

# 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 if 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:

- WSHFC Bond Financing Policies
- Bond/Tax Credit Policies (this document)
- Tax Credit Program Rules (WAC 262-01-110 to 130)
- Private Activity Bond Allocation Rules (WAC 262-01-140)
- Qualified Allocation Plan
- 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 total amount of tax-exempt private activity bond authority for each state is calculated using a formula based on annual population estimates provided by the U.S. Census Bureau and a per capita multiplier established by the Internal Revenue Service. 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.”

The Internal Revenue Code allows states to determine how to distribute cap authority among five categories of projects. [RCW 39.86.120](#) establishes a formula for initial allocations (set asides of cap authority) for each category. Since 2017, the initial set aside allocations have been:

| <b>BOND USE CATEGORY</b>           | <b>PROPORTION OF BOND CAP</b> |
|------------------------------------|-------------------------------|
| <b>HOUSING</b>                     | 42.0%                         |
| <b>SMALL ISSUE</b>                 | 25.0%                         |
| <b>EXEMPT FACILITY</b>             | 20.0%                         |
| <b>STUDENT LOANS</b>               | 5.0%                          |
| <b>PUBLIC UTILITY</b>              | 0.0%                          |
| <b>REMAINDER AND REDEVELOPMENT</b> | 8.0%                          |

Bond Cap must be issued within the calendar year, generally no later than December 15 of each year. Any cap authority that is unused at the end of the year is allocated as “carryforward” to exempt facilities or a housing issuer (e.g., the Commission) to be carried forward into the next three years.

During the calendar year, timelines apply to some of the category set asides in either RCW or Washington Administrative Code (WAC). After July 1, unused cap from any category can be reallocated to any other category. Under [WAC 365-135-035](#), 50% of any of this unused cap is prioritized for the Housing category.

**1.1.1.1 Competitive Application Rounds**

For most of the program’s history, the Commission has been able to allocate to eligible projects on a first-come, first-served basis. In recent years, market factors combined to increase demand for housing cap, resulting in a record-setting low amount of cap available to carry forward into future years. As long as demand continues to exceed supply, the Commission will hold competitive application rounds announced by the end of October of the preceding year.



Competitive rounds will implement strict closing deadlines. Projects should only apply for an application round in which they can meet the closing deadline and project readiness criteria as set forth in Section 4, Bond Cap and Tax Credit Allocation Criteria. Sponsors should be confident of permit timing, lender approvals, and investor commitments when they apply. Commission staff may verify key readiness criteria with applicable jurisdictions before Bond Cap awards are made.

Projects will be ranked according to point scores, bond cap requested per unit, and cost per unit. Projects not receiving an allocation may be placed on a waiting list for that application round only and will be required to apply in any subsequent application rounds to receive an allocation of bond cap. See the Bond Cap and Tax Credit Allocation Criteria in Section 4 for minimum points and point criteria.

When competitive rounds are in effect, projects will also be expected to provide a Bond Cap Reservation Fee.

#### **1.1.1.2 Commission Board Meetings**

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.

#### **1.1.2 Projects Financed with Bonds Issued by an Issuer Other Than the Commission**

To continue maximizing the use of bond cap, the Commission closely coordinates with the Association of Washington Housing Authorities (AWHA) and local public development authorities. Together, the issuing authorities queue a potential pipeline of projects that will need bond cap each year and coordinate the timely transfer of bond cap to meet demand.

The Commission request that Public Housing and Development Authorities [submit a Bond Cap Request Form](#) by month end of November of the year prior to an expected allocation.

In addition, the Application for Credits (Application) is due at least 60 days prior to the date the 42(m) letter is needed. Waiver requests must be received at least 60 days prior to submitting the Application.

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

## **1.2 Bond Policy Values and Outcomes**

The Commission created criteria for evaluating projects in this program for a non-competitive environment and to achieve a minimum score. When the Commission established this system, the goal was to gain and incentivize additional public benefit from projects that were being financed. As demand began to exceed resources, we adjusted these criteria. For 2022 and beyond, we re-

evaluated the entire process. The policies prioritize and create predictability for **specific, articulated values-based outcomes**. As is the case whenever resources are limited, we will be making trade-offs to achieve these priorities.

Outlined below are:

- Outcomes – the values and specific results we are seeking to prioritize and achieve,
- Tradeoffs – some of the considerations and potential consequences or impacts from targeting specific articulated outcomes,
- Methodology – the different tools and approach for achieving the articulated outcomes.

Our goal is to at least meet the minimums of our targets in Preservation, and public investment and not exceed the amount in balance of state, but we will prioritize New Production. We will not allocate to more acquisition/rehab projects simply to increase the dispersion of potential projects outside of King and Snohomish counties.

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### **Value 1: Racial Justice and Equity**

**Outcome:** To achieve greater equity and social justice in housing for historically disenfranchised people, we will finance more development projects by organizations led by people of color and who reflect the community they will be serving. We will take a more inclusionary approach to encourage development features that benefit residents in the housing that is being created.

**Trade-off:** We will need to work collaboratively to identify and dismantle system-level barriers to encourage and provide capacity building and technical assistance for this priority to be successful.

We recognize that communities of color have not been successful in the housing development and finance arena, and we are committed to addressing the inequities and unintended consequences that our approach to allocating resources have created. We will make changes to our programs that prioritize development **BY** and **FOR** disenfranchised or historically impacted communities. Across the state, we will prioritize projects sponsored by organizations with a board majority and ED/CEO of color, which are place based and which prioritize service to specific populations based on local community needs and resources.

**Methodology:** We will provide a continuum of options for organizations to deliver and achieve a **BY** and **FOR** community-based approach through specific point criteria. We commit to continue to seek broader outreach and inclusion in this category and will evaluate and analyze the results after each allocation round.

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### **Value 2: Alignment of Resources**

**Outcome:** WSHFC acts in coordination with other public funders to help them achieve their federal, state, and local goals, to create a predictable pathway for developers and our funding partners, resulting in a more efficient use of public funds.

Key resources at the local, state, and federal levels create and/or preserve affordable housing. Many of these resources rely on the Multifamily Bond/Tax Credit Program to complete the financing stack. These public funds, or contribution of land, are a proxy for priorities either driven by the local jurisdiction or by the state legislative process and represent important needs in the community.

**Trade-off:**

Key resources at the local, state, and federal levels create and/or preserve affordable housing. Many of these resources rely on the Multifamily Bond/Tax Credit Program to complete the financing stack. These public funds, or contribution of land, are a proxy for priorities either driven by the local jurisdiction or by the state legislative process and represent important needs in the community.

