Commonwealth of Massachusetts

DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT

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MASSACHUSETTS

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Tax Credit Assistance Program (TCAP)

Guidelines

June 1, 2009

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TCAP Guidelines

A. Introduction:

The American Recovery and Reinvestment Act of 2009 (ARRA) was signed into law by President Obama on February 17, 2009. The Act provides funds to the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of the Treasury to support certain low-income housing tax credit projects that have been delayed over time by equity market conditions. Consistent with the ARRA statute, HUD will administer the distribution of Tax Credit Assistance Program (TCAP) funds on a formula basis to state housing credit agencies. The Treasury through the Internal Revenue Service (IRS) will administer funds through Section 1602, or the tax credit exchange program.

On May 4, 2009, HUD and the Treasury published notices governing the resources available to state housing credit agencies to help stalled tax credit projects. The HUD notice (CPD-09-03) sets forth the requirements for state credit agencies that intend to seek formula funds through TCAP. In the Commonwealth of Massachusetts, the Department of Housing and Community Development (DHCD) is the state housing credit agency. This memorandum from DHCD establishes guidelines for the use of TCAP funds in Massachusetts, including the criteria DHCD will use to select projects competitively, as required by the HUD notice. The Department will issue separate guidelines for the use of Section 1602 funds, or tax credit exchange funds, from the U.S. Department of the Treasury. Consistent with the intent of the American Recovery and Reinvestment Act, DHCD will emphasize readiness to proceed in the award of funds through both programs -- TCAP and the tax credit exchange program.

B. TCAP in Massachusetts:

The formula award available to Massachusetts for TCAP is $59,605,630. At least 75% of the total award amount must be committed by February 16, 2010. At least 75% of the funds must be expended by projects by February 16, 2011. All the funds must be expended by projects by February 16, 2012.

The HUD notice governing TCAP requires each state housing credit agency to submit a written plan for use of the formula-distribution funds by June 3, 2009. After HUD approves the written plan, the state credit agency and HUD will enter into a grant agreement governing the use of the funds. The HUD notice requires state housing credit agencies to hold a competition for TCAP projects, even if projects previously had been selected competitively for tax credit awards. At this time, the Department intends to hold two TCAP competitions, using the selection criteria set forth in these guidelines.

The first competition will begin two weeks after DHCD has received the TCAP grant agreement from HUD. The likely date of the first competition is July 15, 2009, although the date cannot be finalized until DHCD receives the HUD agreement. When finalized, DHCD will post the date on the Department's web site. All TCAP applications must be received at DHCD by the close of business on the date established as the deadline for the first competition. Applications that are received after the close of business on that date will not be reviewed. All TCAP applications must be complete. Applications that are incomplete will not be reviewed.

Although the HUD notice provides state credit agencies with some flexibility as to TCAP selection criteria, it instructs all agencies to emphasize readiness to proceed. Sponsors of delayed projects in Massachusetts should note that readiness to proceed will be one of the most important selection criteria as projects are reviewed. Once TCAP applications have been submitted, Department staff will review them in order, beginning with projects previously selected for credit and/or subsidy awards in 2007 ("2007 Projects"), followed by projects previously selected for such awards in 2008 ("2008 Projects"). The Department intends to announce TCAP awards on a rolling basis, as soon as the evaluation process for the 2007 Projects or the 2008 Projects, with emphasis on readiness to proceed, has been completed. DHCD anticipates making the first awards within three weeks of the application deadline. A sponsor previously selected for awards of credit and subsidy in 2007 and 2008 that is concerned about timely placing its project in service for purposes of the credit may apply for 2010 or later credits without jeopardizing the project's status as a 2007 Project or a 2008 Project, as applicable.

At this time, the Department expects to award between 75% and 90% of its TCAP funds during the first competition. However, the Department reserves the right to award all TCAP funds during the first competition. If the Department awards less than 100% of the formula allocation during the first competition, the remaining TCAP funds, including any funds recaptured from TCAP projects that fail to meet their first deadlines, will be awarded during a second competition likely to be held between October 2009 and January 2010. Depending on how much funding remains at that time, the Department reserves the right to consider delayed projects with 2009 Department awards ("2009 Projects"), as well as any remaining 2007 Projects or 2008 Projects that were not funded in the first round or that have lost their first-round TCAP award.

The HUD notice requires state housing credit agencies to submit plans for redistributing TCAP funds if projects do not proceed in timely fashion. After DHCD has made a TCAP award to a project, the project sponsor will have 120 days to close on all financing, with a construction start to follow within 45 days thereafter. If a project sponsor fails to proceed to a full closing within 120 days, DHCD will withdraw the TCAP commitment to the project. Similarly, if a project fails to move to a construction start 45 days after the full closing, DHCD will withdraw the TCAP commitment. If either event occurs, the project sponsor may elect to submit the project again, either for consideration in a second TCAP round or for consideration through the tax credit exchange program, provided that such subsequent submission must explain the reasons for the failure to meet the deadlines of the earlier TCAP award and DHCD will only consider the project for a subsequent award under the TCAP or tax credit exchange programs if DHCD determines that such reasons were unanticipated and beyond the control of the project sponsor.

