



Low Income Housing Tax Credit Program

2012 Qualified Allocation Plan

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2012 QUALIFIED ALLOCATION PLAN  
 TABLE OF CONTENTS

<b>I. Introduction .....</b>	<b>4</b>
<b>II. Tax-Exempt Financed Developments Not Subject to Housing Credit Ceiling and Other Matters .....</b>	<b>4</b>
<b>III. Approval and Modification of the Qualified Allocation Plan.....</b>	<b>4</b>
III. A. QAP Approval.....	4
III. B. QAP Modification.....	5
<b>IV. Authority Disclaimer and Anti-Discrimination Obligation .....</b>	<b>5</b>
<b>V. Funding Rounds and Availability of Credit.....</b>	<b>6</b>
V. A. Funding Rounds.....	6
V. B. LIHTC Allocation Limits.....	6
V. C. LIHTC Exchange .....	7
<b>VI. Allocation Process and Funding Priorities .....</b>	<b>7</b>
VI. A. Reallocation and National Pool.....	10
<b>VII. Eligibility Requirements.....</b>	<b>11</b>
VII. A. General Threshold Requirements.....	11
1. Permanent Supportive Housing .....	11
2. Affirmative Fair Housing Marketing Plan .....	13
3. Site control.....	13
4. Zoning.....	13
5. Environmental.....	13
6. Utilities .....	13
7. Financing .....	13
8. Market study .....	14
9. Pro-forma.....	14
10. Sources and Uses .....	14
11. Financial Statements.....	14
12. Title Insurance Commitment .....	14
13. Nonprofit Certification .....	15
14. Project Narrative.....	15
15. Acquisition Transfer.....	15
16. High-speed Internet.....	15
17. Equity Investor Letter .....	16
18. Green Policy .....	16
19. Waiver of Qualified Contract .....	16
20. Vouchers and Public Housing .....	16
21. MSHDA Financing Signage.....	16
22. Development Team Capacity .....	17
23. Ownership Formation Document.....	17
24. Minimum Hard Construction Costs.....	17
VII. B. Threshold Requirements – Preservation Projects .....	17
1. Eligible Preservation projects .....	17
2. Project Must be 'At Risk'.....	18
3. Properties Ineligible for Preservation .....	18
4. Preservation Project Submission Requirements.....	18
VII. C. Disqualification of Development Team .....	19
<b>VIII. Selection Criteria .....</b>	<b>19</b>
VIII. A. Administrative review .....	19
VIII. B. MSHDA's Selection.....	20

VIII. C. Tiebreakers.....	20
<b>IX. Underwriting Standards.....</b>	<b>20</b>
IX. A. Development Fees.....	20
IX. B. Development Team Encompassed by Development Fee.....	21
IX. C. Construction Contract Items.....	21
IX. D. Construction management.....	21
IX. E. Rent Increases.....	22
IX. F. Identity of Interest.....	22
IX. G. Project Feasibility.....	22
<b>X. First Evaluation and Award of Reservations.....</b>	<b>23</b>
X. A. State-Designated Difficult Development Areas.....	23
<b>XI. 90-Day Reservation Follow-up.....</b>	<b>25</b>
XI. A. 90-Day Return of Credit/Refund Opportunity.....	25
<b>XII. Second Evaluation and Commitment.....</b>	<b>26</b>
XII. A. Program changes.....	27
<b>XIII. Carryover Allocations.....</b>	<b>27</b>
XIII. A. The 10% test.....	27
XIII. B. Rescission.....	27
<b>XIV. Final Evaluations.....</b>	<b>27</b>
<b>XV. Evaluation of Developments Subject to Subsidy Layering.....</b>	<b>28</b>
XV. A. Profit and Fees.....	29
XV. B. Syndication Expenses.....	29
XV. C. Syndication price.....	29
<b>XVI. Housing Choice Vouchers.....</b>	<b>29</b>
<b>XVII. Project Reconfiguration and Exchange of Credit.....</b>	<b>29</b>
<b>XVIII. Fees.....</b>	<b>30</b>
<b>XIX. Compliance Monitoring and Notification of Noncompliance.....</b>	<b>31</b>
XIX. A. Owner Responsibilities.....	31
XIX. B. MSHDA Responsibilities.....	33
XIX. C. Notification of Noncompliance.....	33
<b>XX. Combined Application, Policy Bulletins and Addenda.....</b>	<b>34</b>

## **2012 QUALIFIED ALLOCATION PLAN STATE of MICHIGAN LOW INCOME HOUSING TAX CREDIT PROGRAM**

### **I. Introduction**

The Low Income Housing Tax Credit (LIHTC) program offers a financial incentive to construct, rehabilitate, and operate rental housing for low-income tenants. Under federal law, LIHTC is required to be allocated according to a Qualified Allocation Plan (QAP). The QAP is required to set forth selection criteria to be used to determine housing priorities appropriate to local conditions in Michigan and must give preference in allocating LIHTC dollar amounts that:

- Assures, to the extent economically feasible, that selected properties:
  - Serve the lowest income tenants;
  - Serve qualified tenants for the longest periods;
  - Are located in Qualified Census Tracts (QCT) and contribute to a concerted Community Revitalization Plan; and
- Provides a procedure that the Michigan State Housing Development Authority (MSHDA) will follow in monitoring for noncompliance with IRS requirements including notifying the IRS of such noncompliance.

### **II. Tax-Exempt Financed Developments Not Subject to Housing Credit Ceiling and Other Matters**

In accordance with Section 42 of the IRS Code, tax-exempt bond financed projects are required to satisfy certain basic requirements for allocation of LIHTC and are subject to the QAP. These projects are not, however, subject to the LIHTC allocation limits, other QAP requirements from which they are expressly excepted, or as determined by MSHDA (see Tab W – Policy Bulletin #6).

### **III. Approval and Modification of the Qualified Allocation Plan**

#### **III. A. QAP Approval**

Pursuant to federal and state law, the QAP (including the Scoring Summary) shall be prepared by MSHDA, submitted to the legislature and approved by the Governor after notice to the public and public hearing. Notice of the public hearing will be published on MSHDA's website and in newspapers of general circulation throughout the state at least fourteen (14) days prior to the public hearing. Comments received shall be taken into consideration and a written summary of such comments shall be provided to the Governor together with the request for approval of the Plan. LIHTCs shall be allocated in accordance with the QAP and any amendment(s) to the QAP.

### **III. B. QAP Modification**

To the extent necessary to facilitate the award of LIHTCs that would not otherwise be awarded, the QAP may be modified by MSHDA from time to time pursuant to State law. Modifications to the QAP shall be prepared by MSHDA, submitted to the Legislature, and approved by the Governor after notice to the public and public hearing.

MSHDA is required to hold one informational hearing prior to publication of proposed changes to the QAP. After proposed changes have been published, MSHDA is required to conduct at least three public hearings. Hearings are required to be held at such time and place as determined by MSHDA; however, MSHDA shall give priority to locations that provide the greatest opportunity for public comment. Additional hearings may be held at MSHDA's discretion. The QAP is valid until it is changed by MSHDA.

### **IV. Authority Disclaimer and Anti-Discrimination Obligation**

The allocation of LIHTCs is made at the sole discretion of MSHDA. MSHDA and its directors, employees, and agents shall not be liable for any matters arising out of or in relation to the allocation or administration of LIHTC.

MSHDA may approve requests for the exchange of credit or waive any requirements and/or conditions that are not mandated by Section 42 of the IRS Code on a case-by-case basis, including project-specific deadlines, as deemed necessary to facilitate the administration of the LIHTC Program, to address unforeseen circumstances, and that it determines are in the best interest of the State of Michigan.

In the event a waiver is granted under any of these or other circumstances, a fee of 5% of the annual credit amount may be charged. MSHDA shall administer the QAP and the allocation of LIHTC in a manner consistent with both federal housing policy governing non-discrimination and MSHDA's statutory non-discrimination requirements.

To the extent that anything contained in this QAP does not meet the minimum requirements of federal law or regulation, or state law or regulation, such law or regulation shall take precedence over the QAP.

## V. Funding Rounds and Availability of Credit

### V. A. Funding Rounds

The Authority will hold two competitive funding rounds for 2012 LIHTC, with each round making available approximately 50% of the 2012 credit available for allocation. Funding rounds will be publicized on the Authority's website ([www.michigan.gov/mshda](http://www.michigan.gov/mshda)). The following table outlines the anticipated schedule for funding rounds for 2012:

Funding Round	Application Due Date	Expected Award Date
Summer 2011	Monday, August 15, 2011	December 2011
Winter 2012	Wednesday, February 15, 2012	June 2012

Applications must be received in either MSHDA's Lansing office or MSHDA's Detroit office no later than 5:00 pm on the applicable application due date shown above. Applications may be sent via delivery service (e.g., post, overnight, and courier) or personal hand-delivered service. Applications received after the due date and time will not be processed. No waiver of the delivery time will be granted. It is anticipated that the schedule shown above will continue in future years as part of a permanent funding round schedule.

### V. B. LIHTC Allocation Limits

1. The maximum award to any one project will be \$1,500,000.
2. The maximum award from the annual tax credit ceiling to any one Principal will be a total of \$3,000,000 in tax credits, including all set-asides. MSHDA may exceed this limitation in order to fund completely a project request. Projects will be counted towards this limitation in the order awarded under the QAP.

