

BOND / TAX CREDIT PROGRAM POLICIES

Washington State Housing Finance Commission

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1 Introduction

The Tax Reform Act of 1986 created two financing tools for the development of low-income rental housing that work together under the Commission’s Multifamily Housing Bonds with 4% Tax Credits Program (the “Bond/Tax Credit Program”). Section 142 of the Internal Revenue Code of 1986, as amended (the “Code”) allows tax-exempt bonds to be issued to finance Qualified Residential Rental Projects. Section 42 of the Code allows those projects financed under Section 142 that are subject to the bond volume cap limitation in Section 146 of the Code to be eligible for low-income housing tax Credits as long as a portion of the Project’s eligible basis and land is financed with tax-exempt bonds. The Commission or another qualified issuer may provide the tax-exempt bond financing. The Commission is the sole designated housing tax credit allocator for the State. The Rules governing the Tax Credit Program in Washington State are codified in the Washington Administrative Code 262-01-110 to 130 (the “WAC”).

The Bond/Tax Credit Program is governed by the following documents:

1. WSHFC Bond Financing Policies
2. Bond/Tax Credit Policies (this document)
3. Tax Credit Program Rules (WAC 262-01-110 to 130)
4. Private Activity Bond Allocation Rules (WAC 262-01-140)
5. Qualified Allocation Plan
6. Sections 42 and 142 of the Code.

These policies intentionally do not restate Section 42 and Section 142 of the Code with regards to the federal requirements of projects financed with tax-exempt bond financing or low-income housing tax credits. In addition to being familiar with the federal programmatic requirements of the Code, Applicants should review the Bond Compliance Procedures Manual and the Tax Credit Compliance Procedures Manual as part of a due diligence process.

The Commission reserves the right to change the policies at any time.

The Bond/Tax Credit Policies guide the allocation of Private Activity Bond Volume Cap (“Bond Cap”) and the 4% Low-Income Housing Credit (“4% Credit”) to eligible projects. These Policies apply only to projects using both types of financing, and they apply regardless of whether the bonds are issued by the Commission or another agency.

Multifamily Housing projects financed with tax-exempt bonds that do not use the Housing Tax Credit (“80/20” projects) are subject to the Multifamily Bonds Only Policies. Projects using the 9% Competitive Housing Credit are subject to the 9% Competitive Housing Tax Credit Policies.

1.1 Bond Financing

1.1.1 Projects financed with Commission-Issued Bonds

Commission-issued bonds for Qualified Residential Rental Projects, hereafter referred to as Multifamily Housing Bonds, are often referred to as Private Activity Bonds since the bonds are issued by a public entity to provide low-cost financing for private projects that serve a public purpose.

These bonds (with the limited exception of certain bonds, see Section 2.3), also allow for the generation of 4% low-income housing tax credits (“LIHTCs”). LIHTCs are equity dollars. An

allocation of 4% credits yields tax credits over a 10-year period with a present value of 30% of eligible costs to construct the low-income units. The 4% credit is also referred to as the noncompetitive tax credit, since 4% credits are not limited to an annual federal per capita restriction as the 9% LIHTCs.

The amount of tax-exempt bonds that may be issued for private activity with a state are subject to an annual “cap” or “ceiling.” The limit is based on a state’s population multiplied by \$100. The Revised Code of Washington (“RCW”) 39.86 refers to this as the “annual tax-exempt private activity bond ceiling;” however it is generally referred to in the state as “Bond Cap.” RCW 39.86.120 provides for the initial allocation of Bond Cap as follows:

BOND USE CATEGORY	2010 and THEREAFTER
Housing	42.0%
Small Issue	25.0%
Exempt Facility	20.0%
Student Loans	5.0%
Public Utility	0.0%
Remainder and Redevelopment	8.0%

Bond Cap must be used before December 15 of the same year.

In addition, if no allocation for student loan bonds has been made by February 1 of that year, the entire initial allocation for student loans may be reallocated to the housing category on February 1 of the same calendar year.

If a current year’s Bond Cap is not used, the unused Bond Cap can be carried forward for up to three calendar years (“Carryforward Bond Cap”).

If the Commission determines that demand will exceed supply, the Commission will announce by the end of October of the preceding year, that competitive rounds will be implemented and the approximate dates of the round or rounds. Competitive rounds will have strict application and closing deadlines. Generally, there will be at least two rounds in competitive years. Projects should apply only for a round in which they can meet the closing deadline and the project readiness criteria. Sponsors should be confident of permit timing, lender approvals, and investor commitments when they apply. Projects will be ranked according to point scores, bond cap requested per unit, and cost per unit.

For monthly and competitive rounds, the minimum qualifying score is 40 points.

When competitive rounds are in effect, Projects will also be expected to provide a Bond Reservation Fee, (see [Section 9.1.2](#)). Projects not receiving an initial reward will be placed on a waiting list for that round only.

All projects receiving Bond Cap or Carryforward Bond Cap must have a public hearing at a Commission meeting, unless an exception is made. Commission meetings are held generally the fourth Thursday of each month except for the months of May, November, and December. A meeting schedule is posted on the Commission’s website.

Please note that there are no public hearings held at the Commission's Annual Planning Session meeting generally held in May or at Commission meetings not held in Seattle or Olympia.

If the Commission is holding an off-site meeting outside of Seattle or Olympia, only public hearings for projects in the community where the off-site meeting is held will be official.

1.2 Projects financed with Bonds issued by an Issuer other than the Commission

For those bond/tax credit projects that are applying to the Commission for the 4% tax credit only, the Commission requests that an Application for Credits (Application) be received at least 60 days prior to the date the 42(m) letter is needed.

The Commission must be kept informed of the closing process and timing.

2 Program Limits

The Commission has established the following program limits for projects seeking an allocation of bonds and tax credits. The Applicant should demonstrate compliance with all the program limits in the Application. This program and its policies are established by the Commission and administered by the Multifamily Housing and Community Facilities (“MHCF”) Division.

2.1 Maximum Allocation of Tax Credit – WAC 262-01-130(7)

As required by Section 42 of the Code, the Commission will allocate no more than the minimum amount of Housing Tax Credits needed to ensure that the project will be financially feasible and viable as a qualified low-income housing project throughout the credit period.

As part of the Commission’s Credit determination, the Commission will evaluate each project based upon the project’s feasibility and viability which includes, among other things, examining the development and operational costs of each project, as well as the market need and demand and the credit pricing.

2.2 Maximum Allocation of Bond Cap

During years when the Commission conducts competitive rounds, MHCF will not allocate more than 50% of the volume cap to be allocated in that round to one project sponsor, unless an exception is approved by the Director of the MHCF Division. Additionally, MHCF will not allocate more than 50% of the calendar year’s aggregate available bond cap for a calendar year, including both Carryforward Bond Cap and Current Bond Cap, to a single project sponsor.

2.3 Maximizing the Use of Recycled Bond Cap

The Housing and Economic Recovery Act of 2008 allows for the recycling of bond volume cap. Recycled bond volume cap (“Recycled Bonds”) is derived from the pay down or pay off of multifamily bond issues if certain conditions are met. Recycled Bonds must be issued for a qualified residential rental project within six months of the repayment of the original bonds, the final maturity of the newly issued Recycle Bonds must be within 34 years of the initial issuance date of the original bonds and TEFRA and approval requirements must be met. Perhaps most significantly, Recycled Bonds are not eligible for 4% tax credits. The Commission intends to allocate Recycled Bonds to projects whenever possible.

By using Recycled Bonds for the portion of the bond issue that exceeds the minimum threshold of the “50% Test” (see Section 3.14) or for projects that do not need to generate 4% tax credits, the Commission will ensure that its current year and carry forward volume cap is prioritized to generate 4% tax credits.

The use of Recycling Bonds will be discussed with the project sponsor well before the scheduled closing of the bonds. The use of such Recycled Bonds is dependent on availability.

2.4 TOTAL DEVELOPMENT COST LIMIT – WAC 262-01-130(8)(a)

Given the finite resource of the Housing Tax Credit, the primary objective of the Total Development Cost Limit policy (“TDC Limits”) is to balance cost containment with promoting quality development. Meaningful cost containment policies are essential to the future success and continued credibility of the Housing Tax Credit program.

2.4.1 King County Limits

Projects located in King County are subject to the King/Seattle TDC Limits. If a scattered site project is located in an additional county(ies), units outside of the King/Seattle area will be subject to Metro, Pierce and Snohomish or Balance of State TDC Limits, depending on its geographic location.

2.4.2 Pierce and Snohomish TDC Limits

Projects located in Pierce or Snohomish Counties are subject to the Pierce and Snohomish TDC Limits. If a scattered site project is located in an additional county(ies), units outside of Pierce or Snohomish Counties will be subject to King/Seattle, Metro or Balance of State TDC Limits, depending on its geographic location.

2.4.3 Metro TDC Limits

Projects located in Clark, Thurston, Whatcom, and Spokane counties are subject to the Metro TDC Limits. If a scattered site project is located in an additional county(ies) that does not include King, Pierce or Snohomish Counties, units outside of the Metro area will be subject to the Balance of State TDC Limits.

2.4.4 Balance of State TDC Limit

Projects not located in the King/Seattle, Pierce and Snohomish or Metro TDC Limit areas, as set forth above, are subject to the Balance of State TDC Limits.

2.4.5 Urban Project TDC Limit Increase

Projects located in any county other than King County that fit the definition of an Urban Project set forth below, may request to be allowed to use the TDC Limits one category higher than their current category. For example, a proposed project in the Balance of State TDC Area meeting the “Urban Project” definition, may request to apply under the TDC Limits for the Metro TDC Area. Urban Projects are defined as those that have three or more of the following and are within a designated urban growth area:

- Located within the city limits
- Located in or near a central commercial zone or downtown core
- More than 4 stories
- An elevator
- Required structured parking ¹
- Maximizes density either through increased number of bedrooms per unit or units per acre
- Specific high-cost design elements meeting city neighborhood plans and infill goals
- Area Designated as a Difficult to Develop Area (DDA)

Projects seeking an increase in their TDC Limits under this section must notify the Commission in

¹ Structured parking is defined as an above-grade or underground structure specifically designed for vehicle parking.

writing of its desire to obtain the increased TDC Limits at least sixty (60) days prior to application. The Commission may request that the Applicant set forth in detail how it meets the Urban Project definition. A project cannot use the increased TDC Limits absent authorization from the Commission.

2.4.6 TDC per Unit Limit Schedule

	Studio	One Bedroom	Two Bedroom	Three Bedroom	Four Bedroom
King/Seattle	\$251,974	\$291,631	\$309,899	\$347,551	\$382,857
Pierce and Snohomish	\$242,494	\$282,881	\$299,573	\$337,124	\$371,373
Metro	\$234,597	\$264,673	\$289,626	\$334,184	\$368,132
Balance of State	\$170,147	\$191,573	\$217,147	\$282,055	\$310,378

A Project’s TDC Limit is the sum of the total number of units of each bedroom size multiplied by the cost Limits of that bedroom size. Total Development Cost is defined as the Total Residential Project Cost minus the cost of land, the costs associated with offsite infrastructure improvements and the capitalized reserves as detailed below. All units (low-income, market-rate and common area units) are to be included in the calculation.

The cost of land is subtracted out. Additional costs associated with the land including, but not limited to, closing costs, site work or purchase and sale extensions must be included in the Total Development Cost for the purposes of determining whether a project exceeds the TDC Limit. Offsite infrastructure improvements are defined as: improvements required by the City to be dedicated for use by the public and can include roads, curbs, gutters, sidewalks, storm water drainage, domestic water inflow and utilities, including utility steel casings, wiring and installation fees.

Capitalized Reserves include long-term reserves such as an operating reserve or a replacement reserve; they do not include reserves capitalized to cover the lease-up period.

Projects are subject to the Development Cost Limit Schedule in place at the time of Application. As part of the Application, Projects must provide a detailed breakdown of anticipated Total Project Costs.

2.4.7 Waiver of the Total Development Cost Limit – New Construction

In setting this policy, the Commission acknowledges that some projects will not fit within these Limits despite best efforts to do so. However, it is imperative that the tax credit resource be allocated to projects demonstrating prudence when making their funding proposals. While the TDC Limit policy sets distinct Limits, discretion is a critical component of this policy. Through the waiver process, the Commission may consider a number of potential project characteristics that can create cost levels above the published Limits.

These cost influences may include, but are not limited to:

- Construction type (e.g. high-rise elevator construction, structured parking)
- Density (e.g. units per acre)
- Costs related to stated program priorities (e.g. supportive housing, large family units)
- Multi-phased projects and large-scale redevelopments

- Funded initiatives promoting design or development innovation
- Costs that result in energy or water cost savings beyond local building code or Evergreen Sustainable Development Standard (“ESDS”)

However, it should be noted that an increase in labor costs is not solely sufficient to support a waiver request.

Approval of the TDC waiver request is at the sole discretion of the Commission. The existence of the above factors should not to be construed as a guarantee of waiver approval.

Projects requesting a waiver of the TDC Limit must submit a TDC Limit Waiver Request Form with required attachments 60 days prior to submission of the Application. Applications submitted that exceed the TDC Limit without an approved waiver will be disqualified and not considered further. Waiver requests will be evaluated to determine whether additional costs are reasonable and justifiable under the circumstances, attributable to unique development characteristics, and consistent with the housing needs and priorities identified in the Policies. They will be valid for only one year from the date of the waiver. If the project has not closed, i.e., issued bonds within 12 months of the waiver. The project must reapply.

If a Project exceeds the TDC Limit by 20% or less, the waiver is subject to the approval of the MHCF Director. If a Project exceeds the TDC Limit by more than 20%, the waiver must be approved by the Executive Director prior to the submission of the Application.

2.4.7.1 Rehabilitation and Re-syndication Projects

Unless the proposed rehabilitation is a major rebuild and/or reconfiguration of the property or properties, the Commission is not likely to grant a TDC waiver for a project in this category, especially if the same project sponsor is applying for a property that has excessive costs due to poor construction, design, deferred maintenance or acquisition.

When a TDC Waiver is requested, the Commission will review the following, among other things:

- the method used to appraise the project
- the scope of work to be done
- needs assessment post-rehab
- developer fee
- management history
- costs that result in energy or water cost savings beyond CODE or ESDS
- projected useful life of improvements
- replacement reserves

2.4.8 Changes in Total Development Costs

The intent of this policy is to encourage the communication of any unanticipated changes in project costs. Any cost increases must be proactively communicated and approved by the MHCF Director. The Commission retains the right to disallow any future increased development cost.

2.4.9 Calculation of Future Total Development Costs Limits

The MHCF Division intends to annually review the TDC Limits using historical internal application and cost certification data, as well as industry construction cost data. Based upon this review, the TDC Limits may be modified as the MHCF Division deems appropriate.

2.4.10 Other Public Funders Development Costs Limitation Initiative.

The Commission reserves the right to incorporate development cost containment initiatives offered by other public funders, such as the Department of Commerce or the City of Seattle, into its analysis of TDC limit waiver requests and future adjustments to its TDC Limits and cost-containment policies.

