

# The 2007 Low-Income Housing Tax Credit Qualified Allocation Plan For the State of North Carolina

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## I. INTRODUCTION

The 2007 Qualified Allocation Plan (the Plan) has been developed by the North Carolina Housing Finance Agency (the Agency) as administrative agent for the North Carolina Federal Tax Reform Allocation Committee (the Committee) in compliance with Section 42 of the Internal Revenue Code of 1986, as amended (the Code). For purposes of the Plan, the term “Agency” shall mean the Agency acting on behalf of the Committee, unless otherwise provided.

The Plan was reviewed in one public hearing and met the other legal requirements prior to final adoption by the Committee. The staff of the Agency was present at the hearing to take comments and answer questions.

The Agency will only allocate low-income housing tax credits in compliance with the Plan. The Code requires that the Plan contain certain elements. These elements, and others added by the Committee, are listed below.

- A. Selection criteria to be used in determining the allocation of federal low-income housing tax credits:
  - 1. Project location and site suitability.
  - 2. Market demand and local housing needs.
  - 3. Serving the lowest income tenants.
  - 4. Serving qualified tenants for the longest periods.
  - 5. Design and quality of construction.
  - 6. Financial structure and long-term viability.
  - 7. Use of federal project-based rental assistance.
  - 8. Use of mortgage subsidies.
  - 9. Experience of development team and management agent(s).
  - 10. Serving persons with disabilities and the homeless.
  - 11. Willingness to solicit referrals from public housing waiting lists.
  - 12. Tenant populations of individuals with children.
  - 13. Projects intended for eventual tenant ownership.
  - 14. Projects that are part of a Community Revitalization Plan.
- B. Threshold, underwriting and process requirements for project applications and tax credit awards.
- C. Description of the Agency’s compliance monitoring program, including procedures to notify the Internal Revenue Service of noncompliance with the requirements of the program.

In the process of administering the low-income housing tax credit and Rental Production Program (RPP), the Agency will make decisions and interpretations regarding project applications and the Plan. Unless otherwise stated, the Agency is entitled to the full discretion allowed by law in making all such decisions and interpretations. The Agency reserves the right to amend, modify, or withdraw provisions contained in the Plan that are inconsistent or in conflict with state or federal laws or regulations. In the event of a major natural disaster the Agency may disregard any section of the Plan, including point scoring and evaluation criteria, that interferes with an appropriate response.

**II. SET-ASIDES, AWARD LIMITATIONS AND COUNTY DESIGNATIONS**

The Agency will determine whether applications are eligible under Section II(A), II(B) or II(C).

**A. PRESERVATION SET-ASIDE**

The Agency will award up to \$750,000 in tax credits to applications proposing to rehabilitate the following:

1. properties with existing U.S. Department of Agriculture, Rural Development (RD) Section 515 financing and project-based rental assistance for at least fifty percent (50%) of the units;
2. projects allocated 9% tax credits in 1991 or earlier.

See Section II(E)(3) for award limitations for this set-aside.

**B. REHABILITATION SET-ASIDE**

The Agency will award up to twenty percent (20%) of tax credits available after forward commitments and the preservation set-aside to projects proposing rehabilitation of existing housing. Adaptive reuse projects and entirely vacant residential buildings will be considered new construction.

**C. NEW CONSTRUCTION SET-ASIDES**

The Agency will award tax credits remaining after awards described above and any under Section II(G)(2) to other new construction projects, starting with those earning the highest scoring totals within each geographic set-aside and continuing in descending score order through the last project that can be fully funded. The Agency reserves the right to revise the available credits in each set-aside.

**NEW CONSTRUCTION GEOGRAPHIC SET-ASIDES**

WEST: 20%	CENTRAL: 25%	METRO: 30%	EAST: 25%
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WEST		CENTRAL		METRO	EAST	
Alexander	Jackson	Alamance	Montgomery	Buncombe	Beaufort	Johnston
Alleghany	Lincoln	Anson	Moore	Cumberland	Bertie	Jones
Ashe	Macon	Cabarrus	Orange	Durham	Bladen	Lenoir
Avery	Madison	Caswell	Person	Forsyth	Brunswick	Martin
Burke	McDowell	Chatham	Randolph	Guilford	Camden	Nash
Caldwell	Mitchell	Davidson	Richmond	Mecklenburg	Carteret	New Hanover
Catawba	Polk	Davie	Rockingham	Wake	Chowan	Northampton
Cherokee	Rutherford	Franklin	Rowan		Columbus	Onslow
Clay	Surry	Granville	Scotland		Craven	Pamlico
Cleveland	Swain	Harnett	Stanly		Currituck	Pasquotank
Gaston	Transylvania	Hoke	Stokes		Dare	Pender
Graham	Watauga	Iredell	Union		Duplin	Perquimans
Haywood	Wilkes	Lee	Vance		Edgecombe	Pitt
Henderson	Yadkin		Warren		Gates	Robeson
	Yancey				Greene	Sampson
					Halifax	Tyrrell
					Hertford	Washington
					Hyde	Wayne
						Wilson

#### D. NONPROFIT AND CHDO SET-ASIDES

If necessary, the Agency will adjust the awards under the Plan to ensure that the overall allocation results in:

1. ten percent (10%) of the state's federal tax credit ceiling being awarded to projects involving tax exempt organizations (nonprofits) and
2. fifteen percent (15%) of the Agency's HOME funds being awarded to projects involving Community Housing Development Organizations certified by the Agency (CHDOs).

Specifically, tax credits that would have been awarded to the lowest ranking project(s) that do(es) not fall into one of these categories will be awarded to the next highest ranking project(s) that do(es) until the overall allocation(s) reach(es) the necessary percentage(s). The Agency may make such adjustment(s) in any set-aside.

In order to qualify under subsection (D)(1) above, an application must either not involve any for-profit Principals or comply with the material participation requirements of the Code, applicable federal regulations and Section VI(A)(2). In order to qualify under subsection (D)(2) above, an application must meet the requirements of subsection (D)(1) above, 24 CFR 92.300(a)(1) and any other regulation regarding the federal CHDO set-aside. The Agency may determine that the requirements of the federal CHDO set-aside have been or will be met without implementing subsection (D)(2).

#### E. LIMITATION OF AWARDS TO PRINCIPALS AND PROJECTS

1. The maximum award to any one Principal will be a total of \$1,000,000 in tax credits, including all set-asides. Forward commitments will count towards the maximum applicable in the year they are allocated.
2. The maximum award to any one project will be the lesser of (a) \$800,000 or (b) \$8,000 per qualified low-income unit. The per-unit limit will be \$8,500 for adaptive reuse projects or where the residential buildings meet all Energy Star standards (as defined in **Appendix B**).
3. Awards under Section II(A) will be limited to \$250,000 and will not be eligible for the federal acquisition tax credit pursuant to Section 42 of the Code.

#### F. COUNTY award LIMITS and INCOME DESIGNATIONS

1. No county will be awarded tax credits for new construction exceeding \$1,500,000 unless doing so is necessary to meet another set-aside requirement of this Plan. Forward commitments will count towards this limit in the year they are allocated. No county will be awarded more than two projects under the rehabilitation set-aside. The Agency may waive the county-based limits for revitalization efforts characterized by a high degree of committed public subsidies.
2. Pursuant to N.C.G.S. § 105-129.42(c) the Agency is responsible for designating each county as High, Moderate or Low Income. Five criteria were used for making this determination:
  - (a) County median income
  - (b) Poverty rate
  - (c) Percent of population in rural areas
  - (d) Regional growth patterns
  - (e) Enterprise area tier (one through five)

Each county was considered as a whole and evaluated relative to others in the state. Based on this process, the Agency designates counties as follows:

HIGH	MODERATE		LOW		
Alamance	Alexander	Lee	Alleghany	Graham	Pasquotank
Cabarrus	Brunswick	Lincoln	Anson	Greene	Pender
Catawba	Buncombe	Moore	Ashe	Halifax	Perquimans
Chatham	Burke	Nash	Avery	Hertford	Richmond
Durham	Caldwell	Onslow	Beaufort	Hoke	Robeson
Forsyth	Carteret	Person	Bertie	Hyde	Rockingham
Guilford	Cleveland	Pitt	Bladen	Jackson	Rutherford
Iredell	Craven	Polk	Camden	Jones	Sampson
Johnston	Cumberland	Randolph	Caswell	Lenoir	Scotland
Mecklenburg	Dare	Rowan	Cherokee	Macon	Surry
New Hanover	Davidson	Stanly	Chowan	Madison	Swain
Orange	Davie	Stokes	Clay	Martin	Tyrrell
Union	Franklin	Transylvania	Columbus	McDowell	Vance
Wake	Gaston	Watauga	Currituck	Mitchell	Warren
	Granville	Wayne	Duplin	Montgomery	Washington
	Harnett	Wilson	Edgecombe	Northampton	Wilkes
	Haywood	Yadkin	Gates	Pamlico	Yancey
	Henderson				

