that failed to meet any development deadlines specified in the Reservation Letter, Reservation Contract, Carryover Allocation agreement or this QAP shall receive a deduction of 5 points. This deduction will be applied to any and all Applications submitted by the General Partner or Developer in the next round in which the General Partner or Developer submits an Application after the development deadline was missed. In any case, failure to meet any development deadlines may be considered in MFA’s determination of Applicant Eligibility under <b>Section III.C.5.</b></p>	<p>Minus 5 Points</p>

## **F. Additional Credits for Projects with Partial Allocations**

If an Applicant receives a partial allocation in a given round, and requests additional Credits in a subsequent round, the Minimum Project Threshold Requirements and the Project Selection Criteria for scoring used in the initial allocation year will be applied to the evaluation of the Project in the subsequent allocation year. The Project's ranking relative to Initial Application year Projects will be determined by calculating the Project Score as a percentage of the highest score in its initial allocation round, and multiplying that percentage by the highest score in the subsequent Application round to derive its subsequent Application year score and ranking among the subsequent round Applications.

## **G. Additional Supplemental Tax Credits for Cost Increases**

Projects with increased Eligible Basis as a result of increases in hard construction costs may apply for additional Tax Credits in subsequent allocation rounds prior to issuance of an IRS Form 8609. Full applications will be required for competition within an allocation round, and the Project will compete on the same basis as that of the subsequent round Projects. However, Projects for which increased Credits have been requested cannot exceed MFA's cost limits or limitation on an award to a single Project for the year of the initial award. Applications that are submitted for additional Tax Credits will be subject to MFA's evaluation process and the availability of Credits, as well as limitations on the time period for allocation of additional Credits under Section 42 of the Code. Only one additional Tax Credit Allocation will be permitted by MFA for any given Project. The process is intended for hardship cases, and hardship will have to be documented accordingly in any such request.

## **H. New Allocations to Projects Previously Subsidized with Tax Credits**

Existing Projects that previously received Tax Credit Allocations and are now eligible under Code Section 42(d)(2) for new acquisition Tax Credits may apply for a current allocation. However, because of prior subsidy investment in the Project and the scarcity of the resource, and to insure that the subsidy is not being used primarily for ownership transfer, previously subsidized Projects, including Tax Exempt Bond Financed Projects, must demonstrate: 1) a real risk of loss of affordable units, and/or 2) an addition of significant improvements and services to enhance livability for the tenants. These may qualify for standard Tax Credit Applicable Percentages (as described in **Section II.N**).

However, in a proposed sale transaction when there is an Identity of Interest between the seller and Principal(s), the Project will be eligible for reduced Developer Fees. When there is such an Identity of Interest, the Developer Fee percentages (described in **Section IV.D.2.b**) will be calculated on Total Development Cost less Acquisition Costs.

## **I. Property Standards**

All newly constructed properties must meet applicable state and local building codes, the Uniform Building Code, the National Standard Plumbing Code, and the National Electrical Code Handbook. Rehabilitation Projects should meet these codes when reasonable. Projects containing facilities that are available to the general public must meet the Americans with Disabilities Act (ADA) requirements, and Projects combining housing Tax Credits with another federal source of funding must comply with HUD Section 504 requirements. Federal fair housing accessibility requirements promulgated through the Fair Housing Accessibility Guidelines {56 FR 9472, 3/6/91} must also be adhered to. Finally, conformance to *MFA Mandatory Design Standards for Multifamily Rental Housing*, in the Application Package, is mandatory for all

Projects including Tax Exempt Bond Financed Projects. All of these requirements, as applicable, are to be verified through certifications by Project architects.

#### IV. ALLOCATION PROCEDURE AND APPLICATION REQUIREMENTS

##### A. Allocation Rounds

1. Submission Date(s)

MFA intends to conduct one Application round each calendar year. However, MFA reserves the right to conduct additional rounds or to award Tax Credits outside of the rounds. **Initial Applications will be accepted between the hours of 8:00 AM and 5:00 PM Mountain Standard Time on business days from January 15, 2012, through January 31, 2012. Initial Applications must be received by MFA at the address identified in Section IV.A.2 of this QAP no later than the Application Deadline. Late Applications will not be accepted.** If the Projects submitted do not use all of the available Tax Credits, or if additional Tax Credits become available later in the year, MFA will consider a second round or make allocations to lower scored, Eligible Projects at MFA's sole discretion.

Initial Applications for Tax Exempt Bond Financed Projects are accepted on a continuous basis, subject to the timing requirements outlined in **Section VI.B.**

2. Place of Submission:

Initial Applications may be delivered by U.S. mail, by courier service, or by hand to the following address:

New Mexico Mortgage Finance Authority  
344 Fourth Street SW  
Albuquerque NM 87102  
(505) 843-6880  
ATTN: Housing Tax Credit Program Manager

3. Form of Submission

Initial Applications may not be delivered by facsimile transmission. Only one complete, original hard copy is needed. The required forms will be provided electronically and may be downloaded from MFA's web site at <http://www.housingnm.org/developer/>. All Applications should be marked "HTC APPLICATION" in readily visible print. On receipt, MFA will date and time stamp the Application.

4. Content and Format: Complete Applications

Complete Applications will meet the following standards when they are initially submitted and without benefit of any subsequent submissions, including any such submissions received during the deficiency correction period:



- a) All Application documents that require signatures must be included and bear the original signatures in blue ink from all General Partners.
- b) Complete Initial Applications must include the Application Form, the HTC Application Attachments Checklist found in the Application Package, and all mandatory items listed in Section I of the HTC Application Attachments Checklist.
- c) All architectural and design materials submitted must provide enough detail to clearly demonstrate that they are consistent with the MFA Mandatory Design Standards.
- d) Complete Initial Applications must include Application fees as outlined in **Section IV.B** below.
- e) Complete Initial Applications must be bound and submitted in a three ring binder, with all attachments provided in the order listed. Attachments must be separated by cover sheets provided in the Initial Application Package and by tabs numbered as in the Attachments Checklist.
- f) No additional materials may be submitted after the Initial Application is date and time stamped by MFA, unless requested by MFA in accordance with the provisions of this QAP.
- g) Current year MFA forms must be used when provided, and no substitutions will be accepted.
- h) All information must be current, clearly legible and consistent with all other information provided in the Application.
- i) Forms must be completely filled out and executed as needed. All signatures are to be made in blue ink.
- j) Except as MFA may determine is necessary to evaluate the "Applicant Eligibility" threshold requirement in **Section II.C.5**, all Applications must be self-contained: MFA will not rely on any previously submitted information, written or verbal, to evaluate the Applications in a given round.

In determining whether the Application is complete, MFA will examine the package for both the availability of all required materials listed in Section I of the Application Attachments Checklist, and for the content of those materials. Failure to provide or complete any element of the Initial Application Package, including all items listed in Section I of the Application Attachments Checklist, may result in immediate rejection of the Application without complete review. When special materials required to obtain points under particular Project Selection Criteria are not provided, as listed in Section II of the Application Attachments Checklist, the related points will not be awarded.

In addition to the actions MFA may take pursuant to **Section IV.C.5** (Deficiency Correction Period), MFA may request additional information from any Applicant as deemed necessary for a fair and accurate evaluation of an Application. MFA may also choose to accept inconsistent information, and if so, may select any

of the inconsistent pieces of information over any other piece, in its reasonable judgment. However, MFA is under no obligation to seek further information or clarification, or to accept inconsistent responses.

**The Applicant will bear sole and full responsibility for submitting its Application in accordance with the requirements of the Internal Revenue Code and the Qualified Allocation Plan and will be deemed to have full knowledge of such requirements regardless of whether or not a member of MFA's staff responds to a request for assistance from the Applicant or otherwise provides the Applicant assistance with respect to all or a portion of the Application.**

5. Contact for Assistance

Please submit questions concerning the Application requirements through MFA's web site at [www.housingnm.org/low-income-housing-tax-credits-lihtc-allocations](http://www.housingnm.org/low-income-housing-tax-credits-lihtc-allocations), or contact:

Dan Foster  
Housing Tax Credit Program Manager  
(505) 767-2273  
[dfoster@housingnm.org](mailto:dfoster@housingnm.org)

**B. MFA Fees and Direct Costs**

All fees are non-refundable. They are due at the times and in the amounts shown below and they apply to both allocated and non-allocated Credits. Fees may be delivered in the form of personal or business checks, money orders or cashier's checks. Any check returned for insufficient funds will result in rejection of the Application, cancellation of the Reservation, or other actions available to MFA. Exceptions may be granted at MFA's sole discretion, and fees may be adjusted annually, as determined by MFA in its sole discretion.

*Application Fee (For Initial and Supplemental Requests)*

- Due at submission of HTC Initial Application
- \$500 for nonprofit or government entity Applicant; \$1,000 for a for-profit Applicant

*Market Study Deposit*

- Due at submission of HTC Initial Application
- \$5,500 deposit to cover cost of commissioned market study. If the market study costs more than the deposit, the difference will be billed. If the cost is less, the difference will be refunded.

*Processing Fee*

Projects receiving a Reservation of 9 Percent Tax Credits

- Due at Execution of Reservation Contract
- 7.5 percent of the MFA-determined HTC Allocation amount

Projects Financed with Tax Exempt Bonds

- Due Prior to Delivery of Letter of Determination
- 3.5 percent of the MFA-determined annual Tax Credit amount

- If the actual Tax Credit amount is greater at Final Allocation than when the Letter of Determination was delivered, the Applicant must pay an additional Processing Fee of 3.5 percent of the increase in the Tax Credit amount.

#### *Monitoring and Compliance Fees*

Due annually by January 31<sup>st</sup> for each year of the Extended Use Period. The monitoring and compliance fee for the entire 15-year Compliance Period may be paid in a lump sum at time of Final Allocation Application

- 2012 - \$45.00/Set Aside Unit/Per Year

#### *Appeal Fee*

- Due at submission of appeal.
- No appeal will be entertained in advance of appeal fee payment.
- \$5,000.00

*Subsidy Layering Review, Request for Increase in Tax Credits, Request for Changes to a Project, and/or Requests for Document Corrections (when not a result of an administrative error by MFA, including when changes or alternate forms are proposed by an Applicant in lieu of MFA standard forms)*

- Due at submission of review/correction request.
- \$500.00

#### *Extension Fee*

- Due at submission of request to extend deadline of any documents required under Subsequent Project Requirements and/or with submission of late or missing documents required under Subsequent Project Requirements.
- \$500.00 per week

#### *Direct Cost of Market Study*

- Any amount in excess of the \$5,500 deposit is due within ten days of billing by MFA. The cost of the study will be determined by a competitive bid process.

### **C. Staff Analysis and Application Processing**

1. **Threshold Review.** Following the Application Deadline, MFA will undertake a Threshold Review to determine whether the Initial Application meets the Minimum Project Threshold Requirements shown in **Section III.C**. If the Initial Application fails the Threshold Review because it does not achieve the Minimum Score, it may be retained until MFA determines whether all Tax Credits can be allocated to higher scoring Projects. If the Initial Application fails to meet Site Control, Zoning, and Fee requirements, the Applicant will be given an opportunity to correct the deficiency in accordance with **Section IV.C.5** and if not corrected in the time period allowed, the Application will be rejected. The Applicant Eligibility and Financial Feasibility threshold requirements are not correctable, and Applications that fail to meet these requirements will be rejected.
2. **Cost Limits.** Total Development Costs for various types of Projects may not exceed the following:

- a) New Construction and Adaptive Reuse Projects. The Total Development Cost per Unit must not exceed 130 percent of the weighted average Total Development Cost per Unit for all New Construction and Adaptive Reuse Projects submitted in the same round.
- b) Acquisition/Rehabilitation Projects. The Total Development Cost must not exceed 100 percent of the weighted average Total Development Cost per Unit for all New Construction and Adaptive Reuse Projects submitted in the same round.
- c) Tax Exempt Bond Financed Projects. Total Development Cost must not exceed the limits established for new construction, Adaptive Reuse or Acquisition/Rehabilitation Projects, as appropriate, submitted in the most recent allocation round.
- d) Special Needs and Senior Housing Projects (see definition in Glossary). Developments having at least 10 percent of their gross square footage devoted to common areas for social and recreational use may not exceed 150 percent of the weighted average Total Development Cost per Unit for New Construction and Adaptive Reuse Projects, or 115 percent of the limit established for Acquisition/Rehabilitation Projects (as defined above.)
- e) Rehabilitation, New Construction, and Adaptive Reuse Projects. For Projects that involve rehabilitation of existing units, the construction of new units, and/or the Adaptive Reuse of an existing building, the costs related to each will be evaluated separately for comparison to the limits established in **Sections IV.C.2.a) and b)** above.

