2015 LOW INCOME HOUSING TAX CREDIT

QUALIFIED ALLOCATION PLAN

CITY OF NEW YORK

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

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I. INTRODUCTION

Since 1988 the New York City Department of Housing Preservation and Development ("HPD" or "Agency") has been making direct allocations of Low Income Housing Tax Credits to eligible projects in New York City by mutual agreement with the New York State Homes and Community Renewal (HCR). Under procedures authorized by federal statute and state law, HPD is officially designated by HCR as a Local Housing Credit Agency, a designation that is renewed annually.

As a Housing Credit Agency, HPD is required to make allocations according to a "Qualified Allocation Plan" (the Plan), which may be adopted only after providing opportunity for public comment and gaining approval of the Mayor. HPD's Plan was first issued and received mayoral approval in 1990. The Plan was found by NYC Corporation Counsel to be consistent with Section 42 of the Internal Revenue Code (the Code), and was approved by HCR as consistent with the 1990 State of New York Allocation Plan.

Modifications have been made to the Plan as needed in response to federal law and industry practice. In 1991, HPD made several changes to facilitate the administration of its Tax Credit Program and to ensure that amendments required by the 1990 Federal Budget Reconciliation Act were incorporated into the Plan. In 1993, a description of compliance monitoring procedures was incorporated into the Plan, as was required under new IRS regulations that became effective that year. In 1998, in response to changes in federal law, HPD made additional changes in the Compliance Monitoring section of the Plan, as well as changes in sections dealing with Administrative Processes, Selection Criteria and Project Underwriting. The 1999 revisions included changes in the Selection Criteria and Project Underwriting sections of the Plan. For 2000, minor changes and clarifications were made in sections on Administrative Processes, Selection Criteria, Project Underwriting, and Compliance Monitoring. In 2001, several sections of the Plan (Administrative Processes, Assessment of Housing Needs, Selection Criteria, and Compliance Monitoring) were revised in response to federal rule changes. No substantive changes were made for 2002 or 2003. In 2004, changes were made to the Administrative Process, Selection Criteria, and Project Underwriting sections of the Plan. No substantive changes were made for 2005. For 2006, changes were made to the Administrative Process, Selection Criteria and Project Underwriting sections of the Plan. In 2007, a number of sections of the Plan were updated including Administrative Process, Project Financing and Development Costs, Competitive Criteria, Project Underwriting, and Compliance Monitoring. Changes in 2008 were made in Administrative Process, Threshold Criteria, Competitive Criteria, and Project Underwriting. In 2009, substantive changes have been made to Competitive Criteria. For 2010, changes were made to the Administrative Process, Selection Criteria, Project Underwriting and Compliance Monitoring sections of the Plan. In 2011, changes were made to the Administrative Process, Selection Criteria, Project Underwriting and Competitive Criteria. In 2012, changes were made to the Administrative Process, Selection Criteria, Underwriting and Competitive Criteria. In 2013, changes were made to the Administrative Process and Selection Criteria. In 2014, changes are being made to the Assessment of Housing Needs, Threshold Criteria and Competitive Criteria sections. In 2015, changes were made to the Threshold Criteria, Competitive Criteria and Underwriting sections.

The Plan presented herein sets forth the goals and administrative procedures to be undertaken by HPD in allocating credits to projects, including application submission, evaluation and selection criteria, standards to be used in underwriting credit amounts and monitoring compliance pursuant to Section 42 of the Code ("Section 42"). This Plan fully conforms to Section 42 and State Executive Order 135.

II. CREDIT ALLOCATION AUTHORITY

HPD has a long and successful history as a provider of housing assistance including direct subsidies for the construction, substantial rehabilitation, and moderate rehabilitation of affordable residential buildings. The Agency also administers the City's housing code and acts as a Public Housing Agency in order to provide Federal tenant-based rent subsidies through the Section 8 Voucher program. Together these activities constitute far and away the largest locally sponsored housing program in the nation.

HPD also has substantial experience in awarding and administering the Low Income Housing Tax Credit Program. Since 1988, HPD has served as a Local Housing Credit Agency. By the end of calendar year 2014, HPD had cumulatively awarded nearly $363 million in tax credits to create or rehabilitate nearly 37,600 low-income units. (The $363 million figure represents annual allocation amounts that are repeated for 10 years, or $3.63 billion in total credits. These credits resulted in over $3.5 billion of direct private equity investments in low-income housing.)

As in the past, HPD will work cooperatively with HCR by furnishing periodic reports and summary information on the administration of its tax credit program. In addition, where HCR receives a proposal for projects located in HPD's five-county New York metropolitan jurisdiction, HCR will notify HPD of the proposal prior to making their decision to allocate credit to the project. Any unused New York City credit authority (i.e., credit authority for which no funding reservation has been issued) will be recaptured by HCR. Should HPD exhaust its allocation of credit authority, the Agency may request additional authority from the statewide pool of recaptured credit or from any national pool credits available.

III. GEOGRAPHIC JURISDICTION

HPD's allocation authority covers the entire City of New York, including the five counties of New York, Kings, Queens, the Bronx, and Richmond. However, selection criteria will target the use of credits to those neighborhoods with the greatest need.

IV. ADMINISTRATIVE PROCESS FOR CREDIT ALLOCATIONS

The allocation of Low Income Housing Tax Credits is administered by HPD's Tax Credit Unit within the Division of Housing Incentives. Tax Credit and federal HOME Program ("HOME") compliance monitoring is administered by the Tax Credit and HOME Compliance Unit within the Division of Asset Management. Specifically, the Tax Credit Unit is responsible for evaluating, underwriting, and scoring applications for tax credits, issuing determinations, reservations and allocations, and maintaining the waiting list. The Tax Credit and HOME Compliance Units are charged with monitoring compliance of tax credit recipients with Federal tax credit regulations.

Annually, HPD will publish a Notice of Credit Availability in a local publication that informs applicants of submission dates and deadlines for future funding rounds. One or more funding rounds may be held each year in which credit allocations will be awarded on a competitive basis. HPD may establish set-asides of credit for projects that meet qualifications determined by the Agency to be current housing priorities. Specific details regarding set-asides, including amounts and eligibility requirements, will be published in the annual Notice of Credit Availability. Projects will be evaluated under the general pool unless the application specifies the project is applying under an established set-aside.

Pursuant to Section 42 of the Internal Revenue Service Code, at least 10% of the credits will be allocated to projects that involve a qualified non-profit organization. A qualified nonprofit organization is one which: a) Is tax exempt under Section 501(c)(3) or Section 501(c)(4); b) Has the fostering of low income housing as one of its purposes; and c) Is not controlled by a for-profit organization. The nonprofit organization must materially participate in the development and ownership of the project throughout the compliance period. Material participation shall mean being the managing general partner of the owner.

To receive consideration for a credit allocation, project owners must submit an application on or before the published submission deadline. Application forms may be obtained from the address below or from the HPD website: www.nyc.gov/hpd. Applications must be completed in their entirety, and the required supporting documentation must be attached. The Agency may reject any application that is incomplete.

The following fees apply:

1) A non-refundable fee will be charged for filing an electronic application for an allocation of credits from HPD's credit authority (9% applications). The fee shall be $1,000 for projects that involve a qualified non-profit organization and $2,000 for projects that do not involve a qualified non-profit organization. A non-profit organization must have at minimum 50% ownership in the General Partner and receive at minimum 50% of the distributions in order to qualify to pay the non-profit application fee. Applicants for 9% projects choosing to file a paper application will be charged an additional non-refundable fee of $1,000. Fees must be paid at the time the application is submitted to HPD.

2) A non-refundable fee will be charged for filing an electronic application for "as-of-right" 4% credits (for projects with tax-exempt bond financing). The fee shall be $2,000 for projects that involve a qualified non-profit organization and $3,000 for projects that do not involve a qualified non-profit organization. A non-profit organization must have at minimum 50% ownership in the General Partner and receive at minimum 50% of the distributions in order to qualify to pay the non-profit application fee. Applicants choosing to file a paper application will be charged an additional non-refundable fee of $1,500. Fees must be paid at the time the application is submitted to HPD.

3) An Allocation Fee of 8% of the requested credit amount will be collected at two stages. For allocations of credits from HPD's credit authority, one half of the fee (4%) must be received before HPD will issue the Carryover Allocation. The second half of the fee (4%) must be received before HPD will issue the final Certification ("8609"). For "as-of-right" credit, one half of the fee (4%) must be received before HPD will issue a "determination of credit eligibility" (DOCE) letter. The second half of the fee (4%) must be received before HPD will issue the final Certification ("8609").

4) A Carryover Allocation extension fee of $5,000 will be charged for any project that requests and is granted an extension beyond the administrative deadline to submit a completed application for a Carryover Allocation. Carryover extension requests will be valid for a maximum of three months and will be issued solely at the discretion of HPD. HPD will not issue a Carryover Allocation extension beyond November 15th of any year.