The level of public resources is varied throughout the state and in some cases, projects may be feasible without any public resources. By prioritizing projects with public funds, we may disadvantage communities where the public resources are not used for these types of projects.

**Methodology:**

To be considered “publicly leveraged”, the amount of public funds invested in projects must be:

**In Seattle** – at least 10% of Total Project Costs, less the deferred developer fee

**Outside of Seattle** – 5% of Total Project Costs, less deferred developer fee

Funds must be committed at the time of application to be eligible. Applicants must include evidence of 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. Waiver of impact fees may count towards the calculation of public leverage. Public leverage includes local, county, state, and federal public capital sources.

Capital contributions by Public Housing Authorities who are also serving as the developer in the project also count as “public leverage”.

Tax-exempt bonds, loans or credit enhancement associated with bond financing such as Fannie Mae, Freddie Mac, and FHA are not considered “leverage” 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.

We will target 50-60% of the resources to projects with public funding commitments.

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**Value 3: Meeting Affordable Housing Needs Everywhere**

**Outcome:** The Multifamily Bond/Tax Credit Program is a statewide resource. As such the WSHFC has the responsibility to ensure reasonable levels of geographic dispersion across the state. Given this is a debt program, the market economics (rent levels and cost to develop) are not equally viable throughout the state. WSHFC wants to facilitate developers accessing the Multifamily Bond/Tax Credit Program in as many locations across the state as is feasible and avoid overconcentration in any one area at the expense of others.

**Trade-off:** We may allocate bonds and tax credits to fewer projects in Seattle/King County

Over the years, the market and economics have largely determined the location of Bond/4% Tax Credit projects. In this most recent competitive environment, projects outside of King County, most notably new construction projects, have had difficulty competing. This has led to an increasingly larger share of the resources flowing to King County, especially Seattle. The Commission wants to ensure that projects outside King County can continue to access this program, and we want to look at additional locations that could use this resource.

**Methodology:** We will compare similar projects and develop slightly different scoring criteria and minimums. Our target will be up to 40% of bonds and tax credits allocated to projects located outside King and Snohomish counties.

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#### **Value 4: Ensuring Affordable Housing Projects Serve Their Purpose for as Long as Possible**

**Outcome:** Low-income tenants remain in their housing and do not suffer displacement when the regulatory covenants expire. Their housing affordability is maintained, and their units are improved, which improves the quality of their lives.

**Trade-off:** Balancing the needs of the existing portfolio of affordable housing with new production could result in a decrease of new production.

Although we want to prioritize the creation of new units, financing the acquisition and rehabilitation of existing projects has also been a key purpose for the Multifamily Bond/Tax Credit Program over the years. We want to maintain a limited but predictable amount of bond financing for rehabilitation projects to ensure there are resources available that address health and safety issues and energy efficiency of the current affordable housing portfolio. We also want to ensure that any equity being pulled out of projects as part of a refinancing is being reinvested into the housing to ensure long-term sustainability and livability of the units. We will additionally prioritize the preservation of units with long term rental assistance.

#### **Methodology:**

A project is defined as “Preservation” if 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 this definition.

Further, Preservation projects must:

- have one or more Federally Assisted Building(s), or
- be currently beyond year fifteen of the Extended Use Agreement and the financing will be preserving the housing units under a new Extended Use Agreement, or
- if originally in the Commission’s portfolio, the final regulatory agreement (bond or tax credit) expired in the past 12 months.

Projects that acquire and rehabilitate buildings that do not have regulatory covenants or agreements do not qualify under this definition of Preservation and would be considered new production and would compete in the new construction category even though they need to adhere to the rehabilitation requirements.

We are targeting 15-25% of the resources to these projects.

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**Value 5: Use Our Limited Resources Efficiently**

**Outcome:** Promote the production of housing to serve the most low-income people of Washington as possible, in balance with the targets listed above. Ensure projects are maintaining cost efficiency principles and that bond cap is used to support the most cost-efficient projects, within the values listed above.

**Trade-offs:** Fewer units may be produced. Different project types and funding sources as well as site and other cost factors impact the amount of units produced.

Although the types of projects targeted in the criteria above produce public benefits beyond just the production of units, within these targets, we want to prioritize the most cost-effective projects. We want to continue to seek ways to provide competitive and cost saving incentives to projects applying for resources.

**Methodology:** Use point criteria with Total Development Cost limits, and/or with comparing like projects. Seek to continue analysis on market factors and cost drivers to ensure these limits are responsive to market conditions.

## 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, the Commission will not allocate more than 25% of the volume cap to be allocated in that round to one project sponsor, unless an exception is approved by the Director of Multifamily Housing and Community Facilities (MHCF). Additionally, the Commission will not allocate more than 25% of the calendar year’s aggregate available bond cap for a calendar year, including both Carryforward and current year 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 Recycled 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. The use of Recycled 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.

By using Recycled Bonds for the portion of the bond issue that exceeds the minimum threshold of the “50% Test” (see Section 3.15) 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 Commission intends to target allocations of new-issue Bond Volume Cap to projects at an amount not to exceed 55% on the 50% Test.

Priorities for Recycled Bond Cap, in order:

1. Finance the development of additional projects - If there is enough accumulated recycled bond cap to make an entire project feasible, staff reserves the right to first offer it to any projects that plan to structure their project as an 80/20 bond deal, i.e., not using tax credits or using minimal

tax credits. If there are no projects considering this structure, then staff may offer the recycled bond cap to projects on the waiting list, in priority order based on point score. All projects receiving recycled cap under this priority would need to meet the following criteria: able to close by a specified date; use a nominal proportional amount of new bond cap; and, able to use most or all the expiring recycled cap

2. Lower the use of the bond cap
3. Finance what otherwise would be financed under taxable bonds

## 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 (“TDC”) Limit policy 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.

**Requests for utilizing different TDC Limits may be determined on a case-by-case basis.**

### 2.4.1 Seattle TDC Limits

Projects located in Seattle are subject to the Seattle TDC Limits. If a scattered site project is in an additional city in or outside of King County, those units will be subject to either the Balance of King, Metro, or Balance of State TDC Limits, depending on its geographic location.

### 2.4.2 Balance of King TDC Limits

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

### 2.4.3 Metro TDC Limits

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

### 2.4.4 Balance of State TDC Limits

Projects not located in the Seattle, Balance of King, 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 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 <sup>1</sup>
- 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 writing of its desire to get the increased TDC Limits at least sixty (60) days prior to applying. 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**

To be able to be as responsive as possible in a volatile cost environment, the Commission will publish a TDC per Unit Limit Schedule to its website rather than have it set in policy.

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.