2.4.11 Total Development Cost Limit Exemption

In setting this policy, the Commission acknowledges that occasionally a project requesting tax credit funding will not fit within these Limits due to extraordinary circumstances. In those rare cases, the Commission may grant a one-time exemption to the TDC Limits.

Some examples of extraordinary circumstances could include historic districts and historic tax credits, seismic retrofit, hazardous material abatement, and other issues faced by projects that consist of an adaptive reuse of an existing site/building.

Projects requesting an exemption from the TDC Limit must make an initial exemption request by submitting, in writing, a request for an exemption to the MHCF Director at least 4 months prior to the Application deadline. After receipt of the initial exemption request, the MHCF Director (or staff designee) will schedule a project pre-application meeting to determine the documentation and narratives necessary to support a formal request for an exemption.

If the Commission grants an exemption from the TDC Limit, the project will be subject to a project cost-analysis during the application process. The Applicant may be required to submit detailed estimates of costs, which can include costs associated with abatement, demolition, seismic retrofit, structural changes, code compliance, parking and design and professional services. The Commission will determine if the project cost analysis will be conducted by Commission staff or by a third-party reviewer. If the Commission determines that a third-party review is necessary, costs associated with that review will be borne by the Applicant.

In addition, if the project is granted an exemption from the TDC Limit, additional reporting requirements, as determined by the Commission, will be required throughout the project construction period.

Total Development Cost Limit exemptions are granted by the Executive Director of the Commission. Total Development Cost Limit exemptions will remain valid only for the current year's application. In addition, the development costs associated with a project receiving an exemption shall not be used to calculate future TDC Limits.

2.5 Maximum Construction Contingencies – WAC 262-01-130(8)(b)

The maximum amount of Credit allocated to a project will be determined after limiting the rehabilitation contingency to 15% of the rehabilitation costs and the new construction contingency to 10% of new construction costs. Rehabilitation costs include rehabilitation hard costs, site work costs, and contractor

profit and overhead. New construction costs include new construction hard costs, site work costs, and contractor profit and overhead.

2.6 Maximum Developer Fees – WAC 262-01-130(8)(f)

The Commission will only consider developer fees in the aggregate, up to 15% of Total Residential Project Costs less reserves, Donation, Intermediary Costs, and less the requested developer fee amount. For this purpose, developer fees include all consultant fees (other than arm’s length architectural, engineering, appraisal, market study and syndication costs) and all other fees paid in connection with the project for services that would ordinarily be performed by a developer, as determined by the Commission.

For projects receiving capital funds from one or more public sources, the Commission will set the developer fee at the time of the Equity Closing based on the project’s final budget after construction bids have been accepted and final sources and uses have been balanced. The fee presented in the Placed-in-Service documentation may not exceed the amount finalized at closing.

For acquisition/rehabilitation projects where the cost of rehabilitation is less than 25% of the reasonable “as-is value” of the building, the Commission will only allow in eligible basis developer fees up to 10% of Total Residential Project Costs less reserves, Donation, Intermediary Costs, and less the requested developer fee amount. Total rehabilitation costs consist of the budget categories of site work, rehabilitation, contractor overhead and profit, and contingency. The Commission may require the Applicant to submit a copy of a current appraisal to establish the building’s as-is value.

If there is an increase in land cost in a transaction between Related Parties or other parties with an Identity of Interest (a “Related Buyer and Seller”), the Commission may require the Applicant to submit a copy of a current appraisal to establish the land value. The Commission may limit the land costs included in the Total Residential Project Costs. If any portion of the increased land cost in a transaction between a Related Buyer and Seller is accepted by the Commission, the amount of the increased land price will be deducted from the lesser of the developer fees listed in the Applicant’s project budget or the maximum developer fees applicable to the project. If land improvements have been completed by a Related Party or other person having an Identity of Interest to the Applicant, the work should be itemized on the project’s budget and not included as an increased land cost.

For the purpose of this policy, Intermediary Costs, Reserves, Donation and any amounts attributed to commercial areas or other non-residential areas are not considered part of the Total Project Costs.

2.7 Maximum Consultant Fees – WAC 262-01-130(8)(f)

Consultant fees (other than arm’s length architectural, engineering, property appraisal, market study, and syndication costs) must be included in the developer fees limit set forth above.

2.8 Maximum Contractor’s Profit and Overhead – WAC 262-01-130(8)(g)

When the general contractor is a Principal, Related Party or otherwise has an Identity of Interest with the Applicant or project owner, the Commission will limit the contractor’s combined profit and overhead to 10% of total rehabilitation/construction costs plus site work costs.

3 MINIMUM Threshold Requirements

All projects must meet the Minimum Threshold Requirements (MTR) described in the following sections when submitting their application in order to be considered eligible for financing through the Bond/Tax Credit Program. If competitive rounds for Bond applications are in effect, Applicants must also meet those submission deadlines.

3.1 Complete Application and Appropriate Fee

The Applicant must submit a complete, legible, and executed Application. The Applicant must include all required attachments and the appropriate Application fee in order to be eligible for financing through the Bond/Tax Credit Program. The Applicant must use the Commission's Application forms. Please see *Section 9: Tax Credit / Bond Program Fees* for details on the Application fee.

The Applicant may pay the fee with a business or personal check, a money order, or a cashier's check. An Application submitted with a check that is returned for insufficient funds will not be considered further. The check will be returned to the Applicant.

3.2 Application Correction Period

If the MHCF Director determines that an Application is substantially complete but an item is missing, incorrect, or needs clarification, the Applicant will have five business days from receipt of written notice from the Commission to deliver the required information to the Commission. At the discretion of the Commission staff, additional time may be permitted to submit the required information. The written notice will be sent to the address of the contact person identified in the Application. If the Applicant fails to submit the required information within the required time period (including extensions), the MHCF Director may disqualify the Application.

If a project is applying for Bond Cap and Credit during a competitive round, the Correction Period may not be used to change the number of points selected for a project.

The Correction Period does not apply to any Application that is determined to be substantially incomplete by the MHCF Director.

3.3 42(m) Letter

Once the Commission has completed the MTR review of the Application, the Commission will issue a 42(m) Letter that verifies the availability of tax credits for the Project. This letter is sometimes referred to as the "Comfort Letter" and is usually a requirement of the Tax Credit investor's due diligence.

3.4 Project Changes

An Applicant must notify the Commission of any material change in a project including, but not limited to, a change in:

- the number of buildings or units
- the identity of interest disclosure
- the Development Team
- legal counsel or another professional representative's information
- the project's Total Project Costs
- the project's financing sources
- anything that would result in a loss of Allocation Criteria points

Material changes to an Application will be permitted only at the discretion of the MHC Director. If the Applicant desires to make a material change to the Application after it has been submitted and the MHC Director refuses to permit the change, the Application will be canceled and a new Application and fee must be submitted according to the deadlines or application timelines currently in effect. For instance, if competitive application rounds are in place, the Applicant will need to wait until the next round. The MHC Director will decide whether a change to the Application is material.

The Commission will consider and may approve a material change to a project, if the change is consistent with the Code and the Bond/Tax Credit Program, and does not decrease the total number of Allocation Criteria points for the project. The Commission will not approve a material change in the project's location or site.

The request for approval of a material change in a project must be submitted in writing and include a narrative description and other supporting documentation, plus the applicable revised pages of the Application. The Commission will consider a change in the selected Tax Credit and Bond Cap Allocation Criteria for which a project has received points only if (i) the project or Applicant qualified for the Allocation Criterion when the Application was submitted; (ii) the Allocation Criterion is no longer feasible through no fault of the Applicant; and (iii) the Applicant can substitute another Allocation Criterion that results in an equal or greater number of Allocation Criteria points. Aside from these exceptions, the Commission will not consider a project change after the original submission of an Application if it affects project eligibility for an allocation of Bond Cap, allocation criteria points, or project rankings.

3.5 Evergreen Sustainable Development Standard (ESDS)

Unless a preapproval has been granted, all Projects must comply with the version of the ESDS criteria that is current as of the date of the application. Applicants may use a comparable alternative sustainable development standard with preapproval, if they are not receiving funds from the Department of Commerce or any other public entity that enforces those requirements.

Specific information regarding ESDS can be found online at [Evergreen Standard](#).

Projects must comply with all ESDS mandatory criteria. New construction projects must score a minimum of 50 points from the optional criteria. Substantial and moderate rehab projects must score a minimum of 40 points from the optional criteria.

Projects must submit the ESDS Checklist as well as the Evergreen Owner Certification with their Application. The Evergreen Owner Certification attests that the Applicant has read and understands the ESDS as posted on the Washington State Department of Commerce's website.

As part of the Placed-in-Service package, the Applicant will submit a copy of the Evergreen Project Implementation Plan, documenting exactly how the project met each of the criteria indicated in the ESDS Checklist. It must be accompanied by an architect's certification attesting to the information supplied in the Plan and the Plan's implementation.

Failure to comply with this requirement may result in a temporary suspension from the program. Such action will be considered on a case-by-case basis.

Projects financed through the Washington State Department of Commerce are not required to submit any additional materials at application or Placed-in-Service.

3.5.1 ESDS Definitions of Rural and Urban

A **Rural Project** is one located in any of the following counties: Adams, Asotin, Benton (except Kennewick and Richland), Chelan (except Wenatchee), Clallam, Columbia, Cowlitz (except Longview), Douglas (except East Wenatchee), Ferry, Franklin (except Pasco), Garfield, Grant, Grays Harbor, Island (except Oak Harbor), Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit (except Mount Vernon), Skamania, Stevens, Thurston (except the cities of Olympia, Lacey, and Tumwater), Wahkiakum, Walla Walla (except the City of Walla Walla), Whatcom (except Bellingham), Whitman (except Pullman), Yakima (except the City of Yakima).

An **Urban project** is one located in any municipality with a population greater than 25,000 that does not fall under the definition of rural. A municipality with a population <25,000 which is adjacent to a city deemed "Urban" may be deemed functionally related to that city and therefore also deemed Urban. For example, Brier with its population of 6,087 (2010) is functionally related to the City of Lynnwood, and therefore, considered Urban.

3.5.2 ESDS Definitions of Substantial and Moderate Rehab

Substantial Rehab (or Gut Rehab): a project that includes the replacement and/or improvement of all the major systems of the building, including its envelope. The building envelope is defined as the air barrier and thermal barrier separating exterior from interior space. For Substantial Rehab projects, this could include either removing materials down to the studs or structural masonry on one side of the exterior walls and subsequently improving the building envelope to meet the whole-building energy performance levels for the project type, or creating a new thermal and air barrier around the building

Moderate rehabilitation: a project that does not fully gut and expose the structure and air barrier of the building envelope or replace / improve all major systems of the building.

3.6 Site Control – WAC 262-01-130(2)(B)

The Applicant must have control of all land necessary for the project and submit evidence of that control with the Application. Acceptable evidence of site control is a document that has a complete and accurate legal description and is one of the following:

- A. a recorded deed or conveyance showing that the Applicant has ownership;
- B. a valid purchase and sale agreement;
- C. a valid option to purchase;
- D. a valid and recorded long-term lease;
- E. a valid option for a long-term lease; or
- F. other evidence approved in advance in writing by the Commission.

The Applicant should be sure that the name on the evidence of site control and the Application is exactly the same. The site control document should also identify the same area as the project site listed in the Application and the same cost for the land and/or existing buildings for the project referenced in the development budget provided with the Application. If the site described in the Application and the site control document are not exactly the same, the Applicant must provide a narrative description and supporting documentation to clarify how the area and cost for the project were established.

If the Commission questions the reasonableness or appropriateness of the land costs for a project, the Applicant may be required to submit a copy of an appraisal with an effective date within 6 months of the transaction and acceptable to the Commission to establish the value of the land. The Commission reserves the right to limit the land costs included in the Total Project Costs for a project when evaluating the Bond and Credit amounts.

The Applicant should be aware that the allocation of Bond Cap and Credits for a project is site-specific. The Applicant must identify in the Application any changes that are anticipated in the legal description for the project site, including a narrative description and drawings to explain the planned changes (e.g., a land survey, partition, subdivision, etc.). The final legal description must be consistent with the planned site changes identified in the Application.

3.7 Title Report

The Applicant must include a title report that is dated not more than 6 months prior to the Application date that shows the ownership of the land containing each site is vested in the same name as either Ownership Entity or the person/entity with which the Applicant has executed acceptable evidence of site control approved in advance in writing by the Commission.

The title report must identify all encumbrances and liens upon the land and include a complete and accurate legal description.

3.8 Market Study –WAC 262-01-130(2)(c)

A complete market study must be submitted with the Application. The market study must satisfy the requirements of this chapter, the Application and Section 42 of the Code. An independent third-party analyst, using generally accepted principles and theory, must prepare the market study. The analyst must be included on the Commission's list of approved providers. The analyst must have demonstrated experience in the proposed project's market area and with the rent-restricted market. The market study must have an effective date no more than 6 months prior to the date that the Application is submitted to the Commission. An update of a market study will be accepted, at the Commission's discretion, if the effective date of the original market study is within 12 months of the Application date.

The market study must demonstrate to the Commission that the project is creating, preserving, or renovating housing that current market forces are not addressing. In addition, the market study must address current market conditions and determine that the project is viable and provides units at below market rents or gives some other public benefit.

The Commission will accept a current appraisal with an effective date no more than 6 months prior to the date that the Application is submitted in lieu of the required market study, provided that the market analysis and rent discussion sections include the information listed below. In addition, at the Commission's discretion, the Commission may require further market justification of the project, or accept a market study in a different format. Any deviation from the market study requirements must be approved in writing by the Commission prior to submission of the Application. The Commission reserves the right to contact the market analyst as needed.

The list of approved market study analysts and instructions for being added to that list may be found on the Commission website at <http://www.wshfc.org/mhcf/9percent/app.htm>.

- **EXECUTIVE SUMMARY**
- **PROJECT DESCRIPTION**
 - Description of Market Area (general and specific)
 - Site Amenities (include any unique characteristics)
 - Description of Improvements (as available in the case of new construction)
 - Unit mix, unit amenities, common amenities
 - Comparison to market rate projects (does project have typical finish, amenities found in local market)
 - Comparison to other rent restricted projects
- **MARKET AREA ECONOMY**
 - Delineation of Market Area
 - Population and Household Trends
 - Housing Trends, including proposed projects and other new developments
 - Supply and Demand Analysis
 - Market Rate Supply
 - Existing
 - Potential/Developing
 - Market Rate Demand
 - Vacancy rates, incentives
 - Rent trends
 - Absorption
 - Rent-Restricted Supply (discuss HUD-assisted housing, TC projects, other subsidized projects, and public housing, as applicable)
 - Existing
 - Potential/Developing
 - Rent-Restricted Demand
 - Vacancy rates
 - Market Penetration Analysis (using income banding – min. and max. income for project)
 - Projected Absorption for project
 - Analysis of project's special needs set asides, if applicable
 - Statistical and anecdotal information from appropriate social service agencies
 - Analysis of specific demand for special needs units
 - Conclusion: Proposed project's competitive position
- **COMPETITIVE RENTAL MARKET**
 - Description of Comparable Properties, both **market rate** and **rent-restricted**
 - Analysis of rents, including amenities and utilities
 - Conclusion of rents by unit type
 - Analysis of Rent Gap (gap between maximum restricted rents, projected restricted rents and market rents)
 - Analysis of the Project's effect on the market area, including the impact on Tax Credit and other existing affordable rental housing

- **CONCLUSION**

- Specific Questions:

- Is the Project, as proposed, viable?
- Does the Project meet a current or projected market need?
- Does the Project supply units below market rate?
- If not, does the Project provide some other public benefit? (i.e. Curing deferred maintenance or supplying better housing than currently available, holding rents stable in a market of increasing housing prices, or supplying reasonably-priced housing where there is a shortage?)