5) A Compliance Monitoring Fee will be charged in the amount of $25 per tax credit unit per year.

6) A non-refundable fee of $2,000 per week will be charged for each week (or part thereof) that initial applications, requests for determination of credit eligibility, Carryover Allocations, Form 8609's, and other documentation required by HPD, are submitted beyond the due date or are incomplete. For the purposes of calculating the fee, a document will not be deemed submitted until the complete document is submitted. HPD may elect not to impose this fee in specific instances if, in HPD's sole discretion, it determines there is good cause for the document being submitted late or incomplete.

7) An expedited Financial Update for 8609 fee of $7,500 per project will be charged for any project that requests and is granted an expedited 8609. A cure letter will be sent to the applicant within one week of receipt of the 8609 request. It is the responsibility of the applicant to ensure all outstanding cure items are submitted to HPD expeditiously. The Tax Credit Unit will issue the 8609 within 4 weeks of the date in which it determines the Financial Update is complete. The Tax Credit Unit will not accept requests to expedite 8609s between December 1st and March 31st.

8) An 8609 extension fee of $10,000 will be charged for any project that requests and is granted an extension beyond the administrative deadline to submit a completed Financial Update for 8609. 8609 extension requests will be valid for a maximum of one year and will be issued solely at the discretion of HPD. Waivers may be issued at the sole discretion of HPD. The annual submission window for 8609 submissions is April 1st through November 30th for 4% and 9% projects.

Extension fees, expedite fees and late fees may not be included in a project's development or conversion budget.

HPD may request any and all information it deems necessary for project evaluation. If any submission is incomplete or if documentation is insufficient to complete any evaluation of the proposed project, processing will be suspended. HPD will notify applicants how the submission is incomplete and provide at least ten business days for the applicant to submit the requested documentation. The application will be disqualified and the package will be returned if the applicant fails to submit the requested documentation within the required period.

Tax credit applications and requests for information should be submitted to:

Tax Credit Unit
NYC Dept. of Housing Preservation and Development
100 Gold Street, Section 9-Y
New York, N.Y. 10038
(212) 863-5184

Tax Credit and HOME compliance inquiries should be submitted to:

Tax Credit and HOME Compliance Unit
NYC Dept. of Housing Preservation and Development
100 Gold Street, Section 7-X2
New York, N.Y. 10038
(212) 863-7371

Tax credits will be awarded based upon the selection criteria outlined in Section VI of this document. Unless otherwise indicated in the Qualified Allocation Plan, applications will be evaluated and underwritten according to the guidelines in effect during the year a complete tax credit application is submitted to HPD.

Sponsors and developers whose action or inaction materially contributed to the return or recapture of credits previously allocated by HPD will be prohibited for three years from the date the credits were returned or recaptured from participation in any project applying for credits. The Commissioner of HPD may waive the prohibition where there is valid cause.

Applications for competitive credits received by the submission deadline will be reviewed for completeness and basic eligibility. Those that meet the threshold eligibility criteria will be scored to determine competitive ranking and underwritten to determine the maximum amount of credits for which they are eligible. Credit reservations will then be issued, in rank order, to as many projects as can be covered by the credit authority available in a given funding round. In the event of scoring ties, HPD will rank tied projects according to which require the least number of tax credit dollars per tax credit unit. After that, HPD reserves the right to select the last project or projects to be funded based on whose credit needs most closely approximate the remaining available credit. HPD reserves the right to set a minimum score each year.

Notwithstanding a project's competitive score, HPD may limit the number of awards to a developer in a given year, or make no awards to a developer if, in HPD's judgment, the developer does not have the current capacity to successfully complete any or all of the projects for which the applications have been submitted. In addition, HPD reserves the right not to commit tax credits to any project if it determines, in its sole discretion, that a reservation for such project does not further the goals set forth in the City's housing plan and shall have the power to allocate credits to a project irrespective of its point ranking, if such intended allocation is: in compliance with the code; in furtherance of the City's housing goals; and determined by the commissioner to be in the interests of the citizens of the City of New York. A written explanation shall be available to the general public for any allocation of a housing credit dollar amount which is not made in accordance with established priorities and the selection criteria set forth herein.

Any complete application which meets the eligibility review criteria but is not selected for a credit reservation will be placed on a waiting list to ensure a continuous flow of quality projects should additional credit authority become available before the next funding round. The waiting list will be terminated at the commencement of a new funding round.

The allocation of tax credits under HPD's credit authority will proceed as outlined below. Applicants will be notified in writing of the status of their application, and of any conditions to be met in order to proceed to subsequent stages of the allocation process.

ALLOCATION STEPS - APPLICATIONS FOR CREDITS UNDER HPD'S CREDIT AUTHORITY

1) Initial Review & Evaluation - Applications are accepted, reviewed for completeness, evaluated against threshold and competitive selection criteria and underwritten. If sufficient credits are available to fund the project in the current funding round, it proceeds to the Credit Reservation stage (below).

2) Credit Reservation Agreement - Reservations will be executed for projects selected during periodic funding rounds. The reservation document serves as a binding commitment. Applicants who execute Credit Reservation Agreements "lock in" the credit percentage rate for the month and year in which the agreement is made.

3) Carryover Allocation - Projects requiring credit allocations prior to completion of construction will be issued a Carryover Allocation if they meet all of the following requirements:

   a) Evidence is provided that 10% of the project's reasonably expected basis will be incurred by the close of the calendar year for which the allocation is made (or by such earlier date as HPD may, for administrative purposes, establish),

   b) Evidence is provided that all financing commitments have been executed (for loans included in basis, no forgiveness or grant language can be included),

   c) The project will be placed in service no later than the close of the second calendar year following the year of the allocation,

Prior to Certification of Allocation (8609), if project ownership changes, entities will be required to submit at minimum:

   a) Information regarding the old ownership structure

   b) Legal documents for the new ownership structure, and

   c) Proof that all restrictive covenants and regulatory agreements are in full force and effect with the new ownership entity.

4) Certification of Allocation (8609) – **Projects must have converted to permanent financing before they are eligible to submit for 8609.** Certification of the final credit amount will be issued after projects are placed in service and converted to permanent financing. The certification will be in the form of an IRS Form 8609 to be issued by the Agency on a per building basis. To request the 8609, project owners must submit a "Financial Update" and such other documentation as HPD may require. The submission must be received no later than November 30th of the second calendar year following the placed in service date (i.e. placed-in service date 12/31/2016, 8609 submission must be received within the April 1st through November 30th submission window in 2018). Prior to issuance of 8609, applicants must submit the final Enterprise Green Communities Certification. All final executed and

recorded legal and loan documents, including final permanent loan documents, supporting the information represented in the Financial Update must be submitted prior to issuance of 8609. For multi-building projects, the Regulatory Agreement must include a schedule that includes the total number of units and total number of tax credit units per building. All Regulatory Agreements must include a waiver of the right to seek a qualified contract to purchase the project at the end of the 15-year compliance period. (see Threshold Criteria for requirements). Applications for 8609 will be accepted between April 1st and November 30th. Any project unable to meet this timeline requirement must request an 8609 extension and pay the appropriate extension fee.

ALLOCATION STEPS - APPLICATIONS FOR "AS-OF-RIGHT" CREDITS FOR TAX EXEMPT BOND FINANCED PROJECTS

Rental projects which meet the rent, income and occupancy requirements of Section 42, and for which more than 50% of aggregate basis is financed by tax exempt bond financing may qualify for "as-of-right" allocations of tax credits which are not charged against the credit ceiling of either HPD or the State of New York. Such projects must apply to a Housing Credit Agency for two purposes: (a) for a determination that the project satisfies the threshold requirements for an allocation under the qualified allocation plan applicable to the area in which the project is located, and (b) for a determination of the amount of tax credits to be allocated to the project. Applications for "as-of-right" credit allocations will be subject to such administrative deadlines as HPD may establish, and to the same threshold requirements (except as specified in Section VI of this document) and underwriting guidelines as apply to applications for credits under HPD's credit authority. Unless otherwise indicated in the Qualified Allocation Plan, applications are evaluated and underwritten according to the guidelines in effect during the year a complete tax credit application is submitted to HPD.

As-of-right projects must apply for and receive a Determination of Credit Eligibility (DOCE) from the Agency prior to commencement of construction. The Commissioner of HPD may waive the prohibition where there is valid cause.

Projects that apply to HPD for "as-of-right" allocations shall be processed as follows:

1) Initial Review & Evaluation - Applications are accepted, reviewed for completeness, evaluated against threshold criteria (but not competitive criteria) and underwritten. (See Section VI "Selection Criteria", and Section VII "Project Underwriting".) Applications must be submitted a minimum of 8 weeks prior to the anticipated closing date. Late submissions are required to pay a $2,000 per week late fee.