Co-Developers will be allocated Tax Credits against the per-Principal limit based upon the percentage of interest in the cash-paid (non-deferred) portion of the Development Fee, including any costs or other fees that would typically be included in and paid from the Developer Fee as described in Section IX below. For example, if Co-Developers retain a fifty percent (50%) interest each in the cash-paid (non-deferred) portion of the Developer Fee, fifty percent (50%) of the Tax Credits will be counted against each of the Developer's per-Principal caps. Parties that have an Identity of Interest may be treated as a single Developer (or Principal) for purposes of the cap if MSHDA concludes, based on the relevant facts and circumstances, that the submission of an application by one or more of the applicants is intended, in whole or in part, as a means of circumventing the annual per-Principal Tax Credit Cap.

For this purpose, a "Principal" includes (a) all persons or entities and their affiliates who are or who will become partners or members of the ownership entity or (b) all persons or entities who earn at least \$100,000 of the developer fee. For purposes of determining Principal status, MSHDA may disregard multiple layers of pass-through or corporate entities. Equity investors that have no other role in the ownership entity, and third-party consultants retained to assist in filing an application, do not count as Principals.

MSHDA reserves the right to waive or modify these limits if not in the best interest of the State of Michigan. .

### V. C. LIHTC Exchange

Under section 1602 of the American Recovery and Reinvestment Act of 2009, MSHDA exchanged 40% of its 2009 LIHTC credit allocation ceiling in order to provide grant support for a variety of housing applicants. There is currently no statute authorizing exchange of LIHTC beyond the original program. However, if an exchange option, or similar program becomes available for 2012 credit, MSHDA may use up to the maximum amount available for exchange program purposes unless market or other conditions warrant an alternative approach.

### VI. Allocation Process and Funding Priorities

As part of the allocation process, MSHDA will award LIHTCs to different Categories of housing, as well as to meet Statutory Set-Asides and Target Percentages of the state's total credit ceiling. Below is a table showing the different funding priorities, and a step-by-step procedure showing how the LIHTC allocation process in Michigan will be conducted in order to achieve the state's funding priorities in each competitive Funding Round.

<b>Funding Priorities</b>	<b>Percentage*</b>
<b>Steps 1-4 – Categories</b>	
Preservation Category	25%
Open Category	25%
Permanent Supportive Housing (PSH) Category	25%
<b>Step 5 – Statutory Set-Asides</b>	
Nonprofit Statutory Set-Aside	10%
Rural Housing Statutory Set-Aside	10%
Eligible Distressed Areas Statutory Set-Aside	30%
Elderly Statutory Set-Aside	10%
<b>Step 6 – Target Percentages</b>	
Central Cities Target Percentage	20%
Detroit, Hamtramck, Highland Park (DHHP) Target Percentage	50%
Underserved Populations Target Percentage	5%

*\*Due to the fact that projects receiving an award can count towards multiple priorities simultaneously, the total percentages in the chart above totals greater than 100%.*

**STEP 1: Scoring and Ranking.** All projects meeting threshold will be scored by allocation staff and ranked from high to low according to their final project score.

**STEP 2: Preservation Category (25%).** After projects are scored and ranked, MSHDA will award credit to the highest scoring projects using the scoring criteria found in Addendum I (and which meet the threshold requirements for Preservation discussed in Section VII.B) until said category is fully subscribed or there are no other qualifying projects remaining under this category. Approximately **25%** of the state's 2012 credit ceiling will be held for projects that meet the Authority's requirements for Preservation. Applicants submitting a project that meets the Preservation threshold requirements and that qualifies for Preservation points in the Scoring Summary must apply in this category. As a matter of process, projects awarded credit from this category will also count towards the first unsubscribed Statutory Set-Aside (in the order listed in STEP 5 below) in which it qualifies and will also count towards the Target Percentages to the extent applicable.

**STEP 3: Open Category (25%).** After projects from the Preservation Category are awarded credit, MSHDA will award credit to the highest scoring projects that qualify under the Open Category until fully subscribed or there are no other qualifying projects remaining under this category. Approximately **25%** of the state's 2012 credit ceiling will be held for projects applying in this category. A project that 1) meets the Preservation threshold requirements or qualifies for Preservation points in Scoring Summary; or 2) has 35% or more of its units designated as PSH units is not eligible to apply under this category. As a matter of process, projects awarded credit from this category will also count towards the first unsubscribed Statutory Set-Aside (in the order listed in STEP 5 below) in which it qualifies and will also count towards the Target Percentages to the extent applicable.

**STEP 4: Permanent Supportive Housing (PSH) Category (25%).** After projects from the Open Category are awarded credit, MSHDA will award credit to the highest scoring projects that qualify under the PSH Category which meet the eligibility criteria found in Addendum III until said category is fully subscribed or there are no other qualifying projects remaining under this category. Approximately **25%** of the state's credit ceiling will be held for Permanent Supportive Housing projects. Applicants submitting a project that has 35% or more of its units designated as PSH units must apply under this category. As a matter of process, projects awarded credit from this category will also count towards the first unsubscribed Statutory Set-Aside (in the order listed in STEP 5 below) in which it qualifies and will also count towards the Target Percentages to the extent applicable.

In the event that a balance of credit remains in any of the Categories listed above after making awards to all qualifying projects in steps 2-4, the remaining balance of credit within that Category will be divided equally among the other Categories where demand still exists and further allocations will be made. For example, if a balance of credit remains unallocated in the



PSH Category after making awards to all qualifying projects, the remaining balance of credit in the PSH Category would be split equally between the Preservation and Open Categories as long as there were remaining qualifying projects in each that had not yet received an award in steps 2-4. After allocations are made using any remaining balance of credit referenced here, the allocation process would then continue as outlined in steps 5-7 below.

**STEP 5: Statutory Set-Asides.** After projects from the PSH Category are awarded credit, MSHDA will ensure that the Statutory Set-Asides are fully subscribed in the amounts listed below by funding the highest scoring projects that qualify first under the Nonprofit Set-Aside and continuing in the order listed below until all the Statutory Set-Asides have been fully subscribed. The funding order and the amounts of the four (4) Statutory Set-Asides are listed below:

1. **Nonprofits, 10%** - Projects involving tax exempt organizations (nonprofits) that meet the requirements of Section VII.A.13;
2. **Rural Housing, 10%** - Proposed or existing housing projects that fall into one or more of the following categories: a) financed by a loan guaranteed by Rural Housing Services or a successor agency; b) funded by a federal program for the development of rural housing; or c) is located in an area other than a metropolitan area;
3. **Eligible Distressed Areas, 30%** - Housing projects in eligible distressed areas, which include proposed or existing housing projects in distressed areas pursuant to MCL 125.1411(u). A list of Eligible Distressed Areas can be found on MSHDA's website at [Eligible Distressed Areas List](#);
4. **Elderly, 10%** - Federally assisted projects in which 100% of the units serve tenants that conform to the federal agency(s) definition of elderly or the MSHDA definition of elderly under the MSHDA Act.

*APPLICANTS SHOULD NOTE THE FOLLOWING: (a) According to the MSHDA Act, a project may only count towards one of the Statutory Set-Asides listed above. If needed to fulfill a Statutory Set-Aside, MSHDA may skip over higher-scoring projects to allocate to the next highest scoring application that meets the criteria for the Statutory Set-Aside. The allocation process described herein will determine which Statutory Set-Aside the project will ultimately count towards, if funded. (b) Please note that if a Statutory Set-Aside has already been fully subscribed because of awards that have been made in Steps 1-4 above, MSHDA will move to the next applicable Statutory Set-Aside in the order listed above.*

**STEP 6: Target Percentages.** After the Statutory Set-Asides have been fully subscribed or if there are no remaining qualifying projects that count towards any unsubscribed Statutory Set-Asides, MSHDA will ensure that the Target Percentages are fully subscribed in the amounts listed below by funding the highest scoring projects that qualify first under the Central Cities Target Percentage and continuing in the order listed below until all the Target Percentages have been fully subscribed. Target Percentages are minimums; they are not caps on allocation. However, should the award to a particular higher-scoring project be impossible because it would require more credits than are available, MSHDA may skip over that project to a lower-scoring

project that could be fully funded with the remaining credits. The funding order and the amounts of the three (3) Target Percentages are listed below:

<u>Target</u>	<u>Percent</u>	<u>Definition</u>
Central Cities	20%	Projects located in a traditional downtown or commercial center <sup>1</sup> with an employee to resident ratio of 1.0 or more within a project's block group. <i>Applicants may 1) contact MSHDA's Marketing Staff in advance of submitting an application, or 2) use the LIHTC Point Scores Database to determine if their project qualifies. The LIHTC Point Scores database can be accessed by using the following link: <a href="#">LIHTC Points Scores</a>.</i>
Detroit, Hamtramck, Highland Park (DHHP)	50%	Projects located in Detroit, Hamtramck, or Highland Park as determined by the corporate boundaries of each city
Underserved Populations	5%	Native American Housing or Affordable Assisted Living

*APPLICANTS SHOULD NOTE THE FOLLOWING: (a) Unlike the Statutory Set-Asides listed in Step 5, a project may count towards multiple Target Percentages. For instance, an Affordable Assisted Living project in DHHP would be counted toward two target percentages. Therefore, applicants are expected to make clear in their application which Target Percentage(s) the project could qualify under, if funded. (b) Please note that if a Target Percentage has already been fully subscribed because of awards that have been made in Steps 1-5 above, MSHDA will move to the next applicable Target Percentage in the order listed above.*

**STEP 7: Highest Scoring Projects.** *After all Steps 1-6 above have been completed and fulfilled to the maximum extent possible, MSHDA will award any remaining credit in a Funding Round to the highest scoring remaining projects. Should the award to a particular higher-scoring project be impossible because it would require more credits than are available, MSHDA may skip over that project to a lower-scoring project that could be fully funded with the remaining credits.*

## **VI. A. Reallocation and National Pool**

With the exception of the nonprofit set-aside, if the LIHTC allocated falls below the set-aside threshold by October 1 of the year in which that credit amount is authorized, MSHDA may reapportion unallocated LIHTC amounts thereafter.