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 local jurisdiction 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 TDC Limits despite best efforts to do so. However, it is imperative that the Bond and Tax Credit resources 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 several potential project characteristics that can create cost levels above the published TDC Limits.

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

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<sup>1</sup> Structured parking is defined as an above-grade or underground structure specifically designed for motor vehicle parking.



- 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, 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 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.

#### **2.4.8 Waiver of the Total Development Cost Limit – Rehabilitation and Re-Syndication projects**

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

- Related-party transactions
- Initial construction issues
- Acquisition price
- Method used to appraise the project
- Scope of work to be done
- Percentage of the total budget the rehab accounts for
- Needs assessment post-rehab
- Developer fee
- Amount of cash and developer fee going to the sponsor
- Management history
- Deferred maintenance issues
- Costs that result in energy or water cost savings beyond Code or ESDS
- Projected useful life of improvements
- Replacement reserves
- Ability to repay any Seller Note or Loan

#### **2.4.9 Changes in Total Development Costs**

The intent of this policy is to encourage the communication of any unanticipated changes in project costs. Applicants must proactively communicate any cost increases. The MHCF Director must approve any cost increases above the TDC limit before closing. The Commission retains the right to disallow any future increased development cost.

#### **2.4.10 Calculation of Future Total Development Cost Limits**

The MHCF Division intends to review the TDC Limits at least annually, using historical internal application and cost certification data, as well as industry construction cost data. Based upon this review, the Division may modify TDC Limits appropriately. The new TDC limits may be found on the Commission's website.

#### **2.4.11 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

#### **2.4.12 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 land costs increase 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 the Commission accepts any portion of the increased land cost in a transaction between a Related Buyer and Seller, 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 a Related Party or other person having an Identity of Interest to the Applicant complete land improvements, the work should be itemized on the project's budget and not included as an increased land cost.

In 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 to be eligible for financing through the Bond/Tax Credit Program. If competitive rounds for 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 to be eligible for financing through the Bond/Tax Credit Program. The Applicant must use the Commission's Application forms. Please see [Bond/Tax Credit Program Fees](#) in Section 9 for details on application fees.

The Commission prefers that the Applicant pays the Application fee using ACH or wire services. The Applicant also 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.

#### **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 MHCF staff, additional time may be permitted to submit the required information. Staff will send the written notice to the address of the contact person identified in the Application. If the Applicant fails to submit the required information within the required time (including extensions), the MHCF Director may disqualify the Application.

If a project is applying for Bond Cap and Tax Credits 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 to:

- Number of buildings or units
- Identity of interest disclosure
- Development Team
- Legal counsel or another professional representative's information
- Total Project Costs

- Financing sources
- Other changes that would result in the loss of Allocation Criteria points

Material changes to an application will be permitted only at the discretion of the MHCDF Director. If the Applicant desires to make a material change to their application after it has been submitted and the MHCDF Director refuses to permit the change, the Application will be canceled. The Applicant must submit a new Application and fee according to the deadlines or application timelines currently in effect. If competitive application rounds are in place, the Applicant may need to wait until the next round. The MHCDF 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 Applicant must submit a request for approval of a material change in a project 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 on the [Commission's ESDS Reference Page](#) or from the [Department of Commerce](#).

Projects must comply with all ESDS mandatory criteria. New construction projects or "substantial" / "gut" rehab projects must score a minimum of 50 points from the optional criteria. Moderate rehab projects must score a minimum of 40 points from the optional criteria.

Projects must submit the ESDS Checklist, Project Priorities Survey, Sustainable Development Outline, 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 Integrated Development Plan and the Evergreen Project Plan (the "EPP"), which documents exactly how the project met each of

the criteria indicated in the ESDS Checklist. The EPP must be accompanied by an architect's certification attesting to the information supplied in the EPP and the EPP'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.

### **3.6 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 recorded deed or conveyance showing that the Applicant has ownership.
- a valid purchase and sale agreement.
- a valid option to purchase.
- a valid and recorded long-term lease.
- a valid option for a long-term lease; or
- other evidence approved in advance in writing by the Commission.

The Applicant should be sure that the name on both, 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)**

The Applicant must submit a complete market study with the Application. The market study must satisfy the requirements of this section, 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/MarketStudyGuidelines.pdf>.

- **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:

- 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.
- 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.
- 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
- 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 any tenants reside on the proposed project site, the Applicant must submit a relocation plan approved by the appropriate government authority. Applicants should review the Landlord/Tenant Act (RCW 59.18.010). A local government that has jurisdiction over tenant relocation issues, such as a planning or community development department or housing authority must approve the plan, in writing.

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. The Applicant must give proper notice to all existing residents and sufficiently post notice in common areas of the property. The 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, the Applicant must submit a copy of the notification 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 Acquisition/Rehabilitation of Existing Affordable Housing**

If an Applicant is considering a re-syndication of a project that currently has an Extended Use Agreement, the Commission must approve any changes, 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. Project 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: The Commission requires a pre-application meeting for applicants seeking modification to the current Regulatory 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. The Applicant must complete forms and must submit information to the Asset Management and Compliance (AMC) Division staff prior to making their Bond/Tax Credit Program application.

If an Applicant does not plan to make changes to the existing Regulatory Agreement(s) MHCF staff encourage Applicants to contact Asset Management and Compliance at the Commission prior to applying.

### **3.13 Existing Manufactured Housing Communities**

Manufactured housing 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.

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 homeowners. 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.

### 3.14 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 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.

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:

- Breakdown of the total residential and commercial project costs.
- List of the financing sources for the commercial areas.
- 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 that the Applicant submits. 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.

### **3.15 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. Project projects financed with bonds issued by an issuer other than the Commission are not subject to this requirement.

#### **3.15.1 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.

#### **3.15.2 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.

#### **3.15.3 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.

### **3.16 "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.

### 3.17 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.

### 3.18 Rehabilitation Requirements

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

#### 3.18.1 Federal Requirements

##### 3.18.1.1 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.

##### 3.18.1.2 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);
- (2) 20% of the adjusted basis of the building.

#### 3.18.2 State Sustainability Requirements

##### 3.18.2.1 Weatherization and Ventilation Requirements

#### Weatherization

For all Acquisition/Rehab projects, when complying with the mandatory ESDS Section - 5.01B Building Performance – Weatherization, projects complying with the residential provisions of the WSEC must implement the Deemed Measures List (including windows) option. Utilities frequently offer financial incentives for weatherization efforts to offset these capital costs. All projects must complete the Utility Contact Incentive Form outlined in Section 3.25 to demonstrate they have connected with the project’s utility provider(s) to discuss these incentives.

During submittal, all required applicants must complete and include the Deemed Measures List for all properties included in the application.