See the Glossary for the definition of the terms “Unit” and “Total Development Cost” as they apply to the cost limit calculations in this section. Costs that exceed these limits will be excluded when calculating the Tax Credit amount. These limits are binding through Final Allocations.

- 3. Local Notice. The Chief Executive Officer of the local jurisdiction where the Project is located will receive a Local Notice from MFA stating that an Application has been received. The Local Jurisdiction and the Chief Executive Officer are to be identified by the Applicant in the Application form. The jurisdiction may be a municipality, town, county or tribal government. Such notification will be issued for all Applications no more than ten (10) business days after MFA’s Application Deadline and the recipient will have thirty (30) days to respond. If MFA receives a response to this notice that MFA deems in its sole discretion to be negative with respect to the Project, the Application may be rejected with no further review regardless of its scoring or Threshold Review results. No response will be interpreted by MFA as approval of the Project by the local jurisdiction.
- 4. Site Visits. On completion of the Threshold Review, MFA will visit the proposed sites for the highest ranking Projects. Sites considered by MFA in its reasonable judgment to be inappropriate due to current or foreseeable adverse health, safety, welfare, or marketability risks may be cause for rejection of any Application, regardless of Threshold Review or scoring results.

5. Deficiency Correction Period. MFA may provide a Deficiency Correction Period immediately after the Threshold Review. This period is intended only to: (1) correct Threshold items that are identified as correctable in **Section III.C**, (2) address Complete Application items, (3) clarify ambiguous information, (4) complete forms, or (5) make minor corrections to the Application. If the Deficiency Correction Period is used, MFA will provide notice to Applicants having such shortcomings in their Applications via email and U.S. mail. Applicants will have five (5) business days after the date of the email notice to correct deficiencies. All materials must be submitted no later than 5:00 PM Mountain Standard Time on the fifth business day, following “Form of Submission” requirements shown in **Section A.3** above. Certain types of deficiencies cannot be corrected during the Deficiency Correction Period, including an Applicant’s failure to provide materials or to provide materials in the required form, as well as other deficiencies that MFA determines in its reasonable judgment may not be correctable. Furthermore, the Deficiency Correction Period may not be used by the Applicant to alter the original structure of the Project. This prohibition includes, but is not limited to, all changes listed in **Section IV.I**. If the information requested by MFA is not submitted within the timeframe provided, or is submitted but remains deficient, the Application may be rejected without any further review.
6. Local Jurisdiction Support. Allocations will be limited to Applications which include a local support letter, and which do not produce negative responses to MFA’s Local Notice described in **Section IV.C.3**. The local support letter to be delivered under this requirement must 1) refer to the specific Project location proposed in the Application, 2) identify the nature of the development as affordable housing, 3) have a date no more than ninety (90) days prior to the Application Deadline, 4) be signed by the Chief Executive Officer or the Chief Administrative Officer of the jurisdiction in which the site is located, and 5) be conditional only on standard zoning and local regulatory process approvals. Signatures by designees of these officials will not be accepted.
7. Supplemental Information Submission. If at any point during the processing of an Application, staff determines that supplementary information is needed to complete its review, the Applicant will be notified in writing and will have five (5) calendar days after the date of MFA’s notice to deliver a written response. This provision does not apply to incomplete Applications, which may be rejected during the Threshold Review or subject to the Deficiency Correction Period Process.
8. Design Review. All Projects will be subject to a design review by MFA to determine compliance with MFA Mandatory Design Standards. For rehabilitation and Adaptive Reuse Projects, a Capital Needs Assessment will be required subsequent to the Initial Application (prior to the issuance of the Letter of Determination for Tax Exempt Bond Finance Projects, and at Carryover Application for all other Projects) and this assessment may be reviewed by MFA for completeness and compliance with MFA Mandatory Design Standards. All plans and related design materials submitted as part of an Application must provide enough detail for MFA to determine compliance with the Mandatory Design Standards.

9. Design Competition. MFA may hold a design competition for each allocation round. Participation in the competition is optional, but Projects selected by a panel chosen by MFA will receive additional points in the scoring process. The additional materials required are shown in the Attachments Checklist, and the choice to participate must be noted in the Application. Winners of the Design Competition may be publicly announced by MFA, and participation in the Design Competition constitutes Applicant's concurrence to such publicity.
10. Market Study. For all Projects passing the Threshold Review in an allocation round and all Tax Exempt Bond Financed Projects, MFA may commission a standardized market study by outside professionals chosen pursuant to the requirements of MFA's procurement policy and having no financial interest in any of the Projects. A deposit of \$5,500 is required with each application. Any additional cost of these studies will be charged to the Applicant, and failure to pay any additional costs within 10 days of the billing will result in rejection of the Application. A refund of the difference between the deposit and the cost of the study will be made to applicants if the cost is less than the deposit.
11. Other Project Compliance. All Principals (See Glossary), related entities, and affiliates must be in compliance with respect to all other federally subsidized housing or HTC Projects that they own or operate throughout the country. Principals of Applicant shall submit a complete list of all Projects in which Principals have a financial interest. Each Principal shall also submit an affidavit certifying that Principal is not in default with respect to any material compliance matter for any such property or shall state what defaults exist and what corrective action Principal is taking. If MFA determines either through information provided by Principal or through MFA's investigation that any federally subsidized housing or HTC Projects in which Principal has a financial interest is in default of any material compliance matter, MFA may reject the Application. This determination of default as regards any Principal may concern, but is not limited to, progress made with previous tax credit reservations, including timely delivery of required documents and meeting all required deadlines; development compliance; and payment of monitoring fees.
12. Development Team Review. Staff will review the qualifications of each development team member to determine capacity to perform in the role proposed. Considerations may include related experience, financial capacity, performance history, references, management and staff, among others. An Application may be rejected or substitutions requested if the Development Team or any member thereof is unsuitable as determined by MFA.

#### **D. Feasibility Analysis and Financial Considerations**

All Projects successfully completing the Threshold Review and ranking among the highest scoring Projects for which Annual Credit Ceiling is available in a given year, as well as Tax Exempt Bond Financed Projects which pass Threshold Review, will undergo financial analysis by MFA staff to determine whether the Projects are financially feasible. Such determinations will rely on both the financial data submitted by the Applicant and on staff judgments with respect to feasibility matters. Projects that do not appear financially feasible in MFA's judgment may be rejected without further processing. Although Financing Commitments will not be required at Initial Application, all sources must be clearly identified and their terms specified. Financing

Commitments will be required as a “Subsequent Requirement” after the initial Reservations are made.

Initial Applications for 9 Percent Tax Credits must include a letter of interest from a tax credit syndicator or direct investor stating the terms and pricing for the purchase of Tax Credits allocated to the Project. In addition all Projects will be underwritten using the more conservative of the standards indicated in this QAP, those published in an underwriting supplement to be published by MFA at least one month prior to the Application Deadline, the terms listed in any Financing Commitment or letter of interest, or, in cases where one acceptable to MFA has been completed, the Project’s market study. Project 15-year proforma cash flow projections must include an operating expense inflation factor of at least 3 percent, a rental income inflation factor of no more than 2 percent, and a vacancy factor of at least 7 percent for all occupancy related income.

1. Development Costs. Development Costs will be evaluated against industry cost standards and the average costs of competing Projects. In the case of rehabilitation Projects and Adaptive Reuse Projects an appraisal and Capital Needs Assessment of the existing Project will be required (prior to the issuance of the Letter of Determination for Tax Exempt Bond Finance Projects, and at the time of the Carryover Application for all other Projects), and used by MFA to evaluate Development Costs. The acquisition cost on which Tax Credits are calculated, for rehabilitation Projects, will be held to the lesser of sale price or appraised value. Applicants submitting costs exceeding these cost standards or submitting costs substantially below costs typical in the marketplace must provide information acceptable to MFA, justifying such costs. Projects with excessive costs will be subject to adjustments to the amount of Credits requested.

2. Developer and Other Fees. Fees are limited to the following standards:

a) Builder’s Profit, Overhead and General Requirements

Builder’s profit may not exceed 6 percent of Construction Costs, builder’s overhead may not exceed 2 percent of Construction Costs, and general requirements may not exceed 6 percent of Construction Costs. For purposes of these calculations, see definition of Construction Costs in the Glossary.

b) Developer’s Fee

This fee may not exceed 15 percent of Total Development Cost for Projects of 30 or fewer Units; 14 percent for Projects of 31 to 60 Units; 13 percent for Projects of 61 to 74 Units; 12 percent for Projects of 75 to 99 Units; and 10 percent for Projects of 100 or more Units. This fee includes all consulting costs. Any reserve, excluding the MFA required Project Reserve (see below), may be considered as part of the developer fee, if it is not held for the benefit of the Project for a minimum of 10 years. Where an Identity of Interest exists between the Developer and the builder, the above-mentioned fee may be further reduced if MFA, in its discretion, determines the fee to be excessive. For purposes of these calculations, Total Development Cost is adjusted to exclude Developer’s fees, consultant fees, and all reserves. If an Identity of Interest exists between a seller and a

Principal, the above-mentioned fees may be further reduced at MFA's discretion, and as described in **Section III.H** for Projects previously subsidized with Credits.

Exceptions to these rules governing Developer and other fees may be granted in MFA's sole discretion. Although the same standards will apply for Projects subject to Subsidy Layering Review, such Projects will require Board approval for Subsidy Layering purposes whenever they exceed the federally defined "Ceiling Standard" limits, and only five such excess fee amounts can be approved in any given year.

Increases in Project costs subsequent to the Application Deadline may not result in an increase in any of the fees calculated above for Tax Credit Allocation purposes. These fees may be held to the same dollar amount as approved by MFA during the initial underwriting of the Project. Any changes in the amount of fees through the course of development will require prior approval of MFA and must be justified by a change in scope of the Project. Any change in the scope of the Project that results in increased fees for which an exception is being requested constitutes a change to that Project.