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<sup>1</sup> A traditional downtown or commercial center is an area where 20 or more contiguous buildings have been planned, zoned, or used for commercial purposes for 50 or more years and where a majority of the buildings are built zero feet back from the public right of way and are adjacent to one another. In order to be a traditional downtown or commercial area, the area must also contain a significant number of multi-level, mixed-use buildings.

In the event that credits are returned/recaptured or the state receives credits from the national pool, MSHDA may carry such credits forward, make an award to any project application (subject only to the nonprofit set aside), or a combination of both (see Policy Bulletin #2).

## **VII. Eligibility Requirements**

When an application is received, it will be reviewed for eligibility to be scored and evaluated. In order to be eligible for scoring and evaluation, certain threshold requirements must be met for all projects, unless otherwise stated in any Addenda or Policy Bulletins, or waived. Applicants should note that after a project is placed in service it will be prohibited, under the QAP, from applying for a new allocation of LIHTC during the 15-year compliance period unless waived by MSHDA.

Determination of eligibility does not entitle an applicant to an allocation of LIHTCs.

The application must be made on a completed form prescribed by MSHDA, including the mandatory exhibits prescribed below and in the Combined Application. Required documents must be tabbed in the order found in Addendum I to the Combined Application. The Combined Application, Addendums, and Policy Bulletins are available for downloading from the Authority's website at [www.michigan.gov/mshda](http://www.michigan.gov/mshda).

MSHDA will evaluate proposals in accordance with Threshold Requirements and Scoring Criteria. Proposals not meeting threshold requirements will not be processed further.

### **VII. A. General Threshold Requirements**

#### ***1. Permanent Supportive Housing***

All projects with allocated tax credits (excluding elderly projects and projects using tax-exempt bond financing) will be required to target ten percent (10%) of the total units to Supportive Housing Tenants. Projects not required to include Permanent Supportive Housing may still choose to include it, particularly as a way to secure project-based vouchers or other subsidy. Projects are not required to provide onsite supportive services or a service coordinator. Owners must demonstrate a partnership with a local lead agency and complete the Permanent Supportive Housing Inclusion Plan requirements in Addendum VI; both the agency and Plan must be approved by MSHDA. In addition to the further discussion (including roles and responsibilities) and specific requirements contained in Addendum VI, the following general provisions shall apply to this threshold requirement:

- **“Safety Valve” to Allow for Project Viability** - The PSH threshold requirement is predicated on the service provider and referring agency providing qualified rental applicants. To protect operational viability, a “safety valve” is available for supportive housing units. This safety valve combines the interests of delivering available PSH units where needed while also ensuring that projects will remain financially viable. Financial viability will not be impeded if a sufficient PSH tenant-base for these units cannot be identified or if adequate service funding is not available.
  - Properties must make PSH units available to PSH tenants referred by the service provider.

- If a lease-qualified PSH tenant is not referred within 60 days at initial lease-up (or 30 days as units turnover), the property may rent the unit to a non-PSH tenant under the property's other applicable use restrictions.
  - If at any time the property has fewer PSH tenants than its threshold, the next-available-vacancy must be made available to a PSH tenant.
  - If a unit receives rental assistance through a project based voucher, the unit must be rented to a PSH tenant to secure the rental assistance.
- **Unavailability of Service Provider** – In some instances a local lead agency may not be available to service the project due to the location of the project, funding availability, etc. If the owner needs assistance with identifying a lead agency to complete this requirement, the owner must contact MSHDA within 14 days after the award of LIHTC. Supportive Housing staff will provide contact information for the local Continuum of Care Chairperson and technical assistance. MSHDA has the authority to extend the deadline for the Inclusion Plan, or waive this requirement altogether, if the owner has made contact with MSHDA as indicated above and has made a good faith effort to meet this requirement.
  - **Availability of Project-Based Vouchers** - Deep income targeting is not a basic function of the LIHTC award for PSH units, but can be achieved through additional subsidy such as income supplement (e.g. Section 8 or Housing Choice Vouchers), or sinking funds established by additional local sources. MSHDA encourages applicants to seek awards of project-based vouchers to support any units designated as PSH units, whether from MSHDA or elsewhere. The use of project based vouchers with the PSH units provides the ability to deep income target these units without sacrificing rental income to the development or applying further income targeting regulatory restrictions.
  - **Deadline for Meeting Requirements** - Owners will agree to complete the requirements of this subsection within 60 days after the award of LIHTC. Additional requirements are listed in the Addendum VI for projects required to meet the 10% supportive housing targeting. MSHDA has the authority to extend the deadlines for an MOU between service providers and property owners, if extensions are needed to make the process work.
  - **Preservation Projects** - Notwithstanding this requirement, for preservation projects, the Applicant will not be required to displace any current tenants, but shall be required to comply with this requirement as units turn over and become available for occupancy so long as compliance with this requirement does not occasion an event of noncompliance under other applicable federal law or regulations under which a project is operated or is receiving federal subsidy.

Projects will be monitored by MSHDA to determine the percentage of units occupied by PSH tenants.

## **2. Affirmative Fair Housing Marketing Plan**

Submission of an Affirmative Fair Housing Marketing Plan consistent with MSHDA requirements (see Tab P of MSHDA's Combined Application).

## **3. Site control**

Evidence of site control by the Applicant, as evidenced by an option to purchase, letter of intent or term sheet, land contract, offer to purchase, purchase agreement, long-term lease or other appropriate documentation, and ability to keep same for 120 days from the application due date. If site control is vested in an entity other than the anticipated owner, the control must be unilaterally assignable to the proposed owner. Site control documents must clearly identify the physical location of the property (i.e. property address, full legal description or plat map identifying street names) and be consistent with the rest of the development information provided in the application including the title insurance commitment.

## **4. Zoning**

Evidence from the municipality of the property's current zoning designation and what, if any, steps are in process to obtain proper zoning for the proposed development.

## **5. Environmental**

Submission of an environmental review in accordance with the current MSHDA Environmental Review Standards (see tab D of MSHDA's Combined Application) together with a remediation plan, if necessary, with estimated costs outlined in detail and accounted for in the Sources and Uses Statement. Projects may be rejected if the environmental review and/or supporting documentation do not meet MSHDA's standards or if MSHDA determines additional testing or modifications to a remediation plan are necessary.

## **6. Utilities**

Evidence from the municipality and/or utility companies regarding the availability of all utilities – electricity, gas, water and sewer.

## **7. Financing**

Evidence of submission of application(s) to a mortgage lender(s) stating the amount of the loan, terms, and interest rate for all sources of financing. In the case of a Rural Housing Service (RHS) project, an original letter signed by an official of RHS; in the case of conventional financing, original documentation from the lender(s) stating that a formal application for construction and permanent financing has been submitted and is under serious consideration; in the case of Federal Historic tax credit, State Historic financing, or State Brownfield financing, documentation indicating that Part I of the required application has been made; and in the case of an Authority financed project, evidence that the project has passed initial determination.

The Authority understands that due to differing schedules of funding rounds for various government financing sources, including but not limited to AHP or HOME funds, limited documentation or confirmation of funding awards may be available at the time of LIHTC application. Because of the unique timing of these types of sources of funding, the Authority is committed to being as flexible as possible. Accordingly, MSHDA will accept and process LIHTC applications that are proposing to apply for funding sources that are only available as part of a

funding round held by another entity as long as the applicant can confirm that the specific funding source has been applied for and that there is a strong likelihood of funding availability prior to receiving an award of LIHTC. If, at the time LIHTC awards are made, it cannot be determined that the specific funding source has been applied for and that there is a strong likelihood of funding availability, the funding source will not be considered, which may result in the disqualification of the application. In this way, applicants are encouraged to take note of this flexibility, but are also cautioned to list only those funding sources in their initial application that they are confident will meet the requirements noted above prior to the LIHTC award.

At the 90-Day Reservation Follow-Up stage (as explained in Section XI.) projects will be required to demonstrate that they have received a commitment or term sheet for the funding sources listed in the application.

### ***8. Market study***

A market study completed in accordance with MSHDA's guidelines (see tab C of MSHDA's Combined Application) that indicates the housing needs of low-income individuals in the area to be served.

### ***9. Pro-forma***

Pro-forma financial projections for the 15-year compliance period submitted on a form and in the format prescribed by MSHDA (see Section X of MSHDA's Combined Application).

### ***10. Sources and Uses***

Statement of Sources and Uses of funds submitted on a form and in a format prescribed by MSHDA (see Section IX of MSHDA's Combined Application). Applicants must list all persons or entities who will receive more than \$100,000 of the developer fee.