2) Determination of Credit Eligibility - Projects found to be eligible shall receive a (DOCE), which is a non-binding statement of the amount of credit for which the project is eligible. The DOCE will also list conditions and requirements for obtaining an allocation. Once a DOCE has been issued by HPD, the owner may elect to lock in a credit rate for the month in which the bonds are issued, by executing and returning to HPD an original statement to that effect, along with evidence of the date of bond issuance. The credit rate lock form must be executed and delivered to HPD's Tax Credit Unit directly no later than the fifth day after the close of the month during which the tax-exempt bonds are issued. (For example, if bond are issued June 15th, HPD's Tax Credit Unit must receive the credit rate lock form no later than July 5th). It is the responsibility of the Applicant to ensure that HPD receives the original rate lock form within the required timeframe. Applicants must submit Letter of Satisfaction from Enterprise Green Communities prior to issuance of the DOCE letter.

Certification of Allocation (8609) - **Projects must have converted to permanent financing before they are eligible to submit for 8609.** Certification of the final credit amount will be issued after projects are placed in service and have converted to permanent financing. The certification will be in the form of an IRS Form 8609 to be issued by the Agency on a per building basis after the final building has placed in service. To request the 8609 project owners must submit a "Financial Update" and such other documentation as HPD may require. The submission must be received no later than November 30th of the second calendar year following the placed in service date (i.e. placed-in service date 12/31/2016, 8609 submission must be received within the April 1st through November 30th submission window in 2018). Prior to issuance of 8609, applicants must submit the final Enterprise Green Communities Certification. In accordance with Section 42, all final executed and recorded legal and loan documents, including final permanent loan documents, supporting the information represented in the Financial Update must be submitted prior to issuance of 8609. In addition to the loan documents, projects must submit a letter from HDC confirming the permanent loan amounts from HDC. For multi-building projects, the Regulatory Agreement must include a schedule that includes the total number of units and total number of tax credit units per building. All Regulatory Agreements must include a waiver of the right to seek a qualified contract to purchase the project at the end of the 15-year compliance period. (see Threshold Criteria for requirements). Applications for 8609s will be accepted April 1st through November 30th.

Official written notice of Determination of Credit Eligibility, Credit Reservation, Carryover Allocation, and Certification of Allocation must be signed by the Assistant Commissioner of HPD's Division of Housing Incentives or his/her designee.

Electronic versions of the tax credit applications, Carryover Allocation application, and Financial Update for 8609 can be found on the HPD website:
http://www1.nyc.gov/assets/hpd/downloads/pdf/LIHTC/Tax-credit-application.pdf

V. ASSESSMENT OF HOUSING NEEDS

Providing decent and affordable housing is a constant challenge throughout the State of New York. Nowhere is this challenge greater, however, than in New York City, where more than 42% of the state's total population resides and many of the most significant housing problems exist.

New York City is faced with an extreme shortage of housing units, especially low cost housing units. This shortage has led thousands to become homeless, and forced countless others to "double-up" with existing occupants or to settle for substandard accommodations. In addition, many of those who have found decent living conditions are paying excessive portions of their income for rent and consequently may be in jeopardy of being displaced themselves. Predictably, low and very low-income families are the hardest hit. These households include the elderly, as well as the mentally and physically disabled, whose incomes severely restrict their housing choices.

The New York City Housing and Vacancy Survey (HVS) is the primary data source used to analyze the City's housing needs. The HVS is conducted periodically by the U. S. Census Bureau for the Department of Housing Preservation and Development, and provides an assessment of the housing inventory in the City, including the condition of the rental housing stock, vacancy rates, rent levels, and ownership trends. Data from the HVS Initial Findings for 2014 revealed numerous critical housing issues with which the City must contend. The Survey disclosed:

- The overall vacancy rate for rental housing in New York City in 2014 was 3.45%. For units renting under $800 the vacancy rate was 1.80%; for units renting between $800 and $999 the vacancy rate was 3.73%; and 3.13% for units in the $1000-$1499 range.
- The proportion of renter households that were crowded in 2014 was 12.2%.
- 33.1% of households were paying more than 50% of their household income in rent.

In addition, the affordable housing crisis is exacerbated by (and compounds) inequality. In some of the City's neighborhoods, median household incomes are as high as $122,222, while in others, the median household income is only $21,562. Often, both the highest income and the lowest income neighborhoods have little income diversity. Similarly, some neighborhoods have tremendous racial and ethnic diversity, while others are racially homogenous. Indeed, nearly half of the city's neighborhoods remain dominated by a single racial or ethnic group. The inequality and lack of diversity in many neighborhoods means that some families do not have access to the education, jobs, and other opportunities others enjoy. It also means that low income households often are unable to find homes in neighborhoods in which they would like to live.

The Mayor's *Housing New York: A Five-Borough, Ten-Year Plan* commits to the preservation or new construction of 200,000 units by 2024. The Plan also commits to making housing investments that will foster diverse, livable neighborhoods, provide new affordable housing for a wider range of New Yorkers, and reduce inequality by making opportunities for education, jobs, healthy lifestyles, security from crime, and other key neighborhood determinants of the quality of life available to lower income New Yorkers.

The Low Income Housing Tax Credit, one of the Federal incentives created to stimulate private sector participation in low-income housing production, has been and will be an essential tool for meeting housing needs in New York City. While those needs are extremely broad, the limited availability of tax credit resources dictates that they be targeted to specific housing needs, as set forth below:

1) Projects that produce affordable standard housing units for low and moderate-income persons. Priority will be given to those projects that include a high percentage of low-income units, and to those that provide rents affordable to persons of very low income.
2) Projects that convert City owned land or buildings that are difficult to develop or are in the City's Third Party Transfer or Multi-family Preservation Loan programs to private ownership including, among other options, eventual tenant ownership.
3) Projects that create permanent housing for special populations (homeless families with children, homeless individuals, the homeless mentally ill, other homeless groups, persons with AIDS, and mentally and/or physically disabled), and provide training and/or support services necessary to make the transition to independent living.
4) Projects that are located in high-opportunity neighborhoods
5) Projects that are developed by M/WBE developers
6) Projects that attract or retain HPD subsidies.
7) Projects that meet the Enterprise Green Communities Criteria.
8) Projects that provide the City with an option to extend the affordability period beyond the initial 30 years.

A more detailed discussion of the City's priorities in awarding credit authority is included in the following section.

VI. SELECTION CRITERIA

As a Local Housing Credit Agency, HPD will evaluate all applications received to determine which projects should receive tax credits. (Note: Tax-exempt bond financed projects which qualify for "as-of-right" credit allocations must still be in conformance with the threshold requirements of the qualified allocation plan applicable to the area in which the project is located.)

THRESHOLD CRITERIA

To be considered for funding, a project must demonstrate that it meets each of the following threshold criteria:

1. Rent and Income Restrictions – Project conforms to the basic income, occupancy and rent restrictions of Section 42.

2. Readiness – Project is ready to proceed as documented by the following:

   (a) If the property is currently owned by the applicant or a related entity, applicant must submit a copy of an executed deed to the applicant or related entity;

   (b) If the property is currently owned by a private party and is not in foreclosure or the subject of a foreclosure sale, applicant must submit an unexpired contract of sale between the current owner and the applicant or related entity, or unexpired purchase option in favor of the applicant or related entity;

   (c) If the property is currently owned by the City of New York, then ULURP certification must have been obtained as of the time of application for the disposition of the property for the land use contemplated by the project and full ULURP approval must be obtained within 40 days of submission of application;

   (d) If the proposed development is not as-of-right, ULURP certification for the required zoning amendment must have been obtained and full ULURP approval for the zoning amendment must be obtained within 40 days of submission of application;

   (e) If the property is currently owned by a governmental entity other than the City, applicant must submit evidence satisfactory to HPD that the governmental entity has the authority to convey the property to applicant or a related entity;

   (f) The property is or is contemplated to be in the City's Third Party Transfer Program and the proposed use of the property is consistent with the City Council's approval for the Third Party Transfer conveyance.

   (g) If the property is currently owned by a private party and is the subject of a mortgage foreclosure, then the following is required:

      (i) If the foreclosure sale has taken place, applicant must provide an executed Memorandum of Sale including the Terms of Sale and showing either the applicant as the successful bidder at the foreclosure sale or an assignment of bid to the applicant as assignee of the successful bidder, as the entity that will ultimately close title with the foreclosure referee.

(ii) If a judgment of foreclosure has been granted and entered but the foreclosure sale has not yet taken place, the applicant must be either the foreclosure judgment-creditor or the assignee of the foreclosure judgment-creditor and must submit the judgment of foreclosure and sale and a letter of intent stating that the applicant intends to serve and publish a Notice of Sale within thirty days of entry of the judgment and to credit bid up to the full amount of the foreclosure judgment and will close title with the foreclosure referee.