3. Reserves (Escrows) Included In Development Costs. The development budget must include an operating reserve equal to a minimum of four months of projected operating expenses, debt service payments, and replacement reserve payments. Larger operating reserves may be required for Projects which show a declining debt coverage ratio in 15-year cash flow projections, have rental assistance contracts included in their income projections, or have other factors that MFA determines in its discretion to warrant larger reserves. Replacement reserve levels must be shown in the operating budget at the minimum of \$250 per unit per year for Senior Housing (new construction Projects only) and \$300 per unit per year for all other new construction and rehabilitation and Adaptive Reuse Projects. Project reserves of any kind in the development budget will not be included in MFA's calculation of Eligible Basis for Tax Credit purposes.
4. Operating Expenses and Replacement Reserves. MFA will review the projected operating expenses, replacement reserves and loan terms and may, in its determination of economic feasibility, make adjustments based upon industry standards, its own underwriting parameters, the Capital Needs Assessment, or facts obtained from other appropriate sources. Applicants are urged to carefully review operating cost proformas. Applicants must include real estate taxes in their operating expenses, unless evidence of a perpetual real estate tax waiver (throughout the term of permanent financing) is submitted with the Application.
5. Debt Service Coverage and Subordinate Debt. Applicants who are proposing subordinate debt must include the terms of the loan, and proformas must reflect the ability to repay the senior and subordinate debt with an aggregate minimum debt service ratio of 1.15. Projects that have debt service ratios higher than 1.35 may receive smaller Tax Credit awards, smaller subsidized loans, or higher loan rates than requested in the application. MFA will consider total annual cash flow as well as debt service ratio when making this determination. MFA will generally not consider the repayment of deferred



developer fee when underwriting for feasibility but may consider a Project infeasible if the deferred fee represents a financial burden to the Project.

6. Unit Distributions. For Projects with more than one income and rent tier, all unit types must be distributed proportionately among each of the multiple tiers. That is, if 30 percent of the units are to be Set Aside for tenants earning no more than 50 percent of median income, then the units used for this income group must include 30 percent of all one-bedroom units, 30 percent of all two-bedroom units, etc. This also applies to market rate units in the Project. This is intended to prevent allocation of all of the high rent units to the higher income groups, thereby maximizing income while potentially violating the intent of fair housing law.

Although the Federal Tax Credit regulation allows tenant rents plus federal rent subsidies in excess of the Tax Credit Ceiling Rents as long as the tenant pays no more than 30 percent of household income toward rent, the practice is prohibited by MFA except in Projects with project-based subsidies where the program that governs the project-based subsidies allows rents above Tax Credit Ceiling Rents. More detail regarding rental assistance payments and qualifying tenants can be found in the MFA Tax Credit Monitoring and Compliance Plan, which is issued under a separate cover and summarized in **Section X**.

#### **E. Credit Calculation Method**

1. Tax Credit Calculations. During each evaluation, MFA will determine the amount of Tax Credits to be reserved, committed, or allocated by considering the following components of each Project:
  - a) Development Costs;
  - b) Funding sources available to the Project for construction and permanent financing:
    - (1) First mortgage loans;
    - (2) Grants;
    - (3) Tax Credit proceeds;
    - (4) Owner equity; and
    - (5) Subordinate debt.
  - c) Projected operating income and expenses, cash flow and tax benefits;
  - d) Maximum Tax Credit eligibility;
  - e) Debt service coverage ratio compared to lender requirements or commercial lending practices, as applicable;
  - f) Project reserves;
  - g) Developer fees and builder overhead and profit; and
  - h) Per Unit cost limits (**Section IV.C.2**).
2. Amount of Tax Credits for Reservation or Carryover Allocation. To estimate the amount of the Tax Credit Allocation for a Project at Initial Application or at Carryover, MFA will use the lesser of 9 Percent (4 Percent if appropriate) of the Qualified Basis, as adjusted by MFA, or the amount needed to fill the financing gap. The procedure to determine the amount to fill the financing gap is outlined in 3 below.

3. Tax Credit Proceeds. At the time of Initial Application, MFA will use the more conservative of the equity-pricing factor stated in the letter of interest from the tax credit syndicator or the equity-pricing factor listed in the underwriting supplement published by MFA for the current allocation round. The prior twelve months' average of Applicable Credit Percentage will be used along with the equity-pricing factor to estimate the Tax Credit Proceeds. At the time of the Carryover Allocation, the Project Owner must deliver a written letter of intent from a syndicator or equity provider that clearly states the equity-pricing factor. That equity-pricing factor along with the prior twelve months average Applicable Credit Percentage will be used to estimate the Tax Credit proceeds for the Carryover Allocation. The equity-pricing factor to be used at Final Allocation will be the actual equity-pricing factor contained in the Project's syndication agreement, and the Applicable Credit Percentage will have been determined at either Carryover (or in the case of Tax Exempt Bond Financed Projects, the month the tax-exempt obligations are issued) or Placed in Service date.
4. Limitation on Tax Credit Awards to a single Project or Principal. Subject to the exceptions contained herein, no Project shall receive a Tax Credit Reservation in excess of \$1,110,000 and no single Principal or related entities will receive Tax Credit Reservations in excess of \$1,780,000 unless a waiver is deemed necessary by the Board to prevent a partial allocation that would make development of the Project (as funded) infeasible. Projects to be located on adjacent sites proposed by the same Applicant in the same allocation round will be treated as a single Project for purposes of this calculation. At MFA's discretion, exceptions to these limits may be made to ensure maximum distribution and/or effective utilization of the Tax Credits available in a given round.
5. Other Factors Limiting the Credit Reservation. The amount of Credit reserved, committed and finally allocated to a Project will be the lesser of:
  - a) The maximum Tax Credit eligibility of the Project;

Maximum Tax Credit eligibility is the maximum amount of Tax Credit justified by a Project's Qualified Basis, as adjusted by MFA, and taking into consideration any increase in Eligible Basis approved by MFA and the Applicable Credit Percentage as described in **Section IV.E. 2** above, or the Applicable Credit Percentage that was locked-in at Carryover (or in the case of Tax Exempt Bond Finance Projects, the month the tax-exempt obligations are issued) or was in effect when the building was Placed in Service; or

b) The amount requested in the Application; or

c) The amount necessary to fill the funding gap.

The funding gap is the difference between Total Development Cost (exclusive of syndication related costs) and all available funding sources, including HOME funds awarded in conjunction with the HTC allocations. The terms of all proposed sources must be within reasonable industry norms and financing for the Project has to be maximized when evaluating

rate, term, debt service coverage, loan-to-value, etc. The maximum Tax Credit amount allowed based on the funding gap will be determined by the MFA limits stated in **Section IV.E.3** above.

6. **Increased Basis for High Cost Areas.** Additional Eligible Basis (up to 30 percent of the initial calculation) will be considered for Projects located in HUD-designated “Difficult Development Areas” (DDA) and “Qualified Census Tracts” (QCT) if deemed necessary for viability of the Project by MFA. Applicants requesting such increases must deliver evidence in the Initial Application Package that the Project is located in a DDA or QCT. Projects that are not financed with Tax Exempt Bonds which score at least 5 points under Project Selection Criterion #3, *Projects that Benefit the Environment*, and have units set-aside for seniors, households with children, or residents with special needs may also be determined to be eligible for the basis increase (up to 30 percent) if deemed necessary for Project feasibility as determined by MFA. All areas of the state are eligible for this additional basis boost. The boost may not be applied to Projects financed by Tax Exempt Bonds unless located within a HUD-designated DDA or QCT.
7. **Adjustments to Credit Allocations.** When actual Tax Credit proceeds are confirmed and final financial feasibility analysis is performed during review of Final Allocation Packages, there may be adjustments to the Tax Credit Allocation. Adjustments may also be made at Carryover when the 12-month average Applicable Credit Percentage has changed, and, for rehabilitation Projects, when the Capital Needs Assessment and appraisal are provided. If actual Project costs or funding sources differ substantially from the projections submitted in the Application, MFA may reduce the final Tax Credit Allocation or the Project Owner may establish Project reserves to offset the deficit if in MFA’s reasonable judgment the Project has sufficient Tax Credit eligibility. The conditions for such reserve accounts will be determined by MFA on a case-by-case basis.
8. **Federally Required Subsequent Financial Analyses.** Federal regulations require that Housing Credit Agencies conduct evaluations at three specific times to determine the amount of applicable Tax Credits:
  - a) Upon receipt of an Application for Low Income Housing Tax Credit Reservation; and
  - b) Prior to granting a Tax Credit Allocation; and
  - c) No earlier than thirty (30) days prior to awarding the Tax Credit Certification, IRS Form 8609.

## **F. Final Processing and Awards**

1. **Additional Considerations.** Applications meeting the requirements of the Threshold Review and Feasibility Analysis described above will be further evaluated and processed by MFA. In this step all remaining determinations will be made with respect to development team capability, design, readiness to proceed, and other factors in MFA’s reasonable judgment to evaluate the Project’s Application. Projects must meet MFA Mandatory Design Standards for Multifamily Housing available from MFA on the website. Debarment from HUD or other federal housing programs, bankruptcy, criminal indictments or

convictions, poor performance on prior MFA or federally-financed Projects (for example, late payments within the 18 month period prior to the Application deadline, misuse of reserves and/or other Project funds, default, fair housing violations, non-compliance, or failure to meet development deadlines or documentation requirements) on the part of any proposed development team member or Project Owner or other Principal may result in rejection of an Application by MFA. In addition, MFA will consider a Principal's progress made with previous tax credit reservations, including timeliness in delivering required documents and fees, and meeting all required deadlines. When scoring and ranking generates multiple Projects that would draw tenants from a single market area (as determined by the MFA market studies for the Projects in question), MFA may choose to eliminate the lower scoring or higher cost Project to avoid overbuilding and distribute Credits more evenly throughout the state. In addition MFA reserves the right to reject any Project, which MFA in its reasonable judgment determines is inconsistent with prudent business practices or with the intent and purpose of the QAP. MFA may also make awards conditional on specific modifications to the Project that MFA in its sound judgment considers necessary to enhance the feasibility or safety of the Project.

2. Selection of Projects for Awards. Projects meeting the Threshold Review requirements listed in **Section III.C** will be ranked and ordered according to scoring procedures established in **Section III.E**, with consideration to the Allocation Set Asides as described in **Section III.D**. Staff will then prepare a summary of the Projects to be recommended for allocations. Eligible and ineligible Projects will be distinguished for purposes of subsequent awards if additional Credits become available. Tax Exempt Bond Financed Projects will be evaluated in a similar process but will not compete against other Projects for an allocation of Tax Credits.
3. Allocation Review Committee (ARC). The Chairman of the Board of MFA will appoint an Allocation Review Committee. The functions of this committee will be to 1) review the Project rating and ranking results in the staff's proposed award summary, 2) determine whether or not the proposed awards have been made consistent with the criteria and other aspects of this Qualified Allocation Plan, 3) conduct the appeals process, and 4) make final award recommendations to the Board. MFA will notify Applicants of the preliminary status of their Projects with the use of a preliminary reservation letter, preliminary waitlist letter, or rejection letter, after the committee's approval of the staff's proposed awards and before the appeal process begins. Such letters will be scheduled to be issued approximately ninety (90) days after the Application Deadline. Except for appeals as described in **Section IV.F.4** below, the provisions of this section are not applicable to Tax Exempt Bond Financed Projects.
4. Appeal Process. Applicants wishing to appeal a determination made by MFA with respect to their Application may do so in writing delivered to MFA no later than 5:00 PM local time on the 10th day after the date of the preliminary reservation letter, preliminary waitlist letter, or rejection letter (or draft Letter of Determination, in the case of Tax Exempt Bond Financed Projects). Appeal requests may only be filed with regard to Applications that have been made to meet all of the requirements in "Content and Format" in **Section IV.A.4**, must

be specific as to the decision being appealed, and they must be accompanied by a fee payment in the amount shown in **Section IV.B**. Appeals for a given Project can only be filed by the General Partner or proposed General Partner and only one appeal may be filed with regard to an Application. MFA's initial determination with respect to the Application will stand unless the Applicant can prove or justify, solely on the basis of materials submitted in the Initial Application, why the decision should be changed. The ARC will review the appeal and take whatever action it deems appropriate. The decision by the ARC or the Board, if the matter is referred to the Board, will be final; no further appeals will be entertained. Appeals may result in re-ranking of the Projects, in rejection of previously approved Projects and/or in approval of previously rejected Projects. Once the appeals process is completed, and the resulting recommendations are approved by MFA's Board of Directors, final Reservation Letters (or draft Letter of Determination in the case of Tax Exempt Bond Financed Projects) will be issued.