#### G. OTHER AWARDS

1. The Agency may award tax credits remaining from the four geographic set-asides to the next highest scoring eligible new construction application(s) statewide and/or one or more eligible rehabilitation applications. The Agency may also carry forward any amount of tax credits to the next year.
2. The Agency may award 2007 tax credits outside of the normal process to projects that: a) allow the Agency to comply with HUD regulations regarding timely commitment of funds, b) prevent the loss of state or federal investment, c) provide housing for underserved populations or d) are part of a settlement agreement of legal action brought against a local government. The total amount of such awards(s) shall not exceed \$1,000,000.
3. The Agency may also make a forward commitment of the next year's tax credits in an amount necessary to fully fund project(s) with a partial award or to any project application that was submitted in a prior year if such application meets all the minimum requirements of the Plan. In the event that credits are returned or the state receives credits from the national pool, the Agency may elect to carry such credits forward, make an award to any project application (subject only to the nonprofit set aside), or a combination of both.
4. The Agency may exceed the limitations on awards contained in Sections II(A), II(B), II(E)(1), II(F)(1) and this Section II(G) in order to completely fund a project request.

### III. DEADLINES, APPLICATION AND FEES

#### A. APPLICATION AND AWARD SCHEDULE

The following schedule will apply to the 2007 application process for 9% tax credits. The Agency will announce the application schedule for bond allocation and 4% tax credits at a later time.

January 12	Deadline for submission of preliminary applications (12:00 noon)
March 5	Market analysts will mail studies to the Agency and applicants
March 16	Notification of final site scores

March 23	Deadline for market-related project revisions
April 2	Deadline for the Agency and applicant to receive a hard copy of the revised market study, if applicable
May 11	Deadline for full applications (12:00 noon)
August	Notification of tax credit awards

The Agency reserves the right to change the schedule as necessary.

## B. APPLICATION, ALLOCATION AND PENALTY FEES

1. All applicants are required to pay a nonrefundable fee of \$5,300 at the submission of the preliminary application. This fee covers the cost of the market study or physical needs assessment and a \$1,100 preliminary application processing fee (which will be assessed for every electronic application submitted). The Agency may charge additional fee(s) to cover the cost of direct contracting with other providers (such as appraisers).
2. All applicants are required to pay a nonrefundable processing fee of \$1,100 upon submission of the full application.
3. Entities receiving 9% tax credit awards are required to pay a nonrefundable allocation fee equal to the greater of:
  - (a) 0.58% of the project's total qualified basis or,
  - (b) seventy-five hundred dollars (\$7,500).

The allocation fee must be paid to the Agency upon the earlier of return of the reservation letter or carryover allocation agreement. Failure to return the required documentation (such as ownership entity information) and fee by the date specified may result in cancellation of the tax credit reservation.

4. Entities receiving tax exempt bond volume are required to pay a nonrefundable allocation fee equal to forty (40) basis points of the awarded bond volume. (For example, the fee due on a \$10 million bond award would be \$40,000.) The allocation fee will be due at the time the bond volume is awarded. Failure to return the required documentation and fee by the date specified may result in cancellation of the bond allocation. The Agency may assess other fees for additional monitoring responsibilities.
5. If expenses for legal services are incurred by the Committee or Agency to correct mistakes of the Owner which jeopardize use of the tax credits, such legal costs will be paid by the Owner in the amount charged to the Agency or the Committee.
6. The Agency may assess applicants or owners a fee of up to \$500 for each instance of failure to comply with a written requirement, whether or not such requirement is in the Plan. The Agency will not process applications or other documentation relating to any Principal who has an outstanding balance of fees owed; such a delay in processing may result in disqualification of application(s).

## C. APPLICATION PROCESS AND REQUIREMENTS

1. The Agency may require applicants to submit any information, letter or representation relating to Plan requirements or point scoring as part of the application process. Unless otherwise noted, the Agency may elect to not consider information submitted after the relevant deadline.
2. Any failure to comply with an Agency request under subsection (C)(1) above or any misrepresentation, false information or omission in any application document may result in disqualification of that application and any other involving the same owner(s), Principal(s), consultant(s) and/or application preparer(s). Any misrepresentation, false information or omission in the application document may also result in a revocation of a tax credit allocation.

3. The Agency may elect to treat applications involving more than one site or population type (family/elderly) as separate for purposes of the Agency's preliminary application process. Each application would require a separate initial application fee. Projects may be considered as one application in the full application submission if all sites are secured by one permanent mortgage and are not intended for separation and sale after receipt of the tax credit allocation.
4. The Agency will notify the appropriate unit of government about the project after submission of the full application. The Agency reserves the right to reject applications opposed in writing by the chief elected official (supported by the council or board), but is not obligated to do so.
5. For each application one individual or validly existing entity must be identified as the applicant. An entity may be one of the following:
  - (a) corporation, including nonprofits,
  - (b) limited partnership, or
  - (c) limited liability company.

Only the identified applicant will have the ability to make decisions with regard to that application. The applicant may enter into joint venture or other agreements but the Agency will not be responsible for evaluating those documents to determine the relative rights of the parties. If the application receives an award the applicant must become a managing member or general partner of the ownership entity.

#### D. MONITORING FEES

The following must be paid prior to the issuance of a federal form 8609:

Project Type	
Tax credit projects without an Agency loan, including projects using tax-exempt bond financing and 4% credits	\$550 per unit
Projects receiving an RPP loan.	\$650 per unit

The monitoring fee is applied to all units in a project, including all market rate units and units reserved for employees, managers or other personnel.

### IV. SELECTION CRITERIA AND THRESHOLD REQUIREMENTS

New construction applications must meet all threshold requirements and receive 200 points to be considered for award and funding. Preservation and rehabilitation applications will not receive point scores but instead will be evaluated using the criteria listed in Section IV(H)(3) (thus all references to receipt of points only apply to new construction projects). All threshold requirements also apply to preservation and rehabilitation projects unless otherwise noted. Scoring and threshold determinations made in prior years are not binding on the Agency for the 2007 cycle.

#### A. SITE AND MARKET EVALUATION (MAXIMUM 140 POINTS)

The Agency will not accept a full application where the preliminary application does not meet all site and market threshold requirements.

##### 1. SITE EVALUATION (MAXIMUM 140 POINTS)

###### (a) General Site Requirements:

- (i) Sites must be sized to accommodate the number and type of units proposed. The applicant or a Principal must have site control by the preliminary application deadline, which may be evidenced by an option, contract or deed. The documentation of site control must include a plot plan.



- (ii) Required zoning must be in place by the full application submission date, including special/conditional use permits, and any other necessary land use approval other than approval of subdivision plats or building permits.
  - (iii) Utilities (water, sewer and electricity) must be available with adequate capacity to serve the site. Sites should be accessed directly by existing paved, publicly maintained roads. If not, it will be the applicant's responsibility to extend utilities and roads to the site. In such cases, the applicant must explain and budget for such plans at the preliminary application stage and document the right to perform such work.
- (b) Criteria for Site Score Evaluation:

Site scores will be based on the following factors. Each will also serve as a threshold requirement; the Agency may remove an application from consideration if the site is sufficiently inadequate in one of the categories. Evaluation of sites will involve a relative comparison with other applications in the same geographic set-aside, with an emphasis on those the Agency considers to be within the same market area. Criteria involving consideration of land uses will focus on the area within approximately one-half mile. The Agency will consider revitalization plans and other proposed development based on certainty, extent and timing. Where appropriate, the score for a particular category will reflect the project's tenant type (family/elderly/special needs).