(iii) If a judgment of foreclosure and sale has not yet been granted and entered, applicant must be the owner of the Note and Mortgage and submit evidence consisting of a) the applicant being owner of the Note and Mortgage and b) the decision and order that summary or default judgment of foreclosure and order of reference has been granted to the mortgagee and c) a statement of intent that the applicant as the Note and Mortgage owner intends to pursue the foreclosure through Judgment of Foreclosure and Sale, serve and publish a Notice of Sale within thirty days of the entry of the foreclosure judgment and credit bid up to the full amount of the judgment.

In all instances, the project must meet the HPD program requirements. The Tax Credit Unit will confirm that all requirements have been met. HPD has the right to approve the members of the assignee. If title does not close with the foreclosure referee within a reasonable period of time, as determined by HPD, the application may be declared void at HPD's discretion.

3. Financing commitments: At minimum, project must be able to demonstrate:

a) For "competitive" applications, evidence may include "soft" or conditional commitment letters indicating intent to provide funding.

b) For "as-of-right" applications, evidence of *executed* construction financing commitment is required for financing issued by New York City Housing Development Corporation. There must be a provision of evidence, satisfactory to HPD, that the mortgage securing the tax-exempt bond financing will remain on the project in an amount not less than 50% of the aggregate basis at least until the date required by the Internal Revenue Service in order for the project to meet the "50% test". For other financing sources, evidence may include "soft" or conditional commitment letters indicating intent to provide funding.

All commitments must be on company letterhead, executed and contain a dollar amount. All developments must demonstrate that sufficient sources are available to the project to assure feasibility.

4. Ownership Structure - All entities in the ownership structure are identified, including, for partnerships, all proposed general partners and managing general partners and, for limited liability companies, all members and managing members.

5. Regulatory Agreement / Extended Low Income Use / Waiver of Right to Qualified Contract – Owners of 9% projects are willing to enter into a 30 year regulatory agreement with HPD for extended low-income use of the project that is in conformance with the requirements of Section 42. Owner also agrees to give HPD the option to extend the affordability period for an additional number of years, up to 30 years, if HPD extends the Project's tax exemption for an equal number of years. Owner agrees to maintain the Extended Use period by including in the regulatory agreement a waiver of the right to seek a qualified contract to purchase the project at the end of the 15-year compliance period.

   Owners of 4% projects are willing to enter into a regulatory agreement with HPD for extended low-income use of the project (i.e. a 30 year compliance period) that is in conformance with the requirements of Section 42. Owner agrees to maintain the Extended Use period by including in the regulatory agreement a waiver of the right to seek a qualified contract to purchase the project at the end of the 15-year compliance period.

6. Housing Needs – Project is of the appropriate type needed to address the housing needs in the area where the project is located as evidenced by a market study produced by HPD or a market study consultant approved by HPD. The market study must demonstrate a need for the proposed housing.

7. Design Standards and Minimum Construction Requirements - "Standalone" projects (projects receiving 9% credits and no other HPD subsidy or assistance) must adhere to HPD design standards and will be subject to post-construction audit. HPD's Division of Architecture and Engineering (DAE) will make a determination of compliance with HPD's Design Standards.

8. Marketing Requirements – All projects, including "standalone" projects, are subject to HPD's marketing requirements including the selection of initial tenants through an HPD supervised lottery. The Tax Credit Unit will notify the HPD Marketing Unit when an allocation of credits is made to a "standalone" project.

9. Applicant Qualifications – Applications may be rejected at any time during or after the evaluation process if there are any adverse findings regarding the Applicant, any entity or individual associated with the Applicant, or any property owned and/or managed by them. Applicant and sponsor must certify that there are no such adverse findings, which may include, but are not limited to:

   - conviction, administrative violation, judicial or administrative finding, pending judicial or administrative case, or pending litigation for harassment, arson, fraud, bribery, grand larceny, any felony or crime of dishonesty, or noncompliance with fair housing or anti-discrimination laws, any applicable codes or ordinances, labor laws, or construction laws.
   - defaults or poor performance under any government-assisted program;
   - suspension or debarment by any governmental entity;
   - mortgage arrears, default, or foreclosure proceedings;
   - tax arrears, tax foreclosure or enforcement proceedings, or sale of tax liens;
   - voluntary or involuntary bankruptcy proceeding; or
   - negative findings by the Department of Investigation.

Defaults under any City-sponsored program,

i) Applicants or principals with defaults that have current Agency-approved remediation plans in place at the time the project applies for tax credits will pass threshold. However, competitive points will be deducted from the project's score. The applicant must submit a statement from the appropriate agency showing the agreement is in good standing.
ii) Applicants or principals with defaults that do not have Agency-approved remediation plans in place at the time the project applies for tax credits will not pass threshold.

Note that applicants with current Agency-approved workout plans will pass threshold and may not be subject to point deductions.

Applicants for "standalone" projects must complete HPD Sponsor Review Disclosure Statements. The Applicant is responsible for completing all required Sponsor Review Disclosure Statements in accordance with HPD's Sponsor Review policy. Sponsor Review Disclosure Statements are also required to be completed by General Contractors. Sponsor Review will be performed at the time the applicant submits an original tax credit application. If a General Contractor has not been selected at the time the project submits its original tax credit application, Sponsor Review of the General Contractor will be performed prior to issuance of the carryover allocation. Sponsor Review documents for the General Contractor should be submitted as soon as the Contractor is selected to avoid delays in the issuance of the carryover allocation.

10) Enterprise Green Communities Criteria - All projects will be required to certify under the Enterprise Green Communities Criteria Certification Overlay for NYC HPD projects. Details and instructions on HPD's green building policy can be found on the HPD website at: http://www1.nyc.gov/site/hpd/developers/green-building.page. The Enterprise Green Communities Criteria can be found online at http://www.enterprisecommunity.com/solutions-and-innovation/enterprise-green-communities/criteria. As part of the tax credit application submission, applicants will be required to submit a Step 1 Pre-Build Approval from Enterprise. Additionally, applicants must submit final Enterprise Green Communities Certification prior to issuance of 8609s. Rehabilitation projects engaging in the following minimum work scope are required to meet the following LIHTC Green Communities threshold requirement:

1. Replace heating system, and
2. Work in 75% of units including work within the kitchen and/or bathroom, and
3. Work on the building envelope, such as replace/add insulation, replace windows, replace / add roof insulation, new roof or substantial roof repair.

Projects unable to meet the LIHTC Green Communities threshold requirements, and qualify under an excluded category, may request a waiver. All LIHTC preservation projects receiving a waiver of the Green Communities Criteria must comply with HPD's Standard Specification. In addition, any new construction or rehabilitation project (as defined above), which received a waiver by HPD from the Green Communities requirement will also be waived from the LIHTC Green Communities threshold requirement. Each project will be required to submit either a Step 1 Pre-Build Approval from Enterprise or a waiver from HPD along with the original tax credit application. A copy of the waiver request form can be obtained at: http://www1.nyc.gov/assets/hpd/downloads/pdf/developers/green-

communities-waiver.pdf

HPD may also issue a waiver of the final Green Communities Certification requirement for 8609s, if a project can demonstrate financial hardship that will threaten project viability. To be eligible for a waiver under the financial hardship election at the 8609 filing phase, HPD must receive confirmation from Enterprise that all required documentation has been submitted.

11. 9% projects only - Applicants receiving funding from HPD must submit a letter on HPD letterhead from the Program Director or Assistant Commissioner for the HPD funding program stating the following: 1) the application has been reviewed by HPD and HPD agrees with the items represented and pledged in the application and 2) confirmation the project is not viable as a 4% project. The letter must be dated within 2 months of the application submission.

Projects that do not meet the threshold criteria will not be reviewed further. Applicants will be informed that the project is not eligible for a reservation of credits. Applicants may reapply for subsequent funding cycles, but must pay an additional application fee.

COMPETITIVE CRITERIA (9% PROJECTS ONLY)

A scoring system will be used to evaluate and rank those projects that meet the basic threshold criteria. This system has been established to conform to the selection criteria contained in the Federal law as well as fulfill the objectives outlined in the Assessment of Housing Needs (Section V). This scoring system has a maximum attainable score of 100 points, including special priority points that may be given to a project that the Commissioner of HPD determines to be an important initiative or unique opportunity to meet basic local housing objectives.

HPD will establish a minimum score for each funding round based on the scores calculated from the applications. The minimum score will be established by taking the average score and reducing it by 20%. Any project scoring under 20% of the pipeline average will not be funded.