DHCD will make TCAP assistance available to projects selected through the first or second competition in the form of zero-interest subordinate loans. The loans will be structured either as 30-year loans or, if appropriate, as short term bridge loans intended to permit investors to fund tax credit equity after completion of construction, thereby increasing tax credit pricing. All TCAP loans will be closed through the MassDocs process. The Department will provide detailed information on the TCAP disbursement process to sponsors of projects that receive TCAP awards. The disbursement process will likely incorporate a 10% hold-back of TCAP funds pending completion of the project and submission of an acceptable cost certification as described below. Sponsors should note that, upon project completion, they will be required to submit full cost certifications,

including certifications of construction costs. The cost certifications must be acceptable to DHCD or the Department will enforce its rights under the TCAP loan documents to recover funds that were not used appropriately. As set forth below, it will be a default under the TCAP loan documents, requiring full or partial repayment of a TCAP award, if TCAP funds are not all expended for eligible basis cost within required time periods.

In accordance with the HUD notice, state housing credit agencies must perform asset management functions to ensure that TCAP projects comply with the Section 42 requirements that govern all low-income housing tax credit projects. DHCD intends to contract for asset management services and will provide further information on the process it will follow during summer 2009. TCAP project sponsors must cover the cost of all asset management functions that DHCD performs. However, in accordance with the HUD notice, the costs cannot be covered with TCAP funds: other project funds must be used. Depending on any further guidance from HUD, DHCD will either (x) require projects to retain an asset management firm acceptable to DHCD to provide asset management services throughout the tax credit compliance period pursuant to a scope of services to be furnished by DHCD, with all fees for such services to be paid from operating income or (y) require projects to pay an asset management fee from operating income to DHCD in order to allow DHCD to retain an asset management firm to provide asset management services to DHCD. DHCD will provide project sponsors who intend to seek TCAP funds with cost estimates (based on project size and type) that they may use in the revised operating pro forma they must submit as part of the TCAP application (see Appendix A), although alternative cost proposals solicited by project sponsors for asset management services from third party providers will be evaluated by DHCD.

The HUD notice also requires state housing credit agencies to submit regular reports on the use of TCAP funds. The reporting requirements include but are not limited to the following:

- Total amount of TCAP funds received (quarterly report)
- Amount of TCAP funds expended or obligated (quarterly report)
- Amount of unobligated TCAP funds (quarterly report)
- Detailed list of all TCAP projects and activities (quarterly report)

DHCD will require project sponsors to provide any and all information needed for the HUD reports on demand, and will establish penalties for any project sponsors who fail to comply. From time to time, DHCD also may require sponsors to provide additional data for the Department's use. DHCD reserves the right to stop the flow of TCAP funds to a project whose sponsor does not submit required reporting data when requested.

C. Threshold-for-Review Criteria for TCAP Consideration:

The HUD notice includes a detailed list of federal financial assistance requirements that all TCAP projects must meet. The full list is appended to this memorandum (See Appendix C). To be eligible for a TCAP award, ARRA requires that a project have a tax credit award. DHCD defines tax credit award as the first determination by DHCD that a project is eligible for tax credits, either 9% or 4%. In the case of the 9% credit, such determination is made through the issuance of a conditional reservation to the project. In the case of the 4% credit, such determination is normally made through the issuance of a

so-called Section 42(m) letter to the project, but under Section III of the QAP can also be made through an eligibility determination letter, which can be issued on a rolling basis (a "4% Eligibility Determination").

Davis-Bacon Prevailing Wages:
In accordance with the HUD notice, all projects that receive TCAP funds must incorporate prevailing wages in conformance with the Davis-Bacon Act. (Projects that are processed through the tax credit exchange program, or Section 1602, are not required to meet Davis-Bacon prevailing wage requirements.) During the first TCAP competition, DHCD will accept applications only from projects that were bid as Davis-Bacon prevailing wage projects prior to the publication of the HUD TCAP notice on May 4, 2009.

Maximum Number of Awards per Sponsor:
No sponsor may receive more than two TCAP awards in the initial competition. A sponsor will be deemed to have received an award if it materially participates in a project either directly or through one or more affiliates.