- (i) NEIGHBORHOOD CHARACTERISTICS (MAXIMUM 40 POINTS)
  - Trend and direction of real estate development and area economic health.
  - Physical condition of buildings and improvements.
  - Concentration of affordable housing.
- (ii) SURROUNDING LAND USES AND AMENITIES (MAXIMUM 65 POINTS)
  - Suitability of surrounding development
  - Land use pattern is residential in character (single and multifamily housing) with a balance of other uses (particularly retail and amenities).
  - Availability, quality and proximity of services, amenities and features: grocery store; mall/strip center; gas/convenience; basic health care; pharmacy; schools/athletic fields; day care/after school; supportive services, public park, library, hospital, community/senior center, basketball/tennis courts, fitness/nature trails, public swimming pool, restaurants, bank/credit union, medical offices, professional services, movie theater, video rental, public safety (fire/police).
  - Effect of industrial, large-scale institutional or other incompatible uses, including but not limited to: wastewater treatment facilities, high traffic corridors, junkyards, prisons, landfills, large swamps, distribution facilities, frequently used railroad tracks, power transmission lines and towers, factories or similar operations, sources of excessive noise, and sites with environmental concerns (such as odors or pollution).
  - Amount and character of vacant, undeveloped land.
- (iii) SITE SUITABILITY (MAXIMUM 35 POINTS)
  - Adequate traffic controls (stop lights, speed limits, turn lanes, etc.).
  - Burden on public facilities (particularly roads).
  - Access to mass transit (if applicable).
  - Degree of on-site negative features and physical barriers that will impede project construction or adversely affect future tenants; for example: power transmission lines and towers, flood hazards, steep slopes, large boulders, ravines, year-round streams, wetlands, and other similar features (for adaptive reuse projects- suitability for residential use and difficulties posed by the building(s), such as limited parking, environmental problems or the need for excessive demolition).
  - Similarity of scale and aesthetics/architecture between project and surroundings.
  - Visibility of buildings and location of project sign(s) in relation to traffic corridors.

## 2. MARKET ANALYSIS

The Agency will administer the market study process based on this Section and the terms of **Appendix A** (incorporated herein by reference).

- (a) The Agency will contract directly with market analysts to perform studies. Applicants may interact with market analysts and will have an opportunity to revise their project (unit mix, targeting). Any revisions must be submitted in writing to both the market analyst and to the Agency, following the schedule in Section III(A), and will be binding on the applicant for the full application.
- (b) The Agency WILL NOT ACCEPT A full application in a primary market area containing one or more projects with 9% tax credits or Agency loans which have:
  - (i) a history of high vacancy rates, or
  - (ii) not reached stabilized occupancy.

The Agency may waive this limitation if the existing project has a different population type (family/elderly). The Agency will limit the number of projects awarded in the same application round to those that it determines can be supported in the market.

- (c) The following four criteria are threshold requirements for new construction applications.
  - (i) The project's capture rate.
  - (ii) The project's absorption rate.
  - (iii) The vacancy rate at comparable properties (what qualifies as a comparable will vary based on the circumstances).
  - (iv) The project's effect on existing or awarded properties with 9% tax credits or Agency loans.
- (d) The Agency is not bound by the conclusions or recommendations of the market analyst(s), and will use its discretion in evaluating the criteria listed in this subsection (A)(2).
- (e) Projects may not give preferences to potential tenants based on residing in the jurisdiction of a particular local government.

## B. RENT AFFORDABILITY (MAXIMUM 45 POINTS)

### 1. FEDERAL RENTAL ASSISTANCE

- (a) Applicants proposing to convert tenant-based Housing Choice Vouchers (Section 8) to a project-based subsidy (pursuant to 24 CFR Part 983) must submit a letter from the issuing authority in a form approved by the Agency. Conversion of vouchers will be treated as funding source under Section VI(B)(6)(c); a project will be ineligible for an allocation if it does not meet requirements set by the Agency as part of the application and award process. Such requirements may involve the public housing authority's (PHA's) Annual Plan, selection policy, and approval for advertising.
- (b) Applicants must include a written agreement between the owner and all PHAs and Section 8 providers with jurisdiction inside the project's primary market area. The agreement must commit the PHAs to include the project in any listing of housing opportunities where households with tenant-based subsidies are welcome, and the project's management agent to actively seek referrals from the PHAs to apply for units at the proposed project. If one or more of the PHAs refuses to cooperate for any reason, an explanation must be submitted as well as a statement of commitment by the applicant to seek referrals from the PHA(s). This requirement does not apply to projects with rental assistance provided through RD.

2. MORTGAGE SUBSIDIES AND LEVERAGING (MAXIMUM 30 POINTS)

(a) Eligible Sources:

Only loans from the following sources will qualify for points under this subsection (B)(2):

- (i) the local PHA,
- (ii) Community Development Block Grant (CDBG) program funds (for on-site improvements only),
- (iii) HUD Section 202 or 811,
- (iv) Federal Home Loan Bank Affordable Housing Program (AHP),
- (v) local government housing development funds, and
- (vi) RD Section 515.

Other sources of public funding may qualify PROVIDED THEY ARE APPROVED IN WRITING IN ADVANCE by the Agency. (Approval of a particular source in prior years does not meet this requirement.) Applications including market-rate units will be ineligible for points under subsection (B)(2). Adjustments to the purchase price of the land by the seller, uncommitted RPP funds or other Agency loans, state credits and bond financing are not considered sources of mortgage subsidy.

(b) Required Terms:

In order to qualify for points under subsection (B)(2), loans must be listed as a source in the full application, comply with the requirements of Section VI(B)(6)(b), and either:

- (i) have a term of at least twenty (20) years and an interest rate less than or equal to two percent (2%) or
- (ii) have a term of at least forty (40) years, an interest rate of the long-term applicable federal rate (AFR) and a source that must be treated as a “below market federal loan” under Section 42(i)(2) of the Code.

(c) Metro Region:

Applications will earn points based on the total amount of qualifying funds committed per unit (excluding an employee/manager’s unit), as described below:

Funds/Unit	Points	Funds/Unit	Points
\$6,000	12	\$11,000	22
\$7,000	14	\$12,000	24
\$8,000	16	\$13,000	26
\$9,000	18	\$14,000	28
\$10,000	20	\$15,000	30

The calculation includes all units and amounts will not be rounded up. The funds-to-unit ratio approved by the lending source determines the score. The amount provided by a local government will be reduced by the amount included in the project budget for any impact, tap or related fees charged by that local government and the cost of land sold by that local government. The Agency will only recognize fifty percent (50%) of the amount of AHP funds committed for the purposes of making this calculation.

(d) East, Central and West Regions:

Applications will earn points based on the total amount of qualifying funds committed per unit (excluding an employee/manager's unit), as described below:

Funds/Unit	Points
\$2,000	10
\$4,000	15
\$6,000	20
\$8,000	25
\$10,000	30

The calculation includes all units and amounts will not be rounded up. The funds-to-unit ratio approved by the lending source determines the score. The amount provided by a local government will be reduced by the amount included in the project budget for any impact, tap or related fees charged by that local government and the cost of land sold by that local government. The Agency will only recognize fifty percent (50%) of the amount of AHP funds committed for the purposes of making this calculation.

- (e) Projects that will utilize federal and state historic rehabilitation tax credits and are funded entirely with equity and state low-income housing tax credits (no grants or debt sources other than deferred developer fees) will be awarded five (5) points. Any deferred fee must comply with Section VI(B)(5).

3. TENANT RENT LEVELS (MAXIMUM 15 POINTS)

The application may earn points under one of the following scenarios:

(a) If the project is in a High Income county:

- Ten (10) points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of county median income.
- Five (5) points will be awarded if at least fifty percent (50%) of qualified low-income units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.

(The two options for point scoring in this subsection are mutually exclusive.)

(b) If the project is in a Moderate Income county:

- Fifteen (15) points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.
- Ten (10) points will be awarded if at least fifty percent (50%) of qualified low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income.

(The two options for point scoring in this subsection are mutually exclusive.)

- (c) If the project is in a Low Income county, fifteen (15) points will be awarded for projects in which at least forty percent (40%) of qualified low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income.

(d) Ten (10) points will be awarded to applications for new construction tax exempt bond projects that meet one of the following requirements:

- at least twenty percent (20%) of total units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income, or
- at least ten percent (10%) of total units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.

(The two options for point scoring in this subsection are mutually exclusive.)

## C. PROJECT DEVELOPMENT COSTS AND RPP LIMITATIONS

### 1. MAXIMUM PROJECT DEVELOPMENT COSTS

- (a) Full applications for new construction projects must have less than \$95,000 per unit in total replacement costs to be eligible for an award of tax credits or RPP funds. The Agency will consider exceptions to development cost limits where a project faces extraordinary circumstances mandated by building code compliance requirements or development issues. Examples include:
  - (i) all units are detached single family houses or duplexes,
  - (ii) serving persons with severe mobility impairments,
  - (iii) development challenges resulting from being within or adjacent to a central business district,
  - (iv) utilization of historic rehabilitation tax credits, or
  - (v) building(s) with both steel and concrete construction and at least four (4) stories of housing.
- (b) The following will be excluded from the calculation of total replacement costs in subsection (C)(1)(a) above:
  - (i) land costs (the lesser of the appraised value or amount in the evidence of site control),
  - (ii) reasonable reserves,
  - (iii) water and sewer tap fees and impact fees (provided that the applicant has included documentation from the local government verifying the amount of fees required), and
  - (iv) the costs directly associated with a Community Service Facility.