### ***11. Financial Statements***

Financial Statements of the Applicant and Contractor that meet the requirements of MSHDA Policy Bulletin #7 and demonstrates adequate professional and financial capacity.

### ***12. Title Insurance Commitment***

Applicants proposing projects that contain multiple sites will be required, at the time application is made, to submit a title insurance commitment dated within six months of the application due date.

All other applicants will be required to submit a title insurance commitment prior to receiving a Reservation of LIHTC (i.e. not at the time of application), which must be dated within six months of the date requested by MSHDA. Receipt of a Reservation of LIHTC will be contingent upon approval of the title insurance commitment documentation by MSHDA. Title insurance documentation will be required to be submitted within 15 days of the date requested by MSHDA. For projects located on federally recognized American Indian reservations, MSHDA may accept, in lieu of the title insurance commitment, an attorney's opinion letter describing chain of title and land control.

Applicants must assure that the name of the entity that owns the property matches with the site control documents, that the entity to be insured is correct, and that all parcels of property under

land control exactly match up, are properly identified, and agree with the application that was submitted. The title insurance commitment must contain an original signature of the authorized title insurance company agent or employee, must indicate the availability of a title insurance underwriter, and must otherwise be complete and without defect.

NOTE: For proposed projects that contain multiple sites, Applicants must submit the Property Identification form found in Addendum I to accompany the title insurance documentation. The title insurance documentation submitted must be organized in the same order as shown on this form.

### **13. Nonprofit Certification**

For purposes of qualifying under the nonprofit set aside, at least one nonprofit entity involved in a project (including through a qualified corporation) must:

- (a) be qualified under Section 501(c)(3) or (4) of the IRS 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, and
- (d) be a managing member or general partner of the ownership entity.

MSHDA reserves the right to make a determination that the nonprofit owner is not affiliated with or controlled by a for-profit entity (other than a qualified corporation).

### **14. Project Narrative**

A detailed and complete narrative description of the project which includes the type of project; location; prior LIHTC status, if any; type of financing; tenants served; bedroom mix; local, federal or state subsidies, if any; and any other relevant descriptive information. Applicants are encouraged to provide as much additional detail and background information about the proposed project as possible.

### **15. Acquisition Transfer**

For acquisition/rehabilitation involving properties currently regulated by another government body (including HUD, RHS, or MSHDA), statement from the Applicant of the requirements for such approval and how the Applicant intends to meet them consistent with the LIHTC timetables.

### **16. High-speed Internet**

Certification from the architect and Applicant that:

- (a) All units will be equipped with high-speed Internet capability, either by connecting each unit to a separate data network using Category 5e wiring, by installing a wireless Local Area Network (LAN) server and providing each unit with at least one wireless LAN card, or by installation of cable service to the project and to each unit, and
- (b) The project will have an active internet connection between the project and a local internet service provider. In the event that there is no local Internet service provider in the area, the Applicant and architect must provide a written certification that states that a local Internet service provider is not available to service the project at this time and the Applicant must agree to provide such service once it becomes available.

An Applicant is not responsible for monthly subscription fees associated with individual service to a tenant in an individual unit.

### **17. Equity Investor Letter**

At the time of application, the applicant must submit an Equity Investor Letter from the proposed syndicator or investor. This is demonstrated by the submission of the items listed below:

- The amount, price, and terms of the investment.
- The planned equity pay-in schedule.
- Investment underwriting and financial forecast pages compiled by investor (sources and uses of funds, development budget, draw schedules, rental income and operating expenses, cash flow analysis, lease-up schedule, tax credit analysis, capital account analysis, etc.).
- Certification that investor has conducted financial review of development team.
- Clear statement of any conditions for investment that need to be met.

Projects that fail to include one or more of the above referenced items may be determined ineligible for funding.

### **18. Green Policy**

All projects applying for and receiving LIHTC will be required to incorporate one of three available green standards referenced in the Green Policy which can be found in Tab M of the Combined Application.

### **19. Waiver of Qualified Contract**

By submitting an application for LIHTCs, all Applicants waive the right to request a qualified contract under Section 42(h)(6)(E)(i) of the Internal Revenue Code. Thus, MSHDA's required extended use commitment shall not terminate at the end of the compliance period, but is instead a minimum of 30 years.

### **20. Vouchers and Public Housing**

A written statement signed by the Applicant stating:

- it will give priority to persons whose names are on appropriate Public Housing or Housing Choice Voucher waiting lists maintained by a Public Housing Commission (PHC) or Public Housing Authority (PHA) in the area in which the project is located, and
- it will make ongoing efforts to request that the PHC and/or the PHA make referrals to the project, or place the relevant project information on any listing the PHC or PHA makes available to persons on their waiting lists.

A copy of the written statement and documentation of ongoing efforts as evidenced by a referral agreement or other appropriate memorandum of commitment must be kept on file at the development's office and available for compliance inspection and review at all times.

### **21. MSHDA Financing Signage**

A statement of certification that if the Applicant is awarded LIHTC it shall post signage at the project construction site listing MSHDA as a financing source.



## **22. Development Team Capacity**

The development team must demonstrate professional and financial capacity to plan, build, market, and operate the proposed development. The performance record of the Applicant, consultant, architect, management agent and contractor will be measured by the quality and quantity of previous development(s); design, construction and property management efforts; and affirmative action records. Each team member is expected to demonstrate satisfactory prior experience on projects of similar scale and complexity; to have satisfactory professional references; and to devote sufficient staffing and resources, including financial resources, to complete the proposed development.

The Applicant and contractor will be evaluated for creditworthiness and financial capacity. The composition of a non-profit Applicant's Board of Directors and the tenure of its respective members will be given significant consideration.

If a development team member does not have satisfactory prior experience or adequate financial capacity, a written plan must be submitted to outline how these deficiencies in experience and financial capacity will be rectified.

## **23. Ownership Formation Document**

Certified copy (dated within 30 days of application due date) of the certificate of limited partnership (or limited liability company) and any amendments on file with the Department of Licensing and Regulatory Affairs, Bureau of Commercial Services. Out-of-state entities must submit a copy of an endorsed application for certificate of authority to transact business or conduct affairs in Michigan, along with the supporting documentation submitted with the application. The ownership entity must be formed prior to issuance of a tax credit Reservation.

## **24. Minimum Hard Construction Costs**

The application must indicate a need for at least \$20,000 per unit in hard rehab or construction costs and must include this amount in the construction budget.

## **VII. B. Threshold Requirements – Preservation Projects**

'Preservation' applies to the acquisition and renovation of existing properties or the preserving of project-based subsidies, which are currently subject to a low income use restriction. For these purposes, adaptive reuse projects and entirely vacant residential buildings will be considered new construction. Only Preservation projects that meet this definition and the threshold requirements below may receive points for Preservation and apply under the Preservation Category.

### **1. Eligible Preservation projects**

Eligible Preservation projects include those with any of the following elements:

- a. *Government financing* from HUD (including Section 236, Section 8, HOPE VI or successor program, and Section 202), USDA Rural Development (including 515), or MSHDA;
- b. *Other below-market financing*, defined as a below market federal loan as defined in Section 42 of the IRS Code;

- c. *Redevelopment of Public Housing Units*; or
- d. *Year 15 LIHTCs*, allocated in 1996 or earlier.

Projects with federal assistance must retain the assistance. Prepayment of a HUD loan and conversion to enhanced vouchers may qualify as retainer of assistance if the applicant demonstrates to MSHDA's satisfaction that such conversion is necessary to enhance the property's long-term affordability and if the property will remain viable even after normal attrition of enhanced vouchers.

## **2. Project Must be 'At Risk'**

Projects must either:

- a. Be within five years of any permitted prepayment or equivalent loss of low income use restrictions; or
- b. Preserve occupied and restricted low income units provided the rehabilitation will repair or replace components that are:
  - i. In immediate need of repair or replacement; or

Either substantially functionally obsolete or being improved to provide modifications or betterments consistent with new building code requirements and MSHDA's Design Requirements.

## **3. Properties Ineligible for Preservation**

Preservation projects are ineligible if they:

- a. Are deteriorated to the point of requiring demolition (except HOPE VI or other redevelopment of public housing) , or
- b. Have completed a full debt restructuring under the Mark to Market process within the last five (5) years.

## **4. Preservation Project Submission Requirements**

### **A. Real Estate Taxes**

Projects not providing proof of tax abatement must provide a copy of the most recent tax bill.

### **B. Capital Needs Assessment ("CNA")**

If applying for the applicable points found in Section F. Preservation Developments of the Scoring Summary, Applicants must provide a CNA prepared by an architect or engineer licensed by the state of Michigan. In the event the extent of rehabilitation requires the preparation of architectural plans and specifications, a copy of the cover sheet of such plans signed by the Applicant's Architect, a trade payment breakdown prepared by the General Contractor, the Architect's scope of work and specifications, along with a certification from the Applicant's architect's stating the necessity to prepare plans and specifications instead of a CNA will be permitted.

If the applicable points found in Section F. Preservation Developments of the Scoring Summary are not going to be applied for, Applicants may choose to wait to provide a CNA until the time of Tax Credit Commitment. The applicable points found in Section F. Preservation Developments

of the Scoring Summary will not be awarded without the submission of a CNA or the alternative documentation discussed in the preceding paragraph.

MSHDA staff or a contracted third party may conduct site reviews of any preservation application in order to review the validity of the CNA or other applicable required documentation. If MSHDA determines the CNA is materially inaccurate, MSHDA may reject the CNA or the entire application.