- Summary

- Recap of Project
- Conclusion and recommendations

3.9 Consistency with Local Consolidated Plan – WAC 262-01-130(2)(e)

All projects must be consistent with the local consolidated plan at the time the Application is submitted, and the Applicant must submit adequate evidence consistent with the Plan.

For projects located in **communities covered by a local consolidated plan**, the Applicant must submit a letter from the local government planning or community development department or housing authority responsible for administering the consolidated plan. The letter must:

- identify the current consolidated plan;
- state that the Project is consistent with the consolidated plan; and
- indicate that the Project is responsive to local housing needs described in the consolidated plan.

For projects located in **communities not covered by a local consolidated plan**, the Applicant should submit a letter dated no later than 6 months prior to the Application date from the local government where the Project is located which describes local housing needs and states that the Project is responsive to those needs.

A list of cities and counties covered by a local consolidated plan is available on the Commission’s website. The Commission reserves the right to determine whether a project complies with the local consolidated plan, if there is no response from the local jurisdiction.

3.10 Notification of Public Housing Authorities – WAC 262-01-130(2)(f)

The Applicant must submit a copy of a written letter committing to notify the local public housing authority of the availability of low-income units. The letter must be in the form described below, dated no earlier than 60 days before the date of the Application, and addressed to the relevant public housing authority or to such other agency authorized to act in lieu of a public housing authority where no public housing exists. If there is no public housing authority and no other agency authorized to act in lieu of a housing authority serving the community where the Project is located, this notification requirement is waived.

In the commitment letter, the Applicant must:

1. identify the location, the planned number of low-income housing units, the target population and the expected Placed-in-Service date for the proposed Project;

2. agree to notify the public housing authority or other such agency, in writing, of the availability of low-income housing units at least 60 days before the Placed-in-Service date of each building in the Project;
3. agree to notify the public housing authority or other such agency, in writing and at least once a year, of the ongoing availability of low-income housing units; and
4. encourage the public housing authority or such other agency to make the above notices available in any way it deems appropriate to those people on a waiting list for public housing programs.

This requirement does not apply if the housing authority is the project owner or its general partner.

3.11 Relocation Plan – WAC 262-01-130(2)(d)

If there are any tenants residing on the proposed project site, the Applicant must submit a relocation plan approved by the appropriate government authority. Be sure to review the Landlord/Tenant Act, RCW 59.18.010. The plan must be approved in writing by a local government that has jurisdiction over tenant relocation issues, such as a planning or community development department or housing authority.

In the absence of a local policy, Applicants are required to notify existing households of the proposed financing within 10 days following the real estate closing. It will be the responsibility of the Applicant to ensure proper notice is given to all existing residents and sufficiently posted in common areas of the property. Notice should include information regarding transfer of ownership and any and all potential restrictions on income, rent and/or populations served as a result of the proposed financing. Tenants must also be advised of where to obtain further information. Once notification has taken place, a copy of the notification must be submitted to the Commission.

To help minimize displacement, units occupied by households with incomes at or below the 60% AMI, but above the income levels pledged in the Application, may be filled through attrition.

3.12 Existing Manufactured Housing Communities

These communities often have land owned by a landlord and the dwelling units are owner-occupied units. Often these are affordable homeownership properties with average incomes below 60% of median. The Commission actively works to preserve this type of affordable homeownership. When the property is sold to a developer, the residents are not only losing their homes, but their investment, and their community (neighborhood). Residents in these communities tend to be very low income. In many of the communities the Commission has preserved through resident ownership, the residents had incomes at 30% of median income or below.

If you are seeking to purchase such a community for development into low-income rental units, a pre-application meeting is required. We would like to work with you to develop an equitable solution for the home-owners. Ideally, homeowners would be reimbursed at the assessed value of their home plus full moving costs.

Please be aware of RCW 59.20.300, Manufactured/mobile home communities—Notice of sale.

3.13 Financial Feasibility and Viability Analysis – WAC 262-01-130(7)

Under Section 42(m)(2)(D) of the Code, the issuer of the tax-exempt bonds is required to determine the amount of Credit necessary for a project's financial feasibility and viability. However, under the *Qualified Allocation Plan* for the State of Washington, the Commission, whether or not it is the issuer of the tax-exempt bonds, is required to determine the amount of Credit necessary for a project. The Commission will not allocate or award a bond project more than the minimum amount of Credit needed. Credit pricing is a critical component of assessing and underwriting the appropriate amount of Credit allocated to each project. The Commission's QAP and WACs also require the Commission give weight to projects which maximize the use of the tax credit (WAC 262-01-130(5)(j); QAP II.B(j)).

Further, the *Qualified Allocation Plan* states that if a project is financed in part with tax-exempt bonds from an issuer that is not the Commission, the responsibility to determine the financial feasibility and viability of a project will be shared.

When the Commission issues tax-exempt bonds or determines the initial Credit for a bond project that receives tax-exempt bonds from an issuer other than the Commission, it will determine the appropriate Credit amount at the time of the Application and again prior to the issuance of IRS Form 8609. The Commission will review all representations made by the Applicant in the Application regarding the Project's eligible basis, qualified basis, projected sources and uses of funds and will use the Tax Credit Factor selected by the Applicant.

In order to allow the Commission to perform these analyses, the Applicant is required to submit, among other things, (i) a comprehensive development budget showing all sources and uses of funds and the total financing plan for the Project and (ii) a fifteen-year operating pro forma for the Project.

The operating pro forma must list each of the 15 years separately and include assumptions, notes and explanations regarding the income and expense projections.

Absent a long-term commitment, projects with rental assistance must demonstrate financial feasibility excluding the rent subsidy.

If the Project includes commercial and/or other non-residential space, the Applicant will need to submit the following information and supporting documentation in addition to the residential pro forma requested above:

1. a breakdown of the total residential and commercial project costs;
2. a list of the financing sources for the commercial areas;
3. a 15-year operating pro forma for both the residential and commercial areas.

The residential and commercial/non-residential development budgets and operating pro forma forms are incorporated into the Application workbook.

The Commission will review the reasonableness of the development and operating budgets submitted by the Applicant. It may require that the Applicant submit documentation to substantiate that any or all of a project's revenue or costs are reasonable and appropriate. In addition, the Applicant may be required to submit a copy of an appraisal with an effective date within 6 months of the Application to establish the value of the land for a project. Even if the land cost is adequately supported by an appraisal, all or a portion thereof may be treated as Developer Fee (which could have the effect of reducing eligible basis).

In determining the amount of Credit for IRS Form 8609, the Commission will review all representations made by the Applicant as well as the Independent CPA's certification regarding the Project's eligible basis, qualified basis, and the sources and uses of funds.

Based on the feasibility and viability analyses performed by the Commission, the amount of the final Credit allocation reflected in Form 8609 may be different than the amount of the Credit determined after the Project's initial review.

3.14 Project Financing

Projects using the tax-exempt bonds issued by the Commission must provide evidence in the Application that the project's lender(s) and tax credit investor have been engaged. **Projects financed with bonds issued by an issuer other than the Commission are not subject to this requirement.**

3.14.1 Lenders

The lender(s) and/or credit enhancer involved in the financing of the Project must be identified and engaged in the Project before an application for Bond/Tax Credit financing will be accepted. Applicants must submit a copy of each lender's signed term sheet that has been accepted by the Applicant and proof that an appraisal deposit has been made.

3.14.2 Tax Credit Investor

The tax credit investor/syndicator must also be engaged at the time of application. Applicants must submit a copy of the Tax Credit Investor's Letter of Intent (LOI) as an attachment to the Application.

3.14.3 USDA Rural Development Financing

Rehabilitation projects using USDA Rural Development (RD) financing must submit a letter from the State RD office indicating a complete approval package has been submitted to Washington D.C. If there is more than one project, an approval package must be submitted for each one. The Commission will not schedule a scoping meeting for the bond financing until the State RD office has confirmed their applications have been submitted to the National RD Office for approval.

3.15 "50 Percent Test"

Bond/Tax Credit projects may be one of two types. If 50% or more of the Aggregate Basis of the building and the land is financed with tax-exempt bonds, then the entire building is eligible for Credits. If less than 50% of the Aggregate Basis is financed with tax-exempt bonds, then only that portion of the building that is financed with the tax-exempt bonds is eligible for Credit.

If the Project fails to meet the 50% test at Placed-In-Service, only the portion of the aggregate basis financed by the tax-exempt bonds will qualify for the 4% credit.

If a project consists of multiple non-contiguous sites, the 50% test must be met at the site level.

3.16 Use of Tax-Exempt Proceeds for Land

Per Section 142 of the Code, less than 25% of the net proceeds of the bonds may be used (directly or indirectly) for the acquisition of land (or an interest therein) and none of the proceeds of the bonds may be used (directly or indirectly) for the acquisition of land (or an interest therein) to be used for farming purposes.

3.17 Rehabilitation Requirements

Projects financing with tax credits and bonds must meet the both requirements below. Please consult your tax counsel for additional information on these requirements.

3.17.1 Bond Requirements:

Per Section 142 of the Code, Applicants must spend an amount equal to or greater than 15% of the bond proceeds used to acquire the building (and not the land) for expenditures related to rehabilitation.

3.17.2 Tax Credit Requirements

Per Section 42 of the Code, rehabilitation expenditures must exceed the greater of:

- (1) \$6,000 per low-income unit (adjusted for inflation); or
- (2) 20% of the adjusted basis of the building.

3.18 Development Team Capacity –WAC 262-01-130(2)(g)

The Project Sponsor must demonstrate to the satisfaction of the MHCF Director that the Project Sponsor, the developer, and/or the development consultant under contract:

- (1) has successfully completed a multifamily housing project of a comparable number of housing units, of a similar complexity, and for a similar target population as the proposed project;
- (2) has the necessary level of staffing and financial capacity to successfully manage development and operations of the current project portfolio, including but not limited to, all current and pending tax credit projects and applications; and
- (3) has successfully completed previous Credit projects for which a Credit allocation was received in Washington or other states.

If the Applicant is using a development consultant to show this capacity, the Applicant must also submit a copy of the executed contract detailing terms, conditions, and responsibilities between the Applicant and the development consultant.

3.19 Property Management Capacity – WAC 262-01-130(2)(h)

The tax-exempt status of the bonds and the viability of the Low-Income Housing Tax Credit are dependent in part on the management of the property, especially the low-income unit resident reporting. The reporting requirements and terms are detailed in the Regulatory Agreement (Bonds) and the Extended Use Agreement (Tax Credits) (together the “Agreements”).

The Commission’s rules require that “[e]vidence of the experience of the property management team” must be provided with each application. Whether the Applicant intends to self-manage or employ a property management firm, the evidence of the management’s experience should be provided in documentation acceptable to the Commission detailing the experience level of the proposed property management team; e.g., résumés of staff (if in-house), contractor resumes and experience (if applicable.) The WAC further states that “the Commission will notify the Internal Revenue Service when instances of noncompliance come to its attention.”

Documentation must demonstrate the successful management of:

1. multifamily housing projects of a comparable number of housing units and/or of a similar complexity as the proposed project, and
2. multifamily assisted or subsidized housing projects with local, state, and/or federal operating requirements comparable to those of the Bond/Tax Credit Program.

If employing a property management firm, a letter of intent or an executed property management agreement must be submitted at the time of application (see Section 6.3). If self-managing, the Commission must be notified of any property management staff changes.

During the regulatory period of the Agreements, the Commission may request that the property manager be replaced if the reporting requirements of the Agreements are not being met.

3.20 Consultant Contract

If consultant services and corresponding fees are not detailed in the developer agreement, the Applicant must submit a copy of each consultant contract that itemizes the services to be performed by each consultant and the amount of the consultant fee for each service or group of services.

3.21 Identity of Interest

The Applicant will be required to disclose to the Commission whether certain financial, familial, business or similar relationships exist between or among the parties participating in the development and operation of the Project (i.e. whether an “Identity of Interest” exists). This disclosure shall be made when the Application is filed and at such other times during the development and operation of the Project as determined by the Commission.

3.22 Financial Solvency and Litigation Status

As part of the Application and at such other times as required by the Commission, the Applicant must provide a certification with respect to the financial solvency of the Applicant, the Project and certain project participants in the form required by the Commission.

If the certification discloses any financial difficulties, risks or similar matters that the Commission believes might substantially impair or harm the successful development and operation of the Project as a qualified low-income housing project, the Commission may:

- refuse to allow the Applicant to participate in the Bond/Tax Credit Program;
- reject or disqualify an Application and cancel any Credit reservation and carryover allocation; or
- demand additional assurances that the development, ownership, operation, or management of the Project will not be impaired or harmed (such as, performance bonds, pledging unencumbered assets as security, opinions of financial solvency by an independent certified public accountant, or such other assurances as determined by the Commission).

The Applicant must also disclose throughout the development and operation of the Project if there is a material change in the matters addressed in the certification.

3.23 Documentation of Ownership Entity

The Applicant must submit the required documentation below for the Ownership Entity of the Project:

1. IRS notification of Ownership Entity’s federal identification number;

2. An organizational chart or diagram that identifies each entity or individual with an ownership interest in the Project and the Applicant, including the percentage of ownership;
3. A Certificate of Existence/Authorization issued by the Washington Secretary of State dated within 6 months of the Application date; and
4. In the case of a general partnership, the Applicant must submit a Certificate of Existence/Authorization issued by the Washington Secretary of State for each Limited Partnership, Limited Liability Company or corporate entity.

If any entity is incorporated or organized outside of Washington, the Applicant must submit a Certificate of Existence/Authorization from the state of incorporation or organization.

3.24 Disqualification – WAC 262-01-130(3)(a)

The Commission may disqualify or condition any Application that does not meet the Program Limits in Chapter 3 and the Minimum Threshold Requirements listed in Chapter 4. The Applicant may request this determination be reviewed using the procedures described in Chapter 12: Decisions and Reviews.

3.25 Re-syndication

If you are considering a re-syndication of a project that currently has an Extended Use Agreement, any changes to the Agreement will need to be approved; e.g. change in set-asides or target population or reconfiguration of units, etc.