### 2. RESTRICTIONS ON RPP AWARDS

Projects requesting RPP funds may not:

- (a) request RPP loan funds in excess of the following amounts per unit- \$15,000 in High Income counties; \$20,000 in Moderate Income counties; \$25,000 in Low Income counties,
- (b) include market-rate units,
- (c) involve Principals who have entered into a workout or deferment plan within the previous year for an RPP loan awarded after January 1, 1999, or
- (d) request more than \$1 million per project.

The maximum award of RPP funds to any one Principal will be a total of \$2,000,000.

## D. CAPABILITY OF THE PROJECT TEAM

### 1. DEVELOPMENT EXPERIENCE

- (a) At least one Principal must have successfully developed, operated and maintained in compliance either one North Carolina low-income housing tax credit project or six separate low-income housing tax credit projects totaling in excess of 200 units. The project(s) must have been placed in service between December 1, 2001 and January 1, 2006. (The Agency may waive this requirement for applicants with adequate experience in the North Carolina tax credit program.) Such Principal must:
  - (i) be identified in the preliminary application,
  - (ii) become a general partner or managing member of the ownership entity, and
  - (iii) remain responsible for overseeing the project and operation of the project for a period of two (2) years after placed in service.

The Agency will determine what qualifies as successful and who can be considered as involved in a particular project.

- (b) All owners and Principals must disclose all previous participation in the low-income housing tax credit program. Additionally, all owners and Principals that have participated in an out of state tax credit allocation must complete the Authorization for Release of Information form.
- (c) The Agency reserves the right to determine that a particular development team does not meet the threshold requirement of subsection (D)(1)(a) due to differences between its prior work and the proposed project. Particularly important in this evaluation is the type of subsidy program used in the previous experience (such as tax-exempt bonds, RD).

## 2. MANAGEMENT EXPERIENCE

The management agent must have at least:

- (a) one similar tax credit project in their current portfolio and
- (b) one staff person serving in a supervisory capacity with regard to the project who has been certified as a tax credit compliance specialist.

Such certification must be from an organization accepted by the Agency (refer to the list in **Appendix C**). None of the persons or entities serving as management agent may have in their portfolio a project with material or uncorrected non-compliance beyond the cure period. The management agent listed on the application must be retained by the ownership entity for at least two (2) years after project completion, unless the agent is guilty of specific nonperformance of duties.

## 3. PROJECT TEAM DISQUALIFICATIONS

The Agency may disqualify any owner, Principal or management agent, who:

- (a) has been debarred or received a limited denial of participation in the past ten (10) years by any federal or state agency from participating in any development program;
- (b) within the past ten years has been in a bankruptcy, an adverse fair housing settlement, an adverse civil rights settlement, or an adverse federal or state government proceeding and settlement;
- (c) has been in a mortgage default or arrearage of three months or more within the last five years on an FHA-insured project, an RD funded rental project, a tax-exempt bond funded mortgage, an Agency loan, a tax credit project or any other publicly subsidized project (resolution of all outstanding Agency concerns regarding the default or arrearage may be considered in assessing disqualification);
- (d) has been involved within the past ten years in a project which previously received an allocation of tax credits but failed to meet standards or requirements of the tax credit allocation or failed to fulfill one of the representations contained in an application for tax credits (this includes returning an allocation of tax credits to the Agency after the carryover agreement has been signed);
- (e) has been found to be directly or indirectly responsible for any other project within the past five years in which there is or was uncorrected noncompliance more than three months from the date of notification by the Agency or any other state allocating agency;
- (f) interferes with a tax credit application for which it is not an owner or Principal at public hearing or other official meeting;
- (g) has outstanding flags in HUD's national 2530 National Participation system;
- (h) has been involved in any project awarded tax credits in 2003 or earlier for which either the permanent financing or equity investment has not closed;
- (i) has been involved in any project awarded tax credits in 2003 or earlier for which the final cost certification requirements have not been met by December 22, 2006;

- (j) has been involved in any project awarded tax credits after 2000 where there has been a change in general partners or managing members during the last five years that the Agency did not approve in writing beforehand;
- (k) would be removed from the ownership of a property that is the subject of an application for under the preservation or rehabilitation set-asides in the current cycle; or
- (l) is not in good standing with the Agency.

A disqualification under this subsection (D)(3) will result in the individual or entity involved not being allowed to participate in the 2007 cycle and removing from consideration any application where they are identified.

**E. UNIT MIX AND PROJECT SIZE**

- 1. Ten (-10) points will be subtracted from any full application that includes market-rate units. This penalty will not apply where, as of the full application, the rents for all market rate units are at least five percent (5%) higher than the maximum allowed for a unit at 60% AMI and the market study indicates that such rents are feasible.
- 2. New construction 9% tax credit projects may not exceed 100 units.
- 3. New construction bond financed projects may not exceed 180 units.
- 4. All projects must have at least sixteen (16) qualified low-income units.

The Agency reserves the right to waive the penalties and limitations in this Section IV(E) for proposals that reduce low-income and minority concentration, and subsection (E)(2) for proposals that are within a transit station area as defined by the Charlotte Region Transit Station Area Joint Development Principles and Policy Guidelines.

**F. SPECIAL CRITERIA AND TIEBREAKERS (MAXIMUM 20 POINTS)**

**1. HUD PROGRAMS (MAXIMUM 5 POINTS)**

Five (5) points will be awarded to projects that have an obligation of funds from the HUD 202 or 811 programs, including project based rental assistance appropriate for the project.

**2. COMMUNITY REVITALIZATION PLANS (MAXIMUM 10 POINTS)**

Ten (10) points will be awarded to applications if all of the following apply:

- (a) the project is within the geographic area identified by a community revitalization plan (CRP);
- (b) the project is in a Qualified Census Tract or the CRP is primarily focused on an existing residential neighborhood;
- (c) completion of the project would contribute to one or more of the goal(s) stated in the CRP; and
- (d) the CRP either (i) was officially adopted or amended by a local government between January 1, 2002 and the preliminary application deadline or (ii) is actively underway.

Only documents or information included in the officially adopted CRP will be considered in evaluating the criteria in this subsection. The CRP must be included with the preliminary application to be eligible for points in this subsection.

**3. UNITS FOR THE MOBILITY IMPAIRED**

Five percent (5%) of all units in new construction projects must:

- (a) be fully accessible according to the standards set forth in Volume 1-C (1999) of the North Carolina State Building Code, (Chapter 30, Multi-Family Dwellings),

- (b) have at least one bathroom with a toilet located in a five foot by five foot clear floor space (may overlap with the five foot turning diameter described in Chapter 30), with no overlapping elements or fixtures; the toilet must be positioned in a corner with the centerline of the toilet bowl 18 inches from the sidewall, and
- (c) have at least one bathroom with a 36 inch by 60 inch (minimum size) curbless, roll-in shower. Such showers must also meet the requirements for accessible controls as required by Volume 1-C.

At least one unit in each class of fully accessible units must meet the above requirements. Unit classes are measured by the number of bedrooms, pursuant to Volume 1-C (1999) of the North Carolina State Building Code (Chapter 30, Section 30.3.2). **THESE UNITS ARE IN ADDITION TO MOBILITY IMPAIRED UNITS REQUIRED BY FEDERAL AND STATE LAW (INCLUDING BUILDING CODES).** Units for the mobility impaired should be available to all tenants who would benefit from their design and are not necessarily reserved under the Targeting Plan requirements of subsection (F)(4).

#### 4. TARGETING PLANS

All projects will be required to target the greater of five (5) units or ten percent (10%) of the total units to persons with disabilities or homeless populations. (The five unit minimum does not apply to applications without federal project-based rental assistance.) Projects that are targeting units under this subsection are not required to provide onsite supportive services or a service coordinator. Project owners must demonstrate a partnership with a local lead agency and submit a Targeting Plan for review and certification by the N.C. Department of Health and Human Services (DHHS).

At a minimum, Targeting Plans must include:

- (a) A description of how the project will meet the needs of the targeted tenants including access to supportive services, transportation, proximity to community amenities, etc.
- (b) A description of the experience of the local lead agency and their capacity to provide access to supportive services, and to maintain relationships with the management agent and community service providers for the duration of the compliance period.
- (c) A Memorandum of Understanding (MOU) between the developer(s), management agent and the lead local agency. The MOU will include-
  - (i) A commitment from the local lead agency to provide, coordinate and/or act as a referral agent to assure that supportive services will be available to the targeted tenants.
  - (ii) The referral and screening process that will be used to refer tenants to the project, the screening criteria that will be used, and the willingness of all parties to negotiate reasonable accommodations to facilitate the admittance of persons with disabilities into the project.
  - (iii) A communications plan between the project management and the local lead agency that will accommodate staff turnover and assure continuing linkages between the project and the local lead agency for the duration of the compliance period.
- (d) Certification that participation in supportive services will not be a condition of tenancy (not required for projects where all of the units are providing transitional housing for the homeless).
- (e) Agreement that for a period of ninety (90) days after certificate of occupancy, the number of units specified in the application for persons with disabilities will be held vacant other than for such population(s).
- (f) Agreement to maintain a separate waiting list for persons with disabilities and prioritizing these individuals for any units that may become vacant after the initial rent-up period, based upon the minimum number of units specified in the application.
- (g) Agreement to affirmatively market to persons with disabilities.