## **VII. C. Disqualification of Development Team**

Each Applicant shall submit information regarding its entire "Development Team," defined as any of the following (without limitation): (i) the Applicant entity, (ii) the proposed owner, (iii) principal(s) of the owner or Applicant, (iv) the developer, (v) the general contractor, (vi) the property management company, (vii) any third party development consultant, (viii) any related party(ies) or entity(ies) in the seller of any land or property. For this purpose, a related party or entity is considered to be related if one party or entity directly or indirectly has the ability to control the other party or exercise significant influence over the other party in making financial and operating decisions.

Applicants shall submit (a) a list of all tax credit developments the Development Team has participated in as a Principal in the three (3) years preceding the application, and (b) a statement concerning any felony criminal convictions, indictments, and pending criminal investigations of all Development Team members, and details of each circumstance, unless otherwise prohibited by court order, statute or regulation. Additionally, Applicants will be required to submit a certification regarding their previous experience in the development and ownership of affordable housing.

Proposals submitted wherein any member of the Development Team (v) has failed to pay any fee or expense due to the Authority in connection with any Authority-sponsored program (w) has been determined to be in default or in major non-compliance with LIHTC or any other MSHDA program, (x) has been debarred or suspended from any MSHDA, HUD, or Rural Housing programs, (y) is in foreclosure or been foreclosed, or (z) is under felony investigation, indicted or been convicted of a felony, will automatically be disqualified until the event or events of default, debarment, suspension, foreclosure, non-compliance, or other legal action are corrected or resolved.

MSHDA has the sole and absolute discretion to determine those parties ineligible for LIHTC due to non-compliance or disqualification status.

## **VIII. Selection Criteria**

### **VIII. A. Administrative review**

MSHDA may reject applications with material errors in documentation, incomplete information, or inconsistency.

If an otherwise eligible project faces possible rejection because of an administrative or technical oversight by the Applicant, MSHDA may request additional material for clarification purposes for any items not related to a project's score. Determinations of correctable, administrative, or technical errors are at the sole discretion of MSHDA. Requested materials must be submitted within 10 business days of the date of notification by MSHDA.

MSHDA will promptly notify administratively rejected applicants.

## **VIII. B. MSHDA's Selection**

MSHDA will evaluate applications for LIHTC in accordance with the requirements of federal and state law and the QAP based on a competitive scoring process. Under no circumstances will any application subject to a competitive scoring process give rise to an entitlement or legal right to an allocation of LIHTCs. The allocation of LIHTCs shall be entirely at the discretion of MSHDA. Owners will not be allowed to make changes to a project that would result in a change to any of the specific items for which points were awarded, unless extraordinary and well-documented circumstances would warrant it. MSHDA may rescind a Reservation of LIHTC if a change occurs to a project that, when re-evaluated, causes the project's score to fall below its original position in the ranking.

For specific point amounts, refer to the Scoring Summary.

## **VIII. C. Tiebreakers**

If two projects have identical scores, MSHDA will select between them according to this order of priority: greater ability to proceed; greater percentage of Permanent Supportive Housing units; lowest amount of LIHTC per square foot.

## **IX. Underwriting Standards**

MSHDA will perform an evaluation of the project costs to determine reasonableness as compared to other projects in similar areas. Generally, costs in excess of 110% of the Department of Housing and Urban Development's 221(d)(3) Mortgage Limit for the area will not be permitted to be included in eligible basis (although such costs are not prohibited). However, in unusual and well-documented cases, costs in excess of these limits may be included in eligible basis, at the sole discretion of MSHDA. Such waiver requests must be submitted prior to application due date. (See Policy Bulletin #12 for what items to include with these requests.)

In making its determination of the LIHTC dollar amount necessary for the financial feasibility of a project and its viability as a qualified low income housing project throughout the credit period, MSHDA will consider the sources and uses of funds and the total financing planned for the project, and any proceeds or receipts expected to be generated by reason of tax benefits.

HOWEVER, SUCH A DETERMINATION OF FEASIBILITY BY MSHDA SHALL NOT BE CONSTRUED TO BE A REPRESENTATION OR WARRANTY AS TO THE FEASIBILITY OR VIABILITY OF THE PROJECT. (See Tab O of the Combined Application for the current underwriting standards, as well as Section IX.G. below for a discussion on how these underwriting standards will apply to a project's feasibility analysis.)

## **IX. A. Development Fees**

For projects financed with tax-exempt bonds eligible for 4% credit, the maximum development fee shall be calculated as follows:

- (i) For projects of 49 units or fewer, the development fee will be the lesser of
  - a. 20% of total development cost, including reserves required by MSHDA, the lender, or investor, but excluding the developer fee, developer overhead, and developer consulting fee; or
  - b. \$2,500,000.
- (ii) For projects of 50 units or more, the development fee will be the lesser of

- a. 15% of total development costs, including reserves required by MSHDA, the lender, or investor, but excluding the developer fee, developer overhead, and developer consulting fee; or
- b. \$2,500,000.

For all other projects, the maximum development fee shall be the lesser of

- (i) 15% of total development costs, including reserves required by MSDHA, the lender, or investor, but excluding the developer fee, developer overhead, and developer consulting fee; or
- (ii) \$1.8 million.

At its sole discretion, in exceptional circumstances, the Authority may permit a development fee in excess of the above limitations.

If an existing project is split into two or more phases, the aggregate developer fee for all phases shall not exceed the limitations stated above.

For projects involving acquisition and rehabilitation, an amount equal to at least 5% of the acquisition cost of the land and building(s) must be allocated to acquisition eligible basis for purposes of attribution to the developer fee.

Developer fees can be deferred to cover a gap in funding sources as long as the entire amount will be paid within fifteen (15) years. If the Pro Forma in the application indicates that cash flow is insufficient to repay the deferred developer fee within 15 years, the Applicant must provide an explanation in the narrative as to how the deferred developer fee will be repaid. No more than fifty percent (50%) of the total developer fee may be deferred.

#### **IX. B. Development Team Encompassed by Development Fee**

The total amount of any (i) developer fees, (ii) developer guaranty fees, and (iii) consulting fees (excluding fees to a third party, non-related construction manager included and paid from the construction contract), will be no more than the maximum development fee allowed to that project.

#### **IX. C. Construction Contract Items**

- General Requirements - 6% of construction contract, exclusive of builder profit, builder overhead and general requirements.
- Builder Overhead - 2% of construction contract, exclusive of builder profit and builder overhead.
- Builder Profit - 6% of construction contract, exclusive of builder profit.

Projects of 49 units or fewer may aggregate general requirements, builder overhead, and builder profit to a maximum of 20% of the construction contract.

#### **IX. D. Construction management**

If a construction manager is not included in the construction contract, then any construction management consulting fee must be included in and paid from the developer's fee at a maximum limit of \$50,000. Excess fees will be deducted from total development costs when performing the gap calculation. If a construction management fee (paid to a related or unrelated third party) is included in the construction contract, it must be included in and subject to the above fee limits relating to General Requirements, Builder Overhead, and Builder Profit.

### **IX. E. Rent Increases**

Rent increases on the tenant-paid portion of rent, for occupied units will be limited to no more than 5% per year for the first three years. This limitation does not apply to occupied units protected by project-based rental assistance or enhanced vouchers.

### **IX. F. Identity of Interest**

If an identity of interest exists between the Applicant and the General Contractor, incentive fees may only be paid to the extent that they are included in the above mentioned fee limitations. A general contractor may act as a subcontractor and may be entitled to additional overhead and profit otherwise payable to an independent subcontractor. However, the general contractor's overhead, profit, and general requirements that may be included as allowable project costs are limited to the percentages noted above.

### **IX. G. Project Feasibility**

In determining the feasibility of a project over the compliance period, MSHDA has established minimum standards for operating expenses, vacancy rates, increases in operating costs and expenses, project income, debt service coverage ratio, operating reserves, and replacement reserves. Requests for use of alternative standards other than those established by MSHDA must be supported by written explanation and appropriate documentation. For developments seeking only competitively allocated 9% credits without financing from MSHDA, applicants may request waivers from these standards based on the submission of written documentation indicating that the alternative underwriting standards have been reviewed and approved in advance by both the debt and equity providers for the project. The use of the MSHDA minimum standards or any alternative standards for determining financial feasibility of a project is at the sole discretion of MSHDA. If MSHDA determines that the project is not financially feasible using MSHDA's minimum standards or the alternative standards at the time of initial application review, the project will not be eligible for an allocation of LIHTC.

MSHDA will review a project's feasibility over the 15 year compliance period at three different stages as required by Section 42 of the Internal Revenue Code: 1) prior to making an award of credit, 2) at 10% Carryover, and 3) at Placed in Service. The following is a breakdown of how this provision will apply to each of the underwriting stages in the allocation process and what this provision will mean in practice:

- **Initial Application/Prior to LIHTC Award** – If a project is not shown to be financially feasible for the 15-year compliance period when a project is reviewed for eligibility to receive an award of credit, the project will be rejected from the application process and no award of credit will be made. As part of its evaluation, MSHDA will consider the project's sources and uses as well as a project's rental income and operating expenses for the 15-year compliance period when making the determination of whether or not a project is financially feasible.
- **Carryover/10% Certification** – MSHDA will review the sources and uses of funds and the total financing planned for the project to ensure that the amount of credit being allocated to the project does not exceed the amount necessary for the project to be financially feasible for the 15-year compliance period. MSHDA will continue to monitor a project's income and expenses during this phase of the allocation process, but will not hold up the issuance of Carryover documentation because of this portion of the review.

