

TAX CREDIT PROGRAM GUIDELINES

These guidelines are provided to assist applicants for Tax Credits in preparing the Application. The guidelines are a supplement to the Allocation Plan. Should there be an inconsistency between these guidelines and the Allocation Plan, the terms and descriptions set forth in the Allocation Plan will prevail. The terms set forth in these guidelines may change from time to time. The Agency will attempt to notify interested parties of any changes in the Tax Credit Program or the process of implementing the Tax Credit Program through the Agency's website at www.phfa.org.

Applicants are advised to be familiar with the requirements of Section 42 of the Internal Revenue Code, as amended (the Code). Information concerning the basic requirements of the Tax Credit Program is provided on the Agency's website. It is recommended that, before completing the Application, applicants should check the Agency's website to ensure that the development meets current program eligibility.

Review Process

An Application, once received by the Agency, may not be altered, amended or modified except as approved by staff during underwriting and program review. If a discrepancy is found in an Application during the review process, the applicant may be given five business days to respond to the request for clarification. Corrections allowed by staff will not include replacement, substitution or amendment of material items used in the ranking of the Application. An omission from the Application Checklist may result in the immediate rejection of the Application.

Site Visits

In reviewing the Application, the Agency will first determine the financial feasibility and long term viability of the development based upon the development costs, sources of financing and the operating income and expenses presented in the Application. If an Application appears to be financially feasible and the Allocation Plan threshold requirements are met, a site visit will be scheduled. Agency Representatives will visit the site to substantiate the information contained in the Application and the Market Study/Housing Needs Assessment. The applicant should attend the site visit to answer any questions that might be raised during the site visit.

After the site visit, the Agency will complete the review of the Application and consider the Application according to the Selection Criteria set forth in Exhibit SC2007 to the Program Guidelines. A development must address a substantial number of the Selection Criteria in order to qualify for a reservation of Tax Credits. The minimum point threshold for 2007 Applications is 130 points. Contained in the Instructions is a Self-Scoring Sheet (Exhibit C). It is important for each applicant to complete this form so there is no question as to the intent of the applicant. A narrative explaining the applicant's reasoning for requesting points is recommended, but not required.

(Note that for applicants seeking both PennHOMES financing and Tax Credits, the Tax Credit Application review will be completed by staff from the Agency's Development Division.)

Fees and Cost Limitations

The Agency has developed a Development Cost Limits Schedule (Exhibit LIMITS) and a Fee Schedule (Exhibit FEES). These schedules, included in the Program Guidelines, are an applicant's guide for the fees and expenses that are normally incurred in developing a property. The fees and expenses outlined in these two schedules are the maximum amounts that may be included in the total development cost, and, if applicable, the eligible basis of the development. Any cost, whether developmental or operational, that is deemed unreasonable may be adjusted by the Agency.

Maximum Per Unit Basis Limitations

The Agency has established Maximum Basis limits. Exhibit MAX BASIS to the Program Guidelines contains the Maximum Basis limits applicable to developments for each market area of the Commonwealth. A detailed explanation of the conditions under which an applicant may request a waiver of these limits is found in the Allocation Plan. Maximum Basis is calculated by applying the limits in Exhibit MAX BASIS by the number of each applicable bedroom-size unit, as shown in the Application. To this amount is added the approved developer fee. This total is then adjusted for any federal subsidies, non-recourse debt, non-qualifying units of higher quality and historic rehabilitation tax credits. In certain developments, these adjustments may be pro-rated. To request a waiver of the Maximum Basis limits, a development's high costs must be due to the existence of one or more of the factors outlined in the Allocation Plan. An applicant must formally request a high cost waiver at the time of application, supplying detailed information on the high cost conditions, cost estimates and cost comparisons. This information will be reviewed by Agency staff and a specific waiver amount may be approved. This approved high cost amount will be added to the Maximum Basis amount. If a development also qualifies for Acquisition Tax Credits, the Acquisition Tax Credits will be in addition to the New Construction/Rehabilitation Tax Credit. There is no high cost waiver provision, applicable to Acquisition Tax Credits.