5. **Board of Directors.** The Board will make final awards for each competitive allocation round, although for logistical reasons the preliminary reservation letters, preliminary waitlist letter and rejection letters may be issued prior to the appeals process and the Board's final decisions. Final reservation letters will be issued following the Board decision. The Board will approve Projects considered to be Eligible Projects, and these may include Projects for which Tax Credit Allocations are not immediately available. If any Projects receiving Reservations fail to meet subsequent requirements, an allocation of Tax Credits may be revoked and then awarded by MFA to the next highest scoring Eligible Project(s) on the waiting list. Any conflicts of interest of Board members are to be disclosed and Board members having such conflicts will abstain from votes approving or disapproving Tax Credit Projects in accordance with MFA's policies, procedures, rules, and regulations regarding conflicts of interest. The provisions of this section relating to Board actions following competitive allocation rounds are not applicable to Tax Exempt Bond Financed Projects.
6. **Prohibited Activities.** Applicants or their representatives shall not communicate with the Board of Directors, Design Review Committee members, or members of the ARC, regarding any Project under consideration, except when specifically permitted to present testimony at a Tax Credit related proceeding. A Project will be deemed ineligible for Credits if the Applicant or any person or entity acting on behalf of the Applicant, attempts to influence members of the Board of Directors, Design Review Committee or ARC during any portion of the Tax Credit award process, or does not follow the prescribed Application and Appeals process.

## G. Notification of Approval and Subsequent Project Requirements

Note: Only Sections 6.e) and 7-9 of this Section IV.G. apply to Tax Exempt Bond Financed Projects.

Successful Applicants will be notified of MFA's allocation decision in the form of a Reservation Letter.

**Affirmative actions after Reservation.** From the date of the Reservation, the applicant must meet each of the deadlines specified below for follow up activity in order to maintain its Reservation or Carryover Allocation. **MFA has no obligation to provide any further notice to Applicants of these requirements, and failure to submit any one or more of the items may cause the Reservation to be terminated or the Carryover Allocation to be cancelled.** Applicants must further agree to voluntarily return their Reservations or Tax Credit Allocations for reallocation to other Projects by MFA if any of the deadlines below are not met.

1. At Reservation

The Processing fee must be paid at this time, and any other conditions noted in the Reservation Letter, which may include evidence of continued site control, must be satisfied.

2. By November 15<sup>th</sup> (See Glossary for the definition of this date) of the allocation year

a) Threshold Requirement #2

Applicants whose Projects were not required to meet Threshold Requirement #2 (zoning) at the Application Deadline must submit evidence that all required zoning approvals for the proposed Project have been obtained; and

b) All Applicants must deliver:

(1) The contractor's resume, if it was not included in the Application;

(2) Financing Commitment(s) (See definition) for construction and permanent financing and any other rental or other subsidy, as applicable. Financing Commitments must be submitted from all funding and subsidy sources including construction and first mortgage lender(s), all secondary financing sources (i.e., grants, loans, in kind contributions), and a letter of intent from equity provider. Projects which include Federal Historic Tax Credits in the financing structure submit evidence from National Park Service that a complete Historic Certification – Part 2 for the Project has been received.

(3) For a Project to be financed by HUD, evidence that the Applicant has submitted a SAMA Application to HUD; and

(4) For a Project to be financed by MFA's 542(c) Risk Sharing Program, a HUD Firm Approval Letter.

- c) Carryover Allocation Requirements. If the Project will not be Placed In Service during the calendar year in which the reservation is made, the Applicant must request a Carryover Allocation, which allows for twenty-four (24) additional months to complete the Project. The complete Carryover Allocation Package must be delivered to MFA by November 15<sup>th</sup> of the year in which the Reservation was made. It must contain all items on the Carryover Allocation Requirements Checklist, which include, among other items, an updated Application Form, and recorded deed or lease to the site. The Applicant must own or hold long-term lease rights to the land or depreciable real property that is expected to be part of the Project. For Tribal Projects, this would include fully executed master and sub-lease agreements with evidence of filing with the Bureau of Indian Affairs. All Tax Credit fees must be paid to date. In addition, the Project architect must certify that the Project's plans and specifications meet MFA Mandatory Design Standards and contain all commitments made in the initial application regarding design and building.
  - d) Rehabilitation Projects. In addition, rehabilitation Projects must provide with the Carryover Application an appraisal and a Capital Needs Assessment of the existing Project.
3. March 1<sup>5</sup> of the year following Carryover
- If applicable, the MFA 542(c) Risk Sharing commitment is to be fully executed.
4. August 31<sup>2</sup> of the year following Carryover
- a) The Applicant must submit evidence that the basis in the Project exceeds 10 percent of the reasonably expected total basis in the Project, an Independent Auditor's Report and Cost Certification, and a Project Owner's attorney's opinion and any other documentation required by MFA ("10 Percent Test").
  - b) The Applicant must deliver evidence acceptable to MFA that construction of the Project has begun. This will include, at a minimum, building permits and site photographs.
  - c) The Applicant must deliver an executed partnership agreement.
  - d) If Federal Historic Tax Credits are included in the financing structure of the Project, evidence of National Park Service approval of the Project's Historic Certification – Part 2 must be submitted.
6. November 15<sup>th</sup> (see Glossary) of the Second Year following the initial allocation

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<sup>5</sup> If such date falls on a weekend or holiday, the deadline shall be the first working day following such date.

Final Allocation and Placed in Service Requirements. On or before November 15<sup>th</sup> of the second year following the initial allocation, a Placed in Service Application or a Final Allocation Application must be submitted for each Project. **Failure to meet this requirement will result in the loss of Tax Credits.** If the Project is to be Placed in Service but the Applicant is not yet ready to request Low Income Housing Tax Credit Allocation Certification (IRS Form 8609), the Placed in Service portion of the Final Allocation Package must still be submitted. A complete Final Allocation Package should be submitted no later than 120 days following the close of the Project's first taxable year of the Credit Period. Prior to the issuance of IRS Form 8609 certifications for the Project, the Project Owner must submit a complete Final Allocation Package, containing all items on the Final Allocation Checklist, which include, among other items, the following:

- a) **Cost Certification.** A Project Cost Certification prepared by a Certified Public Accountant must be delivered by the Project Owner prior to the issuance IRS Form 8609 certifications. This form and required documentation must be completed within sixty (60) days after the Project is Placed In Service. MFA is under no obligation to issue IRS Form 8609 certifications for the current year if the package is received after November 15<sup>th</sup>.
  - b) **Architects Certification.** A certification from the Project architect that the Project has been built in conformance with MFA Mandatory Design Standards, all applicable codes, and commitments made in the initial application regarding design and building.
  - c) **Project Owner's Attorney's Opinion.** A Project Owner's attorney opinion submitted on firm's letterhead with required text.
  - d) **Final Contractor's Application and Certificate for Payment, AIA Doc. G702, or equivalent.** A fully executed copy indicating all of the hard construction costs for the Project must be submitted with the Final Allocation Package.
  - e) **Land Use Restriction Agreement (LURA).** Prior to December 31 of the year in which the buildings are Placed in Service, the Project Owner must submit an executed and recorded LURA, satisfactory to MFA in form and content.
7. **Other Developer Responsibilities and Elections.** The developer has several options concerning the month in which the Applicable Credit Percentage is locked in, for both taxable Projects and Tax Exempt Bond Financed Projects. Additionally, the Project Owner must place the buildings in service and claim Tax Credits within certain time periods. MFA must be notified of these dates to ensure that all necessary administrative actions are taken in a timely manner. Otherwise Tax Credits may not be able to be claimed as desired.
  8. **LURA or Extended Use Agreement.** Section 42(h)(6) of the Code requires imposition of "an extended low-income housing commitment". MFA complies with this requirement with a LURA filed at the time of Placement in Service or Final Allocation. The LURA sets forth, as covenants running with the land for



a minimum of 30 years (or longer if the developer commits to a longer restriction period), the compliance fees, the low income Set Asides, the percentages of median income to be served, the special housing needs to be served (if any) and any other such commitment made in the Initial Application or that may be imposed through this QAP and Code Section 42. The LURA may not be terminated prior to its term for any reason other than foreclosure and the Project Owner will not have the right to require the MFA to present a “qualified contract” in accordance with Code Section 42(h)(6). The Developer will also have to deliver subordination agreements from all lenders, giving lien priority to the Tax Credit restrictions.

#### **H. Termination of Reservations or Rejection of Applications**

Any of the following events or actions on the part of the Applicant at any time subsequent to the Application Deadline may cause the Application to be rejected, or the Reservation to be terminated in MFA’s sole discretion:

1. Loss of site control or site change;
2. Submission of any false or fraudulent information in the Application or in other submissions;
3. Failure to meet the conditions in **Sections IV.B** and **IV.G** above or in the Reservation Letter;
4. Subsequent regulations issued by U.S. Treasury or the IRS pertaining to Section 42;
5. Failure to promptly notify MFA of any material or adverse changes in the facts of the original Application pursuant to **Section IV.I** below;
6. Instances of non-compliance continuing beyond the specified cure period on Applicant’s or Principals’ other Projects;
7. Any other change which would alter the original scoring of the Application, or which was not approved in advance by MFA;
8. Debarment from HUD or other Federal programs, bankruptcy, criminal indictments or convictions, poor performance on prior MFA or HUD financed Projects (including but not limited to late payments within the 18 month period prior to the Application Deadline, misuse of reserves and/or other Project funds, default, fair housing violations, non-compliance, failure to meet development deadlines, or documentation requirements) on the part of any development team member or owner or other Principal; or
9. Change in the Federal Set Aside Election or other Set Aside proposed in the Initial Application, subsequent to the Application Deadline.

#### **I. Notification to MFA of Changes to the Project**

It is the Applicant’s responsibility to notify MFA immediately, in writing, of any changes to the Project subsequent to submission of an Application, including the changes listed below and any

other material changes, by requesting MFA's approval of such changes. If any proposed change results in adjustments to the Project's original scoring, regardless of the Project's ranking, or if the proposed changes would have prevented the Project from achieving one or more of the original Minimum Project Threshold Requirements at Initial Application, MFA may reject the Application and/or revoke the Reservation or Tax Credit Allocation. Failure to notify MFA may result in the rejection of an Application or loss of a Reservation or Tax Credit Allocation. Approval of such changes will be made in MFA's sole discretion, and the change may result in a change in the Tax Credit amount or other action by MFA. A \$500 fee payment is required at the time of the request for approval of any changes pursuant to **Section IV.B.**

1. Site control or rights of way are lost;
2. Project costs change in excess of five percent (5 percent) of the Total Development Cost shown in the Initial Application;
3. Applicant obtains additional subsidies or financing other than those disclosed in the Application; loses subsidies or financing included in the Application; or the amount of any such financing or subsidy changes by 10 percent or more from the amount shown in the Application;
4. Development cost contributions made by a state, local or tribal government entity are reduced, increased, withdrawn or substituted with other types of contributions than the ones originally proposed in the Application;
5. The syndication payment timing and/or net proceeds change from those stated in the Application;
6. The parties (other than the Limited Partner(s)) involved in the ownership entity as represented in the Application change;
7. The unit and Project design, square footage, unit mix, number of units, or number of buildings changes. Substantial changes of this sort may result in a requirement to produce a new Market Study;
8. The general contractor or other member of the original development team changes; and/or
9. Any other factor deemed material by MFA in its reasonable judgment.