All elections made by the applicant on the original tax credit application will be included in the project's Regulatory Agreement and will remain in full force for the first thirty years of the regulatory term. Affordability restrictions will remain in full force for the duration of the Regulatory Agreement. The elements for which competitive points will be awarded are:

A. PROJECT OCCUPANCY (Maximum points 23)

1) Permanent Housing for the Homeless (4) – For this purpose, "homeless" shall be defined to mean either homeless singles or families referred by HPD, the NYC Department of Human Resources (HRA) or the NYC Department of Homeless Services (DHS). Projects that set aside at least 5% more residential rental units for homeless than required by its funding program will receive points. For example, if the funding program requires 10% of units to be set aside for homeless units, projects setting aside at least 15% will receive points. For standalone projects and projects funded through a program with no homeless requirement (including the Extremely Low Income and Low Income Program (ELLA)), at least 10% of the units must be set aside as homeless units to receive points.

2) Households with Children (4)– Projects where at least 10%, 20% or 30% of the low-income units are two bedrooms or larger. Points are awarded on a sliding scale basis.

3) Mixed Income (3)– Projects where the difference between the lowest eligible maximum tenant household income and the highest eligible maximum tenant housing income is at least 50 percentage points in terms of Area Media Income (AMI). For example, a project would receive points if it has units designated for households whose incomes are up to 40% of AMI upon initial occupancy and units designated for households whose incomes are up to 90% of AMI upon initial occupancy. At least 5% of the units must be designated at the low AMI band and at least 5% of the units must be designated at the high AMI band. All other units can be distributed as needed. For example, a 100 unit project would need to have at least 5 units designated at 40% of AMI, 5 units designated at 90% of AMI, and the other 90 units can be designated as needed between 40% of AMI and 90% of AMI.

4) Very Low Income Occupancy (4)–Projects that either elect the 20/50-threshold test, or otherwise set aside at least 20%, 30% or 40% of units as very low income units (50% of AMI or lower). Points are awarded on a sliding scale based on the actual percentages.

5) Deeper Affordability (2)– Projects that designate 5% or more of the units for households up to 40% of AMI units than the funding program requires will receive points. For example, if the funding program requires that a minimum of 10% of the units be rented to households with incomes up to 40% of AMI, a project designating 15% of the units for such households would receive points. Standalone projects and projects being funded through programs with no requirement to have any units designated as 40% AMI units must designate at least 10% of the units for such households in order to receive points. The underwriting must support the project's ability to support these rents without rental subsidy (only exception is project-based Section 8).

6) Special Needs Populations – Special needs groups include homeless persons and families, persons who are mentally ill or disabled, persons with AIDS, persons with substance abuse disorders, and survivors of domestic violence and their families. (5)

   a) Projects that set aside 35% or more of units for Special Needs groups and provide evidence of adequate provision of support services for the intended population by including a letter of interest from a social service agency [e.g. Office of Alcoholism and Substance Abuse Services (OASAS), Office of Mental Health (OMH), Office of Mental Retardation and Development Disabilities (OMRDD), the NYC Human Resources Administration (HRA) or the Department of Homeless Services (DHS)], stating that the agency has reviewed the project and determined that the applicant will be eligible for operating subsidies and/or supportive housing services through the agency. (4)

   b) Sponsors that have previous experience in this type of housing or service delivery. (1)

7) Public Housing Waiting Lists (1)– Scored on whether the sponsor has committed in writing to the Agency to designate at least 20% of the low-income units in which special preference will be given to households on the waiting list for public housing.

B. PROJECT FINANCING AND DEVELOPMENT COSTS **(Maximum points 33)**

1) Public Financing (8) – Projects that have received a commitment of HPD and/or HOME funding. Evidence of subsidy (a commitment letter from the appropriate HPD program) must be submitted identifying the subsidy and the terms and conditions for its receipt.

2) Efficiency of Subsidy (2) – Projects that have received a commitment of HPD and/or HOME funding and request at least 10% below the maximum subsidy allowed by the funding program.

3) Firm Financing Commitments (5)– Projects with evidence of firm commitments for financing. Firm financing commitments do not include proposals, letters of interest, term sheets, or financing contingent on either loan committee approval or availability of tax credits, or any similar document.

4) Developer Fees (4)– Projects with developer fees of 13% or less of development costs (total development costs less developer fee, operating and other reserves, syndication and partnership costs). Points are awarded on a sliding scale basis.

5) Other Sources of Financing (2)– Projects that received a commitment from sources other than HPD subsidy, HOME subsidy and Tax Credit equity. The amount of these other sources must be 10% or greater of the total permanent financing.

6) Pricing (5)– Projects with Tax Credit pricing that exceeds the minimum underwriting standard for pricing by at least $0.05.

7) Efficiency of Credits (5)– Projects with credit ask of $19,000 or less per tax credit unit. Points are awarded on a sliding scale basis.

8) Lower Costs (2) – Projects with an overall lower Total Development Cost (TDC) than projects of the same housing type (Supportive Housing, New Construction, and Preservation). Projects will be ranked according to TDC within those housing types and the lower 50% of each category will receive points.

C. PROJECT CHARACTERISTICS (Maximum points 17)

1) Targeted Areas (2)– Scored on whether the project is located in a geographic area defined by HPD as an area of special need or where HPD determines the project will have a strong impact in that it will encourage further development or redevelopment in the community, such as Urban Renewal Areas.

2) High-Opportunity Neighborhoods (4)– Projects that increase housing opportunities to low income households. Projects located in any of the following areas will receive points: high performing schools, low crime, or less than 10% poverty. Projects located in at least two of the criteria will receive an additional bonus point.

3) Acquisition of properties from the City (7) – Projects where properties are acquired through the City of New York's Third Party Transfer Program or Multifamily Preservation Loan Program, or projects that are acquired from the City and are especially difficult to develop because of size, possibility that remediation will be needed, unusual physical shape or characteristics or other special circumstances.

4) Tenant Ownership (1)- Scored on whether the sponsor has committed in writing to the Agency that the project is intended for eventual tenant ownership at the end of the extended use compliance period. To receive points, the applicant must include a plan deemed acceptable by HPD for ensuring the feasibility for the affordability period.

5) Historic (1) – Projects where an existing building is landmarked, designated as historic, as defined by local, state, or federal law.

6) Preservation Projects (2)– Projects that preserve existing affordable housing that either: a) have, and continue to use if possible, project-based rental assistance and/or operating subsidy; b) have a loan made prior to 1984 from any of the following loan programs: HUD 202/811, 221(d)3 or (d)4 or 236; or c) are a HPD LIHTC Preservation project where HPD has approved a resyndication plan.

D. APPLICANT CHARACTERISTICS (Maximum points 7)

1) Experience – Applicants (owner and/or developer) with demonstrated capacity for undertaking the development, management and/or ownership of a Low Income Housing Tax Credit project. (6)

   a) Experience as a developer of Low Income Housing Tax Credit projects.

   b) Experience in the operation and/or management of Low Income Housing Tax Credit project.

2) Participation diversity: Applicants who demonstrate that their programing (such as training programs or job placement activities), their own staffing practices, or their use of MWBE firms on the proposed project, will help to increase the participation of racial or ethnic minorities, women, or local residents in the construction or management of affordable housing. (1)

3) HPD Development History and Problems – Applicants who have previously received tax credit allocations or other development financing from HPD will be reviewed for outstanding problems on previous projects. Points will be deducted for applicants who are principals in any of the following:

   a) Projects with outstanding instances of uncorrected Tax Credit noncompliance. (1 point deducted for each uncorrected finding, up to a maximum of 15 points)

   b) Projects with outstanding instances of uncorrected HOME noncompliance. (1 point deducted for each uncorrected finding, up to a maximum of 15 points)

   c) Projects whose credit allocations have been returned to or recaptured by HPD. (5 points deducted for any return or recapture of credits)

   d) Projects that are in default or workout status. (10 points deducted for any such project)

E. PROJECT READINESS (Maximum points 10)

1) Approved Contractor Price (5)– Projects that can provide evidence that the general contractor has been selected by the owner and, if necessary, approved by the construction lender, and that the contractor's price has been approved by the owner and construction lender.

2) Plan Submission (5)– Projects that have submitted construction permit documents to the New York City Department of Buildings (DOB) that indicate a construction start or an imminent start, as evidenced by printed documents from the DOB Buildings Information System (BIS) including the permit number, OR, adequate evidence of approval of construction documents by the construction lender, including HPD.

F. SPECIAL PRIORITY POINTS (Maximum points 10)

Projects the Commissioner of HPD determines to be an important initiative or unique opportunity to meet the basic local housing objectives.

HPD will evaluate projects according to their strength in meeting the selection criteria, and award points accordingly. The results of the evaluation will be determined by HPD in its sole discretion. Any complete application which meets the eligibility review criteria but is not selected for a credit reservation will be placed on a waiting list to ensure a continuous flow of quality projects should additional credit authority become available before the next funding round. The waiting list will be terminated at the commencement of a new funding round.