#### Ventilation

If the project is not required by code (or planning) to upgrade the ventilation system to the current version of the Washington State Mechanical Code then the whole house, kitchen, and bathroom ventilation systems must still be renovated/replaced and commissioned to meet either 2015 WSMC/IRC or ASHRAE 62.2-2019 requirements with amendments below. *Note: 2015 WA codes/62.2-2019 allows for exhaust based whole house ventilation to be used and does not require balanced ventilation to be installed.*

- Replace whole house ventilation equipment if it is greater than 5 years old:

- In-unit WH ventilation using exhaust: Install new Energy Star fans in all bathrooms that run continuously and automatically adjust speeds to setpoint (e.g., Panasonic WhisperSelect or similar), and boost to maximum fan speed based on condensation and/or occupancy sensor.
  - Centralized WH ventilation using exhaust: Install new exhaust fan with EC motor and speed control
  - All other: Replace fans and/or air handlers and filters (if applicable) used to provide ventilation.
- Replace kitchen exhaust ventilation equipment if it is greater than 5 years old:
    - In-unit kitchen exhaust: Install new EnergyStar hoods -or- new combo microwave/exhaust fan. Recirculating range hoods may be used if there is no existing range exhaust ducting to exterior and installing that ducting is impractical.
    - Centralized kitchen exhaust: Install new exhaust fan with EC motor and speed control.
  - Replace all other ventilation fans greater than 5 years old. Use EnergyStar qualified fans if applicable.
  - For properties with ventilation ductwork, replace or inspect/clean all ventilation ductwork (dryer, bathroom, and range exhaust ducts, HVAC supply/return/outside air ductwork), including duct inlets and outlets. If fans are left in service (e.g., <5 years old), clean fan blades and inside of fan housing. Duct cleaning performed after major construction is complete. Replace all filters after construction is complete and prior to commissioning.
  - For properties with central exhaust systems, regardless of whether fans are replaced: perform duct leakage test and sealing.
  - For all properties, WH ventilation flow testing or verification of testing and compliance certificate, as well as review of O&M plan, by “qualified” 3<sup>rd</sup> party (HERS energy raters, BPI Energy Auditor, ASHRAE energy auditor, AEE energy auditor, or WA State PE). 100% air flow test and balance (TAB) of supply and exhaust points required.

### **3.19 Development Team Capacity – WAC 262-01-130(2)(g)**

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

- 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;
- 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
- 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.

### **3.20 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 “evidence 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:

- Multifamily housing projects of a comparable number of housing units and/or of a similar complexity as the proposed project, and
- 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 [Property Management Agreement](#) in 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.

### **3.21 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.

### **3.22 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 (e.g., 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.

### **3.23 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.

### **3.24 Documentation of Ownership Entity**

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

- IRS notification of Ownership Entity's federal identification number;
- 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;
- A Certificate of Existence/Authorization issued by the Washington Secretary of State dated within 6 months of the Application date; and
- 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.

### **3.25 Disqualification – WAC 262-01-130(3)(a)**

The Commission may disqualify or condition any Application that does not meet the [Program Limits](#) in Section 2 and the [Minimum Threshold Requirements](#) listed in Section 3. The Applicant may request this determination be reviewed using the procedures described in [Decisions and Review](#) in Section 10.

### **3.26 Utility Incentive Contact**

The Applicant must contact their project's utility(s) before submitting a Bond/Tax Credit application to discuss any qualifying incentives. The Commission highly encourages contacting the applicable utilities early in the design process to ensure maximum savings and efficiency.

To comply with this requirement, projects must submit the Utility Contact Form with their application. To identify potential rebates or points of contact in the project's area- please visit [www.dsireusa.org](http://www.dsireusa.org) or contact the Commission's Senior Sustainable Energy Coordinator at [energy@wshfc.org](mailto:energy@wshfc.org).

### **3.27 Additional Low-Income Housing Use Period**

The Additional Low-Income Housing Use Period will be required for 25 years for all projects. The Additional Low-Income Housing Use Period commences upon the close of the compliance period (e.g., 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 Extended Use Agreement will be a minimum of 30 years as required by Code. 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.

Any part of the project that was used in calculating Eligible Basis, providing service to tenants at no additional cost, must continue to be provided at no additional cost through the duration of the Tax Credit Extended Use Agreement. This could include but is not limited to facilities such as parking, EV chargers, storage units, or laundry facilities. 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.

### **3.28 Minimum and Additional Low-Income Housing Commitments**

The Tax Credit Program includes two low-income housing Commitments: (i) the minimum low-income housing commitment required by Section 42 of the Code and (ii) the Additional Low-Income Housing Commitment, a voluntary election under the Commission’s Allocation Criterion. Both Commitments are made when the Application is submitted and are irrevocable and binding upon the Applicant and the Applicant's successors in interest.

The Applicant must choose one of the following minimum low-income housing commitments under the Code:

- at least 40% of the total housing units in a project must be rented to residents with incomes at or below 60% of the AMI adjusted for household size;
- or at least 20% of the total housing units in a project must be rented to residents with incomes at or below 50% of the AMI adjusted for household size;
- Or Income Averaging - allows units to serve households earning as much as 80% of the AMI as long as the average income/rent limit in the property is 60% or less of AMI

The income limits for the selected minimum low-income housing commitment apply to any low-income housing unit in the project. Each low-income housing unit must be rent-restricted, with the maximum gross rent not to exceed 30% of the applicable AMI.

Criteria for Income Averaging: allowed on a “case by case” basis with the following:

- Submit a plan and unit configuration, using the spreadsheet created by Novogradac, showing that the unit configuration meets the income averaging; all buildings must have the same election
- Written agreement from the investor and any other public or private funders;
- Submit a market study that addresses income mix
- Commit and agree in writing to the compliance implications, as we understand them at the time of commitment

Note: Income averaging is not available for re-syndications or mixed income projects (with market rate units)

### 3.29 Set Asides for Priority Populations

Applicants must choose a minimum set aside of 20% of the total housing units for priority populations, which are defined as units for Large Households, or units for Persons with Disabilities. Applicants may set aside 10% of the units for each population or may set aside 20% for Persons with Disabilities to satisfy this requirement:

- 10% Large Households and 10% for Persons with Disabilities

OR

- 20% for Persons with Disabilities

Applicants may elect other set aside options under the Commission’s Allocation Criteria **in addition to** the above set aside requirement. See [Housing Commitments for Priority Populations](#) in Section 4.3 for information on the voluntary election option for 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”).