- (h) Agreement to include a section on reasonable accommodation in property management's application for tenancy.
- (i) Agreement to accept Section 8 vouchers or certificates (or other rental assistance) as allowable income as part of property management income requirement guidelines for eligible tenants and not require total income for persons with rental assistance beyond that which is reasonably available to persons with disabilities currently receiving SSI and SSDI benefits.
- (j) A description of how the project will make the targeted units affordable to persons with extremely low incomes. NOTE: Key Program assistance is only available to persons receiving income based upon a disability. Projects targeting units to non-disabled homeless populations or persons in recovery with only a substance abuse diagnosis must have an alternative mechanism to assure affordability.

The requirements of this subsection (F)(4) may be fully or partially waived to the extent the Agency determines that they are not feasible. A Targeting Plan template and other documents related to this subsection are included in **Appendix D** (incorporated herein by reference). Applicants will agree to complete the requirements of this subsection (F)(4) and **Appendix D** by the earlier of July 28, 2008 or four months prior to the project's placed in service date. (The Agency may set additional interim requirements.) This subsection (F)(4) does not apply to tax-exempt bond applications.

5. LOCAL GOVERNMENT LAND DONATION (MAXIMUM 5 POINTS)

Applications that meet the following criteria will be awarded five (5) points:

- (a) the real estate that will contain the proposed project buildings is owned by a unit of local government as of the preliminary application deadline;
- (b) the local government did not purchase any portion of the real estate from the applicant or any owner, Principal or affiliate thereof; and
- (c) the application shows no more than a total of \$1,000 in the line-items for purchase of land and buildings (in the case of a ground lease, no more than \$50 per year).

6. TIEBREAKER CRITERIA

The following will be used to award tax credits in the event that the final scores of more than one project are identical.

First Tiebreaker: The project requesting the least amount of federal tax credits per unit based on the Agency's equity needs analysis.

Second Tiebreaker: Tenants with Children: Projects that can serve tenant populations with children. Projects will qualify for this designation if at least twenty-five (25%) of the units are three or four bedrooms. This tiebreaker will only apply where the market study shows a clear demand' for this population (as determined by the Agency).

Third Tiebreaker: Tenant Ownership: Projects that are intended for eventual tenant ownership. Such projects must utilize a detached single family site plan and building design and have a business plan describing how the project will convert to tenant ownership at the end of the 30-year compliance period.

In the event that a tie remains after considering the above tiebreakers, the project requesting the least amount of federal tax credits will be awarded.

G. DESIGN STANDARDS (MAXIMUM 80 POINTS)

All proposed measures must be shown on the plans or in specifications in the application in order to receive points.

## 1. THRESHOLD REQUIREMENTS

The minimum threshold requirements for design are found in **Appendix B** (incorporated herein by reference) and must be used for all projects receiving tax credits or RPP funding. These minimum requirements include, but are not limited to, standards in the following categories:

- on-site playground areas;
- on-site postal and laundry facilities;
- community/office space;
- on-site parking and refuse collection areas;
- exterior and interior building design;
- plumbing and electrical provisions;
- heating, ventilating and air conditioning provisions;
- sitework;
- bedrooms, bathrooms and kitchens;
- provisions for all elderly housing;
- building envelope and insulation;
- provisions for sight and hearing impaired residents;
- additional requirements for rehabilitation of existing apartments;
- additional requirements for adaptive reuse; and
- Fair Housing, Americans with Disabilities Act and the North Carolina State Accessibility Code requirements.

## 2. CRITERIA FOR SCORE EVALUATION

A maximum of eighty (80) points will be awarded based on the following criteria as applied to the site drawings submitted with the full application.

### (a) Site Layout

The Agency will award up to ten (10) points based on its evaluation of the site layout. The following characteristics will be considered.

- (i) The extent to which the proposed site plan includes a scattered building layout focusing on visual appeal and privacy.
- (ii) The location of residential buildings in relation to site amenities, community building, postal facilities and trash collection areas.
- (iii) The degree to which site layout ensures a low, controlled traffic speed through the project.

### (b) Quality of Design and Construction

The Agency will award up to seventy (70) points based on its evaluation of the quality of the building design, and the materials and finishes specified. The following characteristics will be considered:

- (i) The extent to which the design uses multiple roof lines, gables, dormers and similar elements to break up large roof sections.
- (ii) The extent to which the design uses multiple types, styles, and colors of siding and brick veneer to add visual appeal to the building elevations.
- (iii) The level of detail that is achieved through the use of porches, railings, and other exterior features.
- (iv) The degree to which building exteriors are designed for very low maintenance and extended useful life.

NOTE: In addition to the above criteria, all projects must meet or exceed all design requirements as specified in **Appendix B**. Owners may not start construction, including sitework, before the Agency has approved the project's plans and specifications (see **Appendix B**).

## H. CRITERIA FOR SELECTION OF PRESERVATION AND REHABILITATION PROJECTS

### 1. GENERAL THRESHOLD REQUIREMENTS

In order to be eligible for funding under Sections II(A) or II(B), a project must:

- (a) have either (i) committed mortgage subsidies from a local government in excess of \$5,000 per unit or (ii) federal rental assistance for at least thirty percent (30%) of the total units, which may consist of a project-based contract, households with Section 8 vouchers as of the preliminary application deadline, or a combination of the two,
- (b) have been placed in service on or before December 31, 1992,
- (c) require rehabilitation expenses in excess of \$10,000 per unit for preservation projects under Section II(A) and \$15,000 per unit for rehabilitation projects under Section II(B) (both as supported by a physical needs assessment approved by the Agency),
- (d) not have an acquisition cost in excess of sixty percent (60%) of the total replacement costs,
- (e) not be feasible using tax exempt bonds (as determined by the Agency),
- (f) not have received an Agency loan in the last five (5) years,
- (g) not be deteriorated to the point of requiring demolition, and
- (h) not have begun or completed a full debt restructuring under the Mark to Market process (or any similar HUD program).

Rehabilitation expenses include hard construction costs directly attributable to the project, excluding costs for a new community building, as calculated using lines 2 through 7 (less line 6) in the Project Development Cost Description.

### 2. THRESHOLD DESIGN REQUIREMENTS

In addition to the relevant sections of **Appendix B**, the Agency will require owners to complete the following as appropriate for their project.

- (a) Improve site amenities and common areas by upgrading or adding a freestanding community building, making repairs and additions to landscaping, adding new site amenities such as playgrounds, and repairing parking areas.
- (b) Improve building exteriors by replacing deteriorated siding, replacing aged roofing, adding gutters and downspouts, adding new architectural features to improve appearance.
- (c) Upgrade unit interiors by replacing flooring, installing new cabinets and countertops, replacing damaged interior doors, replacing light fixtures, and repainting units.
- (d) Replace and upgrade mechanical systems and appliances including HVAC systems, water heaters and plumbing fixtures, electrical panels, refrigerators, and ranges.
- (e) Improve energy efficiency by replacing inefficient doors and windows, adding additional insulation in attics, and upgrading the efficiency of mechanical systems and appliances.
- (f) Improve site and unit accessibility for persons with disabilities by making necessary alterations at common areas, alterations at single story ground floor units, adding or improving handicapped parking areas, and repairing or replacing sidewalks along accessible routes.

### 3. EVALUATION CRITERIA

The Agency will evaluate applications under Sections II(A) and II(B) based on the following criteria, which are listed in order of importance. Each one will serve both to determine awards and as a threshold requirement; the Agency may remove an application from consideration if the proposal is sufficiently inadequate in any of the categories. For purposes of making awards, the Agency will not

consider subsections (d) through (g) below if the outcome is determined by the criteria in subsections (a) through (c).