- **Placed in Service/Issuance of 8609** – MSHDA will review the sources and uses of funds and the total financing planned for the project to ensure that the amount of credit being allocated to the project does not exceed the amount necessary for the project to be financially feasible for the 15-year compliance period. MSHDA will continue to monitor a project's income and expenses during this phase of the allocation process, but will not hold up the issuance of 8609s to a project because of this portion of the review.

For projects relying upon project-based rental assistance for financial feasibility – If the project-based rental assistance ends due to events outside the owner's control, any rent and income restrictions on the property, that the owner agreed to for points as part of a competitive funding round, will revert to the 50% or 60% AMI level as selected by the owner

## **X. First Evaluation and Award of Reservations**

Project applications that include all required information and documentation in a form and manner acceptable to MSHDA, and that meet or exceed the QAP's threshold requirements will be eligible to be evaluated for receipt of a Reservation of LIHTC.

An equity gap calculation will also be performed to ensure that only the amount of LIHTC necessary to make the project feasible will be awarded. The equity gap is determined by subtracting the syndication costs, all permanent financing amounts, and any other applicable amounts from the total development cost (after deductions are made for excess fees). This total is then compared to the value of the credit based on using a 4% (used for acquisition costs and for tax-exempt bond financing) or a 9% credit rate (used for rehabilitation or new construction costs), the credit dollar identified in the Equity Investor Letter, and on its qualified basis. The amount of credit awarded will be that for which the value is the lesser of the two, but in no event greater than the amount of LIHTC requested by the Applicant. If MSHDA, in its sole discretion, determines that the equity dollar amount shown in the application and the Equity Investor Letter is unreasonable based on current market conditions, MSHDA may use an alternative equity dollar amount that is more indicative of current market conditions.

Applicants should be aware that the Housing and Economic Recovery Act of 2008 (H.R. 3221, HERA) provides a temporary applicable percentage of 9% for newly constructed non-Federally subsidized buildings placed in service after the date of enactment (July 30, 2008) and before December 31, 2013.

### **X. A. State-Designated Difficult Development Areas**

The Housing and Economic Recovery Act of 2008 (H.R. 3221, HERA) provides that state housing credit agencies may award up to a 30 percent "basis boost" to buildings that states determine need the boost to be economically feasible, effective for buildings placed in service after date of enactment (July 30, 2008). Any building designated by the state housing credit agency as requiring the increase in credit, in order for such building to be financially feasible as part of a qualified low-income housing project, shall be treated as located in a difficult development area. This additional increase is not available to buildings located in a Qualified Census Tract, HUD-designated Difficult Development Areas, or tax-exempt bond financed projects.

The Authority will use the following criteria in awarding the 30% basis boost. Properties meeting any of the below criteria are eligible for a 30% basis boost, although they are still subject to the usual evaluation of minimum credits needed to achieve feasibility. Criteria:

1. High Cost Areas – Projects where the eligible basis (without the boost) would be a low percentage of the total development costs due to either high land costs or the necessity of extensive site preparation and/or off-site costs, may apply for a boost of their eligible basis.
2. Permanent Supportive Housing – Projects that meet the requirements of the Permanent Supportive Housing set-aside may apply for a boost of up to 30% of their eligible basis.
3. Financial Feasibility – Projects that demonstrate, to the Authority's satisfaction, that they are financially infeasible without a boost may be granted a boost. The amount of the boost required to make the project financially feasible will be determined by the Authority. The Authority will make its determination on such factors, but not limited to: market conditions that make it difficult in obtaining debt financing and equity commitments, income and expense expectations affected by economic conditions, and other subsidy resources already committed to the project.
4. Historic Projects – Projects that are completing a rehabilitation of an existing certified historic property listed on the National or State Historic Register.
5. Green Policy – Projects that achieve and certify to a score of 10 points in the Green Policy which can be found in Tab M of the Combined Application.
6. Deep income targeting – Projects serving very low income tenants (50% AMGI or less).
7. Preservation projects – Projects meeting the threshold requirements for preservation.
8. Central Cities Projects – Projects meeting the requirements to be considered under the Central Cities Target Percentage.

The boost may be awarded by the Authority to a project placed in service after July 30, 2008 and prior to issuance of the 8609, and subject to tax credit ceiling being available.

Site visits may be conducted for each application submitted. MSHDA reserves the right to ask for clarification and deny an application or rescind an award because of site location. Site acceptability is the sole and absolute determination of MSHDA.

Once MSHDA has conducted the evaluation and determined the amount of LIHTC to be reserved, it will issue a Reservation to the Applicant.

Reservations shall be valid for 180 days from the date of issuance by MSHDA, at which time all documentation required for a Commitment will be submitted to MSHDA.

MSHDA, at the time it issues the Reservation, shall notify the chief executive officer of the municipality in which the project is to be located of the proposal, and shall give reasonable opportunity for comments by the chief executive officer.

Reservations, Commitments, and/or Carryover Allocations are non-transferable either to another entity or within the same entity where there is a change in control or general partner interests, except with the express written consent of MSHDA, it being the explicit intention of the QAP to prevent one party from obtaining such a Reservation, Commitment, and/or Carryover Allocation in order to sell or broker its interest in the proposal (except for syndication purposes). Because all representations made with respect to the owner, Applicant, developer or related party or entity, or any member of the development team, their experience and previous participation are material to the evaluation made by MSHDA, it is not expected that MSHDA's



consent will be granted for such transfers unless a new application is submitted and scores no less than the original application.

## **XI. 90-Day Reservation Follow-up**

Within 90 days following the issuance of the Reservation, applicants will be required to demonstrate that they are sufficiently progressing forward with certain aspects of the project. Applicants will be required to document that they have secured a certain level of commitment for the sources of financing planned for the project. Accordingly, the following must be submitted within 90 days following the issuance of a LIHTC Reservation:

- A copy of a term sheet for all sources of debt financing (including construction financing).
- A copy of the executed Letter of Intent from all equity investment sources, which has been accepted by the sponsor. As part of this submission, the sponsor must also provide evidence acceptable to MSHDA that there is an investor committed to providing equity financing to the project, and that the proposed investor has sufficient funding to meet its obligations under the terms of its Letter of Intent, the Partnership Agreement or the Operating Agreement. This evidence may include, but is not limited to, disclosure of upper tier investors or other sources of funding to MSHDA's Executive Director or Director of Legal Affairs or certification by an independent certified public accountant or attorney with knowledge of the investor, that the investor has sufficient funds to meet its obligations under its Letter of Intent, the Partnership Agreement or the Operating Agreement.
- Certification that a site visit has been conducted by the investor or syndicator.

MSHDA may consider alternative documentation as means of demonstrating progress on a case-by-case basis. Failure to demonstrate that the project is sufficiently progressing forward, either by providing the appropriate documentation shown above or through other means, may result in a loss of credit. This determination will be made in the sole discretion of the Authority.

### **XI. A. 90-Day Return of Credit/Refund Opportunity**

In an effort to effectively utilize LIHTC resources, while at the same time taking into account the challenges in the LIHTC market, sponsors who receive an allocation of tax credit and who cannot meet the requirements shown in Section XI above will be given the option to return their allocation and receive a refund of their 3% tax credit fee anytime within 90-days of the project's Reservation date. Sponsors are encouraged to realistically assess the likelihood of their project finding an equity provider to purchase the tax credits and are encouraged to take advantage of this opportunity to get a refund of their 3% tax credit Reservation fee and help expedite the utilization of this valuable 9% tax credit resource.

Sponsors who wish to take advantage of this opportunity must notify the Authority in writing of their intent to return their tax credit allocation, request a refund of the 3% tax credit Reservation fee, and execute the applicable return of credit documentation prior to the 90-day deadline. No penalties will be imposed for sponsors seeking to return their credits under this scenario. If sponsors choose not to return their credits before the 90-day deadline, the 3% tax credit Reservation fee will become entirely nonrefundable and the project will be expected to fully meet all required project deadlines to avoid the potential for rescinding of the credit, fee penalties, and negative points in future funding rounds.

## **XII. Second Evaluation and Commitment**

Within 180 days of the issuance of the Reservation by the Authority, Applicants must submit to MSHDA acceptable evidence of the following items. Applicants are also encouraged to refer to the LIHTC Commitment Exhibit Checklist, which can be found on MSHDA's website for further detail regarding these requirements. Failure to provide such documentation may result in the allocation being rescinded. The items required to be submitted are:

- a Partnership Agreement or Operating Agreement,
- Evidence acceptable to MSHDA that there is an investor committed to providing equity financing to the project, and that the proposed investor has sufficient funding to meet its obligations under the terms the Partnership Agreement or the Operating Agreement. This evidence may include, but is not limited to, disclosure of upper tier investors or other sources of funding to MSHDA's Executive Director or Director of Legal Affairs or certification by an independent certified public accountant or attorney with knowledge of the investor, that the investor has sufficient funds to meet its obligations under the Partnership Agreement or the Operating Agreement.,
- Documentation of the price to be paid to the owner, if not identified in the Partnership Agreement or Operating Agreement
- For all projects that are relying on tax abatement for financial feasibility, a copy of the project-specific PILOT resolution, if not provided at the time of application.
- Record of the disbursement of the equity or construction loan
- Recorded notice of commencement (or evidence that the notice has been received for recording) unless on tribal land
- Recorded deed to the property (or evidence that the deed has been received for recording) or long-term lease on tribal land
- All necessary local approvals
- All building permits necessary to begin construction, or a letter from the municipality stating that the permits will be issued upon payment of fees
- Appraisal for all rehabilitation projects and for new construction projects with an identity of interest prepared consistent with Policy Bulletin #8 to ensure the most effective and efficient use of LIHTC
- Capital Needs Assessment dated within 1 year of the Commitment application due date, if not submitted at the time of initial application (if applicable). All Capital Needs Assessments must be completed in accordance with Section VII. B.3 above, and tab ZZ of MSHDA's Combined Application.
- Updated project schedule, pro-forma financial information, and sources and uses statement.
- Fully executed copy of the MSHDA Green Policy Certification and, if required by MSHDA Green Policy, proof of project registration with either Enterprise Green Community Partners or U.S Green Building Council.