Please note that any existing residents certified under the current regulatory or extended use agreements must be held harmless; i.e., their rents and utilities may not be adjusted upward. A Project's residents may need to be recertified.

Approval will be analyzed based on several criteria, including but not limited to:

- Extent of the rehabilitation being proposed
- Current tenant mix, income levels and market conditions of the Project's location
- Overall financial viability
- Level and type of developer fee being proposed

Please Note: A pre-application meeting is required for Applications seeking modification to the current Agreement(s) covering the property. Please contact MHCF staff for additional information regarding this type of request and the requirements needed as part of the application process.

If there are no changes to the Agreement(s) it is advised that you contact Asset Management and Compliance at the Commission.

4 Bond Cap and Tax Credit Allocation Criteria

Commission staff will use the Bond Cap and Tax Credit Allocation Criteria described below and the points assigned to each Allocation Criteria to assess the degree to which a proposed project promotes the Commission's housing priorities as outlined in WAC 262-01-140 "Private Activity Bond Cap allocation" and WAC 262-01-130 "Tax Credit Program Rules". The rules specifically include readiness as part of the allocation criteria, WAC 262-01-140 (2) *"As part of its application, each applicant shall demonstrate to the commission's satisfaction that it is ready to proceed with the financing of its project."*

When market conditions develop so that demand for private activity bonds exceeds the amount of Bond Cap available, the Commission may implement a reservation requirement for bonds and hold competitive rounds for Bond Cap Allocation. During this competitive process projects will be ranked according to readiness and scoring. Current demand is anticipated to exceed the Bond Cap and Carryforward Bond Cap available. The Commission is announcing competitive allocation rounds. Please refer to our website for the current dates and application timelines.

A **minimum of 40 points** must be selected from the options below in order to apply for the Bond/Tax Credit Program.

For scattered site or portfolio applications each property must meet the 40-point minimum. The portfolio score will be the weighted average score of the properties.

If points are in dispute, the decision will be made by the Director of MHCF.

Summary of Bond/Tax Credit Program Scoring

● Additional Low-Income Set-Asides:	
90% at 60% AMI, 10% at 40% AMI	2
70% at 60% AMI, 30% at 50% AMI	4
50% at 60% AMI, 50% at 50% AMI	6
30% at 60% AMI, 70% at 50% AMI	8
100% at 50% AMI	10
● Additional Low-Income Housing Use Period	1-11
● Serving Priority Populations:	
10% for Large Households	5
10% for Persons with Disabilities	5
20% for Large Households	10
20% for Persons with Disabilities	10
100% of the units reserved for Seniors	5
Assisted Living	10
● Project-Based Rental Assistance:	
Less than 16% of low-income units	2
16-25% of low-income units	4
26-50% of low-income units	6
51-75% of low-income units	8
76-100% of low-income units	10
● 811 Project Rental Assistance	1
● Leveraging of Public Resources:	
5% of Total Project Costs	3
10% of Total Project Costs	5
15% of Total Project Costs	10
● Leveraging of Taxable Bonds	1-7
● Cost Efficient Development	
≥ 5% of the limits	1
≥ 10% of the limits	2
≥ 15% of the limits	3
≥ 20% of the limits	4
≥ 25% of the limits	5
● Limiting of Developer Fee	1-5
● Rehabilitation Project	5
● Re-syndication	5
● At-Risk Properties	5
● Property Type:	3
Grayfield, Adaptive Reuse or Historic Property	3
Brownfield	6
● Location Efficient Projects	3
● Area Targeted by a Local Jurisdiction	2
● Transit Oriented Development	3
● Community Revitalization Plan	3
● High/Very High Opportunity Areas	1
● Nonprofit Sponsor	3

● Donation in Support of Local Housing Needs (10 BPS)	4
● Donation in Support of Local Housing Needs (20 BPS)	8
● Development Amenities:	
Onsite Community Garden	1
Onsite Fitness Center	1
Onsite Business/Learning Center	1
Onsite Media Center	1
Onsite Playground/Fitness Trail	1
Bicycle Storage	1
● Utility Allowance Option	2
● Solar Options	
Solar PV Installation	3
Solar Thermal (Hot Water) Installation	3
● Energy Efficient Building	
Zero Energy Ready	3
Zero Energy	5
● Project Innovation	5
● COMBO 9%/Bond 4% Property	5

4.1 Additional Low-Income Housing Commitment

Points will be awarded to projects based on the Applicant’s commitment to provide selected percentages of the housing units for occupancy by households at or below selected area median income levels. Units are both rent and income restricted at the selected income levels. This commitment will be reflected in the Tax Credit Extended Use Agreement and the Bond Regulatory Agreement.

- 100% of the housing units at 60% AMI 0 points
- 90% of the housing units at 60% AMI, 10% at 40% AMI 2 points
- 70% of the housing units at 60% AMI, 30% at 50% AMI 4 points
- 50% of the housing units at 60% AMI, 50% at 50% AMI 6 points
- 30% of the housing units at 60% AMI, 70% at 50% AMI 8 points
- 100% of the housing units at 50% AMI 10 points

Rounding Rule: For instances where the respective percentage of units that are subject to the commitment do not distribute evenly (i.e. 50% of 25 units = 12.5), the number of units in the lowest income targeting category must be rounded up the next unit. The remaining number of units will then be assigned to the higher income set-aside category.

Example: 125-unit project			
	≤ 50% AMI	≤ 60% AMI	Total
% of low-income units selected:	30%	70%	100%
Actual units per % selected:	37.5 units	87.5 units	125 units
Units after rounding rule:	38 units	87 units	125 units

4.2 Additional Low-Income Housing Use Period

One point will be awarded for every two years that the Additional Low-Income Housing Use Period is extended in the Tax Credit Extended Use Agreement beyond required 15-year Initial Compliance Period, up to a maximum of 22 years (the “Additional Low-Income Housing Use Period”). The Additional Low-Income Housing Use Period commences upon the close of the compliance period (i.e. after the first 15 years). In making this commitment, the Applicant agrees to maintain the low-income housing units and all applicable commitments made by the Applicant in the Application for the duration of the Project Compliance Period and waives the ability to terminate the Extended Use Regulatory Agreement through the Qualified Contract Process until the end of the Additional Low-Income Housing Use Period. The term of the Tax Credit Regulatory Agreement will be a minimum of 30 years as required by Code. If the Additional Low-Income Housing Use Period selected is greater than 15 years, the term of the Tax Credit Extended Use Agreement will be the 15-year Compliance Period plus the term of the Additional Low-Income Housing Use Period.

For example, if an Applicant selects an Additional Low-Income Use Period of 18 years, the Project’s regulatory agreement term will be 33 years and the owner may engage the Qualified Contract Process at the end of the Regulatory Agreement. If an Applicant selects an Additional Low-Income Use Period of 10 years, the Project’s regulatory agreement will be the mandatory 30 years, but the owner defers the right to engage the Qualified Contract Process until year 25 (15-year compliance period + 10-year Additional Low-Income Housing Use Period).

A full explanation of the various Affordable Use Periods is available in the “Compliance Affordable - Use Periods” section of the Tax Credit Compliance Procedures Manual, Chapter 2.

The term of the Bond Regulatory Agreement will be guided by the minimum requirements of the IRS Code; no points will be awarded for the extension of the Bond Regulatory Agreement.

Additional Low-Income Housing Use Periods may range from

- 2 years 1 point
to
- 22 years 11 points

4.3 Housing Commitments for Priority Populations

Points will be awarded based on the Applicant’s commitment in the Application to provide housing units for the following priority populations: Large Households, Persons with Disabilities or Seniors. Applicants may select no more than two of the following options. If an Applicant chooses two priority population set-asides, the set-asides must be for different populations.

- 10% of total housing units set aside for Large Households 5 points
- 10% of total housing units set aside for Persons with Disabilities 5 points

- 20% of total housing units set aside for Large Households 10 points
- 20% of total housing units set aside for Persons with Disabilities 10 points

- 100% of housing units set aside for Seniors 5 points
- A portion or all of the Project is a licensed assisted living facility under RCW 1820- 10 points

Applicants should review Chapter 3 of the Tax Credit Compliance Manual and Appendix “P” for further information on Housing Commitments for Priority Populations (also referred to as “Special Needs Housing Commitments”).

4.4 Project-Based Rental Assistance

Points will be awarded to projects that create or preserve project-based government rental assistance covering a percentage of the units. The Applicant must agree to renew the rental assistance for as long as the rental assistance is available. In the event the rental assistance is eliminated, rents charged to the existing residents may not exceed 30% of their household income at that time. The Applicant may request the Commission waive or modify this requirement if the rental income is insufficient to support the economic viability of the Project.

- Less than 16% of the low-income housing units 2 points
- 16% to 25% of the low-income housing units 4 points
- 26-50% of the low-income housing units 6 points
- 51-75% of the low-income housing units 8 points
- 76% or more of the low-income housing units 10 points

For a project to be eligible for these points, the rental assistance must be committed at the time of application. Applicants must include a copy of the Rental Assistance contract under the Project Operations section of the Application.

4.5 811 Project Rental Assistance (PRA) program.

One point may be added for participation in this category. Please note program eligibility at the link following:

<https://www.hudexchange.info/programs/811-pra/pr-program-eligibility-requirements/>

Note restriction: no more than 25% of the total units in Eligible Multifamily Properties can: 1) be provided Section 811 PRA funds; 2) be used for supportive housing for persons with disabilities; or 3) have any occupancy preference for persons with disabilities.

4.6 Leveraging of Public Resources

Points will be awarded to projects that have received a substantial funding commitment from a federal, state or local government in the form of a loan, grant or contribution of land for the Project’s development with a combined value of at least:

- 5% of the Total Project Costs 3 points
- 10% of the Total Project Costs 5 points
- 15% of the Total Project Costs 10 points

Funds must be committed at the time of application in order to be eligible for these points. Applicants must include evidence of public funding commitments under the Project Financing section of the Application. Land donation and nominal value land leases will be valued according to the Fair Market Value of the property substantiated by a recent appraisal.

Capital contributions by Public Housing Authorities who are also serving as the developer in the Project are eligible for these points.

Neither tax-exempt bonds nor credit enhancement associated with bond financing are considered a “public resource” for the purposes of this policy. In-kind contributions such as goods and services are also not considered eligible for the purposes of this policy.

4.7 Leverage of Taxable Bonds

Points will be awarded to projects that use taxable bonds as a portion of the Project’s total bond issue according to the following scale:

- 2% of the Total Bond Issue 1 point
- 4% of the Total Bond Issue 2 points
- 6% of the Total Bond Issue 3 points
- 8% of the Total Bond Issue 4 points
- 10% of the Total Bond Issue 5 points
- 12% of the Total Bond Issue 6 points
- 14% of the Total Bond Issue 7 points

In order to be eligible for points under this criterion, the appropriate amount of taxable bonds must be listed in the Project Financing section of the Application. Bonds must be issued by the Commission.

4.8 Cost Efficient Development

Points will be awarded for projects that will achieve development cost efficiencies of the applicable total development cost limits according to the schedule below (see Section 2.3). Points will be awarded provided at least three amenities (See Section 4.21) are included in the Project. For Acquisition/Rehab projects, existing amenities may count towards the minimum required.

- ≥ 5% of the limits 1 point
- ≥ 10% of the limits 2 points
- ≥ 15% of the limits 3 points
- ≥ 20% of the limits 4 points
- ≥ 25% of the limits 5 points

4.9 Limiting of Developer Fee

Points will be awarded to Applicants that commit to limit the Project’s maximum developer fee, in aggregate, according to the following schedule:

- 10% of the Total Project Costs less Reserves, Intermediary Costs & Donation..... 5 points
- 11% of the Total Project Costs less Reserves, Intermediary Costs & Donation..... 4 points
- 12% of the Total Project Costs less Reserves, Intermediary Costs & Donation..... 3 points
- 13% of the Total Project Costs less Reserves, Intermediary Costs & Donation..... 2 points
- 14% of the Total Project Costs less Reserves, Intermediary Costs & Donation..... 1 point

4.10 Rehabilitation Project

Five points will be awarded to a Project in which 80% or more of the housing units that exist at the time of application are to be renovated as part of the Project. In a situation where the Project proposal involves both rehabilitation and new construction, the rehabilitated units must make up more than 50% of the total housing units in the Project to be eligible for these points.

4.11 Re-syndication Project

Five points will be awarded to a Project that currently is beyond year fifteen of the Extended Use Agreement (the “Agreement”) and will be preserving the housing units under a new Agreement. The Project must meet the conditions of Section 4.9 above. If a change to the current Agreement is planned or if there is a need to reconfigure units that will result in a modification to the current Agreement, please see section 3.24 of the Policy.

4.12 At-Risk Property

Projects will be awarded 5 points if they meet each of the following criteria:

- The Project has one or more Federally Assisted Building(s)
- The Project does not currently have an Extended Use Agreement with the Commission
- At least 50% of the total Housing Units in the Project are low-income;

- The Applicant agrees to maintain the low-income housing units included in the Project for a minimum of 30 years (i.e., make an additional low-income housing use period Commitment of at least 12 years);
- The Federal agency regulating the low-income use certifies that the owner may be released from all low-income use restrictions within five years of the date of the Application; and
- The market study clearly demonstrates that (1) market rate rents are significantly greater than current rents being charged and (2) that those market rate rents are achievable, creating the likelihood that existing residents will be displaced as a result of increasing rents.

The application must include a copy of the Federal agency’s certification and if applicable, the written notice required by RCW 59.28.040.

4.13 Property Type – Grayfield, Brownfield, Adaptive Reuse or Historic Building

Points will be awarded to projects that meet one of the following criteria .. Only one criterion may be selected.

4.13.1 Grayfield

Three points will be awarded to a project located on a Grayfield Site, defined as previously developed vacant or underutilized sites such as parking lots and shopping centers. To qualify for these points, the application must include photographs of the site, a description of the current land use and the recent history of the property.

4.13.2 Adaptive Reuse Site

Three points will be awarded to an Adaptive Reuse Site, defined as a site that was previously developed for non-residential purposes, in which at least 25 percent of the proposed development will reuse existing non-residential structures. To qualify for these points, the application must include a letter from the project architect describing the previous use and certifying that at least 25% of the proposed development will reuse the existing structure.

4.13.3 Historic Property

Three points will be awarded to a project that is a Historic Property, defined as a project that uses the federal Historic Tax Credit (RTC) as part of the Project financing and that is either (1) listed, or have been determined eligible for listing, in the National Register of Historic Places administered by the U.S. Department of the Interior in accordance with the National Historic Preservation Act of 1996; or (2) located in a registered historic district and certified by the Secretary of the U.S. Department of the Interior as being of historic significance to that district. To qualify for these points, 50% or more of the total housing units in the Project must be located in the building(s) designated as historic property. The application must include documentation of the historic designation and Form 7B of the application workbook must be completed.