Rural Development Section 515

For developments financed through the Rural Development Section 515 program, the Agency will recognize only those costs that have been approved by Rural Development with the exception of the developer's fee. The Agency has entered into a Memorandum of Understanding with Rural Development regarding agreed upon procedures for processing developments involving both Rural Development funds and Tax Credits. These procedures will be applied when processing a Tax Credit request for a development with Rural Development funding and are available upon request.

Qualified Census Tract/Difficult Development Area

A building located in a "qualified census tract" (QCT) or "difficult development area" (DDA) at the time a binding allocation of Tax Credits is made may have its eligible basis, for purposes of the New Construction Tax Credit or Rehabilitation Tax Credit, increased in an amount not to exceed 130% of the eligible basis. Location of the property does not automatically entitle a building to receive a higher amount of Tax Credits. The Agency will determine the amount of Tax Credits needed to ensure the development's feasibility and long term viability. The QCTs and DDAs are designated by HUD and are listed in Exhibit QCT of the Program Guidelines.

Applicable Percentage

When calculating the maximum amount of Tax Credits the development is eligible to receive, the Agency will use the applicable percentage in effect for the initial month of each processing cycle. The applicable percentage is determined monthly by the Treasury Department. The Agency's website contains a listing of the applicable percentages. The percentage utilized at the initial Application review will remain with the development until a binding commitment is executed by the developer and the Agency to lock into the applicable percentage as required by the Code. This binding commitment can only occur upon the execution of the Carryover Allocation Agreement (certain exceptions apply to developments funded with tax-exempt bonds). If a binding commitment is not executed, the applicable percentage for each building will be the one in effect for the month in which each building is placed in service. The reservation amount, however, is the maximum amount that the development may receive even if the applicable percentage rate has increased at placement-in-service.

Determination of Maximum Amount of Tax Credits

When determining the amount of Tax Credits to be reserved for the development, the Agency may only reserve the amount of Tax Credits necessary to ensure the financial feasibility and long-term viability of the development. The Agency will determine the amount of Tax Credits based upon a review of the development costs and permanent funding sources (considered the “need calculation”), the qualified basis of the development and the Maximum Basis allowable to the development. Tax Credits will be issued on the lesser of these calculations. In determining the need for the Tax Credits all sources of financing are reviewed. Each financing letter must include the terms of the loan including all financing fees. Any conventional permanent loan must have a minimum term of 15 years with a fixed rate, and a debt coverage ratio between 115 and 125 percent, (except for Rural Housing loans which may have a debt service coverage ratio as low as 110%).

Upon the issuance of a reservation of Tax Credits, a worksheet is provided to the applicant which shows the approved development costs, the eligible and qualified basis of the development and the calculation of the Maximum Basis. Once a reservation letter is issued, the applicant for the Tax Credits will have fifteen (15) business days from the reservation date to notify the Agency in writing of any discrepancy on the worksheet.

A development’s costs, subsidies, financing and allocable Tax Credits will be evaluated at least three times during the processing period:

- (1) upon application for the Tax Credits;
- (2) upon review of the 10% test, which is a component of the Carryover Allocation Agreement for the allocation of Tax Credits; and
- (3) after the building is completed and placed-in-service but prior to the issuance of IRS Form No. 8609.

Certifications of the applicant and documentation will be required to be submitted at each stage to allow the Agency to properly evaluate any changes to the development’s initial Application. Any material change in the development’s Application at any time during the process may result in a loss of Tax Credits, a recapture of the Tax Credits or a required submission of a new Tax Credit Application.

The determination of Tax Credits by the Agency is not a representation or warranty as to the development’s feasibility, viability, or eligibility to claim Tax Credits.