VII. PROJECT UNDERWRITING

The following guidelines apply equally to projects competing for an allocation of credits under HPD's Credit Authority and to "as-of-right" credits for tax-exempt bond financed projects. The determination of the amount of credit to be allocated to projects and the underwriting of projects will be made at each of the following times:

1) At Initial Review and Evaluation of the application for tax credits.

2) Prior to issuance of a Carryover Allocation of tax credits (not applicable to "as-of-right" credits).

3) Prior to Certification of Allocation, i.e., when the project is placed in service.

A pre-requisite for underwriting will be the submission of the rent structure, development and operating budgets, and financing and syndication plans. (Applications, Carryover Allocation forms and Financial Update forms specifying the information required may be obtained from HPD.)

HPD will establish underwriting guidelines to ensure project feasibility and determine that credit allocated does not exceed the amount needed. Section 42 requires that two forms of financial analysis be employed in determining the amount of the credit allocation:

1) Qualified Basis Analysis - Based on:

   a) Total qualified costs as adjusted, where allowable, for high cost areas.

   b) The "applicable fraction," the lower of low-income units or floor space.

   c) The monthly credit rate in effect; HPD will calculate the maximum credit amount for which the project could qualify.

2) Sources and Uses Analysis – HPD will compare total project costs (as adjusted to exclude the cost of Syndication Fees, Limited Partnership (or Upper Tier) Reserves, and Bridge Loan Fees and Interest) and total financing available to determine what, if any, gap in project financing exists. The amount of credit needed to generate equity to fill the gap is then calculated.

The amount of credit allowable will be the lower of the two amounts calculated above. (Actual allocation amounts may be lower than the amount allowable, depending on the availability of credit authority.)

The following guidelines will be employed in performing the financial analyses described above.

1) Development Costs – All development costs will be reviewed for reasonableness as required under Section 42. As general reference points, HPD may refer to development cost guidelines used by the Agency's own financing programs or to general industry standards. Costs may be reviewed both on a line-by-line basis, as well as on a total cost per unit basis. HPD will consider reasonable variations in cost based on project location, scope of work involved, whether prevailing wage rules apply, and other factors. The following specific guidelines will apply to all projects applying for tax credits:

   a) Eligible Basis – In performing the Qualified Basis Analysis for Rehab/Construction credits, HPD will recognize Eligible Basis in amounts not exceeding $300,000 per residential unit for 9%

projects and $400,000 per residential unit for 4% projects. For competitive 9% projects this maximum will apply the year the project first applies. For "as-of-right" 4% bond projects this maximum will apply the year the project submits a "financial update" in anticipation of an IRS Form 8609. However, the Commissioner of HPD has the right to waive the eligible basis maximum if the applicant can demonstrate there is good cause to do so. Waiver requests must be in writing and include documentation in support of the request.

b) Cost Increases – At the 8609 stage of underwriting, HPD reserves the right to disallow costs that are not either: (a) identified in the initial application, or (b) based on unforeseen conditions. For all projects, documentation and justification of any significant cost increases may be required.

c) Acquisition Costs – Acquisition costs exceeding $500 per unit will not be recognized unless supported by a current independent appraisal of "as-is" value as it exists in the market today. (HPD appraisals are also acceptable.) For projects with acquisition costs in excess of $20 million, applicants must submit two independent appraisals. For projects seeking acquisition credits, the appraisal date must be within one year prior to the date of acquisition and the credit rate in effect at the time the property was acquired will be used to calculate the acquisition credit. If a project receives financing from an HPD loan program and the acquisition amount approved by the loan program is less than the appraised value, only the cost approved by the loan program will be recognized. This cap applies for purposes of the Qualified Basis Analysis, the Sources/Uses Analysis, and for calculating the allowable Developer Fee. All appraisals must be on letterhead, executed, dated and marked final.

   HPD may reduce any allowable costs where it finds there is an identity of interest among the parties to the sale, such as common financial interests; common officers, directors or stockholders; or family relationships between officers, directors, or stockholders.

d) Loan Interest – HPD may recognize in eligible basis interest on loans made by a limited partner to a project. In such cases, documentation must be submitted that demonstrates the transaction is a bona fide loan that is repayable by a definite maturity date. HPD may require an attorney's opinion that supports a finding that the transaction is a bona fide loan, and may also require documentation identifying the use of the loan proceeds and that the loan is financially necessary for the success of the project, as determined by HPD in its sole discretion.

e) Developer Fees – The term "Developer Fee" shall refer to and encompass all compensation for development services, including all staff and overhead costs, developer profit, and the cost of consultants (financial, construction monitoring, relocation, and other consultants) engaged by the developer to perform development services. If the construction contract price includes any consulting fees, this must be disclosed at the time of application and at the time the 8609 is submitted. In performing the Qualified Basis Analysis and Sources/Uses Analysis, HPD will recognize Developer Fees in amounts not exceeding 15% of improvement costs and 10% of acquisition costs. For this purpose "improvement costs" excludes Developer Fee, reserves and syndication and partnership expenses.

f) Deferred Developer Fees - HPD will recognize deferred Developer Fees in the Qualified Basis and Sources and Uses analyses only when all the following conditions are met:

   i) Total Developer Fee, including any deferred portions, does not exceed the 15% standard described above,

ii) the owner's liability for such fees is incurred under a valid development agreement and reflected in the partnership documents, and

iii) the applicant can demonstrate in a manner acceptable to HPD that a clear source of revenue exists, usually cash flow, to enable the deferred fees to be paid within 15 years of the expected placed in service date of the project.

g) "Waived" Developer Fees – In calculating the credit amount, HPD will recognize Developer Fees only if they are:

i) Included in the application's development budget, and

ii) reflected as a non-contingent liability in the partnership documents. These requirements will apply whether or not such Developer Fees are included in Eligible Basis, and whether or not the developer may subsequently waive the fee.

h) Disclosure of Upper Tier Partnership and/or Any Other Fees – Applicants must disclose any fees paid at the upper tier partnership level and/or any other fees paid to any parties to the transactions involving the syndication, development and/or operation of the project. Projects will be evaluated to determine if the fees are reasonable and necessary. HPD may adjust credit allocations by an amount equal to any fees that HPD finds to be excessive or unnecessary.

i) Reserves - Projects will be evaluated to determine that operating reserves are adequate (but not excessive) to insure project affordability and viability over the project term. "Standalone" projects must have replacement reserves equal to at least $300 per unit per year. Operating reserves for "standalone" projects must equal at least 6 months operating expenses, debt service and replacement reserve payments. Additional amounts necessary to provide operating assistance to support very low income, homeless and special needs populations may be permitted. All reserves, whether funded from the Developer Fee or separately, must be irrevocably committed to the project. For purposes of analyzing reserves, HPD may review a project's income and expense data and cash flow analyses, as it deems necessary, and may require justification for reserves required by lenders or investors. Reserve amounts considered by HPD to be excessive may be reduced for purposes of performing the Sources/Uses analysis.

j) Identity of Interest – Identity of Interest shall mean any financial, familial or business ownership relationship between any general partner and any participant in the project's development. This includes, but is not limited to, existence of a reimbursement arrangement or exchange of funds; common financial interests; common officers, directors or stockholders; or family relationships between officers, directors, or stockholders.

HPD may reduce any allowable costs where an Identity of Interest has been found among the parties to the transactions involving the syndication, development, and/or operation of the project. All applicants will be required to submit an affidavit disclosing the nature of any identity of interest. Where an identity of interest exists among parties to the sale, development, and/or operation of the project, the applicant will be required to demonstrate expenditures to be customary given the financial structure of the project. HPD may also request that the applicant provide information regarding all officers, directors and principal shareholders of the development and contracting organizations and their relationship to the project and each other.

k) Community Service Facility - The allowable basis for community service facilities located in a HUD-defined Qualified Census Tract ("QCT") is 25% of the first $15 million of eligible basis and 10% of additional basis. If a project is not located in a HUD-defined QCT, the community service facility costs are not allowable in eligible basis.

l) 30% Basis Boost - The Code provides that all projects located in a HUD-defined QCT or in a Difficult to Develop Area (DDA) are eligible for up to a 30% increase in basis. HUD is expected to designate only certain zip codes in New York City as a DDA. However, the Code also allows allocating agencies to designate areas within their jurisdiction as DDA's. HPD has designated all five boroughs in New York City as a DDA. Therefore, all 9% projects in New York City will be eligible for the basis boost. (4% projects are only eligible for the basis boost if they are located in a HUD-defined QCT or DDA.)

2) Financing – All sources of financing will be examined. All developments must demonstrate that sufficient sources are available to the project to assure feasibility. Evidence of commitment must be provided for all debt financing, including specific amounts and terms of repayment. HPD reserves the right to review debt service coverage ratios, to calculate the amount of debt the project could support, and to use such imputed debt amounts in its Sources and Uses Analysis, if it deems appropriate. "Standalone" projects must demonstrate a debt service coverage ratio of at least 1.15, and positive cash flow over 15 year period.