4.13.4 Brownfields

Six points will be awarded to a project located on a Brownfield site, defined as a site where the expansion, redevelopment, or reuse is complicated by the presence of a hazardous substance, pollutant, or contaminant including petroleum. To qualify for these points, the application must

include a copy of the site’s Phase II Environmental Assessment and a remediation plan for the environmental issues.

4.14 Location Efficient Projects

Three points will be awarded to projects that provide nearby access to food and go beyond the minimum Access to Services criterion of the Evergreen Sustainable Development Standard (ESDS). Under ESDS Criterion 3.0, urban projects should be located within ¼ mile walking distance of at least two or a ½ mile of at least 4 community, retail or service facilities. Rural projects should be located within 1 mile of at least 2 facilities or 2 miles of at least 4 facilities. For the purposes of this Allocation Criterion, urban and rural hold the same definitions as under ESDS (see [Section 3.5.1](#)) and the same distance measurement, from the center of the site to the entrance of the facility, will be used.

Three points will be awarded to **Urban Projects** that are:

- located within ¼ mile walking distance of at least 3 community, retail or service facilities or within a ½ mile walking distance of 5 facilities; AND
- located within ½ mile walking distance of a supermarket, a grocery store with produce or a farmer’s market. This does not count as one of the 3 or 5 facilities referenced in the bullet above.

Three points will be awarded to **Rural Projects** that are:

- located within a 2-mile driving distance of 4 or more facilities; AND
- one of the 4 facilities must be a supermarket, a grocery store with produce or a farmer’s market.

CIVIC & COMMUNITY FACILITIES		SERVICES	RETAIL
<ul style="list-style-type: none"> • Medical clinic or office • Licensed adult or senior care • Licensed childcare • Community or recreation center • Entertainment venue (theater, sports) • Educational facility (including K-12 school, university, adult education, vocational school, community college) • Cultural arts facility (museum, performing arts) 	<ul style="list-style-type: none"> • Police or fire station • Public library • Public park • Post office • Place of worship • Government office that serves public on-site • Social services center 	<ul style="list-style-type: none"> • Bank • Restaurant, café, diner, laundry, dry cleaner • Gym, health club, exercise studio 	<ul style="list-style-type: none"> • Supermarket • Other food store with produce • Farmer’s market • Hardware store • Pharmacy • Clothing retail • Other retail

The facilities used to meet this criterion must be built at the time of application. Facilities that are planned, but not built, may be eligible with preapproval.

A farmer’s market must operate at least once a week for at least 5 months of the year.

Each establishment must be a separate and distinct business and may only count as one facility. Separate and distinct businesses under one roof will each count as a facility. For example, a Safeway that also houses a Wells Fargo Bank and a Starbucks will count as 3 facilities.

If a project includes multiple sites, each of the sites must be with the required distance of the specified number of facilities.

The Applicant is responsible for explaining and demonstrating how the listed facilities meet the intent of this policy; however, it is the Commission, in its sole discretion, who will determine whether the specific facilities, services and/or retail presented qualify.

Applicants must attach (1) a list of the required number of services, facilities, and/or retail establishments including the name, type of facility and address; and (2) a context map demonstrating that the center of the Project site is within the required walking or driving distances of the required number of services. Google Maps offers a function to demonstrate walking or driving distance. On Google Maps, go to “Get Directions” and click on the image of a pedestrian or a car.

4.15 Area Targeted by a Local Jurisdiction

Two points will be awarded to a Project that is located within the defined geographic boundaries of a planning document approved by the governing body of the local jurisdiction. The planned targeted area must provide for a mix of housing, retail and services and have zoning provisions to accommodate new growth in the area. The plan must include policies addressing the creation or preservation of affordable housing serving households at 80% AMI or below. The targeted area cannot be an entire local jurisdiction, nor can it be a site level designation.

The Applicant must submit documentation of the targeted area designation by the local jurisdiction and a site map showing the Project’s location within the designated area. If a project includes multiple sites, each of the sites must be located within an area targeted by a local jurisdiction.

4.16 TRANSIT ORIENTED DEVELOPMENT (TOD)

3 POINTS IN DEFINED AREAS

Projects will be awarded 3 points if they are located within a 10-minute walkshed of Fixed Transit Infrastructure that has “[high-capacity-transit-supportive density](#).”

“**Fixed Transit Infrastructure**” is defined as Light Rail Stations, Commuter Rail Stations, Ferry Terminals, Bus Rapid Transit Stations, Streetcar Stops, and Major Bus Transit Centers. Rapid Ride stops that are not designated as “stations” are not eligible TOD locations. Transit Station is defined as a transit access point serving multiple transportation modes or routes or a bus stop serving at least three routes on a regular scheduled basis with a fixed transit structure (does not include peak-time service only routes).

If the Fixed Transit Infrastructure does not yet exist, the transit investment must be planned, approved, and funded at the time of Application. Transit investments that have been funded, but not yet been sited, will not be considered.

A “**10-minute walkshed**” is defined as the area surrounding the Fixed Transit Infrastructure that is comfortably walkable within 10 minutes, typically an area that is within ½ mile of the transit. The size

and shape of a watershed takes into account the existence of freeways, the street grid, topography and other obstacles that might impede access to the transit site.

An area is considered to be zoned for “**high-capacity-transit-supportive density**” when the overall zoning for the area within the watershed of the Fixed Transit Infrastructure allows for at least 20 dwelling units per gross acre.

The Applicant must submit a site map with the application demonstrating the Project’s location is within the boundaries of an eligible TOD’s 10-minute watershed. If a project includes multiple sites, each of the sites must each be located within a TOD watershed to be eligible for the TOD points.

4.17 Community Revitalization Plan

Three points will be awarded to a Project that is located within the defined geographic boundaries of a Community Revitalization Plan (CRP).

A Community Revitalization Plan must:

- A.** be a published document, approved and adopted by a governing body, by ordinance, resolution, or other legal action; and
- B.** target funds or tax incentives to specific geographic areas for
 - o economic development, including economic related initiatives or
 - o commercial/retail development, including infrastructure and community facility improvement.

If a project includes multiple sites, each of the sites must each be located within an area covered by a Community Revitalization Plan.

The applicant must submit each of the following to be eligible for these points:

- A copy of the Community Revitalization plan with the specifics relative to the Project and this policy highlighted
- A narrative explanation of how the CRP meets the intent of this policy
- A site map identifying the geography covered by the CRP and the location of the Project
- Evidence of funding for the specified revitalization initiatives

4.18 High and Very High Opportunity Areas

One point will be awarded to projects located in a census tract that is rated High or Very High on the Comprehensive Opportunity Index as defined by the Puget Sound Regional Council. More information on Opportunity Mapping is available on PSRC’s website: <http://www.psrc.org>.

If a project includes multiple sites, each of the sites must each be located within a High or Very High Opportunity Census Tract to be eligible for this point.

4.19 Nonprofit Sponsor

Three points will be awarded to Projects that are sponsored by:

- A. A Nonprofit Organization:** The Project is developed, owned and operated solely by a credible and viable Nonprofit Organization, recognizing there may be for-profit partners or participants to provide tax-credit equity. Public Housing Authorities, Public Development Authorities and federally recognized Indian tribes are eligible for points under this option.

B. **A For-Profit / Nonprofit Partnership:** The Project is developed, owned and operated by a partnership between a for-profit entity and a Nonprofit Organization as co-owners. The Nonprofit Organization must have a material role in the development or management of the Project, provide considerable resident services or otherwise contribute to the Project; and have a reasonable expectation to be able to acquire the property after year 15. Advising construction management or the hiring of or advising the property manager are not considered material participation.

The Director of MHCf will decide if points are awarded in this category. The Applicant must submit each of the following to be eligible for these points:

- Nonprofit Organization's IRS determination letter
- Articles of Incorporation as filed with the Secretary of State
- Bylaws and/or other governing instruments of the organization
- Evidence of project ownership and material participation in the Project
- Certification that the Nonprofit is not affiliated with a for-profit organization
- Board Member List

4.20 Donation in Support of Local Nonprofit Programs

- Four points will be awarded to Projects based on the Applicant's commitment to contribute funds to a local Nonprofit Organization in an amount equal to 0.010% (10 basis points) of the total bond issue or \$10,000, whichever is greater.
- Eight points will be awarded to Projects based on the Applicant's commitment to contribute funds to a local Nonprofit Organization in an amount equal to 0.20% (20 basis points) of the total bond issue or \$20,000, whichever is greater.

The local Nonprofit Organization must not be affiliated with or controlled by the Applicant. The nonprofit program being supported must include in its service area the county in which the Project is located and must provide housing, housing-related services, or nearby community/social services that are available to the residents of the Project. However, the nonprofit donation cannot be used to fund support services provided within the Project. The program receiving the donation cannot require participants to have a specific religious affiliation. The donation recipient must be approved by the Commission prior to the approval of the Project's Finance Resolution and the donation must be paid at the time of bond closing.

4.21 Development Amenities

One point will be awarded for each of the following amenities that a Project provides for its residents. The amenities must not currently exist. More than one amenity may be selected for points.

4.21.1 Onsite Community Garden

An Onsite Community Garden must provide raised beds and access to water for resident use at no additional cost to residents. The Garden must consist of at least 1 plot for every 10 units, up to a maximum of 25 plots. Plots must be at least 32 square feet each. The applicant must submit a site

plan of the Garden and a management plan describing how access to the Garden will be managed and how it will be maintained.

4.21.2 Onsite Fitness Center

A space set-aside within the project with facilities and equipment for improving physical fitness. This may include a gym, pool and weight-room. The center must be available for resident access no less than 12 hours each day. Onsite Business/Learning Center

4.21.3 An Onsite Business/Learning Center

A space that must have at least 1 computer per 25 units (max of 5 computers required), at least 1 printer and high-speed internet access. The use of the computers must be provided to the residents free of charge. The Application must include a site plan documenting the site location of the center within the Project, the number of computers and location of printer(s). It must also include a management plan that describes how access to the Center will be managed and how the facilities will be maintained and upgraded over time.

4.21.4 Media Room

A media room is a space with seating and activity area that may have a large screen, which is commonly available to users of the building for screening any kinds of moving pictures or other media with cable and internet access. It may be used for showing films, videos, television, or for playing video games, making slide presentations, or any other purposes requiring a shared use of media. The room must be made available without a fee.

4.21.5 Onsite Playground or Fitness Trail

Applicants must submit a site plan and description of the proposed amenity with the Application for approval.

4.21.6 Bicycle Storage

Covered and secured Bicycle Storage must be provided free of charge to residents and must meet the recommended practices of the Association of Pedestrian and Bicycle Professionals: http://www.apbp.org/?page=Bike_Parking . Multifamily Properties must have 1 space for every 2 units of the first 200 units, and 1 for every 8 units for any units over the first 200. Senior properties must have 1 bicycle parking space for every 10 units. Applicants must submit a site plan, a description of how the storage meets the recommended guidelines, and a plan for how access will be managed with the Application.

4.22 Utility Allowance Option

Two Points for projects which are not regulated by HUD or RD and choose to use either Method 6 (Actual Usage Estimate) or Method 8 (Energy Consumption Model) of [Appendix O](#) of the [Tax Credit Compliance Procedures Manual](#). .

4.23 Solar Options

Three points will be awarded for each of the two options listed below:

- Install a solar photovoltaic (PV) system with a nameplate capacity of at least 13 kilowatts (kW), **or** with annual production equivalent to at least 30% of expected common area load. If the production equivalent of 30% of the common area load is achieved with less than 13 KW, points are awarded.
- Install a solar hot water system (solar thermal) to provide for domestic water heating. If the Project contains a Central Laundry facility, the solar hot water system must be sized to be able to meet:
 - 100% of the estimated domestic water heating load during summer months AND
 - 30% of the estimated domestic water heating load during winter months
 - If the Project does not have central laundry, a system must be installed that is sized at 10 square feet per unit.

4.24 Energy Efficient Building

Points will be awarded for projects that meet the requirements of Zero Energy Ready or Zero Energy. Applications must indicate the certification that will be provided. In addition, any costs incurred for this option may not be used to qualify for a TDC waiver.

3 points: "Zero Energy Ready",

- Built Green 5 Star
- Passive House (PHIUS+ or PHI)
- Evergreen Standard options to meet Passive House requirements and equivalent EUI rating

5 points: "Zero Energy"

- ILFI Zero Energy
- Built Green Net Zero Energy Label
- Passive House (PHIUS+ or PHI) plus ILFI Reveal Label showing net zero performance

4.25 Project Innovation

New Idea, Design, Achievement, Service. Five points will be awarded to no more than two projects in any Round for barrier breaking initiatives that can demonstrate innovation in, but not limited to, the categories below:

- Innovative Design: special population amenities, net zero/energy efficiency, creative land use, building repurposing, cost saving techniques, modular construction
- Innovative Service: population income mix, community response accommodation, service in-unit design, smart appliances, resident health and safety monitoring, services to seniors and special populations
- Innovative Financing: leveraging of funds, new financing strategies, debt sources, equity sources, partnerships with non-housing organizations

In applying for this category please provide a detailed write-up explaining the innovation, in the category or categories above. Include commitments from any funding, service, energy, design, or other partners. A committee will review the proposal and recommend proposals to be awarded the

points. Please note there is no guarantee that points will be awarded in this category. Consideration will be given for replicability.

4.26 Combo Properties

Five points for properties that have been awarded an allocation of 9% tax credits and are seeking to combine a bond application with 4% tax credits as part of the project. To receive these points, the building or buildings must:

- Be located on the same or contiguous sites
- Be purposed to obtain greater land use density
- Broaden the population being served
- Share construction and development efficiencies
- Close financings simultaneously

5 Requirements Prior to Placed-in-Service

5.1 Tax Credit Extended Use Agreement

As a condition of receiving an allocation of Credit from the Commission, the Applicant must enter into a Tax Credit Extended Use Agreement that applies to each building in the Project. The Regulatory Agreement addresses, among other things, the requirements of Section 42 of the Code, federal and state law, the Bond/Tax Credit Program and the commitments made in the Application.

Generally, the provisions of the Tax Credit Extended Use Agreement will apply for a period of 30 years from the date the Project is Placed-in-Service (the 15-year compliance period and an additional 15-year period, referred to as the “extended low-income use period”). However, if the Applicant makes a commitment for an Additional Low-Income Housing Use Period, the duration of the Tax Credit Extended Use Agreement will extend for a period of up to an additional 22 years beyond the 15-year compliance period. Termination of the Tax Credit Extended Use Agreement will occur prior to the expiration of the extended low-income use period or the Additional Low-Income Use Period only under very limited circumstances. In this respect, and many others, the requirements of the Tax Credit Extended Use Agreement are stricter than the provisions of Section 42 of the Code.

The Tax Credit Extended Use Agreement must be recorded as part of the Equity Closing. It must be recorded in first position as a restrictive covenant running with the land and binding upon the Applicant’s successors in interest. To ensure the Commission’s Tax Credit Extended Use Agreement is in first position, the Applicant must prepare and record a Priority Agreement at the Project’s expense in a form acceptable to the Commission, and executed by the Applicant, the Commission, and all lienholders on the Project. The Priority Agreement must specify that the lienholders’ security interests are subordinate to the interests of the Commission as shown in the Tax Credit Extended Use Agreement.