- (a) The Agency will give the highest priority to applications proposing to rehabilitate the state's most distressed existing housing, particularly buildings with accessibility or life, health and safety problems.
- (b) Applications will have a reduced likelihood of being awarded tax credits to the extent that the purpose is to subsidize an ownership transfer.
- (c) Shortcomings in the above three criteria will be mitigated to the extent that a tax credit allocation is necessary to prevent (i) conversion of units to market rate rents or (ii) loss of government resources (including past, present and future investments).
- (d) The Agency will give priority to applications that have mortgage subsidy resources committed as part of the application.
- (e) Applications will have priority to the extent that the rehabilitation improvements are a part of a community revitalization plan or will benefit the surrounding community. However, projects in severely distressed areas will have a reduced likelihood of being awarded tax credits.
- (f) Applications will have a reduced likelihood of being awarded tax credits based on the number of tenants that would be permanently relocated (including market-rate).
- (g) While the preservation and rehabilitation set-asides are not subject to any regional set-aside, the Agency will consider the geographic distribution of this resource and will attempt to avoid a concentration of awards in any one area of the state.

## **V. ALLOCATION OF BOND CAP**

### **A. ORDER OF PRIORITY**

The Committee will allocate the multifamily portion of the state's tax-exempt bond authority in the following order of priority:

1. Projects that serve as a component of an overall HOPE VI revitalization effort.
2. Rehabilitation projects.
3. Adaptive reuse projects.
4. Other new construction projects.

Applications will only be allocated bond authority if there is enough remaining after awarding all eligible applications in higher priority levels. Within each category, allocation priority will be based on the relevant scoring and threshold requirements of Section IV.

### **B. ELIGIBILITY FOR AWARD**

Except as otherwise indicated, owners of projects with tax exempt bonds and 4% credits must meet all requirements of the Plan. Even with an allocation of bond authority, projects must meet the threshold requirements to be eligible for tax credits.

1. New construction applications must earn 160 points and agree to meet one of the following requirements:
  - (a) at least ten percent (10%) of total units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income, or
  - (b) at least five percent (5%) of total units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.

2. Rehabilitation applications must:

- (a) have been placed in service on or before December 31, 1992,
- (b) require rehabilitation expenses in excess of \$10,000 per unit,
- (c) not have an acquisition cost in excess of sixty percent (60%) of the total replacement costs,
- (d) not have begun or completed after December 31, 2001 a full debt restructuring under the Mark to Market process (or any similar HUD program) and
- (e) not be deteriorated to the point of requiring demolition.

## **VI. GENERAL REQUIREMENTS**

### **A. GENERAL THRESHOLD REQUIREMENTS FOR PROJECT PROPOSALS**

1. Projects with Historic Tax Credits: Buildings either must be on the National Register of Historic Places or approved for the State Housing Preservation Office's study list at the time of the full application. Evidence of meeting this requirement should be provided.
2. Nonprofit Set-Aside: For purposes of being considered as a nonprofit sponsored application under Section II(D), at least one nonprofit entity (or, where applicable, its qualified corporation) involved in a project must:
  - (a) be qualified under Section 501(c)(3) or (4) of the Code,
  - (b) materially participate, as defined under federal law, in the acquisition, development, ownership, and ongoing operation of the property for the entire compliance period,
  - (c) have as one of its exempt purposes the fostering of low-income housing,
  - (d) own, directly or indirectly, an equity interest in the applicant and
  - (e) be a managing member or general partner of the applicant.

The Agency reserves the right to make a determination that the nonprofit owner is not affiliated with or controlled by a for-profit entity or entities other than a qualified corporation. There can be no identity of interest between any nonprofit owner and for-profit entity, other than a qualified corporation.

3. Environmental Hazards: All projects involving use of existing structures must submit a hazardous material report which provides the results of testing for asbestos containing materials, lead based paint, Polychlorinated Biphenyls (PCBs), underground storage tanks, petroleum bulk storage tanks, Chlorofluorocarbons (CFCs), and other hazardous materials. The testing must be performed by professionals licensed to do hazardous materials testing. A report written by an architect or building contractor or developer will not suffice. A plan and projected costs for removal of hazardous materials must also be included.
4. Appraisals: The Agency will not allow the project budget to include more for land costs than the lesser of its appraised market value or the purchase price. Any project involving an existing structure or budgeting more than \$15,000 per acre toward land costs must submit with the full application a real estate "as is" appraisal that is a) dated no more than six (6) months from the full application deadline, b) prepared by an independent, state certified appraiser and c) complies with the Uniform Standards of Professional Appraisal Practice. The Agency may require appraisals where cost per acre is below this amount. Appraisals for preservation, rehabilitation and adaptive reuse projects must break out the land and building values from the total value.
5. Concentration: Projects cannot be in areas of minority and low-income concentration (measured by comparing the percentage of minority and low-income households in the site's census tract with the

community overall). The Agency may make an exception for projects in economically distressed areas which have community revitalization plans with public funds committed to support the effort.

6. Displacement: For preservation and rehabilitation projects and in every other instance of tenant displacement, including temporary, the applicant must supply with the full application a plan describing how displaced persons will be relocated, including a description of the costs of relocation. The applicant is responsible for all relocation expenses, which must be included in the project's development budget. Applicants must also comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as revised in 49 C.F.R. Part 24.
7. Tax Information Authorization: Applicants and Principals must submit an executed Internal Revenue Service (IRS) Form 8821 with their full applications; every owner should submit a separate form.
8. Feasibility: The Agency will not allocate tax credits or RPP funding to applications that may have difficulty being completed or operated for the compliance period. Examples include projects that may not secure an equity investment or a Principal that has inadequate capacity to successfully carry out the development process.
9. Extended Use Period: Applicants must agree to record a thirty (30) year Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits (Extended Use Agreement) stating that the owner (a) will not apply for relief under Section 42(h)(6)(E)(i)(II) of the Code, (b) will not refuse to lease any residential unit in the Project to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder, and (c) will comply with other requirements under the Code, Plan, other relevant statutes and regulations and all representations made in the project application. The Extended Use Agreement may also contain other provisions as determined by the Agency.

## B. UNDERWRITING THRESHOLD REQUIREMENTS

The following minimum financial underwriting requirements apply to all projects. Projects that cannot meet these minimum requirements, as determined by the Agency, will not receive tax credits or RPP funding.

1. Loan Underwriting Standards:
  - (a) Projects applying for tax credits only will be underwritten with rents escalating at three percent (3%) and operating expenses escalating at four percent (4%).
  - (b) All projects will be underwritten assuming a constant seven percent (7%) vacancy and must reflect a 1.15 Debt Coverage Ratio (DCR) for the term of any debt financing on the project. Projects with less than forty (40) units must also demonstrate \$150 per unit per year of net cash flow for the first fifteen (15) years. This does not apply to projects with rental assistance provided through RD.
  - (c) RPP loans will be underwritten using a twenty (20) year term and a two percent (2%) interest rate. The Agency may alter these terms to ensure project feasibility. Underwriting of applications with a commitment from RD will incorporate the requirements of that program, and any RPP loan will have a 30 year term (fully amortizing) and zero percent (0%) interest.  
  
Applications requesting RPP funds may be required to comply with the HOME program, including 42 U.S.C. 12701 et seq., 24 C.F.R. Part 92 and all relevant administrative guidance.
  - (d) The Agency may determine that the interest rate on a loan must be reduced where an application shows an excessive amount accruing towards a balloon payment.
2. Operating Expenses:
  - (a) New construction (excluding adaptive reuse): minimum of \$2,600 per unit per year not including taxes, reserves and resident support services.

- (b) Renovation (includes preservation, rehabilitation and adaptive reuse): minimum of \$2,800 per unit per year not including taxes, reserves and resident support services.
- (c) Owner projected operating expenses will be used if they are higher than Agency minimums. The proposed management agent (or management staff if there is an identity of interest) must sign a statement (to be submitted with the full application) agreeing that the operating expense projections are reasonable.

3. Equity Pricing:

The Agency will conduct a survey of tax credit equity investors to determine appropriate pricing assumptions. Projects will be underwritten using the greater of this amount and the applicant's projection.

Equity should be calculated net of any syndication fees. Bridge loan interest typically incurred by the syndicator to enable an up front payment of equity should not be charged to the project directly, but be reflected in the net payment of equity. Equity should be based on tax credits to be used by the investor(s), excluding those allocated to the Principals unless these entities are making an equity contribution in exchange for the tax credits.

4. Reserves:

- (a) Rent-up Reserve: Required for all except bond financed projects. A reasonable amount must be established based on the projected rent-up time considering the market and target population, but in no event shall be less than \$300 per unit. These funds must be available to the management agent to pay rent-up expenses incurred in excess of rent-up expenses budgeted for in the project development costs. The funds are to be deposited in a separate bank account and evidence of such transaction provided to the Agency 90 days prior to the expected placed in service date. All funds remaining in the rent-up reserve at the time the project reaches ninety-three (93%) occupancy must be transferred to the project replacement reserve account.

For those projects receiving loan funds from RD, the 2% initial operating and maintenance capital established by RD will be considered the required rent-up reserve deposit.