Modifications to a Tax Credit Application

A development receives a reservation of Tax Credits based upon the information contained in the initial Application package. The applicant may not modify the Application in any manner without prior written approval of the Agency. This includes, but is not limited to the following: an increase or decrease in the number of units in any building; an increase or decrease in the number of buildings in the development; a change in any site; replacement of any development team member including the syndicator; alteration of the proposed rent and income structures; change in the participation level of a social services provider; or a change to the financial structure which includes the gross pay-in value of the Tax Credit dollar. Applicants who alter the Application in any manner without prior written approval of the Agency may be subject to an immediate recapture of the Tax Credits reserved. Please note that the Agency may only approve moderate changes to the Application which do not negatively affect the ranking of the development. Certain modifications to an Application will require the remittance of a Modification Fee. Should a development’s ranking score decrease as a result of a change, the change may be disallowed or the Tax Credits recaptured or reduced, and negative ranking points may be assessed to all applications submitted by the general partners (or affiliates, subsidiaries, or related entities with the same principals) during the subsequent two years from the date the unapproved change was discovered.

Extended Use Agreement/Restrictive Covenant Agreement

The Restrictive Covenant Agreement (the Agreement) sets forth the income and occupancy restrictions for the development for the entire compliance period or extended use period, whichever is greater. Furthermore, the Agreement requires that the applicable fraction of low income units will remain the same for each taxable year in the extended use period. In addition to identifying the minimum set-aside election of the buildings, the Agreement will also include the Selection Criteria on which the development was ranked and obtained a reservation of Tax Credits. Tax Credits may not be claimed until the Agreement is executed and recorded. The Agreement must be recorded in the Office of Recorder of Deeds for the county in which the property is located prior to any recording or filing of financing documents for the development. The Agreement will be forwarded to the owner after the reservation of Tax Credits, and should be returned with the Carryover Allocation documentation evidencing that it has been recorded prior to any other document. The original Agreement must be returned to the Agency.

The Agreement is binding on all successors to the owner.

Carryover Allocation Requirements

The Allocation Plan outlines the important deadlines and requirements associated with the execution of a Carryover Allocation Agreement.

If the building is to be placed in service by December 1, 2007, all documents shown under Placed-In-Service Requirements must be received by November 9, 2007 to enable the Agency to issue IRS Forms 8609 in 2007. In the event the development will not be placed-in-service by December 1, 2007, the following requirements must be met no later than November 1, 2007 and received by the Agency **by noon**, on Friday, November 9, 2007:

- 1) The original Allocation Carryover Agreement will be forwarded to the developer for execution. The taxpayer identification number for the taxpayer executing the Agreement is required for a valid Carryover Agreement. **Please note that the taxpayer executing the Agreement must be the party that will meet the 10% expenditure test by April 30, 2008 in order for there to be a valid Carryover Allocation Agreement.**
- 2) The executed "Owner Certification of Property Ownership" Form with either a) the current deed(s) which indicate that the taxpayer is the owner of all buildings and land in the project, or b) an extended lease agreement. All documents must be fully executed.

In the event that property is not conveyed through a deed or lease, the Agency may, in its sole discretion, accept 1) an Attorney's Opinion Letter or a Certified Public Accountant Letter that certifies that the owner has carryover allocation basis for the development pursuant to the Code or 2) an owner's certification which includes sufficient identification of the property (i.e. legal descriptions, surveys, title insurance) to assign building identification numbers. In making this certification, the owner accepts full responsibility for all discrepancies, errors or omissions of properties and acknowledgement that subsequent adjustments may require Internal Revenue Service approval.

- 3) The settlement sheet(s) must be provided for each building or parcel of land in the development, and must be fully executed. In addition, evidence must be provided that each deed was recorded. In the event the property is not owned by the taxpayer, evidence of site control through April 30, 2008 must be provided including evidence of payment of all extension fees. Ownership by the taxpayer for all properties is required by April 30, 2008 and must be submitted with the 10% package due May 9, 2008.

- 4) If the property(s) was purchased through a Purchase Money Mortgage, a copy of the mortgage and mortgage note must be provided.
- 5) Allocation Fee equal to 2% of the annual Tax Credit amount reserved. Refer to the Exhibit FEES for further explanation.