At the Carryover Allocation stage all financing commitments must be firm. Evidence of commitment must confirm the amounts and terms of financing stated in the application.

In accordance with Section 42, all final executed and recorded legal and loan documents, including final permanent loan documents, supporting the information represented in the Financial Update must be submitted prior to issuance of the 8609. For 4% projects with permanent financing issued through New York City Housing Development Corporation (HDC), a letter from HDC must be submitted confirming the permanent loan amount if the mortgage is not being modified at the permanent loan conversion. All projects must convert to permanent financing prior to submitting for 8609 to ensure all costs and financing are final.

For related party and unconventional loans, the following must be submitted:

The Lender must represent in writing that (i) the note is negotiable, repayable, and, if not secured by a mortgage, recourse, (ii) it intends to take the necessary actions as a reasonably prudent lender would take to enforce its rights under the note to collect payment of the debt, (iii) it will treat the loan as an asset in accordance with the generally accepted accounting principles.

The Borrower must represent in writing that (i) the note is negotiable, repayable, and, if not secured by a mortgage, recourse, (ii) it intends to repay the loan in accordance with the terms of the note, (iii) there are no formal or informal understandings or arrangements with the lender that the will be forgiven, and (iv) it will not request the lender to forgive the loan in the future.

Additionally, HPD may require an attorney's opinion that supports a finding that the transaction is a bona fide loan, and may also require documentation identifying the use of the loan proceeds and that the loan is financially necessary for the success of the project, as determined by HPD in its sole discretion.

3) Syndication Proceeds – In calculating the amount of credit required to fill any financing gap identified in the Sources and Uses Analysis, HPD will use an assumed minimum net equity raise factor, which shall be determined by the agency yearly, based on the agency's evaluation of current market trends. This raise factor will be applied as follows:

   a) Timing of Analysis – The assumed minimum raise factor will be used for analyses conducted at the initial application and Carryover Allocation stages, unless the applicant has provided documentation of the actual raise factor pledged by the investor. If the actual raise factor is known, HPD will utilize the higher of the actual or the assumed minimum. At the "8609" stage, applicants must provide documentation of actual gross and net equity. At this stage, HPD will utilize the higher of the actual raise factor or the assumed minimum factor in effect when the credits were first reserved or allocated.

   b) Source of Equity – If tax credit equity is being raised through syndication, the assumed minimum raise factor (as expressed in cents on the dollar) will apply. If equity is raised through a private placement with a single investor, or if the general partner or the owner is utilizing tax credits, the assumed minimum will be increased. Where an identity of interest exists between the developer and/or investor, the equity source will be treated as a private placement.

4) Operating Costs – The rents and operating budget will be reviewed for reasonableness. As general reference points, HPD may refer to operating cost guidelines used by the agency's own financing programs, or to general industry standards. HPD may establish reasonable assumptions with respect to the rates at which income and expenses can be expected to increase.

5) HOME Subsidy Layering – When Federal HOME funds are to be used with tax credits, HPD will perform a subsidy layering review to determine that the level of assistance is appropriate and that the project owner will not receive excessive compensation or excessive Federal subsidy through HPD. Under current regulations, where Federal funds other than HOME are used in conjunction with tax credits, HUD performs the subsidy layering review.

6) Tenant-Based Section 8 Vouchers – "standalone" projects anticipating availability of new tenant-based Section 8 vouchers must be underwritten at rents not greater than the maximum tax credit rents.

7) Outstanding Charges or Liens – "standalone" projects must not have any outstanding real estate tax, water or sewer charges or liens.

8) Rent Rolls – rehabilitation projects must submit current rent roll with original tax credit application.

9) Capital Needs Assessment – "standalone" rehabilitation projects must submit a Capital Needs Assessment to show adequate capital needs.

HPD's underwriting and subsequent allocation of credit shall not be construed as a representation or warranty of feasibility or viability of a project.

VIII. ADMINISTRATIVE PROCESS FOR EXTENDED USE PERIOD

One of the mechanisms by which HPD will discharge its post allocation responsibilities is through enforcement of a regulatory agreement executed with the project owner. (See also Section IX - Compliance Monitoring.) It is required that the regulatory agreement be recorded as a restrictive covenant prior to the issuance of a Certification of Allocation (IRS form 8609) or Carryover Allocation document. In addition, the essential terms of the regulatory agreement as it affects low-income tenants shall be contained in a rider attached to the lease of each low-income unit. The regulatory agreement will specify the following for the low-income portion of the building(s):

1) The agreement shall be binding on all successors of the owner;

2) The project is subject to the requirements of Section 42 of the Internal Revenue Code of 1986;

3) The owner shall agree to attach a lease rider to the lease of each low-income unit on forms provided by HPD that will disclose the restricted rent for such unit;

4) The lease rider which the owner must attach to the lease of each low-income unit will require the tenant to annually provide income verifications to the owner;

5) The owner shall agree under the regulatory agreement that the applicable fraction (as defined in subsection (c) (1) of Section 42 of the Internal Revenue Code) for the building for each taxable year in the extended use period will not be less than the applicable fraction for the building when placed in service;

6) The owner shall consent to enforcement in any State court of the extended use requirement by any prospective, present or former income eligible persons;

7) The owner shall annually submit to HPD a certification that the building is owned and operated in compliance with the provisions of Section 42 of the Internal Revenue Code and any regulations promulgated thereunder;

8) The owner shall not retaliate against any tenant who notifies HPD of alleged violations of the regulatory agreement.

9) Project owners will be allowed to increase rents to 30% of 80% AMI upon vacancy on tax credits units after the thirty year compliance period.

HPD is responsible for enforcing all regulatory agreements and reporting non-compliance. All correspondence and/or legal notices relating to the regulatory agreement should be addressed to HPD.

IX. COMPLIANCE MONITORING

As a Housing Credit Agency, HPD is required to monitor compliance with Low Income Housing Tax Credit ("LIHTC") requirements of Section 42 of the Internal Revenue Code of 1986 for all projects awarded credits by HPD. HPD may delegate its monitoring responsibility in the case of tax-exempt bond financed projects. The agency's monitoring obligations include: a) monitoring record keeping and record retention by project owners; b) receiving and reviewing annual owner certifications; c) making periodic on-site inspections of projects and records; and d) notifying the IRS of non-compliance. The specific IRS requirements provide that HPD monitor the following:

RECORD KEEPING AND RETENTION

1) Record keeping – The owner of a LIHTC project shall keep records for each qualified low-income building in the project and make these records available to HPD upon request. These records shall show for each year in the compliance period the following:

   a) Total number of residential rental units in each building, including the number of bedrooms and size in square feet of each residential rental unit.

   b) The percentage and location of LIHTC qualified low-income residential units in each building.

   c) The rent charges for each residential rental unit, including any utility allowances.

   d) The number of occupants in each LIHTC qualified unit, but only if rent is determined by the number of occupants in each unit under Internal Revenue Code Section 42(g)(2) (as in effect before the amendments made by the Revenue Reconciliation Act of 1989).

   e) For each building with LIHTC qualified low-income units, all vacancies that occurred in LIHTC units and information that shows when, and to whom, the next available units were rented.

   f) All annual income certifications submitted by each past and present tenant of LIHTC qualified low-income units.

   g) The documentation to support certifications (for example, a copy of the tenant's federal income tax return or W-2 Forms or verification of income from third parties such as employers or state agencies) that tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 ("Section 8").

   h) The eligible basis and qualified basis of the building at the end of the first year of the credit period (i.e., the first IRS Form 8609 filed with the IRS for each building).

   i) A description of the character and use of the non-residential portion of each building if included in the building's eligible basis under Internal Revenue Code Section 42(d) (for example, tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities reasonably related to the project).

   j) Management agreements, all tenant waiting lists, leases, riders, HCR rent registration, complaints, tenant correspondence and related records.

k) Original local health, safety, or building code violation reports or notices that were issued by the State or local government unit responsible for making such inspections.

2) Record Retention – The owner of a LIHTC project shall retain the above records for each building in the project for at least six years beyond the end of the 30-year extended use period for the building.

ANNUAL CERTIFICATION

Process – Annual certifications shall be submitted for all projects for which an IRS form 8609 has been issued, and shall be submitted annually for the 30-year period during which the project is subject to regulation under Internal Revenue Code Section 42. The owner of a LIHTC housing project shall certify annually under the penalty of perjury that the project or building is in compliance with all state and federal applicable laws, regulations, procedures, policies and contractual obligations in a form approved by HPD ("Owner Certification").

Requirements – The owner certification shall include, but shall not necessarily be limited to, the following:

1) Part A: Project and ownership data.