If the Applicant has established a long-term lease in lieu of ownership, the owner of the land and holders of any liens and encumbrances that are secured by a recorded mortgage or deed of trust against the land and the improvements on it before the Tax Credit Extended Use Agreement is recorded must execute and record a subordination agreement in a form approved by the Commission. The subordination agreement shall specify that the owner’s interest is subject to, and any other parties’ security interest is subordinate to, the interests of the Commission as shown in the Regulatory Agreement.

5.2 Commission-Issued Bond Regulatory Agreement

As a condition of being financed with Commission issued tax-exempt bonds, each project must enter into a Bond Regulatory Agreement that is recorded at closing. The Regulatory Agreement addresses, among other things, the requirements of Section 142 of the Code, federal and state law, the Bond/Tax Credit Program and the Commitments made in the Application.

The Bond Regulatory Agreement must also be recorded in first position ahead of all monetary liens on the property. An exception may be made for projects with FHA-insured financing when the HUD Deed of Trust and Use Agreement must be in first position.

The term of the Bond Regulatory Agreement is the longer of (1) 15 years after the date on which 50% of the residential units in the Project are occupied; (2) the first day on which no tax-exempt private activity

bond issued with respect to the Project is outstanding; or (3) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates.

If currently outstanding bonds substitute a Credit enhancement that does not affect the term of the bonds, the Commission does not require an amendment or extension of the Bond Regulatory Agreement. If bonds issued by the Commission are redeemed by refunding bonds issued by the Commission, then the Regulatory Agreement continues in full force and effect until (1) not less than 10 years after the expiration date of the Regulatory Agreement in force or (2) the date which is the first date on which the refunding bonds are no longer outstanding, whichever is greater.

5.3 Election of Applicable Percentage

The applicable percentage that applies to a project's Credit calculation is the Credit percentage of the month in which (1) the tax-exempt bonds are issued or (2) the building is Placed-in-Service. In order to lock in the applicable percentage for the month in which the tax-exempt bonds are issued, the Commission must receive an executed Election of Applicable Percentage Form no later than the fifth day of the month following the month in which the bonds are issued. If the Commission does not receive the Applicant's election by this deadline, the applicable percentage will automatically default to the month(s) that the building(s) are Placed-in-Service.

The Election of Applicable Percentage Form is sent to the Applicant as part of the 42(m) letter. Applicable percentages are posted on the Commission's website each month.

5.4 Election of Gross Rent Floor

The maximum gross rent that can be charged on a Bond/Tax Credit unit may fluctuate up and down as the county median income fluctuates from year to year. However, according to Section 42(g)(2)(A) of the Code, the Gross Rent charged can never drop below the initial Gross Rent Floor as applied to a unit. That initial Gross Rent Floor may be set according to the rent limits in place on either (1) the date the Commission initially issues a determination letter or (2) the date the building is Placed-in-Service.

Pursuant to Revenue Procedure 94-57, the initial Gross Rent Floor will be set according to the rent limits in place on the date the Commission initially issues a determination letter unless the Owner specifically elects to choose the date the building is Placed-in-Service.

In order for the Owner to elect Placed-in-Service as the date on which the Gross Rent Floor is set, the Owner must complete the Election of Gross Rent Floor form and submit it to the Commission no later than 5:00 p.m. on the Placed-in-Service date(s) for the building(s). The election will be applicable to all buildings in the Project that are Placed-in-Service on or after the date the Commission receives the election unless the Owner clearly indicates otherwise in writing.

6 Placed-in-Service Requirements

The Commission will accept and process Placed-In-Service documents and issue IRS Form 8609(s) throughout the year. However, a project owner must submit all Placed-In-Service documentation, including the Independent Certified Public Accountants Report ("Cost Certification"), Energy Efficient Building certifications if necessary, and the certificates of occupancy for each building in the Project at least 60 days prior to when they expect to receive the IRS Form 8609(s).

6.1 Compliance Training

The Applicant and the Applicant's property management representative must attend a Commission Tax Credit compliance workshop or receive equivalent training by a Commission compliance officer by the earlier of:

- at least 120 days before the first building is Placed-in-Service; or
- prior to commencement of initial rent-up activities for the Project.

Certificates cannot be more than 18 months old by Placed-in-Service date. If the Applicant's property management representative has attended a Commission Tax Credit compliance workshop within the 12 months previous to the Placed-in-Service date, the representative is not required to attend another workshop prior to commencement of the property's initial rent-up activities. "Property management representative" is defined as someone who will be working directly with the Project on a regular basis from the point of initial rent-up onward. In an effort to keep staff trained on the latest compliance issues, owners should also send new staff to the first available tax credit compliance workshop and senior staff every three years.

6.2 Master Lease; Lease Rider

The Applicant must provide a copy of the master form of resident lease or rental agreement in a form acceptable to the Commission at least 60 days before the first building in the Project is Placed-in-Service. The Lease Rider must be attached to the master lease or rental agreement.

6.3 Property Management Agreement

The Applicant must provide an executed copy of the property management agreement or related documents with an organization acceptable to the Commission (See Section 3.18). The agreement must include specific terms, conditions, and responsibilities. If the Applicant has previously submitted a property management agreement and amended it, the Applicant must provide a copy of the agreement.

6.4 Long-Term Lease Covenant

If the Applicant has established a long-term lease in lieu of ownership, the Applicant must execute, notarize, and record an agreement between the Applicant and the owner of the land. The owner must agree to allow the Applicant to record the Regulatory Agreement as a restrictive covenant on the land and all improvements on it that is binding upon the current owner and any successors in interest to the owner.

6.5 Long-Term Lease Covenant

The Applicant must confirm that all project specific information in the Regulatory Agreement accurately reflects the Project at the time of bond closing. At the time of project completion, the Applicant must confirm all specific information in the Extended Use Agreement accurately reflects the Project. If the Project has changed, an amendment to the Extended Use Agreement must be executed, notarized and recorded in each county where the Agreement was originally recorded.

6.6 Compliance with Code and Commission Requirements

Before the Commission will issue IRS Form 8609 to any building in a project, the project owner, each of the Principals, each member of the Development Team, all Related Parties to the project owner and the

Project must be in compliance with any requirements of the Code and the terms, conditions, or obligations of the Tax Credit Program with respect to the Project. Further, the Commission may choose not to issue IRS Form 8609 for a building if the project owner, a Principal, a member of the Development Team, or a Related Party to the Tax Credit project owner is in noncompliance with respect to any project subject to the Tax Credit Program. In addition, the Commission may cancel any Credit reservation and carryover allocation for any noncompliance, e.g. the failure to pay any fee assessed by the Commission with respect to the Project.

If the Commission decides to disqualify the Project/Application and cancel the Credit reservation and/or the carryover allocation, the Credit will be available, at the discretion of the Commission, for reservation and/or allocation to other qualified projects.

6.7 Approval of and Payment of Funds for Local Housing Needs

If the Applicant represented that it would provide funds for local housing needs, the Applicant must provide the Commission with a written request to approve a donation to a specific Nonprofit Organization that provides housing or housing-related services in the county where the Project is.

The Applicant must provide the Commission with certifications (in a form acceptable to the Commission) from both the Applicant/donor and the recipient confirming the contribution will be made or received, respectively, without any favor, benefit, gift, or other consideration. The Applicant must provide a letter from the approved Nonprofit Organization acknowledging receipt of the proper contribution amount as well as a copy of the cancelled check from the transaction. The letter must show receipt of the proper contribution amount, identify the low-income housing program, and specify how the funds will be used. The amount of the donation cannot be included in the Project's Total Project Costs.

6.8 Program Requirements

All applicable Program requirements and disclosures set forth in Chapter 2 and the RAC and all applicable Program Limits must be met. All Allocation Criteria Commitments must be satisfied.

6.9 Occupancy Permit

The Applicant must get a certificate of occupancy or temporary certificate of occupancy for each building and provide a copy of each certificate to the Commission. The Applicant must place each building in service by the deadline(s) set by the Commission. Generally, a building will be deemed to be Placed-In-Service when it is issued a certificate of occupancy by a governmental permitting agency or as otherwise defined by the Code.

6.10 Final Cost Certification

The Applicant must provide a certification, addressed to the Commission and prepared by an independent CPA, of the eligible basis of each building and, based on the Applicant sworn representations about the low-income use of each building, its qualified basis. The certifications must also list sources and uses of all funds for the Project, for example, the proceeds from the sale of the Credit. The independent CPA's certification must be accompanied by executed copies of the developer agreement, each consultant contract, and an itemized statement earmarking the developer's fees and/or consultant fees earned for the services provided.

6.11 Partnership Agreement

If the Applicant is a partnership or a limited liability company, the Applicant must provide the most current Partnership Agreement.

6.12 Financing Documents

The Applicant must provide financing documents, not previously submitted, for all loans or grants made to the Project. For loans, a copy of the promissory note will fulfill this requirement.

6.13 Operating Pro Forma

The Applicant must provide a copy of a current 15-year operating pro forma for the Project.

6.14 Evergreen Sustainable Development Standard (ESDS)

The Applicant must provide a copy of the Evergreen Final Architect Certification, the Evergreen Project Implementation Plan, and all required backup documentation. As much of the backup documentation as possible should be submitted in digital format on a compact disc. Emailed documentation will not be accepted.

7 Project Transfer or Assignment Requirements

Generally, all direct and indirect project transfers or assignments require the prior written consent of the Commission. If the Applicant fails to obtain the Commission's prior written consent, the Commission may disqualify the Project/Application and cancel the Credit reservation and/or carryover allocation. Further, a project transfer or assignment that occurs after a building is Placed-in-Service may result in Credit recapture under the tax law, regardless of the Commission's consent. The Applicant should consult the Applicant's legal counsel and/or tax advisor about the effect of a project transfer or assignment.

7.1 Project Transfer or Assignments Requiring Commission Consent

A project transfer or assignment means any direct or indirect sale, contribution, assignment, lease, exchange, or transfer of, or other change in:

- an interest in the land, the Project, or any building;
- an ownership interest in the entity that is the Applicant or project owner (for example, a transfer of a partnership interest or, with respect to a limited liability company, a membership or managers' interest); or
- the rights, title, or interest of the Applicant or project owner in any agreement in which the Commission and the Applicant or project owner are parties.

Only a few types of project transfers or assignments do not require the prior written consent of the Commission. They include:

- the grant of a security interest or lien junior to the interest of the Commission;
- the sale or transfer of, or change in, the interest of a limited partner (including the addition, removal, or withdrawal of a limited partner);
- in the case of a limited liability company, the sale or transfer of, or change in, the interest the investment member (unless the investment member actively participates in management of the company); or
- the issuance, redemption, or transfer of stock or shares of a corporation that is not a closely-held corporation.

7.2 Process and Requirements for Obtaining the Commission's Consent

The first step in obtaining the Commission's written consent is to advise the Commission staff in writing of the Applicant's proposed project transfer or assignment. At a minimum, the Applicant should describe: (1) the name of the Project; (2) the names of the Project Applicant and/or the owner, the proposed transferor and transferee, and all other relevant parties; (3) a complete description of the proposed project transfer or assignment, including the proposed effective date; and (4) any special circumstances related to the proposed project transfer or assignment.

After receiving the Applicant's written request, the staff will advise the Applicant if Commission consent is necessary. If it is, the staff also will advise the Applicant of the Commission's requirements and conditions that must be satisfied in order to obtain the Commission's consent, including the payment of a nonrefundable transfer fee to the Commission.

If the Applicant made a Commitment to participate under the Credit Set-Aside category for Qualified Nonprofit Organizations, any project transfer or assignment must be such that the Project continues to qualify for applicable Credit Set-Aside category.

7.3 Final Conditions to Consent by Commission

The Commission will indicate its consent to the proposed project transfer or assignment by executing and returning to the Applicant a certain “Agreement Regarding Transfer of Project Consent.” The Applicant may not complete the proposed project transfer or assignment until the Commission has executed and returned this agreement to the Applicant and until the Applicant has performed or satisfied any and all other requirements and conditions established by the Commission. If a Regulatory Agreement has been recorded for the Project, the “Agreement Regarding Transfer of Project Interest” must be recorded in the office of the county auditor or recorder of each county where any building in the Project is.

Any project transfer or assignment made without the Commission’s prior written consent (unless otherwise expressly permitted in this chapter) or otherwise in violation of the requirements or provisions of this chapter, the RAC, the Regulatory Agreement, or the Tax Credit Program will be:

- ineffective to relieve or release the transferor, the land, the Project, and/or any building from the obligations and provisions of the Policies, the RAC, the Regulatory Agreement, and/or the Tax Credit Program;
- considered an event of default under the Application, the RAC, the Regulatory Agreement, and the Tax Credit Program, allowing the Commission to exercise any or all available remedies; and
- considered an event of Noncompliance that may result in the cancellation or invalidation of the reservation and/or allocation of Credit for the Project and/or any building.

The indemnity and hold-harmless provisions of the RAC, the Regulatory Agreement or any other Tax Credit Program agreement by the Applicant and/or a successor-in-interest will survive the ending of such parties’ interest in the Project and will continue to be a personal obligation of such party.

8 Project Monitoring

Pursuant to the Qualified Allocation Plan and WAC 262-01-130(16), the Commission has established certain compliance monitoring requirements for the owners of projects. These requirements, described in the Qualified Allocation Plan and in a project’s Regulatory Agreement and Extended Use Agreement, specify the requirements and processes an owner must follow to make sure the Project is in compliance with Section 42 of the Code and the Tax Credit Program. They also specify the process the Commission or its representatives will follow in monitoring for compliance with the provisions of Section 42 of the Code and the requirements of the Tax Credit Program, and in notifying the IRS of any Noncompliance.

Federal and state laws, together with Commission policies, governing the compliance monitoring are frequently amended. It is the responsibility of the owner to make sure its Project is in compliance throughout the Project Compliance Period.

8.1 Owner's Responsibilities and Requirements

The owner's responsibilities and obligations for maintaining project compliance are set forth in the Qualified Allocation Plan and the Regulatory Agreement. In addition, the Commission has prepared a Tax Credit compliance manual that will help an owner understand its responsibilities and obligations for compliance monitoring under the Tax Credit Program. The Commission also provides Tax Credit compliance workshops throughout the year for owners, managers, and on-site managers in order to support compliance monitoring.

In addition to such other rights the Commission may exercise in connection with compliance monitoring, as a condition of participation in the Tax Credit Program, a project owner agrees that the Commission may perform an on-site review of any building in the Project, interview residents, review residents' applications and financial information, and review an owner's books and records relating to the Project. A project owner must provide the Commission reasonable access to the Project and its books and records in order to allow the Commission to perform compliance monitoring. In connection with this obligation, an owner must take all action as may be reasonably necessary to allow the Commission to inspect housing units occupied by residents.