The following requirements must be fulfilled no later than April 30, 2008 and received by the Agency by noon on **May 9, 2008**:

- 1) Financial Characteristics Form (Agency document)
- 2) For developments with commercial space that is a separate condominium, provide a Sources and Uses statement for each area.
- 3) Updated financing letters. If closing on the loan has already occurred, provide a copy of the executed mortgage note(s) in lieu of the updated letter. The updated financing letters or notes must be provided for all sources of financing shown on the application, including bridge loan if applicable. Do not send copies of the actual mortgages.
- 4) Updated syndicator letter or, if it exists, a fully executed partnership agreement signed by the all partners (including the investors).
- 5) Certification of Subsidies
- 6) The executed "Owner's Certification of Costs Incurred" Form including either "a" or "b" shown below.
 - a. For developments with 6 units or more, the owner's certification must be audited by an independent, third party, certified public accountant.
 - b. For developments with 5 units or less, in lieu of the certified public accountant's audit, the taxpayer may provide evidence of costs incurred in the form of copies of checks, receipts, or other records of payment. These items must total the amount indicated as expended on the "Owner's Certification of Costs Incurred."
- 7) Independent Auditor's Report
- 8) Copy of the executed Developer's Fee Agreement (Development Services Agreement). The agreement should specifically state the fee earned through April 30, 2008, in order to allow these costs for inclusion in the 10% of basis expenditures test.
- 9) Syndicator/Investor Certification – If the Developer's Fee included in the 10% of basis expenditure test exceeds 20% of the total Developer's Fee, the syndicator and/or investor must certify that the percentage claimed by the accountant is a percentage acceptable to them. The letter must refer to the percentage and the amount of the Developer's Fee that is acceptable as part of the 10% of basis expenditure test. If a development has already closed on all of the construction loans and construction is underway, a certification from the investor is not required.
- 10) Copy of the recorded deed demonstrating transfer of ownership to owner for each building and/or parcel of land that is part of the development (if not previously submitted).
- 11) Copy of the fully executed Settlement Statement for each building and/or parcel of land included in the development (if not previously submitted).
- 12) The Architect's Certification of Compliance with Design Requirements for Accessible Housing (Exhibit F, Part 4 of the Instructions) must be executed by the architect and taxpayer.
- 13) Original executed and recorded Restrictive Covenant Agreement.

14) Failure to meet all of the above requirements will result in an immediate recapture of the Year 2007 Tax Credit reservation. The Agency will not extend the November 1, 2007 or the April 30, 2008 deadline dates.

Placed in Service Requirements

Upon completion of the development, a cost certification must be performed. The Placed-in-Service Package must be received by the Agency no later than 90 days after the last residential building receiving Tax Credits in the development is considered placed-in-service pursuant to IRS Advance Notice 88-116. Owners who are not able to submit the cost certification, including all documentation required by the Placed-in-Service Package, within the 90-day period, may request an extension, but will be required to pay extension fees. The maximum extension that will be granted to any development will be 60 days, unless the owner is deferring the start of the Tax Credit period, as defined in Section 42 (f)(1) of the Code. Refer to Exhibit FEES for specific information regarding the maximum allowable extensions and the required fees.

The Agency has developed a cost certification guide to assist applicants in completing the cost certification. This guide is not an authoritative pronouncement on those costs that may be Tax Credit basis eligible or ineligible, but rather serves as a tool for completing the cost certification.

The Placed-in-Service Package requirements will be forwarded to applicants with the reservation letter. All of the required documents must be forwarded to the Agency for review and approval prior to the issuance of IRS Form 8609 (Low Income Housing Credit Allocation Certification). The requirements of the Placed-in-Service Package, including the cost certification guide may also be found on the Agency's Web-site at www.phfa.org.

Upon submission, review and satisfaction of all requirements, IRS Form 8609 will be issued. For developments that have received financing through the Agency, the cost certification required by the Loan Program must be received by the Agency's Finance Division prior to the release of the IRS Form 8609. Please note that once submitted to the Agency, the cost certification cannot be amended. It is the owner's and syndicator's (investor's) responsibility to review the cost certification prior to its submission to the Agency to ensure that all costs and sources of funds are properly included and categorized.

Annual Recertification Waiver

Internal Revenue Service Revenue Procedure 2004-38 provides instruction to owners of a 100% qualified low-income building for obtaining a waiver of the annual recertification required in paragraphs (b)(1)(vi) and (b)(1)(vii) of Section 42(g)(8)(B) of the Code and paragraph (c)(1)(iii) of Treasury Regulation 1.42-5. An owner with more than one 100% low-income building in a development may submit a single request for all qualified buildings in the development.