2) Part B: Certification that:
   a) The project meets the requirements of:

      i) the 20-50 test under Section 42(g)(1)(A), or the 25-60 test under Sections 42(g)(4) and 142(d)(6) for New York City, whichever minimum set aside test is applicable to the project; and
      ii) if applicable to the project, the 15-40 test under Sections 42(g)(4) and 142(d)(4)(B) for "deep rent skewed" projects;

   b) The owner has received an annual income certification from each tenant residing in a LIHTC qualified low-income unit and documentation to support that certification;

   c) Each LIHTC qualified low-income unit in the project is rent restricted under Section 42(g)(2);

   d) All LIHTC qualified low-income units in the project were for use by the general public, and there has been no finding of discrimination under the Fair Housing Act (including an adverse final decision by the Secretary of the Department of Housing and Urban Development (HUD), an adverse final decision by a state or local fair housing agency, or an adverse judgment from a federal court.)

   e) All LIHTC qualified low-income units in the project are used on a non-transient basis (except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii) or single-room occupancy units rented on a month-by-month basis under Section 42(I)(3) (B)(iv);

   f) Each building in the project is suitable for occupancy, taking into account local health, safety, and building codes, and no State or local government unit responsible for making local health, safety, or building code inspections issued a violation report for any building or unit in the project. (If a violation report or notice was issued during the calendar year covered by the certification, a summary of such violations(s) must be included with the certification, and the owner must state whether the violation has been corrected;

g) There has been no change in the eligible basis (as defined in Section 42(d)) of any building in the project; or if there has been such a change(s) the owner shall certify to the nature of the change(s) on a building by building basis;

h) There has been no change in the applicable fraction (as defined in Section 42(c)(1)(B)) of any building in the project; if there has been such change(s) the owner shall certify to the nature of the change(s) on a building by building basis;

i) All tenant facilities included in the eligible basis under Section 42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas are provided on a comparable basis without charge to all tenants in the building;

j) If a LIHTC qualified low-income unit in the project became vacant, reasonable attempts were, are being, or will be made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;

k) If the income of tenants of a LIHTC qualified low-income unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was rented to tenants having a qualifying income, unless the project qualified for "deep rent skewing";

l) An extended low-income housing commitment (regulatory agreement) as described in Internal Revenue Code Section 42(h)(6) was in effect (for buildings subject to Section 7108(c)(1) of the Revenue Reconciliation Act of 1989), including the requirement under section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the US Housing Act of 1937; and

m) The project has been operated in compliance with the HPD regulatory agreement (if applicable).

Additional Tenant Data Collection

HUD now requires based on Section 2835(d) of the Housing and Economic Reform Act of 2008, that each State agency administering tax credits under section 42 of the Internal Revenue Code of 1986 (low-income housing tax credits or LIHTC) to furnish HUD, not less than annually, information concerning the race, ethnicity, family composition, age, income, use of Section 8 rental assistance or other similar assistance, disability status, and monthly rental payments of households residing in each property receiving such credits through such agency.

Accordingly, owners must provide the additional information as part of the annual certification submission on a revised tenant income certification, or through other forms or processes as HPD may require.

COMPLIANCE REVIEW

1) Review of Owner Certifications – HPD shall review the owner certifications for compliance with the requirements of Section 42.

2) Inspections – HPD shall inspect all new LIHTC projects during the first year they are in compliance monitoring. Subsequently, projects will be inspected at three-year intervals (five-year intervals during the "extended use period"). At HPD's discretion, inspections may be conducted at more frequent intervals. During inspections, at least 20% of apartments will be inspected. Inspections will be conducted according to HUD's Housing Quality Standards ("HQS"). HPD shall provide reasonable advance notice to the owner that an inspection will occur. Such inspections may include, but are not limited to:

   a) A physical inspection of the building, grounds, individual rental units, common facilities and central systems for general construction.

   b) Interviews of tenants and project employees.

   c) Review of all records described in "Record keeping" above.

3) Review of Records – As part of its on-site inspections, HPD will inspect records of at least 20% of the LIHTC qualified low-income units in all new LIHTC projects during the first year the projects are in compliance monitoring. Subsequently, project records will be inspected at three-year intervals (five-year intervals during the "extended use period"). At HPD's discretion, inspections may be conducted at more frequent intervals. HPD will choose which tenants' records to inspect in such a manner that the owner will not know in advance which units are to be inspected. Those records which must be inspected may include, but will not necessarily be limited to:

   a) The tenant's initial income certification demonstrating his/her qualification as a low-income tenant at move-in, together with income documentation the owner received to support this certification;

   b) Annual tenant income re-certifications, together with income documentation the owner has received to support these certifications, except if the owners of projects in which 100% of the residential units are LIHTC qualified low income units, as discussed in the following section;

   c) Rent Records;

   d) Review of all records described in "Record keeping" above.

WAIVER OF ANNUAL TENANT INCOME RECERTIFICATION REQUIREMENT

1) Under section 142(d)(3)(A) of the Internal Revenue Code, the annual income re-certification requirement is not applicable for projects in which 100% of the residential rental units are LIHTC qualified low-income units. Projects in which 100% of the residential units are LIHTC qualified low-income units may discontinue annual income re-certification after having completed the initial annual income certification for all units.

2) Irrespective of section 142(d)(3)(A), all projects are still subject to all other regulatory requirements including the obligation to submit annual owner certifications. In addition, HPD reserves the right, at its discretion, to continue requiring annual income re-certifications, or to reinstate annual re-certification requirements, in certain instances. These may include, but not be limited to, projects found by HPD to have less than 100% low-income occupancy, or to have noncompliance with any other IRS requirements.

RIGHT TO INSPECT

In addition to the inspections described above, HPD shall have the right to perform an on-site inspection of any LIHTC project at least through the end of the compliance period and the extended use period.

NOTIFICATION OF NON-COMPLIANCE

1) General – In accordance with Federal law HPD shall notify project owners and the Internal Revenue Service of non-compliance with any requirement or of any failure to submit the owner certification as required by Section 42(m)(1)(B)(iii).

2) Specific Requirements – HPD notification provisions are as follows:
   a) Notice to Owner – HPD shall provide prompt written notice to the owner of discovery upon inspection, review, or in some other manner, that the project is not in compliance with the provisions of Internal Revenue Code Section 42;

   b) Notice to Internal Revenue Service – Upon finding any failure to certify or other event of noncompliance as described above, HPD shall file Form 8823, "Low-Income Housing Credit Agencies Report of Non-compliance", and/or provide such other notification as is required by Internal Revenue Code Section 42, with the Internal Revenue Service. Such notification will be filed no later than 45 days after the end of the correction period (as described in Paragraph 3 of this section), whether or not the non-compliance or failure to certify has been certified. If HPD reports on Form 8823 that a building has gone entirely out of compliance and will not be in compliance at any time in the future, HPD need not file Form 8823 in subsequent years to report that building's non-compliance.
   c) Correction Period – HPD may, at its discretion, allow the owner a period of time to correct a failure to certify or any other event(s) of non-compliance ("correction period"). The correction period shall not exceed 90 days from the date HPD sends the notice described in paragraph 1 of this Section. HPD may extend the correction period for up to 180 days, if HPD, in its sole discretion, determines there is good cause for granting the extension.

DELEGATION OF AUTHORITY

HPD, at its discretion, may retain an agent or other private contractor to perform compliance monitoring functions and activities, or may delegate all or some of its monitoring responsibilities for a project to another Housing Credit Agency within the State of New York, to the extent such delegation is allowed by law.

LIABILITY

Compliance with the requirements of Section 42 is the sole responsibility of the owner of the building for which the credit is allowable. HPD's obligation to monitor for compliance with the requirements of Section 42 shall not make HPD liable in any way whatsoever for an owner's non-compliance.

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

APPROVAL OF THE MAYOR OF THE CITY OF NEW YORK

I, Bill de Blasio, Mayor of the City of New York, in accordance with Section 42 of the Internal Revenue Code, as amended, and in reliance upon certain information submitted, do hereby approve the 2015 Low Income Housing Tax Credit Qualified Allocation Plan of the Department of Housing Preservation and Development, attached hereto.

Dated: August 17, 2015

Bill de Blasio

Bill de Blasio

Mayor, the City of New York

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

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July 29, 2015

New York State Homes and Community Renewal
38-40 State Street
Albany, NY 12207

Attn: Commissioner James Rubin

Re: 2015 Low Income Housing Tax Credit Qualified Allocation Plan

Dear Commissioner Rubin:

You have requested an opinion of counsel from the City of New York that the 2015 Low Income Housing Tax Credit Qualified Allocation Plan of the Department of Housing Preservation and Development (the "Plan"), attached hereto, is in conformance with Section 42 of the Internal Revenue Code.

As counsel for the City of New York, it is our opinion that the Plan is in conformance with the applicable requirements of Section 42 of the Internal Revenue Code of 1986, as amended.

The City of New York

By: _____
Amrita P. Barth
Acting Corporation Counsel