- (b) Operating Reserve: Required for all projects except those receiving loan funds from RD. The operating reserve will be the greater of a) \$1,500 per unit or b) six month's debt service and operating expenses, and must be maintained for the duration of the low-income use period.

Projects receiving RPP funds must capitalize the operating reserve account prior to the RPP loan closing. The Agency must approve any withdrawals from the operating account to meet project's operating deficits.

The operating reserve can be funded by deferring the developer's fees of the project. If this method is utilized, the deferred amounts owed to the developer can only be repaid from cash flow if all required replacement reserve deposits have been made. For tax credit projects where no RPP loan applies, the operating reserve can be capitalized by an equity pay in up to one year after certificate of occupancy is received. This will be monitored by the Agency.

- (c) Replacement Reserve: All new construction projects must budget replacement reserves of \$250 per unit per year. Preservation, rehabilitation and adaptive reuse projects must budget replacement reserves of \$350 per unit per year. The replacement reserve must be capitalized from the project's operations, escalating by four percent (4%) annually. Projects with an RPP loan must have Agency approval of withdrawals for capital improvements throughout the term of the loan.

In both types of renovation projects mentioned above, the Agency reserves the right to increase the required amount of annual replacement reserves if the Agency determines such an increase is warranted after a detailed review of the project's physical needs assessment.

For those projects receiving RD loan funds, the required funding of the replacement reserve will be established, administered and approved by RD, and the replacement reserve will not escalate annually.

Funds remaining in the operating and replacement reserve accounts at the end of the RPP loan term must be used for project maintenance costs approved by the Agency or applied against the loan.

5. Deferred Developer Fees:

Developer fees can be deferred to cover a gap in funding sources as long as:

- (a) the entire amount will be paid within ten (10) years and meets the standards required by the IRS to stay in basis,
- (b) the deferred portion does not exceed fifty percent (50%) of the total amount as of the full application, and
- (c) payment projections do not negatively impact the operation of the project.

Each of these will be determined by the Agency. Nonprofit organizations must include a resolution from the Board of Directors allowing such a deferred payment obligation to the project. The developer may not charge interest on the deferred amount in excess of the long term AFR.

6. Financing Commitment:

- (a) For all projects proposing private permanent financing, a letter of intent is required. This letter must clearly state the term of the permanent loan is at least eighteen (18) years, how the interest rate will be indexed and the current rate at the time of the letter, the amortization period, any prepayment penalties, anticipated security interest in the property and lien position. The interest rate must be fixed and no balloon payments may be due for eighteen (18) years. The bank must complete a cover letter using the format approved by the Agency, and submit it with the letter of intent.
- (b) All projects proposing public permanent financing, binding commitments are required to be submitted by the full application due date. The Agency may grant an extension of this deadline for local governments if requested in advance of the full application due date. All loans must have a fixed interest rate and no balloon payments for at least eighteen (18) years after project completion. A binding commitment is defined as a letter, resolution or binding contract from a unit of government. The same terms described for the letter of intent (using the format approved by the Agency) from a private lender must be included in the commitment.
- (c) Applications may only include one set of proposed funding sources; the Agency will not consider multiple financial scenarios. A project will be ineligible for allocation if any of the listed funding sources will not be available in an amount or under the terms described in the application. The Agency may waive this limitation if the project otherwise demonstrates financial feasibility.

7. Developer/Builder Fees:

- (a) Developer's fees shall be the lesser of \$10,500 per unit or \$800,000 (the maximum for projects with tax-exempt bonds is \$1,500,000). In addition, a maximum developer's fee of four percent (4%) is allowed on the acquisition cost of buildings (not including land value/cost) unless (i) there is an identity of interest between the seller and one or more Principal(s) or (ii) the award is under Section II(A).
- (b) Builder's general requirements shall be limited to six percent (6%) of hard costs.
- (c) Builder's profit and overhead shall be limited to ten percent (10%) (8% profit, 2% overhead) of total hard costs, including general requirements.



- (d) Where an identity of interest exists between the owner and builder, the builder's profit and overhead shall be limited to eight percent (8%) (6% profit, 2% overhead).
8. Consulting Fees: Consulting fees for a project must be paid out of developer fees, so that the aggregate of any consulting fees and developer fees is no more than the maximum developer fee allowed to that project.
  9. Architects' Fees: The architects' fees, including design and inspection fees, shall be limited to three percent (3%) of the total hard costs plus general requirements, overhead, profit and construction contingency (total of lines 2 through 10 on the Project Development Cost Description).
  10. Investor Services Fees: Investor services fees must be paid from net cash flow and not be calculated into the minimum debt coverage ratio.
  11. Project Contingency Funding: All new construction projects shall have a hard cost contingency line item of NO MORE THAN three percent (3%) of total hard costs, including general requirements, builder profit and overhead. Preservation, rehabilitation and adaptive reuse projects shall include a hard cost contingency line item of NO MORE THAN six percent (6%) of total hard costs.
  12. Project Ownership: There must be common ownership between all units and buildings within a single project for the duration of the compliance period.
  13. Section 8 Project-Based Rental Assistance: For all projects that propose to utilize Section 8 project-based rental assistance, the Agency will underwrite the rents according to the tax credit and HOME limits. These limits are based on data published annually by HUD. If the Section 8 contract administrator is willing to allow rents above these limits, the project may receive the additional revenue in practice, but Agency underwriting will use the lower revenue projections regardless of the length of the Section 8 contract.  
  
Given the uncertainty of long-term federal commitment to Section 8 rental assistance, the Agency considers underwriting to the more conservative revenue levels to best serve the project's long-term financial viability.
  14. Any water, sewer, and tap fees charged to the project must be entered on a separate line item of the Project Development Costs page. Any application that does not include these costs must provide a letter from the local provider that no fees will be charged.

## **VII. POST-AWARD PROCESSES AND REQUIREMENTS**

### **A. GENERAL REQUIREMENTS**

1. The tax credit reservation amount will be the total anticipated qualified basis amount multiplied by eight and one half percent (8.5%), or three and three quarters percent (3.75%) for the 4% tax credit. The actual tax credits allocated will be the lesser of the tax credits reserved, the applicable federal rate multiplied by qualified basis (as approved by the Agency), or the amount determined by the Agency pursuant to its evaluation as required under Section 42(m)(2) of the Code.
2. Ownership entities must a) expend ten percent (10%) of the project's reasonably expected basis by a date to be determined by the Agency and b) submit to the Agency a completed carryover agreement and cost certification by a date to be determined by the Agency. (This requirement also applies to projects with partial allocations.) Failure to meet these deadlines will preclude the project from participation in the state credit program. Pursuant to Section VI(B)(6), the Agency may determine that an awarded application listing state tax credits as a source of funding is ineligible for allocation due to failure to comply with the requirements of this subsection (A)(2). Projects will be required to elect a project-based allocation.
3. Once approved, the ownership entity will proceed to acquire, construct or rehabilitate the project. Upon completion for occupancy, the ownership entity must notify the Agency and furnish a

completed Final Cost Certification that complies with the Agency's guidelines and requirements. Project cash flow is a prohibited source of funds for the project budget.

4. Projects must meet all applicable federal, state and local laws and ordinances, including the Code and Fair Housing Act; the Agency may treat any failure to do so as a violation of the Plan.
5. Allocated tax credits may also be returned to the Agency under the following conditions: (a) credits have been allocated to a project building that is not a qualified building within the time period required by the Code, for example, because it is not placed in service within the period required under the Code, (b) credits have been allocated to a building that does not comply with the terms of its allocation agreement, (c) credits have been allocated to a project that are not necessary for the financial feasibility of the project, or (d) by mutual written agreement between the allocation recipient and the Agency. Returned credits may include credits previously allocated to project that fails to meet the 10% test under Section 42(b)(1)(E)(ii) of the Code.
6. The Agency may conduct construction inspections for adherence to approved final plans and specifications.
7. The owner of the project must sign and record the Extended Use Agreement in the county in which the project is located by the end of the first year after the tax credits are allocated. The owner must have good and marketable title at that time, and must obtain the consent of any lienholder on the project property recorded prior to the Extended Use Agreement (other than a lienholder relative to the financing of the construction of the project that by its terms will be cancelled within one year of the last building in the project being placed in service) to be bound by the terms of this Extended Use Agreement.
8. The Agency may revoke tax credits if the Agency determines that the owner has failed to implement all representations in the application to the Agency's satisfaction. Owners will acknowledge that the following constitute conditions to their allocation:
  - (a) accuracy of the facts and compliance with representations contained in the project's final accepted application, including all exhibits and attachments,
  - (b) completion of construction as depicted on the site layout, floor plan and elevations submitted with the project application,
  - (c) adherence to the Plan, and
  - (d) provision and maintenance of those certain unit and project amenities for the benefit of the tenants described in the project application.