An owner obtaining a waiver is not required to: keep records that show an annual income recertification of the low income tenants in the building whose income was previously verified, documented and certified; maintain documentation to support that recertification; or certify to the Agency that the owner has received this information. The waiver becomes effective for the compliance monitoring cycle as of the date the IRS approves the waiver.

The owner must apply for the waiver by sending a completed and signed Form 8877 (Request for Waiver of Annual Income Recertification Requirement for Low Income Housing Credit) to the IRS. The IRS will approve the request for waiver by signing the IRS Form 8877. The Agency will acknowledge the waiver of recertification upon receipt of a copy of the Form 8877 executed by the IRS. The owner is responsible for sending a copy to the Agency.

Please note, the waiver for a building does not exempt the owner of a 100% qualified low-income building from meeting the requirements of the Code for income verification of all new incoming tenants. The Agency may amend this waiver process at any time and reserves the right to require additional documents in its discretion.

COMPLIANCE

Owners are responsible for ongoing compliance with all requirements of the Section 42 of the Code and the Agency's Compliance Program Manual, including such rules, regulations, administrative revenue proclamations and revenue rulings as may be issued from time to time.

Each owner of a Tax Credit development must execute an agreement setting forth allowable occupancy and use restrictions, owner responsibilities and continuing Section 42 qualified development characteristics. This agreement, the "Restrictive Covenant Agreement," must be recorded for the maximum period required by the Code and no Tax Credits may be claimed by a property owner in any taxable year unless the Restrictive Covenant Agreement is in effect and is appropriately recorded on the property in the county land records.

The Agency will monitor each Tax Credit development for compliance with the Code. Such requirements may change from time to time and the protocol for compliance monitoring may be adjusted as deemed necessary or appropriate by the Agency. In addition to monitoring for all federal requirements, developments will be monitored for compliance with the occupancy standards, Selection Criteria and other covenants set forth in the Restrictive Covenant Agreement.

The Agency has established an interactive database (the "Agency Apartment Locator") for all affordable housing units in developments participating in any of the Agency's multifamily housing programs, to provide a resource for households seeking affordable housing throughout the Commonwealth and to provide a marketing tool to owners. All developments receiving 2007 Tax Credits must participate in this data collection effort and will be expected to provide information including, but not limited to unit amenities, household size, household income and move-in information and any ongoing unit vacancies in a secure and timely manner.

All owners must keep the following records for each qualified low income building in the development for each year of the compliance period: number of residential units in the building, the number of low income units in building, the number of occupants in each low income unit, the number of bedrooms in each unit, the square footage of each unit, the rent charged on each unit including the utility allowance, the low income unit vacancies in the building and the rentals of the next available unit for each building in the development including when and to whom it was rented. The owner must also keep documentation of the eligible basis and the qualified basis of the building as of the end of the first year of the Tax Credit period. Owners must also keep a record of the annual income certification of low income residents along with documentation to support the certification. Owners renting to holders of Section 8 certificates or vouchers may ask the public housing authority issuing the certificates or vouchers to provide a statement declaring that the resident's income does not exceed the applicable income limit under Section 42(g) of the Code. Any nonresidential portion of a building included in the eligible basis of the building must demonstrate its availability to all residents in the building at no additional cost to the residents.

Records for the first year of the Tax Credit period must be retained for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building. In all subsequent years of the Tax Credit period, records must be kept by property owners for a minimum of 6 years after the due date (with extensions) for filing the federal income tax return for the year.