#### **J. Notice Provisions**

MFA will typically provide notice to Applicants through certified mail, courier service, facsimile, or email transmission. Consequently, correct street addresses, email addresses and fax numbers must be provided clearly in the Application Form. **Such notices will be provided only to the single contact person shown in the Application Form. MFA will not be responsible for any consequences that may result from the Applicant's inability to receive notice from MFA due to a change in contact person information that was not reported to MFA.**

## **K. Applications are Public Records**

All information contained in Applications for Tax Credits are public records subject to inspection under state and federal open records laws. In addition, MFA may share information and details obtained from Applications with other public agencies.

## **L. Attorney Fees**

In any litigation, arbitration, or other proceeding arising from, as a result of, or pursuant to this QAP and/or the resulting Tax Credit allocation round, selection process, or award determinations, the MFA, if it is the prevailing party, shall be entitled to be awarded its reasonable attorney fees, costs and expenses incurred from the opposing party, regardless of which party initiated the litigation, arbitration, or other proceeding.

## **V. COST CERTIFICATION**

### **A. Applicability of Cost Certification**

Certification by a Certified Public Accountant is required to certify compliance with the 10 Percent Test as defined in **Section IV.G.4.a**. Prior to the issuance of a Low Income Housing Tax Credit Allocation Certification (IRS form 8609), MFA will require a Cost Certification, prepared by an independent Certified Public Accountant, which meets the MFA requirements for all Projects as defined in this QAP.

### **B. Requirements**

The Cost Certification must meet the following requirements:

1. The accountant preparing the Cost Certification must certify that all costs are related to the Project's development and do not include costs for organization, syndication, professional or consultant fees related to syndication.
2. All fees, including the developer fee, which are paid to the Developer or to an entity with an Identity of Interest with the Developer, must be clearly identified. If all or a portion of the developer fee is deferred, copies of the promissory note or other substantiation of the validity of the fee must be reviewed.
3. If the land is purchased from a related party, the Project Owner must submit an appraisal to substantiate fair market value.
4. Legal fees related to land acquisition must be clearly identified.
5. Interest expense related to land must be clearly identified.
6. The sources of all funding including loans, Tax Credit proceeds, developer equity and all other sources must be certified.

### **C. Authority to Determine Maximum Qualified Basis**

MFA may challenge the costs provided in the Cost Certification, impose the limitations set forth

in this QAP and at its sole discretion, determine the maximum Qualified Basis against which Credit is allocated.

## **VI. AUXILIARY FUNCTIONS**

As HCA, MFA conducts certain Tax Credit related functions which are separate from the regular allocation and monitoring process, including the following;

### **A. Subsidy Layering Review**

Pursuant to Section 911 of the Housing and Community Development Act of 1992, HUD is required to determine that Projects receiving Tax Credits and federal, state, or local assistance do not obtain subsidies in excess of that which is necessary to produce affordable housing. This responsibility has been delegated to MFA, and MFA's review process will follow the HUD's Administrative Guidelines issued December 15, 1994. An essential component of this review is an analysis of the reasonableness of fees paid to sponsors, developers, and builders. Consequently for purposes of Section 911 reviews, fees used to calculate Tax Credit amounts will not exceed the limits stated in **Section IV.D.2** "Developer and Other Fees", above. Some of these maximum fees allowed by MFA exceed the "Safe Harbor" fee amounts, which apply to Section 911 reviews. Special factors that justify these published higher fees (which do exceed "ceiling" amounts) include, but are not limited to: the relatively high cost of construction and land within the State of New Mexico; the lack of state- or locally-funded soft second financing or operating subsidies; and the general inability of local governments to donate land and/or other services to worthy Projects due to the state's "Anti-Donation" clause.

MFA reserves the right to include or consider other criteria to justify exceeding Safe Harbor limits for fees associated with Projects requiring Subsidy Layering Reviews. MFA also reserves the right to limit Projects to Safe Harbor limitations for any reason that it in its discretion deems reasonable. This paragraph applies to all Projects that require Subsidy Layering Reviews.

Requests for Subsidy Layering Reviews may be made at any time by a developer/sponsor, and must include a \$500 review fee along with the full HTC Application Form as well as HUD Form 2880 (as applicable), among other materials. Detailed Application Packages may be obtained from MFA. Responses will be provided by MFA no later than thirty (30) business days subsequent to receipt of the Subsidy Layering Review request by MFA, unless the request is submitted less than ninety (90) days after an allocation round deadline.

### **B. Processing of Tax Exempt Bond Financed Project Applications**

**IRS Code Section 42** allows Tax Exempt Bond Financed Projects to receive an allocation of 4 Percent Tax Credits provided they meet the minimum requirements for an allocation in the QAP. MFA's determination that a Project satisfies the requirements of the QAP will be based on the Project's meeting all Minimum Project Threshold Requirements, Staff Analysis, Application Processing, Feasibility Analysis, and Property Standards described in the QAP in effect when the determination is made. The Tax Credits allocated to Tax Exempt Bond Financed Projects are not subject to the Annual Credit Ceiling and, consequently, are not required to compete in the competitive allocation process described in the QAP. In addition to meeting the minimum score stated in **Section III.E**, Tax Exempt Bond Financed Projects are required to score points for serving targeted populations (Project Selection Criteria #11,#12 or #13) and for *Projects that Benefit the Environment* (Project Selection Criteria #3). MFA staff will also undertake an analysis to determine the Credit amount necessary for financial feasibility.

Requests for these determinations must be made by the Project's Developer/Sponsor no more than 60 days after an award of bond volume cap is made by the State Board of Finance, and no less than 60 days prior to the anticipated bond issuance date. Requests must include an Application Fee as listed in **Section IV.B**, a \$5,500 deposit toward the cost of a market study to be ordered by MFA, and the Development Project Application Form with needed schedules, the Attachments Checklist, and any other material specified by MFA. For Tax Exempt Bond Financed Projects only, MFA may accept the Applicant's market study and waive the \$5,500 deposit if the Applicant's study meets all of the requirements of MFA's studies, in MFA's determination, and is dated no more than 180 days prior to the date on which a complete Application is received by MFA. Prior to the release of the Letter of Determination by MFA staff, a processing fee in the amount of three and one half percent (3.5 percent) of the approved annual Credit amount will be due. MFA's initial response to the Application for 4 Percent Tax Credits will be provided no later than sixty (60) business days subsequent to receipt of the complete Application by MFA.

Tax Exempt Bond Financed Projects may receive Credits on the full amount of their Eligible Basis only if at least 50 percent of the Project's "aggregate basis" is financed with Tax Exempt Bonds. Additionally, numerous bond-financing rules apply and many Tax Credit requirements are different for Tax Exempt Bond Financed Projects. MFA recommends that developers undertaking these Projects obtain advice from qualified tax professionals to ensure that such requirements are met.

To ensure that these Credits are used to leverage the greatest possible amount of resources, the following additional Minimum Project Threshold Requirements will apply:

1. Percent of Total Sources Limit. The private activity bond volume cap allocation by the State Board of Finance must not exceed seventy percent (70 percent) of the Project's total permanent sources of funds; and
2. Dollar Limit. The private activity bond volume cap allocation to the proposed Project must not exceed \$8 million; however, limited waivers will be considered when adequate availability of private activity bond volume cap exists, the Applicant has demonstrated the need for additional tax exempt debt for Project feasibility, and is warranted based on Project size; and
3. Costs of Issuance Limit. Costs of issuance may not exceed five percent (5 percent) of the bond issue for Projects with total financing sources of \$2,000,000 or more, and seven percent (7 percent) for Projects with total financing sources of less than \$2,000,000.

For all Tax Exempt Bond Financed Projects, the developer must provide notice to MFA that units have been Placed In Service and request the issuance of a LURA from MFA within one month of the date on which the last unit of the Project was Placed In Service.

## **VII. AMENDMENTS TO THE ALLOCATION PLAN AND WAIVERS OF PLAN PROVISIONS**

MFA reserves the right to modify this QAP, including its compliance and monitoring provisions, as required by the promulgation or amendment of Section 42 of the Code, from time to time, or for other reasons as determined by MFA. MFA will, however, make available to the general public a written explanation of any allocation of Housing Tax Credits that is not made in accordance with established priorities and selection criteria of the agency.

## **VIII. FUTURE YEAR'S BINDING COMMITMENTS**

MFA staff shall have the authority to advance allocate up to \$300,000 in future year's Tax Credits to Board-approved Eligible Projects. However, advance allocations are made solely at MFA's discretion and no advance allocation may be made to any Project whose Tax Credit amount is not at least 50 percent funded by the current year's Annual Credit Ceiling. Future year commitments in excess of \$300,000 in any given year must be approved by the Board.

## **IX. DISASTER RELIEF ALLOCATIONS**

The Board will retain the authority to allocate current or future year's Tax Credits at any time and in any amount to Projects approved by the Board that are intended to alleviate housing shortages in communities affected by natural disasters.

## **X. MFA TAX CREDIT MONITORING AND COMPLIANCE PLAN SUMMARY**

### **A. General Requirements**

Federal Law requires MFA to develop and implement a compliance-monitoring program for completed Projects that have received Low Income Housing Tax Credits. A compliance plan contained in a manual has been developed and is available to the Project Owners at MFA's website, [www.housingnm.org](http://www.housingnm.org). Compliance monitoring is required for a minimum of 15 years after receipt of a Tax Credit allocation. Each owner has chosen to utilize Low Income Housing Tax Credits to take advantage of the tax benefits provided. In exchange for these tax benefits, certain requirements must be met so that the Project will benefit Low Income Tenants.

Project Owners will be required to submit a quarterly report to MFA for each of the first four calendar quarters after a Project is Placed In Service. At that time, if the Project is determined to be in compliance with Section 42 of the Code, reports may be filed on an annual basis. Project Owners will be required to submit to MFA a copy of all federal form 8609's, including schedule A, filed with the IRS in the first year that credits are claimed, and at any subsequent time as requested by MFA.

### **B. Inspections**

MFA will conduct annual on-site inspections of at least thirty-three percent (33 percent) of the Projects under the MFA's jurisdiction. Each inspection will include a review of the Project's low income certifications, supporting income documentation, leases, rent records (including utility documentation) and unit inspections in at least twenty percent (20 percent) of the Project's Set Aside Units and a physical inspection of the entire Project (interior and exterior). In mixed-use properties, one hundred percent (100 percent) of the units may be monitored. If Projects are determined to be in noncompliance, site visits may occur more often. MFA may conduct inspections upon thirty- (30) days' notice.

During the Extended Use Period, MFA reserves the right, under the provisions of Section 42 of the Code and the Project's Land Use Restriction Agreement, to perform an audit of any Project that has received an allocation of Tax Credits. This audit will include an on-site inspection of all buildings, and a review of all tenant records and certifications and other documents supporting criteria for which the Project Owner received points in the Application for an allocation of Credits.

### **C. Record Keeping and Record Retention**

Under the provisions of the Tax Credits, the Project Owner will be required to keep records as defined below for each building within a particular development. These records must be retained by the Project Owner for a minimum of six (6) years beyond the Project Owner's income tax filing date for that year. However, first-year Project records must be maintained for six (6) years beyond the tax filing date of the final year of the Project's eligibility for Tax Credits. The Project Owner must report to MFA, through MFA's *WCMS On-Line* system, annual audited property financial statements, as well as annual operating budgets. On a monthly basis, the Project Owner must provide tenant income certifications and property vacancy data using the *WCMS On-Line* system. In addition, the Project Owner must maintain records for each qualified Low Income building in the Project showing:

1. The total number of residential Units in the building (including the number of bedrooms and size in square feet of each residential Unit);
2. The percentage of residential Units in the building that are Set Aside Units;
3. The rent charged on each residential Unit in the building (including utility allowances);
4. The number of occupants in each residential Unit in the building;
5. The low income Unit vacancies in the building and documentation of when and to whom the "next available units" were rented;
6. The income certification of each Low Income Tenant;
7. The documentation to support each Low Income Tenant's income certification;
8. The Eligible Basis and Qualified Basis for each building;
9. The character and use of any nonresidential portion of the building included in the building's Eligible Basis (this includes separate facilities such as clubhouses or swimming pools whose Eligible Basis is allocated to each building);
10. Additional documentation and reporting as required by federal regulation; and
11. Additional documentation and reporting as required by MFA.