## **XII. A. Program changes**

If changes to the LIHTC Program as enacted by Congress in any given calendar year so dictate, Reservations and/or Commitments of such Authority may be subject to different expiration dates depending on the nature of any changes in the federal program.

## **XIII. Carryover Allocations**

### **XIII. A. The 10% test**

Awarded projects must provide evidence, acceptable to MSHDA and in accordance with any applicable federal regulations, from a Certified Public Accountant that more than 10% of the taxpayer's reasonably anticipated basis in the project (as of the close of the second calendar year following the calendar year of the allocation) is incurred within 12 months of the allocation date.

A second financial review of the project based on updated project sources and uses as well as updated project income and expenses will be conducted at the time this certification is submitted in accordance with the procedures described in Section IX.G.

### **XIII. B. Rescission**

In the event that a Commitment has not been issued prior to issuance of a Carryover Allocation, all requirements for the Commitment must be fulfilled within 180 days of the issuance of the Reservation or the Carryover Allocation shall become null and void.

## **XIV. Final Evaluations**

MSHDA will further evaluate the project at the time of making a Carryover Allocation and again at the date each building is placed in service, including a site visit if deemed necessary by MSHDA, to ensure that all requirements outlined in the Combined Application, applicable Addenda, Policy Bulletins and QAP have been met. In the event that an initial visit warrants subsequent visits, MSHDA will charge a fee of \$500 per subsequent visit.

Projects with multiple buildings must place all buildings in service prior to the issuance of IRS Form(s) 8609. At its sole discretion, and the determination of extenuating circumstances, the Authority may suspend this policy. Owners must submit a copy of the executed first year's filing of IRS Form(s) 8609 for inclusion in the Authority's permanent Project records.

In accordance with Section 42 of the IRS Code, no credit shall be allowed with respect to any building for the taxable year unless an extended LIHTC commitment is in effect as of the end of such taxable year. MSHDA uses a LIHTC Regulatory Agreement to meet this requirement. Requests for a LIHTC Regulatory Agreement must be submitted to MSHDA no later than November 1st of the year in which the project is placed in service, or the following November 1st of the following year if the owner elects to begin the LIHTC period the first year after the building is placed in service.

The placed in service application must be submitted to MSHDA on or before February 1st of the year after the project is placed in service.

When the project/building is placed in service and prior to the issuance of a Form 8609, the owner must submit to MSHDA acceptable evidence of the items listed below. Applicants are

also encouraged to refer to the LIHTC Placed in Service Exhibit Checklist, which can be found on MSHDA's website for further detail regarding these requirements. The documentation required is as follows:

1. Updated application.
2. Independent, third party final owner's and contractor's cost certifications for all projects.
3. Certificates of occupancy (or their equivalent for rehabilitation work).
4. Executed limited partnership agreement and all attachments.
5. Copy of executed and recorded permanent mortgage and other permanent financing sources.
6. Copy of executed and recorded deed to property showing partnership as owner (or long-term lease showing partnership as lessee if on tribal land), including correct property description.
7. Copy of ownership entity formation records approved by the Department of Licensing and Regulatory Affairs Bureau of Commercial Services
8. Color photograph of project.
9. Form 8821, Tax Information Authorization naming MSHDA as the appointee to receive tax information.
10. A copy of the owner's final title insurance policy evidencing that the Extended Use Agreement has been recorded as first priority over all other encumbrances evidencing or securing the financing of the project.
11. A check for Compliance Monitoring Fees.
12. Assignment or transfer agreement of the rental subsidy that has been approved by the appropriate agency, if applicable.
13. First Year Credit Statement
14. A copy of the project's latest financial audit (if available)
15. Fully executed copy of the MSHDA Green Policy Certification and, if required by MSHDA Green Policy, proof of project registration with either Enterprise Green Community Partners or U.S Green Building Council.
16. Updated Environmental and/or Marketing documentation, if applicable

## **XV. Evaluation of Developments Subject to Subsidy Layering**

MSHDA, as Michigan's sole housing credit agency for administration of the LIHTC, and HUD, have entered into a Memorandum Of Understanding which outlines MSHDA's Section 911 subsidy layering review of projects receiving LIHTC and "assistance" from HUD'S Office of Housing. Until such time as guidelines are published and MSHDA accepts such delegation, MSHDA will not be performing subsidy-layering reviews for projects receiving assistance under HUD'S Offices of Public and Indian Housing and Office of Special Needs Assistance Programs.

In connection with the subsidy layering evaluations performed by MSHDA as the housing credit agency, the following standards will be applied.

### **XV. A. Profit and Fees**

Projects with layered subsidies will be subject to the provisions outlined in Section IX, Underwriting Standards, regarding the developer fee and the builder's profit, overhead, and general requirements.

### **XV. B. Syndication Expenses**

The total expenses, excluding bridge loan costs, incurred by the Applicant in obtaining cash from the sale of project interest to investors through public offerings will generally be evaluated as not exceeding 15% of gross syndication proceeds but may, in the event that MSHDA determines special market or risk factors to be involved, be evaluated up to 24% of gross syndication proceeds. Similarly, MSHDA will generally evaluate private offering expenses at 10% of gross syndication proceeds, excluding bridge loan costs, but may use a figure of up to 15%.

### **XV. C. Syndication price**

MSHDA will, in its evaluation, apply an applicable market rate, expressed in cents netted per dollar of credit as of the project's placed in service date, in calculating maximum LIHTC, and valuing all payments, whether by installment or in one lump sum. This applicable market rate will be based upon factors including the project's market value, comparable, contemporary syndications, and MSHDA's judgment regarding market trends. When necessary, MSHDA in its sole discretion may apply adjustments to the syndication price where specific situations appear to warrant it (where a higher than usual ownership percentage is retained, for example).

## **XVI. Housing Choice Vouchers**

Applicants proposing to convert or obtain tenant-based Housing Choice Vouchers for a project-based subsidy must indicate in the Addendum I of this intent and a separate application must be submitted to the issuing authority for approval. Additional information regarding these requirements is provided in Tab G. Projects must comply with the issuing authority's PHA and Administrative Plans in order to receive and convert vouchers to a project-based subsidy. To the extent administratively feasible and consistent with its PHA and Administrative Plan, MSHDA will endeavor to make housing choice vouchers available subject to the requirements of the PHA and Administrative Plans and this QAP.

Housing Choice Vouchers for conversion to project-based subsidy will not be made available by MSHDA for preservation projects that already receive project-based assistance.

This QAP awards LIHTC through a competitive process that can also serve as a form of competitive selection for purposes of applications for project-based vouchers and other forms of assistance.

## **XVII. Project Reconfiguration and Exchange of Credit**

Project evaluations are performed on the information that is provided in the initial application for Reservation. This information is material to the determination of project score, the amount of credit reserved, and the feasibility of the project during the compliance period. Owners will not be allowed to make changes to a project that would result in a change to any of the specific items for which points were awarded, unless extraordinary and well-documented circumstances would warrant it. Any such changes to a project that require a re-scoring or re-evaluation which

causes the projects position to fall below its original position will cause the Reservation of LIHTC to be rescinded.

In certain unusual circumstances, delays may occur which will prevent the project from being placed in service at the end of the second calendar year from the date of the Carryover Allocation. MSHDA may allow the credit to be returned and may issue a Carryover Allocation in the year in which the credit is returned without the necessity of competing for funding provided certain conditions, including an assessment of facts by MSHDA, are met. Requests for an exchange of credit may not be applied for prior to October 1<sup>st</sup> of the year in which the project was required to place in service, unless the Authority determines that extenuating circumstances warrant an earlier exchange of credit.

Developers will not be penalized for voluntarily returning credits. MSHDA encourages developers to make a realistic assessment of their ability to use allocations and return credits rather than delaying the use of a scarce federal resource.

At no time will any project be allowed more than three calendar years from the date of initial application to project completion unless approved by MSHDA.

## **XVIII. Fees**

All applications must be accompanied by a check or money order in an amount equal to \$40 for each proposed low-income unit, with a \$2,000 maximum limit. This fee is non-refundable and must be paid in each funding round in which a project is seeking to be scored and/or evaluated. A fee of \$100 will be assessed each time a check is returned to MSHDA for non-sufficient funds.