The Agency will also review and monitor developments for compliance with required certification submissions. Owners must provide certification at least annually to the Agency, under penalty

of perjury, as to the following: the development meets the requirements of the elected minimum set-aside test; the applicable fraction, as defined in Section 42(c)(1)(B) of the Code, of each building in the development has not changed, or, if there was change, a description of the change; owner has received the annual income certification from each low income resident along with supporting documentation; the low income unit is rent restricted under Section 42(g)(2) of the Code; all units are available to the general public and used on a non-transient basis and no finding of discrimination under the Fair Housing Act has occurred for the development; each building is suitable for occupancy pursuant to local health, safety and building codes and meets all habitability standards for the Tax Credit Program; the building's eligible basis pursuant to Section 42(d) of the Code has remained the same (or if there was a change, the nature of the change); and any resident facility in the building is available to all residents in the building on a comparable basis without a separate fee charged to the resident. Furthermore, owners must certify that no low-income resident of a Tax Credit property will be or has been evicted or otherwise had their lease terminated other than for good cause and owner must confirm that all leases state this affirmatively. Owner must also certify that if a low income unit becomes vacant, reasonable attempts are made to rent that unit to a qualified low income resident, and while that unit is vacant no units of comparable or smaller size may be rented to a non-qualified low income resident. If a low income resident's income rises above the limit established in Section 42(g)(2)(D)(ii) of the Code, all available units of comparable or smaller size in that building must be rented to an income qualified resident. Owner must also certify that an extended low income housing commitment, as described in Section 42(h)(6) of the Code, was in effect for all qualified low income buildings in the development. Owner must also certify that a unit lease has not been refused to a Section 8 applicant because the applicant holds a Section 8 voucher or certificate. Owner's certifications of these items must be submitted at least annually or with such greater frequency as may be required by the Agency. The Agency may adjust any and all of its compliance protocols as it deems appropriate throughout the compliance period and the extended use term covered by the Restrictive Covenant Agreement.

The Agency may review the information set forth on the certifications at any time for compliance with the Code. On-site inspections of all Tax Credit developments will be held from time to time, at the sole discretion of the Agency, for compliance with the certification requirements, habitability standards, rent records, lease provisions, supporting documentation and all record keeping requirements in the low income units. Physical inspections of all buildings and at least 20% of all low income units are performed at least once every three years. The Agency will determine which developments and which records it will inspect and how often such inspections will be conducted in its discretion. The Agency retains the right to perform on-site inspections at any time during the compliance period for any Tax Credit development or to conduct more frequent or more detailed site visits if the Agency deems it appropriate. As referenced above, the Agency may also require submission of ongoing data from each property regarding move-ins and vacant units.

Audited financial statements must be submitted annually to the Agency's Compliance Monitoring Department for all properties with twenty (20) or more units. If audited financial statements are not available, a compilation must be prepared and submitted to the Agency's Compliance Monitoring Department. (Applications for Tax Credits in any year may be rejected from organizations or individuals who have not submitted to the Agency the audited financial statements for a Tax Credit development for the preceding tax year.)

As required by the IRS, in the event the owner or the development does not comply with any of the provisions of the Code, the Agency will provide written notice to the owner that specifies a correction period that may not exceed 90 days, unless extended by the Agency in writing. Upon the expiration of the correction period set forth in the written notice to the owner, the Agency must file IRS Form 8823 "Low Income Housing Credit Agency Report of Noncompliance" ("IRS

Form 8823”) with the IRS to advise the IRS of the existence of an event of noncompliance with an explanation of the nature of the event and whether the owner has corrected the noncompliance. Any change in either the applicable fraction or eligible basis resulting in a decrease in the qualified basis will be treated as an event of noncompliance. In addition, any failure to provide required information to the Agency on a timely basis in accordance with its written request or the procedures established in Agency directives or set forth in its Compliance Program Manual may be treated as an event of noncompliance and may result in the filing of IRS Form 8823. Failure to continually meet the requirements of the use, occupancy and other conditions relevant to the operation of the development, as set forth in the Restrictive Covenant Agreement, may be treated as an event of noncompliance and may result in the filing of IRS Form 8823.

Pursuant to Revenue Procedure Ruling 94-64, an owner of a 100 percent qualified low income building may request a waiver from the IRS of the annual recertification of the resident’s income requirement. Please see the Agency’s 2007 Multifamily Housing Program Guidelines for further details.

The Agency will assess owners an upfront compliance fee designed to cover administrative expenses associated with the performance of compliance monitoring. Additional fees may be charged, as necessary and appropriate, for any property.