Failure to annually report is deemed as noncompliance and is reportable to the IRS.

### **D. Annual Certification Review**

It is the responsibility of the Project Owner to annually certify to MFA that the Project meets the requirements of Section 42 of the Code, whichever Set Aside is applicable to the Project. Failure to make this certification is deemed as noncompliance and is reportable to the IRS. This annual certification requires the Project Owner to certify that:

1. The Project meets the minimum requirements of the Set Aside Election;

2. There has been no change in the applicable fraction;
3. An annual Low Income certification has been received from each Low Income Tenant and documentation is available to support that certification;
4. Each Low Income Unit is rent restricted under Section 42 of the Code;
5. Subject to the income restrictions on the Project, all units in the Project are for use by the general public and are used on a non-transient basis;
6. There has been no finding of discrimination under the Fair Housing Act;
7. Each building within the Project is suitable for occupancy taking into account local health, safety, and building codes;
8. There has been no change in any building's Eligible Basis under Section 42 of the Internal Revenue Code, or if there has been a change, adequate explanation of the nature of the change has been given;
9. All tenant facilities included in the Eligible Basis of any building in the Project are provided on a comparable basis, without a separate fee, to all tenants in the building;
10. If a Low Income Unit in the Project becomes vacant during the year, reasonable attempts are made to rent that unit to tenants having a qualifying income, and while the unit is vacant, no units of comparable or smaller size are rented to tenants not having a qualifying income;
11. If the income of Low Income Tenants of units increases above one hundred forty percent (140 percent) of the applicable income limit allowed in Section 42 of the Code, the next available unit of comparable or smaller size will be leased to tenants having qualifying income.
12. Project Owner has not refused to lease a Unit to an applicant based exclusively on their status as a holder of a Section 8 voucher and the Project otherwise meets the provisions outlined in the extended low-income housing commitment;
13. If the Project Owner received its Tax Credit Allocation from the state ceiling Set Aside for Projects involving "qualified non-profit organizations", the non-profit entity materially participated in the operation of the development;
14. There has been no change in ownership or management of the Project;
15. The Project Owner has obtained accurate, allowable, current utility allowances for use in the calculation of rents for the Project, and acknowledges this to be an annual requirement for the duration of the Compliance Period;
16. For the proceeding 12 months the Project Owner has complied with Section 42(h)(6)(E)(ii)(I) of the Code that an existing tenant of a low-income unit has



not been evicted or had their tenancies terminated for anything other than good cause;

17. The Project Owner has complied with Section 42(h)(6)(E)(ii)(II) of the Code and not increased the gross rent above the maximum allowed under Section 42 with respect to any low-income unit.

As an exception, only for Rural Development (RD) Projects, MFA may accept a certification from RD that income is based upon annual tenant certifications/re-certifications, and that third party verification has been obtained. This certification will be in a form that is acceptable to both RD and MFA. Project Owners must furnish RD certifications annually, verifying that Projects are in compliance with Section 42 of the Code.

Tax Exempt Bond Financed Projects in which fifty percent (50 percent) or more of the aggregate basis is funded with the proceeds of bond financing may also be exempt, in MFA's discretion, from many of the certification and review provisions outlined within this document. The monitoring and certification guidelines for these Projects must be in a form that will satisfy those agencies issuing the bonds and MFA. The Project's monitoring procedures must, at a minimum, satisfy the compliance guidelines set forth by Section 42 of the Code.

Projects which are 100 percent affordable for tax credit purposes (i.e. all units are income and rent restricted at 60 percent of AMI or lower) and that have no other financing requiring annual income re-certifications may also be exempt pursuant to HR 3221. Project Owners must furnish MFA certifications annually, verifying that Projects are in compliance with Section 42 of the Code, as well as any other data that MFA may require per our monitoring and compliance guidelines.

The Project Owner of any exempted Project must certify to MFA on an annual basis that the Project is in compliance with the requirements for RD assistance, tax credits or the Tax Exempt Bond Financing guidelines, as applicable, and that all requirements of Section 42 are also being met. The Project Owner must inform MFA of any noncompliance or if the Project Owner is unable to make one or more of the required certifications.

## **E. Compliance Review**

MFA may elect to subcontract the monitoring procedure to other agents. In doing so, MFA would designate the subcontractor as the compliance-monitoring agent who would perform MFA's function.

In the event that any noncompliance with Section 42 is identified, a discrepancy letter entitled "Notice of Non-Compliance", detailing the noncompliance will be forwarded promptly to the Project Owner and the management company of the Project. The Project Owner must then respond in writing to MFA within thirty (30) days after receipt of the discrepancy letter. The response must address all discrepancies individually and must indicate the manner in which corrections will be made. The Project Owner will then have a cure period of thirty (30) days from the date of the discrepancy letter to correct the noncompliance detected and to provide MFA with any documentation or certification found to be missing during the annual management review. The cure period may be extended for periods of up to six (6) months. Extensions will be based on a determination by MFA that there is good cause for granting the extension.

MFA will notify the IRS within forty five (45) days after the expiration of the cure period of any non-compliance that has been detected. All corrections made by the Project Owner within the

cure period will be acknowledged within this notice. A copy of the Project Owner's response to the non-compliance will accompany the notice to the IRS.

If potential non-compliance is discovered during a compliance monitoring review, the Project Owner will be required to have his managing agent attend a compliance training session within two (2) months following the compliance monitoring review.

In order to offset the cost of monitoring procedures, an annual fee will be assessed for each year of the Extended Use Restriction Period. For 2012 the monitoring/compliance fee is \$45.00/Set Aside Unit/Per Year. The monitoring/compliance fee can be paid annually or in a lump sum to cover the initial 15 years of the Compliance Period. If paid in a lump sum, the amount will be determined in the year the development receives a final allocation. Payment of the lump sum amount will be required prior to issuance of Forms 8609 for each Project. The amount of the compliance monitoring fee for the remainder of the contractual Extended Use Period will be determined in year 15. Annual certifications and reports are due in the MFA office by January 31<sup>st</sup> of each year (for the past reporting year). Annual Compliance Reports are due by January 31<sup>st</sup> of each year, through MFA's *WCMS on-line* compliance system for the full term of the Extended Use Period. Annual audited property financial statements are due in the MFA office within 120 days of the property's fiscal year end. A notice will be mailed to each property Project Owner or a designated representative to remind them that the certification, reports and fees are due.

## XI. GLOSSARY

**“Adaptive Reuse Projects”** means Projects which will involve the conversion of an existing building, or buildings, which was not initially constructed for residential use to multifamily residential use.

**“Agency”** means New Mexico Mortgage Finance Authority (MFA).

**“Allocation Review Committee”** means a committee appointed by the Chairman of the MFA Board to review Projects’ rating and ranking results, to determine if the proposed allocations have been made consistent with the Project Selection Criteria and the Qualified Allocation Plan, and to hear appeals and decide their outcome.

**“Allocation Set Asides”** means the federally mandated Tax Credit allocation set aside requirement for Projects involving Qualified Nonprofit Organizations, as well as other Tax Credit Allocation Set Asides designated by MFA from time to time and incorporated into the Qualified Allocation Plan.

**“Annual Credit Ceiling”** means the total dollar volume of Tax Credits available for distribution by the Agency and authorized pursuant to Section 42 of the Code, in a given year. The Population-based Ceiling Amount is the amount of Tax Credits allocated to the state each year based on the state population.

**“Applicable Credit Percentage”** means the monthly interest rate issued by the Treasury Department and used to discount the present value of the 70 percent Tax Credit (approximately 9 percent yearly) and the 30 percent Tax Credit (approximately 4 percent yearly).

**“Applicable Fraction”** means the fraction, the numerator of which is the number of Low Income Units and the denominator of which is the total number of residential rental units less any unit exempted by Revenue Ruling 92-61; or the fraction, the numerator of which is the floor space of the Low Income Units and the denominator of which is the total floor space of the residential rental units less any unit exempted by Revenue Ruling 92-61, whichever is less. The Eligible Basis of a building is multiplied by the Applicable Fraction to determine the Qualified Basis of a building for Tax Credit purposes.

**“Applicant”** means any person or public entity; public or private, for-profit or not-for-profit, proposing to build or rehabilitate affordable rental housing with the use of the HTC program as defined in Section 42 of the Code.

**“Application”** means the completed forms, schedules, checklists, exhibits, computer disks and any additional documentation requested in the Initial Application Package, Carryover Allocation Package, and Final Allocation Package, as well as any supplemental materials requested by MFA. They must be submitted to MFA in accordance with the Qualified Allocation Plan in order to apply for the HTC Program.

**“Application Deadline”** means 5:00 p.m., Mountain Standard Time on the final day of the Application Period, except for Tax Exempt Bond Financed Projects, for which the submission date is specified in **Section VI.B**.

**“Application Package”** means the forms, schedules, checklists, exhibits, computer disks and instructions thereto obtained from the Agency, which shall be completed and submitted to the Agency in accordance with all regulations in order to apply for the HTC Program.

**“Application Period”** means the period during which Applications will be accepted by MFA as described in the Qualified Allocation Plan.

**“Area Gross Median Income”** means the median income level, issued annually by HUD for each metropolitan area and for each county outside a metropolitan are, which is adjusted for family size and used to calculate maximum income of eligible persons and rents for rent restricted units. As of July 30, 2008, any Project located in a rural area (as defined in Section 520 of the Housing Act of 1949) shall have income limitations measured by the greater of the HUD median income or the national non-metropolitan median income.

**“Average Gross Median Income”** or **“AGMI”** means, for a Project, the average area gross median income level(s) at which units are set aside, weighted by the number of units set aside at each income level. AGMI calculations are rounded to the nearest whole number. Market Rate units will be treated as if they were set aside at 100 percent of Area Gross Median Income.

An example of the calculation of AGMI in a 60-unit Project with no management employee units is as follows:

- 25 percent of the units are Set Aside at 50 percent of Area Gross Median Income; and
- 50 percent of the units are Set Aside at 60 percent of Area Gross Median Income; and
- 25 percent of the units are Market Rate.

The AGMI calculation would be as follows:

Percent of Total Units		Set Aside Income Level (As a % of Median)		Weighted Average
25%	X	50%	=	13%
50%	X	60%	=	30%
25%	X	100%	=	25%
<b>Total AGMI: AGMI for Scoring</b>				<b>68%</b>

Units to be provided for management or maintenance staff should not be included in the calculation.

**“Average Gross Median Rent”** or **“AGMR”** means, for a Project, the average area gross median rent level(s) at which units are Set Aside, weighted by the number of units Set Aside at each rent level. AGMR calculations are rounded to the nearest whole number at each stage of the calculation. Market Rate Units will be treated as if they were Set Aside at 100 percent of Area Gross Median Income.

An example of the calculation of AGMR in a 60-unit Project with no management employee units is as follows:

- 25 percent of the units are rent restricted at 50 percent of Area Gross Median Income; and
- 50 percent of the units are rent restricted at 60 percent of Area Gross Median Income; and
- 25 percent of the units are Market Rate (not rent restricted).