The Commission will report events of Noncompliance (whether the Noncompliance relates to a violation of federal or Tax Credit Program requirements) to the IRS regardless of whether the Noncompliance is corrected timely. Noncompliance may result in the loss and recapture of Credit, in addition to the Commission exercising its rights and remedies under the Policies, the RAC, the Regulatory Agreement, the Tax Credit Program, and law. The procedures set forth for the Commission to report Noncompliance to the IRS are not intended to and will not limit or restrict any other rights and remedies available to the Commission under the Policies, the RAC, the Regulatory Agreement, the Tax Credit Program, or law.

9 Tax Credit / Bond Program Fees

9.1 Projects using Commission Issued Bonds

9.1.1 Application Fee

Projects financed with the 4% tax credit and Commission issued tax-exempt bonds will pay a single application fee of \$7,500 for a project with a single site. Scattered site/portfolio projects will pay an additional \$1,000 for each additional site. A project requesting an Official Intent Declaration (OID) in advance of submitting an application must pay a nonrefundable OID Request fee of \$750. The OID Request Fee is \$750 regardless of the number of sites in the Project. The OID request fee is nonrefundable but may be applied toward the Project's Application fee.

9.1.2 Bond Cap Reservation Fee

When demand for Bond Cap exceeds supply and reservations of Bond Cap are competitive, the MHCF Director may require a Bond Cap Reservation Fee of $\frac{1}{2}$ of 1% (0.5%) of the requested bond amount, not to exceed \$75,000. This fee will be due at the time of notification of a successful Bond Cap Reservation and must be paid within five business days of the notification date. Failure to pay the fee will result in the allocation being withdrawn. This fee does not apply if Bond Cap is allocated in a non-competitive manner.

The Bond Cap Reservation fee may be used to pay the Project's costs of issuance; or if the cost of issuance account is adequately funded, the deposit may be returned or used to pay other costs at closing.

9.1.3 Cost of Issuance Deposit

When Bond Cap is allocated in a non-competitive manner, the Bond Cap Reservation Fee is waived. Instead, the Applicant must deliver a Cost of Issuance Deposit of ½ of 1% of the proposed bond issue, up to a maximum of \$75,000 to the Commission at the time of the Scoping Meeting. Bond counsel is not permitted to commence work on bond documents until the cost of issuance deposit is received.

The deposit may be used to pay the Project's costs of issuance; or if the cost of issuance account is adequately funded, the deposit may be returned or used to pay other costs at closing.

9.1.4 Reservation Fee and Cost of Issuance Deposit Refunds

If the Project fails to proceed due to circumstances beyond the Applicant's control, costs incurred by the Commission (e.g., bond counsel, financial advisor, and other applicable costs of the transaction such as staff time @ \$100 per hour and public hearing notice publication costs) will be deducted from the cost of issuance deposit. If the Project fails to close due to action of the Borrower, the Commission may opt to charge its 25 basis-point Bond Issuance Fee plus additional costs incurred. Remaining funds will be returned to the Applicant. If the deposit is insufficient, the Applicant will be billed for the additional costs.

9.1.5 Bond Cap Allocation Fee

Each project will be charged 2.77 basis points (0.000277) of the tax-exempt bond amount to cover the Department of Commerce's fee for allocations of Bond Cap and costs incurred by the Commission to administer recycled bonds. This fee is due at closing for projects financed Commission bonds.

9.1.6 Credit Issuance Fee

The Credit Issuance Fee is 6.02% of the annual Credit amount.

The Applicant must pay at least 50% of the anticipated Credit Issuance Fee by the latter of (1) the date the Application is submitted to the Commission or (2) the bond closing date. The first half of the Credit Issuance Fee will be included as part of the cost of issuance at bond closing.

The balance of the Credit Issuance Fee will be calculated as part of the Placed-in-Service process once the final Credit amount is determined. Staff will send an invoice to the Project Contact. The second half of the Credit Issuance Fee must be paid prior to the issuance of the Project's 8609(s).

The Credit Issuance Fee is nonrefundable.

9.1.7 Bond Issuance Fee

The Commission's Bond Issuance Fee is 25 basis points of the total bond amount at the time of issuance. This fee is will be included as part of the cost of issuance due at bond closing.

Bond counsel, trustee/fiscal agent and financial advisor fees will be charged pursuant to separate fee schedules negotiated by the Commission. These fees will also be due at bond closing.

Please see Section 7 of the [Bond Financing Policy](#) for further information on costs of issuance and the use of bond proceeds to cover these fees.

9.1.8 Annual Commission Fee for Tax-Exempt Bond Issuance

Bond projects using the 4% Low-Income Housing Tax Credits will have 12.5 basis points waived from the 30 basis point ongoing annual fee resulting in an adjusted annual fee of 17.5 bps. The Commission reserves the right through its formal meeting process to change this fee waiver on future projects or non-conforming projects.

Each project will be required to pay a minimum amount of annual ongoing Commission fees (the “Minimum Ongoing Fee”) calculated at closing as follows:

$$(\text{MAXIMUM PAR AMOUNT} * 0.00175) * 5$$

The annual ongoing Commission fees must be paid:

- At closing, in an amount equal the portion of the ongoing annual fee prorated for the time from the closing date to the next occurring January 1 or July 1; and
- Thereafter, semiannually on each January 1 and July 1 in an amount equal to 17.5 bps of the outstanding par amount of the bonds (or, for bonds which may still be drawn down, the maximum par amount of the bonds) on the most recent July 1 (after any principal redemptions on such date).
- Provided that If at the time of final bond redemption, the aggregate amount of ongoing annual Commission fees paid to date is less than the Minimum Ongoing Fee, that unpaid portion of the Minimum Ongoing Fee will be due and paid before the final bond redemption maybe made.

For bond issues that mature in less than five years, the Borrower may elect to prepay the Minimum Ongoing Fee on the closing date.

Tax credit compliance monitoring fees will apply and be billed separately as defined in the Extended Use Agreements.

9.1.9 Annual Compliance Monitoring Fee

The annual Compliance Monitoring Fee is \$45 per low-income unit for projects with 11 or more units. For projects with 10 units or less, the Compliance fee is \$450 per year.

For projects that received tax-exempt bond financing from the Commission and Placed-in-Service prior to March 31, 2001, there is no separate annual Compliance Monitoring Fee. For these projects, the owner will be required to begin paying the current applicable annual Compliance Monitoring Fee once the tax-exempt financing compliance period ends. The full amount of the monitoring fee is due January 31 of each year.

If the Applicant’s first year of Credit monitoring period begins with the taxable year when a building is Placed-in-Service, the Applicant must pay the annual Compliance Monitoring Fee for the entire project by November 1 of the year that the first building is Placed-in-Service.

The full fee is due for a project when it is Placed-in-Service and is subject to compliance monitoring for that year, regardless of the actual number of days the Project is in service for that year.

9.2 Projects using Bonds issued by an Issuer other than the Commission

9.2.1 Application Fee

Projects submitting an application for 4% Housing Tax Credit but not using Commission issued bonds must pay an application fee of \$4,000 for a project with a single site. Scattered site/portfolio projects will pay an additional \$1,000 for each additional site.

9.2.2 Bond Cap Allocation Fee

For the transfer of a Current Bond Cap and/or Carryforward Bond Cap allocation from the Commission to another issuer, the issuer receiving the transfer will be charged 2.77 basis points (0.000277) of the tax-exempt bond amount to cover the Department of Commerce's fee for allocations of Bond Cap.

9.2.3 Tax Credit Equity Provider Closing Payment

The tax credit equity provider will be required to make an equity contribution of at least \$50,000 before the Commission will close on the bonds. The contribution is due the morning of bond pre-closing. This deposit will be held by the trustee, paying agent, or escrow agent until the bonds close, at which time the funds are dispersed as directed in the closing memorandum. The timing of this requirement may be adjusted when more than 3 business days before the pre-closing from closing with approval of the Director of Multifamily Housing and Community Facilities.

9.2.4 Credit Issuance Fee

The Credit Issuance Fee for projects with Non-Commission issued bonds is either:

- 9.50% of the Annual Credit Amount for Projects setting aside at least 50% of the total low-income units at or below 50% AMI under the Additional Low-Income Housing Commitment; or
- 12.65% of the Annual Credit Amount for all other projects.

The Applicant must pay at least 50% of the anticipated Credit Issuance Fee by the latter of (1) the date the Application is submitted to the Commission or (2) the bond closing date. The first half of the Credit Issuance Fee will be included as part of the cost of issuance at bond closing.

The balance of the Credit Issuance Fee will be calculated as part of the Placed-in-Service process once the final Credit amount is determined. Staff will send an invoice to the Project Contact. The second half of the Credit Issuance Fee must be paid prior to the issuance of the Project's 8609(s). The Credit Issuance Fee is nonrefundable.

9.2.5 Annual Compliance Monitoring Fee

For projects owned or controlled by a Housing Authority or Public Development Authority: The annual Compliance Monitoring Fee is \$45 per low-income unit for Projects with 11 or more units. For projects with 10 units or less, the Compliance fee is \$450 per year.

For projects not owned or controlled by a Housing Authority or Public Development Authority: The annual Compliance Monitoring Fee is \$58 per low-income unit for projects with 11 or more units. For projects with 10 units or less, the Compliance fee is \$580 per year.

The full amount of the monitoring fee is due January 31 of each year.

If the Applicant's first year of Credit monitoring period begins with the taxable year when a building is Placed-in-Service, the Applicant must pay the annual Compliance Monitoring Fee for the entire project by November 1 of the year the first building is Placed-in-Service.

The full fee is due for a project when it is Placed-in-Service and is subject to compliance monitoring for that year, regardless of the actual number of days the Project is in service for that year.

9.3 Transfer Fee

The fee for any project transfer or assignment requiring the written consent of the Commission is \$3,162. The transfer fee applies to any project transfer or assignment occurring after an Application is submitted. The fee is not refundable. See Chapter 9 for more information on Project Transfers.

9.4 Indemnification

The borrower will indemnify the Commission as a condition of the financing.

10 Decisions and Review

This chapter does not apply to any decision made by the Commission relating to a project after the Bond/Tax Credit Program's Regulatory Agreements have been executed. The rights and remedies of the parties to those contracts will be as set forth in those agreements.

10.1 Meeting of Minimum Threshold Requirements

The MHCF Director is responsible for determining whether a project meets the Minimum Threshold Requirements (MTR) set forth in Chapter 3, and whether the Project qualifies for an award of Allocation Criteria points as set forth in Chapter 4 and the Application. Any person who has a question about this process, or who believes the Policies have been violated or misapplied, should contact the MHCF Director and attempt to resolve the matter.

Following submission of the Application, the Applicant will be notified whether its project satisfies the MTR review and, if so, whether the Project qualifies for the number of Allocation Criteria points awarded to the Project. Except for extraordinary circumstances, the MHCF Director will not change a determination as to eligibility, qualification, satisfaction of conditions or requirements, or an award of Allocation Criteria points after posting the results.

The Applicant may request that the determination by the MHCF Director with respect to these matters be reviewed by the Executive Director or his designee using the procedures described below. The Commission will generally not consider any complaint or argument about the MHCF Director's determinations that an Applicant could have raised through these review procedures, if the Applicant has not sought and obtained such review.

10.1.1 Review by Executive Director

If an Applicant believes it has been treated unjustly by a determination that (and only that): (i) the Project does not satisfy MTR or (ii) the Project is not entitled to an award of Allocation Criteria points, the Applicant may ask the Executive Director to review that determination. To be considered, the request must be:

- in writing;
- signed by the Applicant; and
- received by the Executive Director no later than five business days after the Applicant has been notified the Project has not satisfied the MTR review and/or is not entitled to an award of Allocation Criteria points.

A determination that a project does not meet the MTR or does not qualify for an award of certain allocation Criteria points may be reviewed only if the Applicant can show that:

- the MHCDF Director erred in applying the Policies to the Applicant’s project, or
- extraordinary circumstances exist such that:
 - it is unreasonable and unjust to apply the Policies to the Project, and
 - making an exception will not detract from the integrity and fairness of the Bond/Tax Credit Program.

An Applicant may seek a review only with respect to the determination or award that has been made regarding the Applicant’s project. No party may intervene or otherwise participate in another party’s review. An Applicant may not challenge the ranking of its project relative to others. The deadlines in the Policies are not subject to review.

A request for review must state all objections to the MHCDF Director’s determination or award, give specific reasons for the contention that the MHCDF Director erred or that extraordinary circumstances exist, and specify the desired remedy. The request must identify all information the Applicant wants the Executive Director to consider in the review. Although a request for review may include supporting documents, an Applicant may not use the review procedure to supplement the existing record.

The Executive Director (or the Executive Director’s designee) will review each request for review based upon the Application and materials in the Commission’s file for the Project when the MHCDF Director made a determination or award.

The Executive Director or designee may also conduct an investigation and talk to or meet with the Applicant. The Executive Director will grant relief only if the Applicant has met the burden of showing that the MHCDF Director erred in applying the Policies to the Applicant’s project, or that extraordinary circumstances exist such that applying the Policies as written to the Project is unreasonable and unjust, and making an exception in this case will not detract from the integrity and fairness of the Program.

The Executive Director will issue a written decision within 10 business days after receiving a request for review or notify an Applicant within that period that more time is needed to respond.

10.2 Judicial Review

Judicial review of any decision of the Commission is governed by RCW 34.05.510 et seq. In accordance with RCW 34.05.534, any person seeking judicial review must first have exhausted administrative remedies.

10.3 Debarment

Under certain circumstances, the Applicant or other parties associated with the Project may be barred from participating in the Commission's Bond/Tax Credit Program. The debarment rules and procedures are set forth in WAC 262-03-040. The rights and remedies of the Commission under the Bond/Tax Credit Program, the Policies, the RAC, the Regulatory Agreement, and other Bond/Tax Credit Program documents for breach and/or Noncompliance are in addition to, and not in lieu of, the rights and remedies the Commission has authority to exercise by statute, rule, or regulation, including, but not limited to, the debarment rules.

10.4 Indemnification

As a condition of submitting an Application, the Applicant agrees to at all times defend (with counsel reasonably acceptable to the Commission), indemnify and hold harmless and release the Commission, its successors and assigns, including their respective members, officers, employees, agents and attorneys, from and against any and all claims, suits, losses, damages, costs, expenses and liabilities of whatsoever nature or kind (including but not limited to attorneys' fees, litigation and court costs, amounts paid in settlement, amounts paid to discharge judgment(s), and any disallowance of tax benefits) directly or indirectly resulting from, arising out of, or related to:

- the financing, acquisition, construction and/or rehabilitation, syndication, sale, management or operation of the Project;
- any Noncompliance or failure to perform any covenant under the Application, the Regulatory Agreement(s) or any other Bond/Tax Credit Program document (collectively "Bond/Tax Credit Program Documents") (whether or not cured);
- any breach of a representation, warranty or covenant in a Bond/Tax Credit Program Document;
- any other act or omission (whether or not cured) constituting a default under a Bond/Tax Credit Program Document; or
- the enforcement by the Commission, its successors and assigns of the Commission's rights and remedies under any Bond/Tax Credit Program Document.