### 3.30 Community Revitalization Plan

Projects must be located within the boundaries of a Community Revitalization Plan (CRP). The Applicant may meet this requirement by documenting that the project is in at least one of these three locations:

- Within a Washington State Urban Growth Boundary. The urban growth areas can be found on: <https://geo.wa.gov/datasets/washington-state-city-urban-growth-areas/explore>. Please document where the project is located within its local Urban Growth Boundary using a map provided by the local jurisdiction.
- Within a QCT and in one of the following locations:
  - High or Very High on the Comprehensive Opportunity Index as defined by the Puget Sound Regional Council, here: <https://www.psrc.org/opportunity-mapping>
  - In an area of low Environmental Health Disparity, with a score of 5 or lower, as documented by the Washington State Department of Health map, here: <https://fortress.wa.gov/doh/wtn/WTNIBL/>
- Within a federal, state, regional, or local community revitalization plan area, by providing a copy of the plan with the specifics relative to the project and this policy highlighted. To qualify, the plan must be a published document, approved and adopted by a governing body, by ordinance, resolution, or other legal action. A site map identifying the geography covered by the plan and the location of the project must be included.

If a project includes multiple sites, each of the sites must be located within a qualifying area and documented accordingly.

### 3.31 Nonprofit Sponsor

All projects must be sponsored by one of the following:

- **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.
- **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 Applicant must submit each of the following:

- 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

### **3.32 Notification of Intent**

All Applicants must submit a Notification of Intent on the Commission's provided form sixty days in advance of the application deadline. This simple form contains basic information, such as location, and estimated bond and project size. The form is intended to be informational only for Commission staff and program stakeholders. Submittal of the form is not a commitment to apply.

## 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 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 any Carryforward Bond Cap available.

Projects outside King and Snohomish Counties must select a **minimum of 20 points** below to apply for the Bond/Tax Credit Program. Projects located in King and Snohomish Counties must select a **minimum of 25 points**.

For scattered site or portfolio applications each property must meet the minimum for where the majority of the units are located. The portfolio score will be the weighted average score of the properties.

The MHCDF Director makes the final decision regarding points when they are in dispute.

Commission staff are authorized to administer, interpret, and clarify the Policies. In addition, staff have authority to administer and interpret the Code and the treasury regulations, subject to any formal written guidance, rulings or precedent received from the IRS or from court decisions. The decisions to reserve and to allocate Credit to a project rest solely with the Commission.

The Commission may modify the Policies, as well as the forms, legal documents, and other material used by the Program, at any time determined by the Commission to be necessary and appropriate.

### 4.1 Cost Efficient Development

Points will be awarded for projects that will achieve development cost efficiencies of the applicable total development cost limits.

Projects must maintain eligibility for the points awarded. At the time of Final Cost Certification, if a project has failed to meet the total development costs proposed in its application, the Commission may, among other penalties it determines to be appropriate, deduct an equal number of points from the project Sponsor’s next complete Bond/Tax Credit application that satisfies all applicable Minimum Threshold Criteria.

- ≥ 2.5% of the limits ..... 1 point
- ≥ 5% of the limits ..... 2 points
- ≥ 7.5% of the limits ..... 3 points
- ≥ 10% of the limits ..... 4 points
- ≥ 12.5% of the limits ..... 5 points

- ≥ 15% of the limits ..... 6 points
- ≥ 17.5% of the limits ..... 7 points
- ≥ 20% of the limits ..... 8 points
- ≥ 22.5% of the limits ..... 9 points
- ≥ 25% of the limits ..... 10 points

Commission staff will allow ‘boosts’ to the applicable total development cost limit to further acknowledge the impact of certain cost drivers on projects’ total development costs. These ‘boosts’ are the actual cost of approved cost drivers.

The following cost drivers are eligible for a boost up to an aggregate of 10% of the project’s total development cost (minus the cost of land, the costs associated with offsite infrastructure improvements and the capitalized reserves).

- *Commercial Wage Rates:* the additional cost of labor for federal, state, or local commercial wage rates (for projects that trigger a commercial wage rate). The amount is the difference between total commercial wages paid and the alternative residential wage rate.
- *Structured Parking:* costs related to construction of structured parking in an above- or below-ground garage. A brief narrative must be included that describes the rationale behind the decision to include structured parking in the development plan. For example, structured parking may have been necessary to meet a local jurisdiction’s off-street parking requirement or to support near-term marketability in areas without reliable public transportation.

The *sustainable building features* listed below are each eligible for a ‘boost’ and are not subject to the 10% cap.

- Heat pump hot water heating
- Ductless/or ducted heat pumps for HVAC
- Balanced ventilation with energy recovery and MERV 17 or greater filtration (rehab only)

Applicants seeking to qualify for ‘boosts’ must submit a form of construction cost estimate from the General Contractor (GC), clearly delineating the hard cost, as well as the applicable portion of overhead, profit, WSST, etc. Commission staff has full discretion over the final amount approved as a ‘boost.’

## **4.2 Additional Low-Income Housing Commitment**

Points for projects in King and Snohomish Counties 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.

- 100% of the housing units at 60% AMI ..... 0 points
- 70% of the housing units at 60% AMI, 30% at 50% AMI ..... 2 points
- 50% of the housing units at 60% AMI, 50% at 50% AMI ..... 4 points
- 30% of the housing units at 60% AMI, 70% at 50% AMI ..... 6 points

In addition, if the Applicant voluntarily selects an Additional Low-Income Housing Commitment, the Applicant is making a Commitment that may involve a lower percentage of AMI for all or a selected portion of the total low-income housing units in the project. These housing units must be rented for no more than 30% of the applicable AMI.

If the Applicant makes a Commitment to have an applicable fraction of 100%, then 100% of the total housing units in the project will be rent-restricted and rented to qualified low-income residents at the applicable AMI of the minimum low-income housing commitment.

During the project Compliance Period, the Applicant may only rent low-income housing units to residents who are income-eligible at initial occupancy in the project. More specifically, a low-income housing unit must remain vacant until the Applicant can rent it to a resident that meets the income eligibility criteria of the minimum low-income housing commitment and/or the Additional Low-Income Housing Commitment, as applicable.

In determining the maximum gross rent for a low-income housing unit, the Applicant must include the utility allowance. The actual rent cannot be greater than the maximum applicable gross rent less the utility allowance. However, gross rent does not include HUD Section 8 or any comparable rental assistance payments.

If any of the low-income housing units are receiving rental assistance at the time of Application or if the Applicant has a commitment for rental assistance on any housing units in the project, the Applicant must provide a copy of the applicable rental assistance documentation or the commitment specifying the number of housing units, dollar amount, length of time, and any other significant details.