MSHDA will charge a fee equal to 6% of the annual LIHTC dollar amount reserved for a project. A sum equal to 3% of the annual LIHTC dollar amount shall be submitted to MSHDA at the time of Reservation. Should a project that has received a Reservation voluntarily return that Reservation to MSHDA within 90 days of its receipt, this Reservation fee shall be refundable pursuant to Section XI.A. of this Qualified Allocation Plan; however, after 90 days, 0% shall be refundable. The remaining 3% shall be paid at Commitment. Projects in which the sole general partner or sole managing member is a nonprofit entity or a wholly owned for-profit subsidiary of a nonprofit entity may defer all but the initial application fee, until such time as closing on the equity contribution occurs.

In addition to the fees listed above, MSHDA may establish such other fees as may be necessary to effectively administer the program. Such fees may include, but are not limited to, charges to process waiver requests, changes in ownership, subsidy layering reviews and site visits. MSHDA shall publish a schedule of such fees 60 days prior to implementation (see Fee Schedule Policy Bulletin).

Compliance monitoring fees will be charged for the credit period as follows:

- All units for which an allocation of credit was received on or after January 1, 2012 must pay the sum of \$475 per low income unit, which amount will cover the initial 15 year compliance monitoring period and is payable prior to issuance of Form 8609. Also, a fee of \$25 per LIHTC unit will be charged annually during the extended use period.
- All units for which an allocation of credit was received on or after January 1, 2011, but before January 1, 2012 must pay the sum of \$450 per low income unit, which amount will cover the initial 15 year compliance monitoring period and is payable prior to issuance of Form 8609. Also, a fee of \$20 per LIHTC unit will be charged annually during the extended use period.

- All units for which an allocation of credit was received on or after January 2008, but before January 1, 2011 must pay the sum of \$450 per low income unit, which amount will cover the entire 15 year compliance monitoring period and the extended use period and is payable prior to issuance of Form 8609.
- All units for which an allocation of credit was received on or after January 1, 2001 but before January 1, 2008 must pay the sum of \$300 per low income unit, which amount will cover the entire monitoring period and is payable prior to issuance of Form 8609.
- All units that received an allocation of credit prior to January 1, 1993, and all projects financed by MSHDA that received an allocation of credit before January 1, 1997, may elect to submit a sum equal to \$15 per low income unit on an annual basis for the remainder of the compliance period, or may opt to make one payment similar to that described above.
- With the exception of projects financed by Rural Development, all projects that received an allocation of credit prior to January 1, 2001 must pay an additional inspection fee of \$30 for each unit to be inspected once every three years. Projects financed by Rural Development must pay an additional fee of \$20 per each unit to be inspected once every three years. This fee shall be paid at the time of submission of the annual owner certifications.

#### Noncompliance Fees

- MSHDA will assess a fee of \$100 if an owner fails to have a representative present for a scheduled tenant file audit and/or physical inspection which results in the inability to conduct the file audit and/or physical inspection.
- MSHDA will assess a fee of \$50 per unit for significant and repeated noncompliance issues.

Failure to submit any compliance or inspection fee will be considered non-compliance.

Compliance monitoring fees are subject to change based on changes in costs associated with administration of the compliance monitoring function by MSHDA and other changes in MSHDA and/or IRS mandated monitoring requirements.

## **XIX. Compliance Monitoring and Notification of Noncompliance**

Owners (Applicants) receiving a LIHTC allocation shall be required to follow the requirements outlined in MSHDA's LIHTC Compliance Manual (Compliance Manual or Manual) (available on MSHDA's website).

### **XIX. A. Owner Responsibilities**

Within thirty (30) days of completion of Part II of the Form 8609 and filing of the form with the Internal Revenue Service, a completed copy must be sent to MSHDA for its records. Failure to send a copy of the completed form to MSHDA within the required timeframe shall be deemed as noncompliance.

Owners must submit to MSHDA Compliance a copy of the certificate of occupancy (or certificate of substantial completion for preservation projects) for each building in the development within five (5) business days after each certificate becomes available.

The records for the first year of the credit period must be kept for six years after the due date (with extensions) for filing the federal income tax return for the last year of the compliance period (a total of 21 years). Owners must keep subsequent records on file for six years after the due date (with extensions) for filing the federal income tax return for that year. These records must include:

- The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each unit);
- The percentage of residential rental units in the building that are low-income units;
- The rent charged and utility allowance for each residential rental unit in the building;
- The number of occupants in each low-income unit;
- The low-income unit vacancies in the building and information that shows when and to whom the next available units were rented;
- Income certifications of each low-income tenant and the documentation to support the certification;
- The eligible basis and qualified basis of the building at the end of the first year of the credit period;
- The character and use of the nonresidential portion of any building included in the project's eligible basis; and
- Documentation regarding calculation of utility allowances.

Owners must submit to MSHDA Compliance on an annual basis the following:

- An Owner Certification of Continuing Program Compliance (Owner Certification) Form certifying that for the preceding twelve month period the project met conditions outlined in Section 42;
- The original local health, safety or building code violation reports or notices that are issued by the state or local government unit. Copies of these reports or notices must also be kept on-site at the development for review by MSHDA during the physical inspection. These reports may be destroyed following a MSHDA inspection and the owner's notification to MSHDA that the violations have been corrected. Code violation reports must be retained for uncorrected violations.

Owners must submit to MSHDA electronically, on an on-going basis, data stating the number of qualifying units, number of bedrooms in each unit, information on each low-income tenant household (including income, rent amount, utility allowance, number of occupants, AMI % designation, etc.), and any other information as set forth on the MSHDA website and in the Manual. The tenant income and rent information must be provided in the format required by MSHDA, which includes electronic submission via a web-based reporting system.

Owners must submit to MSHDA in writing, responses to the physical inspections and tenant file audits conducted, unless no inspection or file audit noncompliance findings are identified.



Owners must notify MSHDA in writing (Notice of Change in Management form) within five (5) business days of any changes in the management of the project, including changes in the company managing the project or in the address, telephone number or email address of the management agent company and/or contact person.

Owners must notify MSHDA in writing (Notice of Change in Ownership form) within five (5) business days of any changes in the ownership of the project, including a foreclosure, deed in lieu of foreclosure, or any other sale or disposition of the project or any portion of the project and any changes in the ownership entity, including any changes in the name of the entity, address and telephone number of the entity, percent of ownership changes, and changes in the principals comprising the ownership entity.

Owners must notify MSHDA immediately in writing (Notice of Building Casualty Loss or Damage form) of any unit(s) or building(s) in the project that are anticipated to be unavailable for occupancy either permanently or temporarily for a period of time anticipated to exceed 30 calendar days due to casualty loss, damage, or any other reason.

### **XIX. B. MSHDA Responsibilities**

MSHDA will review the Owner Certification Forms and tenant data and income and rent reporting for compliance with program requirements.

MSHDA, or its authorized agent, will conduct a physical inspection of all buildings, common areas, and at least 20% of the low-income units in a project. MSHDA, or its authorized agent, will conduct tenant file audits consisting of a review of the low-income certification, the documentation the owner has received to support that certification, and the rent record for 20% of the low income units.

Physical inspections and tenant file audits of LIHTC projects will commence no later than the end of the second calendar year following the year the last building in the project is placed in service and will be conducted at least once every 3 years thereafter throughout the initial 15 year compliance period. MSHDA will continue to conduct physical inspections and file audits throughout the extended use period. MSHDA retains the right to perform an on-site inspection and/or file audit of any low-income building at any time or frequency during the initial compliance period and the remainder of the extended use period.

MSHDA will retain records of noncompliance or failure to certify for a minimum of six years after the filing of a Form 8823. MSHDA will retain all certifications and records for not less than three years from the end of the calendar year in which they are received.

### **XIX. C. Notification of Noncompliance**

If any of the submissions required in Section A, are not submitted in a timely fashion, or should there be omissions, MSHDA shall request such information from the owner. If the owner fails to provide the required documentation within the specified time period, MSHDA shall notify the Internal Revenue Service of the owner's failure to provide the required information.

Should MSHDA discover, as a result of an inspection or audit, or in any other manner, that the project is not in compliance with Section 42, or that credit has been claimed or will be claimed for units that are ineligible, MSHDA will notify the owner. The owner shall have a minimum of 30 days from the date of notification to cure the noncompliance. In extraordinary circumstances, and only if MSHDA determines that there is good cause, an extension of up to six months to complete a cure for noncompliance may be granted.

MSHDA will notify the Internal Revenue Service, utilizing Form 8823, no later than 45 days after the end of the correction period, and no earlier than the end of the correction period, of the nature of the noncompliance and will indicate to the Service whether or not the owner has made appropriate corrections.

While MSHDA will notify the owner of compliance issues, neither a finding of noncompliance nor a determination that noncompliance has been cured is binding on the Internal Revenue Service. Owners who have received a notification from MSHDA that a project is in compliance may still be subject to an IRS audit and the possibility of loss or recapture of Housing Credits. Refer to the Internal Revenue Code for additional information about federal compliance issues.

The absence of a notice of noncompliance should not be relied upon by any owners or their investors as a warranty or representation by MSHDA that the project is in compliance with application requirements.

## **XX. Combined Application, Policy Bulletins and Addenda**

The Policy Bulletins set forth additional requirements for LIHTC Applicants. The additional criteria of the Combined Application, including all applicable Addenda are also additional requirements for LIHTC Applicants. MSHDA reserves the right to modify the Combined Application, Policy Bulletins, and Addenda at its discretion following notice to the public.