An owner's or project's failure to comply with all such conditions without written authorization from the Agency will entitle the Agency, in its discretion, to deem the allocation to be cancelled by mutual consent. After any such cancellation, the owner will acknowledge that neither it nor the project will have any right to claim tax credits pursuant to this allocation. The Agency reserves the right, in its discretion, to modify or waive any such failed condition.

9. Federal form 8609 will not be issued until:
  - (a) the owner and management company produces evidence of attending a low-income housing tax credit compliance seminar sponsored either by the Agency or a sponsor acceptable to the Agency within the last 12 months;
  - (b) the Agency confirms that the monitoring fees have been paid and that the project has adhered to all representations made in the application (including design elements); and
  - (c) the project demonstrates that it will meet all relevant Plan requirements.

The Agency may require evidence of escrowed funds to complete landscaping.

10. In making application for tax credits, the applicant agrees that the Committee, the Agency, and their designees will have access to any information pertaining to the project. This includes having physical access to the project, all financial records and tenant information for any monitoring that may be deemed necessary to determine compliance with the Code. Applicants are advised that the Agency, on behalf of the Committee, is required to do compliance monitoring and to notify the IRS and the owner of any discovered noncompliance with tax credit laws and regulations, whether corrected or uncorrected. The Agency intends to conduct desk audits and monitoring visits of projects for the purpose of evaluating continuing compliance with tax credit regulations, selection criteria, ensuring that the project continues to provide decent, safe and sanitary housing. The Agency will periodically modify monitoring procedures to ensure compliance with the requirements set forth in the Code and from time to time amended.
11. An allocation of tax credits does not constitute a representation or warranty that the ownership entity or its owners will qualify for or be able to use the tax credits. The Agency's interpretation of the Code is not binding on the IRS, and the Agency neither represents nor warrants to any owner, equity investor, Principal or other program participant how the Internal Revenue Service will interpret or apply any provision of the Code. Each owner and its agents should consult its own legal and tax advisors.

NOTE: Applicants are advised that some portion or all of a project's application may be subject to disclosure to the public under the North Carolina Public Records Act.

## B. STATE TAX CREDITS

As the administrative agent for state credit refunds issued under N.C.G.S. § 105-129.42, the Agency has a responsibility to ensure that ownership entities do not receive resources ahead of corresponding value being created in the project. Therefore the following restrictions will apply to the state tax credit refund program.

1. Loan Option: Loans made by the Agency pursuant to N.C.G.S. § 105-129.42(d) will not be closed until the outstanding balance on the first-tier construction financing exceeds the total state credit amount; the entire loan must be used to pay down a portion of the then existing construction debt.
2. Direct Refund Option: The Agency and ownership entity will enter into an escrow agreement with regard to the refund dollars. The agreement will state, among other reasonable limitations, that issuance of the funds under N.C.G.S. § 105-129.42(g)(1) will not occur until all of the following requirements have been met:
  - (a) at least fifty percent (50%) of the activities included in the project's eligible basis have been completed;
  - (b) the Agency and local government inspector have conducted their framing inspections and approved all buildings (including community facilities); and
  - (c) the outstanding balance on the first-tier construction financing exceeds the total state credit amount (the entire refund must be used to pay down a portion of the then existing construction debt).

Applicants must indicate which of the two options will apply to the project as part of the full application process; such decision may not be changed for the carryover allocation. Ownership entities will have to fully comply with the Plan, including Section VII(A)(2), to be eligible for participation in the state tax credit program. The Agency may adopt other policies regarding the state tax credit after adoption of the Plan. Owners, partners, members, developers or other Principals (and their affiliated entities) that are involved in a violation of any state tax credit requirement or fail to place a project in service after taking a loan or refund may be assessed up to forty (-40) negative points or disqualified from participation in Agency programs.

## C. COMPLIANCE MONITORING

1. **Basic Requirements:** Owners must comply with Section 42 of the Code, IRS regulations, rulings, procedures, decisions and notices, state statutes, local codes, the Plan, Agency loan documents, **Appendix F** (incorporated herein by reference), and any other legal requirements.
2. **Agency Requirements:** The Agency will adopt and revise standards, policies, procedures, and other requirements in administering the tax credit program. Examples include training and on-line reporting. Owners must comply with all such requirements regardless of whether or not they expressly appear in the Plan or **Appendix F**.

## VIII. DEFINITIONS

The terms listed below will be defined in the Plan as indicated below regardless of capitalization, unless the context clearly indicates otherwise. Terms used in the Plan but not defined below will have the same meaning as under the Code and IRS regulations.

**Affiliate:** As to any person or entity (i) any entity of which a majority of the voting interest is owned by such person or entity, (ii) any person or entity directly or indirectly controlling (10% or more) such person or entity, (iii) any person or entity under direct or indirect common control with any such person or entity, or (iv) any officer, director, employee, manager, stockholder (10% or more), partner or member of any such person or entity or of any person or entity referred to in the preceding clauses (i), (ii) or (iii).

**Applicant:** The entity that is applying for the tax credits and/or any RPP loan funds, as applicable.

**Community Service Facility:** Any building or portion of building that qualifies under Section 42(d)(4)(C)(iii) of the Code, Revenue Ruling 2003-77, and any Agency requirements for such facilities (which may be published as part of the Plan, an Appendix or separately).

**Developer:** Any individual or entity responsible for initiating and controlling the development process and ensuring that all, or any material portion of all, phases of the development process are accomplished. Furthermore, the developer is the individual or entity identified as such in the Ownership Entity Agreement and any and all Development Fee Agreements.

**Displacement:** The moving of a person or such person's personal property from their current residence.

**Entity:** Without limitation, any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, public agency or other entity, other than a human being.

**Homeless Populations:** People who are living in places not meant for habitation (such as streets, cars, parks), emergency shelters, or in transitional or supportive housing but originally came from places not meant for habitation or emergency shelters.

**Management Agent:** Individual(s) or Entity responsible for the day to day operations of the project, which may or may not be related to the Owner(s) or ownership entity.

**Market-Rate Units:** Units that are not subject to tax credit restrictions; does not include manager units.

**Material Participation:** Involvement in the development and operation of the project on a basis which is regular, continuous and substantial throughout the compliance period as defined in Code Sections 42 and 469(h) and the regulations promulgated thereunder.

Net Square Footage: The outside to outside measurements of all finished areas that are heated and cooled (conditioned). Examples include hallways, community and office buildings, dwelling units, meeting rooms, sitting areas, recreation rooms, game rooms, etc. Breezeways, stairwells, gazebos and picnic shelters are examples of unconditioned outside structures that may not be used as net square footage.

Owner(s): Person(s) or entity(ies) that own an equity interest in the Ownership Entity.

Ownership Entity: The ownership entity to which tax credits and/or any RPP loan funds will be awarded.

Ownership Entity Agreement: A written, legally binding agreement describing the rights, duties and obligations of owners in the ownership entity.

9% Tax Credit: Low-income housing tax credits available for allocation under the state's volume cap pursuant to Section 42(h)(3) of the Code.

Person: Any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so requires.

Person with a Disability: An adult who has a permanent physical or mental impairment which substantially limits one or more major life activities as further defined in North Carolina's Persons with Disabilities Protection Act (N.C.G.S. § 168A-3 (7a)).

Principal: Principal includes (1) all persons or entities who are or who will become partners or members of the ownership entity, (2) all persons or entities whose affiliates are or who will become partners or members of the ownership entity, (3) all persons or entities who directly or indirectly earn a portion of the development fee for development services with respect to a project and/or earn any compensation for development services rendered to such project, which compensation is funded directly or indirectly from the development fee of such project, and such amount earned exceeds the lesser of twenty-five percent (25%) of the development fee for such project or \$100,000, and (4) all affiliates of such persons or entities in clause (3) who directly or indirectly earn a portion of the development fee for development services with respect to any project in the current year and/or earn any compensation for development services rendered to any project in the current year, which compensation is funded directly or indirectly from the development fee of any such project, and such amount earned exceeds the lesser of twenty-five percent 25% of the development fee for such project or \$100,000. For purposes of determining Principal status the Agency may disregard multiple layers of pass-through or corporate entities. A partner or member will not be a Principal where its only involvement is that of the tax credit equity investor.

Qualified Corporation: Any corporation if, at all times such corporation is in existence, 100% of the stock of such corporation is held by a nonprofit organization that meets the requirements under Code Section 42(h)(5).

Rental Production Program (RPP): Agency loan program for multifamily affordable rental housing.

Stabilized Occupancy: Maintenance of at least ninety-three percent (93%) occupancy for six consecutive months.