Rounding Rule: For instances where the respective percentage of units that are subject to the commitment do not distribute evenly (e.g., 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.

| <b>Example: 125-unit project</b> |                      |                      |              |
|----------------------------------|----------------------|----------------------|--------------|
|                                  | <b>≤ 50%<br/>AMI</b> | <b>≤ 60%<br/>AMI</b> | <b>Total</b> |
| % 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    |

### **4.3 Housing Commitments for Priority Populations**

In addition to the minimum set aside for priority populations threshold requirement in Section 3.29, points will be awarded based on the Applicant’s commitment in the Application to provide housing units for Large Households or Seniors. Applicants may not select both options.

- A total of 20% of the total housing units set aside for Large Households..... 2 points
- 100% of housing units set aside for Seniors ..... 2 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 Overcoming Historic and Systemic Barriers for Developers who are Black, Indigenous, or People of Color (BIPOC)

With the stated goal of promoting development by and for a community, the Commission reserves the right to make determinations regarding an applicant’s eligibility for points in each area of activity and to disallow points to applicants who attempt to circumvent the goals of this policy.

The Commission will award points for projects in which the Ownership Entity is more than 50% BIPOC owned or controlled.

A BIPOC entity is defined as:

- For Profit – more than 50% of the ownership identifies as BIPOC
- Non-Profit – at least one of these is true at the time of application
  - More than 50% of the board of directors identifies as BIPOC
  - Its executive director or chief executive officer identifies as BIPOC

##### For Sole Entity Sponsors only

If the sponsor is a for-profit and more than 50% of the ownership identifies as BIPOC, the Commission will award eight points. The BIPOC sponsor entity that has more than 50% ownership will need full control of development decisions and be taking the full financial risk and reward related to the development to receive these points.

If the sponsor is a nonprofit, the Commission will award points as indicated for each of the criteria:

- More than 50% of board of directors identifies as BIPOC ..... 5 points
- Nonprofit executive director or chief executive officer identifies as BIPOC ..... 3 points

##### For Partnerships only

- If the BIPOC entity has more than 50% ownership in the general partner, the Commission will award eight points. The BIPOC entity with more than 50% ownership will need full control of development decisions and be taking the full financial risk and reward related to the development to receive these points.
- If the BIPOC entity has 50% or less of the ownership in the general partner, but BIPOC entity receives more than 40% of the developer fee and has a significant role in the development decision-making, then the Commission will award six points.

#### 4.5 Projects that are By and For the Community

With the stated goal of promoting development by and for a community, the Commission reserves the right to make determinations regarding an applicant’s eligibility for points in each area of activity and to disallow points to applicants who attempt to circumvent the goals of this policy.

Points will be awarded to projects that can demonstrate that they are by and/or for their community. The goal of this policy is to address the needs of Communities Most Impacted (CMI) by housing disparities. This policy encourages applicants to identify and engage with a CMI to understand and respond to their specific concerns, issues, and requirements. CMI examples could include:



- Black, Indigenous, or other People of Color
- Immigrants
- Low-income LGBTQ People
- Low-income People with Disabilities
- Low-income Large Families
- Low-income Seniors

This policy recognizes identity-based and geographically based communities.

Identity-Based Communities share a common heritage, language, cultural, or other identity-based characteristic such as age, ability, or sexual identity and/or orientation. They also share a common set of community values, goals, and needs.

Geographically Based Communities are centered around a specific place, such as a neighborhood.

This policy uses community-based organizations (CBOs) as a means of community representation in the development.

Community Based Organization (CBO) is any organization or group with demonstrated ability to meaningfully represent one or more Communities Most Impacted (CMI). A CBO does not have to be a non-profit organization. A CBO must have a narrow focus on a specific community, either one of identity or one of geography, or both. Organizations serving a variety of identity-based communities in a narrow geography may qualify; or organizations serving a particular identity-based community over a wide geography may qualify. Organizations serving a variety of identity-based communities over a wide geography will likely not qualify. A supportive narrative is required to show the value and representation of the CBO and must include:

- Description of the CBO’s mission or purpose and connection to the identified Community(ies) Most Impacted.
- Identification and description of the specific Community(ies) Most Impacted.
- Identification and description of what leadership and/or advisory roles persons with lived experiences\* the identified Community(ies) Most Impacted have in the CBO, including two or more of the following:
  - A paid leadership position, list position (if applicable).
  - A member of the board (if applicable).
  - A significant paid staff position (if applicable).
  - An advisory role, such as serving on an advisory committee.
  - Other development role, such as a long-serving volunteer with significant responsibilities.
- A descriptive list of the CBO’s previous activities related to the identified Community(ies) Most Impacted and community development. If there have been no previous activities, please describe who formed the CBO and why and how the CBO will continue during the project.

*\*“Personal knowledge about the world gained from identifying as a member of the affected group, either currently or at some point in life.”*

#### 4.5.1 CBO Ownership

The Commission will award points for projects that are owned long-term by a CBO, as follows:

- a. CBO is a Majority Owner or Sole Sponsor ..... 8 points
- b. CBO is Minority Owner in Ownership Entity – Points are awarded as indicated:
  - o The CBO has first right to exercise option to purchase at Year 15 ..... 4 points
  - o The CBO is first in the waterfall for deferred developer fee ..... 2 points
  - o The partnership has explicit terms in Operating Agreement documenting roles and finances, such as cash flow, decision-making, and management fees ..... 2 points

**4.5.2 CBO Inclusion**

The Commission will award points to projects that includes or partners with a CBO that has a history in the community:

- a. The Sponsor or an entity in the General Partnership qualifies as a CBO ..... 5 points

OR

- b. The Sponsor partners with a CBO, and any or all of the following:
  - o CBO benefits financially from the partnership, as determined by the CBO. Examples can include – nonprofit donation (under Section 4.6) goes to the CBO, CBO pays below-market rent for space in the project..... 3 points
  - o Sponsor partners with a CBO that brings value to and/or provides services to the tenants of the proposed development, as determined by the tenants .....1 point
  - o CBO benefits from the partnership in capacity building or other non-financial way, as determined by the CBO .....1 point

**4.5.3 Meaningful Community Engagement**

The Commission will award points for meaningfully engaging the community in the development of the project.

*4.5.3.1 Community Engagement Process*

- Sponsor provides budgeted community engagement resources to partner CBO who conducts the community engagement process ..... 2 points

OR

- Sponsor conducts a community engagement process using one of the toolkits provided by the Commission.....1 point

OR

- Sponsor provides documentation of a community engagement process that meets or exceeds the standards of the approved toolkits, with pre-approval of the process.....1 point

*4.5.3.2 Application of Community Engagement*

The Commission will award points for projects that can demonstrate that:

- Results of community input are implemented in the project development..... 2 points
- A service provider partnership results from community input .....1 point

## **4.6 Donation in Support of Local Nonprofit Programs**

Two 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 0.10% (10 basis points) of the total bond issue or \$20,000, whichever is greater.