The AGMR calculation would be as follows:

Percent of Total Units		Rent Restricted Level (As a % of Median Income)		Weighted Average
25%	X	50%	=	13%
50%	X	60%	=	30%
25%	X	100%	=	25%

**Total AGMR: AGMR for Scoring** **68%**

Units to be provided for management or maintenance staff should not be included in the calculation.

**“Binding Commitment”** means an agreement between MFA and an Applicant by which MFA allocates and the Applicant accepts Tax Credits in accordance with Section 42(h)(1)(C) of the Code. MFA’s Carryover Allocation is its Binding Commitment.

**“Blighted Buildings”** means buildings that are in such severe disrepair to the extent that rehabilitation or Adaptive Reuse is no longer feasible.

**“Board of Directors”** or **“Board”** means the New Mexico Mortgage Finance Authority Board of Directors.

**“Brownfield”** means real property where the expansion, redevelopment, or reuse may be complicated by the presence of hazardous substance, pollutant, or contaminant including petroleum. Brownfield sites require a remediation plan based on a Phase II Environmental Site Assessment.

**“Capital Needs Assessment”** means a report prepared by a competent third party licensed architect or engineer that addresses the following:

1. Site visit and physical inspection of the interior and exterior of Units and structures.
2. Interview with available on-site property management and maintenance personnel regarding past and pending repairs/improvements and physical deficiencies.
3. Identification of the presence of any visible environmental hazards on the site.
4. Opinion as to the adequacy of the proposed budget for recommended improvements.
5. Identification of critical building systems or components that have reached or exceeded their expected useful lives.
6. Projection of recurring probable expenditures for significant systems and components over 15 years.
7. Determination of the appropriate upfront and ongoing replacement reserve deposits.

**“Carryover Allocation”** means the provision under Section 42 of the Code which allows a Project, under certain conditions allowed by Section 42 of the Code, to receive a Tax Credit allocation in a given calendar year and to be Placed In Service within a period of two calendar years after the calendar year in which the Applicant qualifies for a Carryover Allocation. The Carryover Allocation is MFA’s Binding Commitment for Tax Credits.

**“Childcare”** means daycare and/or youth programming for children. Daily Childcare means that service(s) are provided Monday through Friday for a minimum of 6 hours per day. Weekly Childcare means that service(s) will be provided a minimum of one day per week for a minimum of 6 hours.

**“Code”** means the Internal Revenue Code of 1986, as in effect on the date of the Qualified Allocation Plan, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued with respect thereto by the Treasury or the Internal Revenue Service of the United States.

**“Complete Application”** is an Initial Application meeting all of the requirements in “Content and Format” in **Section IV.A.4.**

**“Compliance Monitoring”** means the Agency’s procedure, as required by Section 42 of the Code and detailed in MFA’s Tax Credit Monitoring and Compliance Plan, of auditing and inspecting all completed Tax Credit Projects.

**“Compliance Period”** means, with respect to any building that is included in a Tax Credit Project, a minimum period of 15 years beginning on the first day of the first taxable year of the Tax Credit period with respect thereto in which a Tax Credit Project shall continue to maintain the Low Income Units as Low Income Units pursuant to the Applicant’s Set Aside Election in the Application, pursuant to Section 42 of the Code.

**“Concerted Community Revitalization Plan”** means a Metropolitan Redevelopment Plan as defined in NMSA 1978 Section 3-60A-4 prepared and enacted by a local, county or tribal government at least six months prior to the application deadline. For Projects located on sovereign tribal lands, “Concerted Community Revitalization Plan” means a written plan similar in content and affect to a Metropolitan Redevelopment Plan as defined in NMSA 1978 Section 3-60A-4, prepared and enacted by or tribal government at least six months prior to the application deadline, which identifies barriers to community vitality and promotes specific concerted revitalization activities within an area having distinct geographic boundaries.

**“Consolidated Plan”** means the plan prepared in accordance with HUD Regulations, 24 C.F.R. 91 (1994), which describes needs, resources, priorities and proposed activities to be undertaken with respect to certain HUD programs.

**“Construction Costs”** means, for purposes of calculating builder profit, overhead and general requirements, the on-site and construction costs in the construction contract, before profit, overhead, and general requirements, and at Initial Application and Carryover a reasonable construction contingency.

**“Contact Person”** means a person identified in the Initial Application with decision-making authority for the Applicant, Developer or the owner of the Project, with whom MFA will correspond concerning the Application and /or the Project.

**“Contractor’s Cost Certification”** A certification prepared by a Certified Public Accountant, indicating the method of certification, all identities of interest, and certification that all construction costs included are related to the Project.

**“Cost Certification”** A certification prepared by a Certified Public Accountant on forms provided by MFA, indicating the method of certification, all identities of interest, and certification that all Project costs included are related to the Project.

**“Credit Period”** means with respect to any building that is included in a Tax Credit Project, the period of 10 years beginning with (i) the taxable year in which the building is Placed In Service, or (ii) at the election of the Developer, the succeeding taxable year.

**“Developer”** means any individual, association, corporation, joint venture, or partnership, which possesses the requisite skill, experience, and credit worthiness to successfully produce affordable multifamily housing.

**“Development Costs”** means the sum total of all costs incurred in the development of a Project all of which shall be subject to approval, and are approved by MFA as reasonable and necessary. Such costs may include, but are not limited to:

1. The cost of acquiring real property and any building thereon, including payment for options, deposits, or contracts to purchase properties.
2. The cost of site preparation, and development.
3. Any expenses relating to the issuance of Tax Exempt Bonds or taxable bonds by the Agency, if any, related to the Project.
4. Fees in connection with the planning, execution, and financing of the Project, such as those of architects, engineers, attorneys, accountants, and the Agency.
5. The cost of studies, surveys, plans, permits, insurance, interest, financing, tax and assessment costs, and other operating and carrying costs incurred during construction, rehabilitation, or reconstruction of the Project.
6. The cost of the construction, rehabilitation, and equipping of the Project.
7. The cost of land improvements, such as landscaping and off-site improvements related to the Project, whether such costs are paid in cash, property, or services.
8. Expenses in connection with initial occupancy of the Project.
9. Allowances established by the Agency for working capital, contingency reserves, and reserves for any anticipated operating deficits during the first 2 years after completion of the Project.
10. The cost of such other items, including relocation cost, indemnity and surety bonds, premium on insurance, and fees and expenses of trustees, depositories, and paying agents for bonds.

**“Difficult Development Area”** means any area designated by the Secretary of Housing and Urban Development as having high construction, land, and utility costs relative to Area Gross Median Income in accordance with Section 42(d)(5) of the Code.

**“Eligible Application” or “Eligible Project”** means an Application or Project which has met all Minimum Project Threshold Requirements.

**“Eligible Basis”** means the sum of the eligible cost elements that are subject to depreciation, such as expenditures for new construction, rehabilitation and building acquisition.

**“Eligible Persons” or “Eligible Households”** means one or more natural persons or a family, irrespective of race, creed, national origin or sex, determined by the Agency to be of low or very low income. In determining the income standards of eligible persons for its various programs, the Agency shall take into account the following factors:

1. Requirements mandated by federal law;
2. Variations in circumstances in the different areas of the state;
3. Whether the determination is for rental housing; and
4. The need for family size adjustments.

**“Executive Director”** means the Executive Director of the New Mexico Mortgage Finance Authority.

**“Extended Use Period”** means, with respect to any building that is included in a Tax Credit Project, the period that begins on the first day of the Compliance Period and ends on the later of (i) the ending date of the term specified by the Applicant in the Initial Application Package and recorded in the Land Use Restriction Agreement or (ii) the date that is the fifteenth anniversary of the last day of the Compliance Period, unless earlier terminated as provided in Section 42(h)(6) of the Code or more stringent requirements of the HCA as reflected in the LURA.

**“Feasibility Analysis”** means a financial analysis based on rules established by the IRS and MFA to determine a Project’s financial feasibility, which is completed to ascertain a Tax Credit amount, the adequacy of financing sources, the income required to support operation of the Project, etc.

**“Federal Grant”** means any Federal Grant except those specifically excluded in Section 1.42-16(b) of the Treasury regulations.

**“Federal Subsidy”** means Tax Exempt Bonds.

**“Federally-Assisted Building”** means any building which is substantially assisted, financed, or operated under Section 8 of the United States Housing Act of 1937, Section 221(d)(3), Section 221(d)(4), or 236 of the United States Housing Act, Section 515 of the Housing Act of 1949, or any other program administered by the Department of Housing and Urban Development or by the Rural Housing Service of the Department of Agriculture.

**“Final Allocation”** means a determination by MFA that a Project is complete and that a certain amount of Tax Credits is warranted. The Final Allocation must be requested by the Project Owner, and culminates in delivery of IRS Form 8609 by MFA.

**“Financing Commitment”** means a commitment for permanent or construction financing which 1) is not subject to further approval by any loan committee or board of directors or other entity of the creditor making the commitment, 2) contains specific terms of funding and repayment, and 3) contains language stating that the loan will be subordinated to the LURA.

**“General Partner”** means that partner or collective of partners identified as the general partner of the partnership that is the Project Owner and that has general liability for the partnership. If the Project Owner is a limited liability company, the term “General Partner” shall mean the managing member or members with management responsibility for the limited liability company.

**“Government Entity or Instrumentality”** means any agency or other government created entity of the State of New Mexico, the counties or municipalities of New Mexico, or the tribal governments of New Mexican tribes and pueblos.

**“Homeless”** means a) an individual or family which lacks a fixed, regular, and adequate nighttime residence; or b) an individual or family which has a primary nighttime residence that: 1) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelter, and transitional housing for persons with mental illness); 2) an institution that provides a temporary residence for individuals intended to be institutionalized, or previously institutionalized; 3) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or 4) individuals who are certified by their case manager as “doubling up”, “couch surfing” or staying



with another household of a relative or friend. The term does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or State law.

**“Households Comprised of Individuals with Children”** means households that include one or more persons under the age of 18 years.

**“HUD”** means the U.S. Department of Housing and Urban Development.

**“Identity of Interest”** occurs when any officer, director, board member, or authorized agent of any development team member (consultant, general contractor, attorney, management agent, seller of the land, etc.): (a) is also an officer, director, board member, or authorized agent of any other development team member; (b) has any financial interest in any other development team member’s firm or corporation; (c) is a business partner of an officer, director, board member, or authorized agent of any other development team member; (d) has a family relationship through blood, marriage or adoption with an officer, director, board member, or authorized agent of any other development team member; or (e) advances any funds or items of value to the sponsor/borrower.

**“Initial Application”** means the Application first provided to MFA on or before an Application Deadline to request an allocation of Tax Credits.

**“Land Use Restriction Agreement”** or **“LURA”** means the agreement submitted to the Agency restricting the property to affordable housing use during the Compliance Period and Extended Use Period.

**“Letter of Determination”** means the letter issued by MFA pursuant to Section 42(m)(1)(D) of the Code advising the Project Owner that MFA has made the determination that a Tax Exempt Bond Financed Project satisfies the requirements for an allocation of Tax Credits under the QAP conditioned upon Project compliance with Section 42 of the Code.

**“Local Government”** means any county, municipality, tribe or other general-purpose political subdivision in the State of New Mexico.

**“Local Lead Agencies”** (LLAs) are organizations selected by the New Mexico Behavioral Health Collaborative, or its designee or successor in interest, to be responsible for supportive services including acting as referral agents for community services, providing and coordinating services provided by local service providers for Special Needs Households. LLAs organize needed services for a specific geographic area, and/or specific target population. The LLA will enter into a formal agreement to provide tenant pre-screening, tenant referrals to the property manager, and social service coordination as well as serving as the Tenant Services Liaison. The LLA will remain in place for the length of the compliance and extended use period.