An indemnified party may monitor and participate in the defense of any claim or suit and may select any law firm to do so. This may include any level of participation the indemnified party wants. The Applicant will promptly reimburse the indemnified party for all attorneys' fees, litigation and court costs, amounts paid in settlement, and other sums as described above that are incurred by the indemnified party.

Furthermore, as a condition of submitting an Application, the Applicant waives any right to bring legal action, on the Applicant's own behalf or on behalf of any other party, against the Commission for any matter for which the Applicant agrees to indemnify and hold harmless the Commission.

Glossary

Note: The following definitions are used in the *Policies* and in other documents that relate to the Tax Credit Program. Capitalized terms in the *Policies* bear the meaning given them in the definitions in this Glossary.

The definitions in this Glossary may be amended by the Commission to comply with federal or state law. If there is a conflict between an Internal Revenue Code and a Tax Credit Program definition, restriction, or requirement, the more restrictive one will apply, as determined by the Commission.

Additional Low-Income Housing Commitment means the specified percentage of housing units that are both rent-restricted and occupied by residents whose household income is at or below the selected percentage of the area median gross income, which is at or below the level of the minimum low-income housing set-aside. The percentages refer to the Commitments made in the Application to receive Allocation Criteria points.

Additional Low-Income Housing Use Period means the number of years (commencing after the close of the compliance period) that an Applicant made a Commitment in the Application to maintain the low-income housing units and all of the applicable Commitments made to receive Allocation Criteria points and to comply with all the terms and conditions of the Regulatory Agreement, as well as the requirements of Section 42 of the Code and the Tax Credit Program. The period of years refers to the applicable Commitment made in the Application to receive Allocation Criteria points.

Affiliated With means a relationship that permits a person to, directly or indirectly, materially and unduly influence the policies and decisions of an organization or entity, regardless of whether the influence is exercised or merely exercisable. In the case of an individual, material and undue influence exercised or exercisable by the individual's family shall be taken into account. The Commission shall have the sole discretion to interpret and apply this definition in its broadest sense, and the Commission's determination shall be based on all relevant facts and circumstances. The following relationships are presumed, unless determined otherwise by the Program Director, to permit a person to materially and unduly influence the policies and decisions of an organization or entity:

- A. A single for-profit organization owns, directly or indirectly, 33 1/3 % or more of the total combined voting power of all classes of stock or membership interests of the Nonprofit Organization; or 33 1/3% or more of the total number of shares or membership interests of all other classes of stock or interests of the Nonprofit Organization; or
- B. A single for-profit organization has the power, directly or indirectly, to elect 33 1/3% or more of the members of the board of directors (or similar governing body) of the Nonprofit Organization; or remove 33 1/3% or more of the members of the board of directors (or similar governing body) of the Nonprofit Organization; or
- C. 33 1/3% or more of the board of directors (or similar governing body) of the Nonprofit Organization are officers, directors, employees, or agents of a single for-profit organization.

For the purposes of the above, a for-profit "organization" may be a sole proprietorship or individual.

Allocation Criteria means the allocation scoring criteria set forth in Chapter 4 and the Application used by the Commission to assess the degree to which a proposed project promotes the Commission’s Housing Priorities and demonstrates the Project’s readiness to close.

Annual Authority means the total state Housing Tax Credit dollar amount that the Commission may allocate for any calendar year, equal to the state Housing Tax Credit ceiling. Total Annual Authority is comprised of the Per Capita Authority plus National Pool Credit plus Returned Credit less any Credit forward committed in the previous year. Whether Annual Authority will be available in a given year depends on the status of federal legislation and the Commission’s actions.

Applicant means the party that submits an Application to the Commission for a Credit reservation and/or allocation, including its successors in interest.

Application means the Tax Credit Program Application and amendments thereto, if any, submitted by an Applicant for a project.

Certification Period means the 12-month period preceding the date the Owner is required to give the Annual Certification in accordance with the reporting requirements of the Regulatory Agreement and Section 42(m) of the Code.

Code means the Internal Revenue Code of 1986, as amended, together with corresponding and applicable temporary, proposed, and final Treasury Regulations, and Revenue Rulings and pronouncements issued or amended regarding it by the U.S. Department of the Treasury or IRS to the extent applicable to the Project.

Combined Funder Application is an application for affordable multifamily housing development capital jointly developed and used by the State Department of Commerce, the Commission, King County, ARCH, and the City of Seattle.

Combo Properties are properties that have competitively won a 9% allocation of LIHTCs and are seeking to combine bond application with 4% tax credits as part of the project in order to realize a building or buildings on the same or contiguous sites to increase land use density, serve a broader population, economize or share on construction and development costs and undergo simultaneous financing.

Commission means the Washington State Housing Finance Commission, a public body corporation and politic in the State of Washington.

Commissioners means the eleven-member board of Commissioners of the Commission, composed of nine members appointed by the Governor and two ex officio members.

Commitment means a representation or agreement by an Applicant in the Application that is binding upon the owner of a project throughout the Project Compliance Period unless otherwise noted in the *Policies*, the Application, or agreements in connection with the Tax Credit Program.

Community Revitalization Plan means a plan that is (1) a published document, approved and adopted by a governing body, by ordinance, resolution, or other legal action; and (2) targets funds or tax incentives to specific geographic areas for either of the following: economic development, including economic related initiatives; and/or commercial/retail development, including infrastructure and community facility improvement.

Controlled By or In Control Of means any kind of control, direct or indirect, by means of which a person in fact controls an organization or another person, whether or not the control is legally enforceable and regardless of the method control is exercised or merely exercisable. In the case of an individual, control possessed by the individual's family shall be taken into account. The Commission shall have the sole discretion to interpret and apply this definition in its broadest sense and the Commission's determination shall be based on all relevant facts and circumstances.

Correction Period has the meaning set forth in Section B of Chapter 3 of the *Policies*.

Development Team means the Applicant, the developer, the project management consultant, the general contractor and includes all persons or organizations materially involved in the acquisition, construction, rehabilitation, development, or improvement of the Project.

Disabilities means a physical or mental impairment that substantially limits one or more of the major life activities of an individual, such as not being able to care for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, or learning.

Donation means the contribution of funds made to qualify for the Donation in Support of Local Housing Needs Allocation Criterion points.

Elderly Housing Commitment has the meaning set forth in Section C (5) of Chapter 6 the *Policies*.

Elderly Housing Project means a project that conforms to the Fair Housing Act, as amended, and:

- A. a project in which all housing units are intended for and solely occupied by residents who are 62 or older;
- B. a project in which all housing units are each intended and operated for occupancy by at least one resident who is 55 or older, and where at least 80% of the total housing units are in fact occupied by at least one resident who is 55 or older; or
- C. a project which is financed, constructed, and operated under the RD Section 515 program for the elderly or a HUD elderly program.

Equity Closing is the date the Project closes on its Tax Credit partnership.

Equity Gap has the meaning set forth in the Application.

Executive Director means the Executive Director of the Commission.

Federal Funds has the meaning set forth in Section 6.5.

Federally Assisted Building means any building that is substantially assisted, financed, or operated under Section 8; Section 221(d)(3) or Section 236 of the National Housing Act; or Section 515 of the Housing Act of 1949.

Housing for Large Household Commitment has the meaning set forth in Section 4.3 of the *Policies*.

Housing for Persons with Disabilities Commitment has the meaning set forth in Section 4.3 of the *Policies*.

Housing Unit means a low-income housing unit or a market rate housing unit in a building that is available for rent or rented by residents. A common area unit is not a Housing Unit. "Total Housing Units" refers to all of the low-income and market rate units in a Project, unless the context clearly means all the Housing Units in a Building.

Identity of Interest means a financial, familial, or business relationship that permits less than arm's length transactions. For example: Related Parties; persons, entities, or organizations Affiliated With or Controlled By or In Control Of another; existence of a reimbursement program or exchange of funds; common financial interests; common officers, directors, stockholders, or managers; or family relationships between officers, directors, or stockholders.

Intermediary Costs are expenses involved in selling the Credit to raise equity capital and include syndication fees, partnership organizational costs, and broker fees.

Investor and Lender Notice means the notice that must be included in any loan application, syndication agreement, offering circular, prospectus, or other information given to potential lenders or investors.

Large Household means a group of four or more income qualified residents who are not necessarily related and who live together in a low-income housing unit containing three or more bedrooms.

Lease Rider means the disclosure statement required by the Commission which is to be attached by the owner to each resident lease and rental agreement for all Low-Income Housing Units and all market rate housing units in a project. The Lease Rider describes in general the rights of the residents of a project.

Low-Income Housing Unit means a Housing Unit that meets the definition of a Qualified Low-Income Housing Unit. In addition, all Housing Units in the Additional Low-Income Housing Set-Aside are Low-Income Housing Units. Common area units are not included.

MHCF means the Multifamily Housing and Community Facilities Division of the Commission.

Metro TDC Limit Counties are Clark, Spokane, Thurston and Whatcom Counties.

Minimum Threshold Requirements means the requirements that must be met by the Application deadline in order for a project to be considered for a Credit reservation and allocation, all as set forth in Chapter 4 of the *Policies*.

New Production Project is defined as new construction, the creation of new affordable units through the adaptive re-use of an existing non-residential building; or the conversion of existing market-rate units to use-restricted affordable units. A Rehabilitation project that does not meet the new vs. rehab unit percentage thresholds outlined in the Rehabilitation definition above (e.g. a project comprised of 40% rehabilitated units and 60% new construction units) is considered a New Production Project.

Noncompliance means a failure to observe or perform any covenant, condition or term of any agreement between the Applicant or project owner and the Commission, or failure to meet the requirements of Section 42 of the Code, the *Policies*, or the Tax Credit Program.

Non-Metro Counties are all counties but, Clark, King, Pierce, Snohomish, Spokane, Thurston, and Whatcom.

Nonprofit Organization means an organization organized and operated exclusively for Charitable Purposes and that is tax-exempt under Section 501(a) of the Code. Examples of these are organizations described in Sections 501(c)(3) and 501(c)(4) of the Code. A Nonprofit Organization also includes public housing authorities, public development corporations, Tribes, and Tribally Designated Housing Entities.

Placed-In-Service Allocation Requirements means the terms, conditions, obligations, and restrictions of the Tax Credit Program that are in the RAC that must be satisfied for a project to receive an allocation and for the Commission to issue IRS Form 8609.

Principal(s) means (1) with respect to a project owned by a partnership, the partners; (2) with respect to a project owned by a limited liability company, the members and managers; and (3) with respect to a closely-held corporation, the shareholders.

Program Limits has the meaning set forth in Chapter 3 of the *Policies*, that is, the limits established by the Commission and set forth in Chapter 3 to be used for selecting projects for Credit reservations and allocations.

Project Compliance Period means the period beginning with the year a building in a project is Placed-in-Service and continuing until the latest of the following periods for each building in the Project:

- The compliance period;
- The extended low-income housing use period;
- The Additional Low-Income Housing Use Period; or
- The Three-Year Period.

Qualified Allocation Plan means the plan adopted by the Commission pursuant to Internal Revenue Code Section 42(m)(1)(B), as more fully described in Chapter 1 of the *Policies*.

Qualified Contract Process means the procedures a developer must follow if, after year 14 of the initial tax credit compliance period, the developer seeks to sell the property. See Qualified Contract Process.

Qualified Nonprofit Organization means a nonprofit organization described in Section 501(c)(3) or Section 501(c)(4) of the Code or that is tax-exempt under Section 501(a) of the Code and that is determined by the Commission not to be Affiliated With or Controlled By a for-profit organization, entity, or individual.

A Rehabilitation Project is defined as existing use-restricted housing that consists of the rehabilitation of 80% or more of the housing units that exist in the Project prior to rehabilitation. The number of rehabilitated units must be 75% or more of the total units in the Project.

Regulatory Agreement means the Commission's Regulatory Agreement and amendments thereto, if any, that is required to be executed by the owner and recorded in first lien position. See Section 2.11.

Related Buyer or Related Seller has the meaning set forth in Section 3.7.

Related Party means:

- (1) the brothers, sisters, spouse, ancestors, and direct descendants of a person;
- (2) a person and corporation where that person owns more than 50% in value of the outstanding stock of that corporation;
- (3) two or more corporations that are connected through stock ownership with a common parent with stock possessing:
 - (i) at least 50% of the total combined voting power of all classes that can vote, or
 - (ii) at least 50% of the total value of shares of all classes of stock of each of the corporations, or
 - (iii) at least 50% percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding in computing that voting power or value stock owned directly by the other corporation;

- (4) a grantor and fiduciary of any trust;
- (5) a fiduciary of one trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
- (6) a fiduciary of a trust and a beneficiary of that trust;
- (7) a fiduciary of a trust and a corporation where more than 50% in value of the outstanding stock is owned by or for the trust or by or for a person who is a grantor of the trust;
- (8) a person or organization and an organization that is tax-exempt under Section 501(a) of the Code and that is Affiliated With or Controlled By that person or the person's family members or by that organization;
- (9) a corporation and a partnership, limited liability company, or joint venture if the same persons own more than:
 - (i) 50% in value of the outstanding stock of the corporation; and
 - (ii) 50% of the capital interest or the profits' interest in the partnership, limited liability company, or joint venture;
- (10) one S corporation and another S corporation if the same persons own more than 50% in value of the outstanding stock of each corporation;
- (11) an S corporation and a C corporation, if the same persons own more than 50% in value of the outstanding stock of each corporation;
- (12) a partnership, limited liability company, or joint venture and a person or organization owning more than 50% of the capital interest or the profits' interest in that partnership, limited liability company, or joint venture; or
- (13) two partnerships, limited liability companies, or joint ventures, or a combination thereof, where the same person or organization owns more than 50% of the capital interests or profits' interests.

For purposes of (1) through (13) above, the constructive ownership provisions of Section 267 of the Code apply.

Rules means those rules adopted by the Commission and codified in Washington Administration Code 262-01-130 governing the Tax Credit Program or 262-1-140 governing Private activity bond allocation.

Special Needs Housing Commitment(s) has the same meaning as Housing Commitment for Priority Populations.

Tax Credit Factor means the factor selected by the Applicant that represents, on a percentage basis, the value of the tax Credit dollar amount available for Total Project Costs.

Tax Credit Program means the Commission's program for awarding, reserving and allocating Credit and monitoring projects for compliance with the Tax Credit Program and Section 42 of the Code, as set forth in the QAP, the Rules, the *Policies*, and the Commission's agreements, contracts, manuals, guides and documents.

Total Project Costs means the total costs incurred in acquiring and developing the Project as set forth in the proposed budget in the Application and/or in an Independent CPA's report of sources and uses of funds given to the Commission.

Transient/Transient Basis means a housing unit that does not have a minimum initial lease term of six months or that does not meet the definition of Transitional Housing. A single-room occupancy unit shall not be treated as used on a Transient Basis merely because it is rented on a month-by-month basis.