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. At least 50% of the donation must be made to a CBO as defined in the previous section. The program receiving the donation cannot require participants to have a specific religious affiliation. Donations may be split among no more than four recipients. Up to 25% of the total donation may be made to an advocacy organization. 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.

## **4.7 Property Type – 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. Preservation projects may only select Historic Property.

### **4.7.1 Adaptive Reuse Site**

One point 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.

### **4.7.2 Historic Property**

One point 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.

### **4.7.3 Brownfields**

Three 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.

## **4.8 Energy Efficiency, Healthy Living, and Renewable Energy (New Construction Projects Only)**

### **4.8.1 NC Solar Option**

Three points will be awarded for projects that install a solar system with an annual energy production per square foot of conditioned floor area of the building, with an annual energy production greater than or equal to 0.28 kWh/SF/Year

Projects must submit with their application an architect's certification and a solar contractor's assessment attesting that the project can accommodate a compliant solar system.

As part of the Placed-in-Service package, the Applicant or the Applicant's solar contractor must submit documentation stating the size of the system installed. Failure to install a compliant solar system may result in a temporary suspension from the program. Such action will be considered on a case-by-case basis.

### **4.8.2 NC Energy Efficient Building**

Five points will be awarded for new construction projects that score an additional 10 ESDS points in ESDS section 5.02a.

During submittal, the ESDS points used to comply with this section must be noted on the ESDS Checklist and Evergreen Owner Certification outlined in Section 3.5.

As part of the Placed-in-Service Package, the ESDS points used to comply with this section must be included in the Evergreen Project Implementation Plan and architect's certification outlined in Section 3.5.

### **4.8.3 NC Electric Vehicle Charging Stations**

Two points will be awarded to projects that install electric vehicle charging stations in no less than 10% of parking spaces, with a minimum requirement of 1 in non-accessible parking and 1 in accessible stalls. 10%+ requirement applies to both accessible and non-accessible parking stalls.

## **4.9 Energy Efficiency, Healthy Living, and Renewable Energy (Rehabilitation Projects Only)**

### **4.9.1 Rehab Solar Option**

Three points will be awarded for projects that install a solar system with an annual energy production per square foot of conditioned floor area of the building, with an annual energy production greater than or equal to 0.42 kWh/SF/Year.

Projects must submit with their application an architect's certification and a solar contractor's assessment attesting that the project can accommodate a compliant solar system.

As part of the Placed-in-Service package, the Applicant or the Applicant's solar contractor must submit documentation stating the size of the system installed. Failure to install a compliant solar system may result in a temporary suspension from the program. Such action will be considered on a case-by-case basis.

#### 4.9.2 Rehab Heat Pump Option

Five points will be awarded for projects that implement the ductless or ducted heat pump options from ESDS Section 5.09. The project must also implement the Performance Testing Option from ESDS 5.09, which requires using a qualified contractor to test and verify the systems meets the Performance Testing Comfort System (PTCS) requirements during commissioning.

During submittal, the ESDS points used to comply with this section must be noted on the ESDS Checklist and Evergreen Owner Certification outlined in Section 3.5. Additionally, a brief narrative must be included that describes how the heat pumps will be implemented into the project's scope of work.

As part of the Placed-in-Service Package, the ESDS points used to comply with this section must be included in the Evergreen Project Implementation Plan and architect's certification outlined in Section 3.5. The qualified contractor's PTCS report must also be included in the Placed-in-Service Package.

#### 4.9.3 Rehab Balanced Ventilation with Wildfire Smoke Filters Option

Five points will be awarded for projects that both upgrade the ventilation system to provide balanced ventilation with heat recovery and provide outside air filtration per ESDS 7.08b and ESDS 7.08c to each dwelling unit.

During submittal, the ESDS points used to comply with this section must be noted on the ESDS Checklist and Evergreen Owner Certification outlined in Section 3.5. Additionally, a brief narrative must be included that describes how these points will be achieved.

As part of the Placed-in-Service Package, the ESDS points used to comply with this section must be included in the Evergreen Project Implementation Plan and architect's certification outlined in Section [3.5](#).

*\*Note: Earning these points will require meeting the current version of the Washington State Mechanical Code and will therefore satisfy the rehabilitation ventilation standard outlined in Section 3.17.*

#### 4.9.4 Rehab Electric Vehicle Charging Station Option

One point will be awarded to projects that install electric vehicle charging stations in no less than 5% of parking spaces, with a minimum requirement of 1 in non-accessible parking and 1 in accessible stalls. 5% + requirement applies to both accessible and non-accessible parking stalls.

### 4.10 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 get greater land use density
- Broaden the population being served
- Share construction and development efficiencies
- Close financings simultaneously

### 4.11 Rehabilitation of Major Systems

For Preservation projects only – projects will be awarded 10 points for each major system installed or replaced, for up to 30 points. Examples of major systems include

- Plumbing
- Electrical
- Heating, ventilation, and air conditioning
- Elevators
- Seismic upgrades

If applying for these points, applicants must submit a professional, independent, third-party Capital Needs Assessment (CNA). The CNA describes a project's physical capital needs over the next 20 years based on the observed current physical conditions of the project. CNA must identify deferred maintenance; physical needs; the age, useful life and remaining useful life of key components; building material deficiencies and material building code violations that affect the property use; structural or mechanical integrity, and future physical and financial needs. The CNA must be the basis from which the scope of work for the project has been developed. MHCF staff may use the CNA along with HUD housing guidelines to determine if the scope of rehabilitation work meets the standards replacing a major system.

The Commission recognizes that existing affordable housing projects may need immediate system repair and replacement for the health and safety of the residents. The Sponsor may begin work on rehabilitation of the building up to 12 months before application to qualify for points. The Commission recommends the request of an Official Intent Declaration (see Section 9.1.2) if the Sponsor plans to begin rehabilitation in advance of application.

## **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 federal compliance period and an additional 15-year compliance 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 compliance period of up to an additional 25 years beyond the 15-year federal 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. 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, subject to subordination language the Commission and HUD have agreed to use.

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, subject to subordination language the Commission and HUD have agreed to use.

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 refunded with 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 longer.

### **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) is 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.

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 project’s property management representative must attend a Commission Tax Credit compliance workshop by the earlier of:

- No later than 180 days before the first building is Placed-in-Service; or
- Prior to commencement of initial rent-up activities for the project.