**“Local Notice”** means MFA’s letter to the Chief Executive Office (or the equivalent) of the local jurisdiction within which the Project is located, which provides a thirty (30) day period to comment on the Project pursuant to Code Section 42(m)(1)(A)(ii).

**“Low Income Housing Tax Credit Program”** or **“HTC Program”** means the rental housing program administered by MFA pursuant to Section 42 of the Code and by the State of New Mexico Executive Order 97-01.

**“Low Income Tenants”** are households that occupy Set Aside Units.

**“Low Income Units”** or **“Set Aside Units”** shall mean units which are rent restricted and set aside for tenants whose income does not exceed 50 percent, 60 percent or some lower percentage, whichever is elected, of Area Gross Median Income.

**“Market Rate Units”** means residential rental units that are not Low Income Units.

**“Minimum Score”** means the lowest score with which an Application will be considered to have passed the Minimum Project Threshold Requirement related to scoring.

**“Mortgage Revenue Bonds (MRB)”** or **“Tax Exempt Bonds”** means bonds issued by state designated issuers, including MFA, which may be used to finance HTC Projects subject to Project allocations made by the State Board of Finance.

**“New Mexico Housing Authority (NMHA)”** means any public housing authority legally established in the state of New Mexico.

**“November 15<sup>th</sup>”** means November 15<sup>th</sup>, unless this date falls on a weekend or a holiday, in which case it means the first business day following November 15<sup>th</sup>.

**“Ownership of Land”** means holding fee title or a qualified leasehold interest.

**“Participating Title Company”** means a New Mexico title company that maintains pooled, interest-bearing transaction account(s) pursuant to the Land Title Trust Fund Act of 1997.

**“Placed in Service”** means the date on which the first Unit of a new construction Project is certified or otherwise officially declared as available for occupancy. For acquisitions of existing Projects, it is the date of transfer to a new Project Owner.

**“Principal”** means an Applicant, any general partner of an Applicant, and any officer, director, board member or any shareholder, general partner, managing member, or affiliate of an Applicant. It also includes any entity receiving any part of a developer fee for a Project. For Project compliance purposes (**Section IV.C.11**), Principal would include shareholders with interests of 25 percent or more, all officers of a corporation (whether Board members or employees), all general partners or members. If an individual shareholder, officer, partner or member does not have any property interests outside of the information already disclosed for the Applicant, they can state that and provide a signed compliance affidavit.

**“Program”** means the HTC Program as administered by MFA.

**“Project”** means any work or improvement located or to be located in the state, including real property, buildings, and any other real and personal property, designed and intended for the primary purpose of providing decent, safe, and sanitary residential housing for individuals, whether new construction, acquisition of existing residential housing, or the remodeling, improvement, rehabilitation, or reconstruction of existing housing, together with such related non-housing facilities as the Agency determines to be necessary, convenient, or desirable.

**“Project Expenses”** means usual and customary operating and financial costs. The term does not include extraordinary capital expenses, development fees and other non-operating expenses.

**“Project Owner”** means the legal entity that ultimately owns the Project and to which tax credits will be allocated.

**“Project Selection Criteria”** means the criteria used to score a Project for Tax Credit allocation purposes.

**“Qualified Allocation Plan”** or **“QAP”** means this Qualified Allocation Plan, which was adopted by Board Action on October 19, 2011 and made effective as of January 1, 2012, and which was approved by the Governor of the State of New Mexico pursuant to Section 42(m)(1)(B) of the Code and sets forth the Project Selection Criteria and the preferences for Projects which will receive Tax Credits.

**“Qualified Basis”** means the portion or percentage of the Eligible Basis that qualifies for the Tax Credit. It is calculated by multiplying the Eligible Basis by the Applicable Fraction.

**“Qualified Census Tract”** means any Census tract which is designated by the Secretary of Housing and Urban Development as having 50 percent or more of the households at an income level which is less than 60 percent of the Area Gross Median Income in accordance with Section 42(d)(5) of the Code.

**“Qualified Leasehold Interest”** means a leasehold interest running at least as long as the Extended Use Period.

**“Qualified Nonprofit Organization”** means an organization described in Sections 501(c)(3) or 501(c)(4) of the IRS Code and exempt from tax under Section 501(a). The production of decent, safe and affordable housing must be one of the defined goals, objectives, or purposes of the nonprofit organization. The nonprofit organization must materially participate in the Project, meaning that the organization must be involved on a regular, continuous, and substantial basis in both the development and operation of the Project during the term of the Compliance Period. The nonprofit must also own an interest in the Project throughout the Compliance Period and may not be affiliated with or controlled by a for-profit organization.

**“Rehabilitation Costs”** means, as stated in Code Section 42(e)(2), the amounts chargeable to capital accounts and incurred for property in connection with the rehabilitation of a building. For the purposes of the calculation in scoring Criterion #4, only rehabilitation “hard” costs will be considered, which are those costs that would be included in a construction contract. If the Project does not include the construction of new Rent Restricted Units, the cost of the construction of common space buildings will be considered Rehabilitation Costs.

**“Rent Restricted Unit”** means, with respect to a Tax Credit Project, a unit for which the gross rent does not exceed 30 percent of the imputed AGMI limitation applicable to such unit as chosen by the Applicant in the Application and in accordance with the Code. Gross rent must be determined from the rent charts included in the Application Package and must correspond to the percentage of AGMI selected by the Applicant in the Application. It includes the cost of utilities, and must be reduced by the amount of tenant-paid utilities. Gross rent includes all income for the unit, including tenant and any subsidy payments. See also “Unit”.

**“Reservation”** or **“Reservation Contract”** means the contract executed by MFA and the Applicant with respect to an allocation of Tax Credits, which states the conditions to be met by the Applicant prior to issuance of a Carryover Allocation.

**“Reservation Letter”** or **“Reservation”** means a document issued by MFA which describes the amount of Credits provisionally awarded to a Project and the conditions which the Project Owner must meet in order to obtain a Binding Commitment for Tax Credits.

**“Reserved”** means that the units may not be rented to other categories of households unless the Project Owner demonstrates a subsequent change in the level of demand for such units and a good faith effort to obtain the originally targeted tenant category. Any such change in tenant characteristics must be approved in advance by MFA.

**“Rural Development”** or **“RD”** or **“USDA”** (previously called “Farmer’s Home Administration” or “FmHA” of the United States Department of Agriculture) means Rural Development or other agency or instrumentality created or chartered by the United States to which the powers of the RD have been transferred.

**“Senior Households”** means households that include at least one person 55 years of age or older.

**“Senior Housing”** means Projects specifically designed for exclusive use by senior tenants. Senior is defined as those persons 55 years of age or older.

**“Service Enrichment Plan”** means a plan prepared for the provision of enrichment services to Households with Children, or Senior Housing Tenants. The plan must specify 1) all services to be provided to tenants, 2) all entities providing such services, 3) where services will be provided, 4) frequency or schedule of services, 5) annual costs of all services, and 6) sources of payments for such services and isolate all expenditures planned from Project cash flow. Project Owner must provide a certification that services will be provided as detailed in the plan and service providers must provide a letter of intent to provide services. The letter of intent must indicate: 1) a description of the service to be provided including frequency, 2) indicate that services, will be provided on-site, and 3) specify any fee for services provided. A resume or other evidence of qualification of each service provider must be attached to the plan. Services included must be long-term, significant and meaningful as determined by MFA, they must be appropriate to the specific needs of the given tenant population, available on a regular basis, and no fees for the basic service except for as specifically allowed for in the scoring criterion.

**“Set Aside”** means all or a portion of a Project’s Units that are Rent Restricted and/or limited to use by a specified tenant income category, or a particular special needs tenant group. Set Asides will be described in the LURA.

**“Set Aside Election”** means the federally imposed minimum proportion of total Project units set aside as Low Income Units at one or more Area Gross Median Income level(s). This election is made by the Applicant, and meets the minimum requirements of Code Section 42: larger proportions of units are generally set aside by the Applicant and restricted in the LURA.

**“Set Aside Units”** means “Low Income Units.”

**“Single Room Occupancy”** (SRO) means housing consisting of single room dwelling units. The unit must contain either food preparation and/or sanitary facilities.

**“Special Needs Households”** means households in which an individual or household member is in need of supportive services, tenancy supports, and housing and has a substantial, long term disability, which includes any of the following: (1) Serious Mental Illness; (2) Addictive Disorder (i.e., individuals in treatment and demonstrated recovery from substance abuse

disorder); (3) Developmental Disability (e.g., intellectual disability, autism, or other disability acquired before the age of 22); (4) Physical, sensory, or cognitive disability occurring after the age of 22; 5) Disability caused by effects of chronic illness (e.g., people with HIV/AIDS who are no longer able to work); (6) Age-related Disability (e.g., frail elderly, or, young adults with other special needs who have been in the foster care or juvenile services system), or, 7) households/individuals who are homeless.

**“State-Assisted Building”** means any building which is substantially assisted, financed, or operated under any State law similar in purposes to Section 8 of the United States Housing Act of 1937, Section 221(d)(3), Section 221(d)(4), or 236 of the United States Housing Act, Section 515 of the Housing Act of 1949, or any other program administered by the Department of Housing and Urban Development or by the Rural Housing Service of the Department of Agriculture.

**“Subsidy Layering Review”** or **“911 Review”** means the review conducted under subsidy layering guidelines adopted by HUD in order to assure that excessive subsidies are not provided to Projects which receive both Tax Credits and other governmental assistance.

**“Tax Credit Allocation”** means Tax Credits approved for a Project by MFA in an amount determined by MFA as necessary to make a Project financially feasible and viable throughout the Project’s Compliance Period pursuant to Section 42(m)(2)(A) of the Code.

**“Tax Credit Project”** means the proposed or existing rental housing development(s) for which Tax Credits have been applied for or received.

**“Tax Credit Ceiling Rents”** means the maximum rent that may be charged for a Rent Restricted Unit.

**“Tax Exempt Bond Financed Project”** means a Project, which is being financed by the issuance of Tax Exempt Bonds subject to applicable volume cap pursuant to Section 42(h)(4) of the Code.

**“Tenant Conversion Plan”** means a written plan acceptable to MFA, describing the method to be used to enable tenants to acquire ownership of their units at such time as conversion to owner occupancy is allowed under Code Section 42. The Project Owner must provide and describe the type of homeownership, financial, and maintenance counseling to be offered. The Project Owner must describe in detail how the unit will be converted from a rental unit to homeownership. Other items the plan must contain include:

1. How the unit will be offered for sale and remain affordable.
2. How the value and sales price of the home will be determined at the time of purchase.
3. Any favorable financing or down payment assistance.
4. Formation of any neighborhood associations, and if so the benefits and responsibilities outlined within the proposal.
5. Copy of the plot plan for ultimate subdivision, or proposed condominium declaration.

**“Threshold Review”** means the assessment of a Project with respect to Minimum Project Threshold Requirements as defined in the QAP.

**“Threshold Tests”** are the Minimum Project Threshold Requirements described in **Section 3.3** that must be achieved for a Project to be considered further for an allocation.

**“Total Development Cost”** means the total of all costs incurred or to be incurred by the Project in acquiring, constructing, rehabilitating, and financing the Project. For purposes of calculating developer fees, Total Development Cost will be adjusted to exclude developer fees, consultant fees, and all reserves. For purposes of calculating Cost Limits and Efficient Use of Tax Credits scoring, the purchase price attributed to the land, any costs related to commercial space, and reserves (not eligible for tax credits) will be excluded.

**“Unit”** means a residential rental housing unit in a Project, including manager and employee units.

**“Universal Design”** means any component of a house or apartment that increases the usability for people of all ages, size and abilities and enhances the ability of all residents to live independently for as long as possible.