Certificates should not be more than six months old by the first building’s Placed-in-Service date. If the Applicant’s property management representative has attended a Commission Tax Credit compliance workshop within the 12 months before the first building’s 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. To keep staff trained on the latest compliance issues, owners should also send new staff to the first available tax credit compliance workshop. The Commission recommends that management staff responsible for management employee training attend Tax Credit compliance workshops every 2-3 years to stay current on compliance and monitoring rules.

### **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 Accurate Extended Use and Regulatory Agreements**

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 Section 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 submit a certificate of occupancy or temporary certificate of occupancy for each building to the Commission within 30 days of the building's Placed-in-Service date. 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, and 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 or Operating 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

Pursuant to the Commission's rules (WAC 262-01-130), *Policies*, and Regulatory Agreements, a transfer of an interest in a project requires Commission approval. A stated goal of the Commission's Tax Credit Program is to prefer projects that are affordable to the lowest income tenants for the longest period of time. Toward that end, the Commission will decide whether to approve a proposed transfer based on whether the proposed transfer will (1) promote satisfaction of all applicable regulatory and contractual obligations, and (2) further the Commission's priorities for LIHTC projects as set forth in WAC 262-01-130, including by increasing the likelihood the project will continue to serve the lowest income tenants for the longest period of time. This will be determined based on the totality of circumstances, including but not limited to the characteristics of the project, existing partners, and transferee.

Transferees are required to submit a short paragraph explaining how the proposed transfer satisfies the Commission's approval criteria and to complete a ***Financial Solvency and LIHTC History*** (FSLH) form as part of the transfer process. This form is designed to help the Commission determine whether the transferee is positioned and likely to support the Commission's stated goals. The Commission may pause, require additional certifications or information from a transferee, or disallow the transfer depending on what the FSLH or other documents reveal. Potential grounds for disallowing the transfer include but are not limited to:

- Transferee has been part of a LIHTC ownership/project that subsequently was found by a court or administrative body to be in violation of a LIHTC statutory or regulatory requirement or covenant.
- Transferee has been part of a LIHTC ownership/project that subsequently reduced the project's associated financial resources such that the project was not able to meet its planned capital needs.
- Judicial or administrative finding against the Transferee of causing actionable harm to a LIHTC project or partner; committing fraud; or violating a LIHTC requirement or covenant.

### 7.1 Project Transfer or Assignments Requiring Commission Consent

A project transfer means any direct or indirect sale, contribution, assignment, lease, exchange, or other similar transfer of, or 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).
- 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.
- the sale or transfer of, or change in, the interest of a limited partner (including the addition, removal, or withdrawal of a limited partner); or
- in the case of a limited liability company, the sale or transfer of, or change in, the interest of the investor member (unless the investor member actively participates in management of the company such as in the case of a transfer of an investor member interest to a fund in which the investor member serves as the fund manager).

## 7.2 Project Transfer or Assignments Not Requiring Commission Consent

Only a few types of project transfers 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 issuance, redemption, or transfer of stock or shares of a corporation that is not a closely held corporation.
- a sale or transfer of the interests in a fund or funds constituting the investor limited partner or member, so long as such sale or transfer does not result in a change of control of the fund or funds constituting the investor limited partner or member.
- a sale or transfer of the interests of the investor limited partner or member to implement the ownership arrangement initially agreed upon by the parties at the time of closing, including as a result of the involvement of a syndicator, such as in the case of a transfer of an investor member interest to a fund in which the investor member serves as the fund manager.

## 7.3 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 will require the short paragraph and **Financial Solvency and LIHTC History** form described above and will advise the Applicant of the Commission's process 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.

Please see submittal instructions in [Chapter 9](#) of the Tax Credit Compliance Procedures Manual.

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.

## 7.4 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/Owner a certain "Transfer Agreement." Certain types of transfers or assignments may not require the execution of a "Transfer Agreement" but may require only a formal letter of approval from the Commission. The Applicant/Owner may not complete the proposed project transfer or assignment until the Commission has executed and returned this agreement to the Applicant/Owner and until the Applicant/Owner 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 Applicant/Owner must ensure the "Transfer Agreement" is 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 section) or otherwise in violation of the requirements or provisions of this section, 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/Owner 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 Sections 142(d) and 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 Sections 142(d) and 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 Bond/Tax Credit 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. Every time a project application is submitted a new application fee is required.

#### 9.1.2 Official Intent Declaration (OID) Request Fee

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.

#### 9.1.3 Bond Cap Reservation Fee

When demand for Bond Cap exceeds supply and reservations of Bond Cap are competitive, the MHC 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. When Bond Cap is allocated in a non-competitive manner, the Bond Cap Reservation fee is waived.

#### 9.1.4 Cost of Issuance Deposit

Applicant must deliver a Cost of Issuance Deposit of  $\frac{1}{2}$  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.

#### 9.1.5 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 at \$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.



### 9.1.6 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.

### 9.1.7 Credit Issuance Fee

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

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.

### 9.1.8 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 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.

### 9.1.9 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).

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.

#### **9.1.10 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 disbursed as directed in the closing memorandum. The timing of this requirement may be adjusted when more than 3 business days separate the pre-closing from closing with approval of the MHCF Director.

#### **9.1.11 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 Monitoring 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.

The project's compliance monitoring period begins in the First Credit Year. The Owner must pay the annual Compliance Monitoring Fee for the entire project by January 31<sup>st</sup> following the First Credit Year.

The full annual fee is due for a project in its First Credit 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 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.

#### **9.2.4 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 Monitoring fee is \$450 per year.

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

The project's compliance monitoring period begins in the First Credit Year. The Owner must pay the annual Compliance Monitoring Fee for the entire project by January 31 following the First Credit Year.

The full annual fee is due for a project in its First Credit Year regardless of the actual number of the days the project is in service for that year.

### **9.3 Transfer Fee**

The transfer fee applies to any project transfer or assignment occurring after an application is submitted. The fee is not refundable. The Commission's transfer fee schedule is outlined in [Chapter 9](#) of the Tax Credit Compliance Procedures Manual and is subject to change. Commission staff do not review an Applicant/Owner's request for a transfer until the Commission receives the transfer fee.

## 10 Decisions and Review

This section does not apply to any of the Commission's decisions 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 MHC Director is responsible for determining whether a project meets the [Minimum Threshold Requirements](#) set forth in Section 3, and whether the project qualifies for [Bond Cap and Tax Credit Allocation Criteria](#) points as set forth in Section 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 MHC Director and attempt to resolve the matter.

Following submission of the Application, MHC staff will notify the Applicant 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 MHC 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 MHC Director's determination 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 MHC 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 MHC 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 MHCF Director's determination or award, give specific reasons for the contention that the MHCF 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 MHCF 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 MHCF 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 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 applying, 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.