9% Projects – Threshold-for-review criteria for TCAP consideration
In order to be reviewed during the Department's first TCAP competition in summer 2009, 9% projects must meet these threshold-for-review criteria:

- The project was structured and bid as a Davis-Bacon project prior to May 4, 2009.
- The project sponsor applied for and received tax credit and soft-loan subsidy awards from DHCD in competitions concluded during 2007 and 2008. (This means that DHCD previously reviewed and approved at least one full One-Stop funding application from the project.)
- The project has been unable to proceed due primarily to equity market conditions; the sponsor can fully document repeated and long-term efforts to attract syndicators and investors to the project.

Sponsors of preservation projects should carefully review the preservation set-aside priorities as described in the Department's 2009 Qualified Allocation Plan.

The 9% projects that meet these threshold criteria will be eligible for consideration during DHCD's first TCAP competition. While other 9% projects also are stalled, some were not structured and bid as Davis-Bacon projects prior to May 4, 2009. These projects will be eligible for consideration for the tax credit exchange program, but are not eligible for the first TCAP competition. As stated previously, if TCAP funding remains after the first competition, DHCD will hold a second TCAP competition between October 2009 and January 2010. Nine percent projects that were restructured as Davis Bacon projects after May 4, 2009, may be eligible for consideration during that competition.

4% Projects – Threshold-for-review criteria for TCAP consideration
In order to be reviewed during the Department's first TCAP competition in summer 2009, 4% projects must meet the following criteria:

- The project was structured and bid as a Davis-Bacon project prior to May 4, 2009.

- The project sponsor applied for and received a soft-loan subsidy award from DHCD in competitions concluded during 2007 and 2008; this means that DHCD previously reviewed and approved a full One-Stop funding application from the project.

- The project received Official Action Status from MassHousing or MassDevelopment during 2007 or 2008.

- The project has been unable to proceed due primarily to equity market conditions; the sponsor can fully document repeated and long-term efforts to attract syndicators and investors to the project.

Sponsors of preservation projects should carefully review the preservation set-aside priorities as described in the Department's 2009 Qualified Allocation Plan.

Four percent projects whose sponsors applied for soft-loan subsidy awards from DHCD but were denied funding are not eligible for TCAP consideration. Four percent projects whose sponsors have not applied for soft-loan subsidy funds may be eligible for consideration under the tax credit exchange program or during a second TCAP competition. However, they have not been previously reviewed and approved by the Department in full One-Stop format and are not eligible for consideration during the first TCAP competition.

D. Competitive Selection Criteria:

In accordance with the HUD notice on TCAP, state housing credit agencies are required to use weighted criteria to select TCAP projects competitively. The notice provides states with some flexibility on selection criteria but emphasizes the importance of readiness to proceed. In accordance with the notice, DHCD will evaluate readiness to proceed as one of the most important factors in the selection of TCAP projects that meet the thresholds described above.

DHCD will evaluate all TCAP applications that are complete, are submitted by the competition deadline, and meet the threshold requirements in Section C above, in accordance with the weighted criteria described in this section. Because projects have been delayed by equity market conditions, sources and uses and development and operating pro formas have changed since the date of initial awards of credit and subsidy. However, the Department will not accept significant and unreasonable cost increases in any project line items, nor material changes to projects. If significant and unreasonable changes have occurred, DHCD will not award TCAP funds to the project.

Weighted Selection Criteria:

Current readiness to proceed:	**Maximum 65 points**
• Zoning in place	10
• Federal environmental review completed	10
• 100% working drawings and specifications as certified by architect	10
• Contractor selected and firm bid received	5
• Construction contract signed	10
• Building permit pulled	10
• All other applicable reviews completed and permits issued	10
Minimum Score Required:	35

Current financial status:		**Maximum 40 points**	
• Updated sources and uses acceptable to DHCD		10	
• Updated development and operating pro formas acceptable to DHCD		10	
• All financing in place*		10	
• Additional funds committed by municipal or private sources		5	(maximum)
○ $500,000 since previous award	3		
○ $1 million since previous award	5		
• Total amount of TCAP requested:		5	(maximum)
○ Less than $3 million	5		
○ Less than $4 million	4		
○ Less than $5 million	3		
○ Less than $6 million	2		
○ More than $6 million	0		
Minimum Score Required:		30	

*with the exception of equity commitments from tax credit syndicators/investors

To be considered for a TCAP award, applications must receive a minimum of 35 points in readiness to proceed and 30 points in current financial status. Furthermore, in accordance with the Department's Qualified Allocation Plan (QAP), any sponsor must be in good standing with the Department in order to receive a TCAP award. Even if a project achieves the minimum score, if the project has no investor and is seeking TCAP assistance to fill a resulting gap, DHCD will evaluate sponsor capacity and the sponsor's ability to develop and operate the project as the Department makes TCAP funding decisions. DHCD may require additional reserves, limited guarantees, and other

commitments by sponsors to support and manage their projects in order to ensure that the TCAP funds will be used appropriately. In addition, it will be a default under the documents evidencing a TCAP loan if the required timelines for construction of the project and expenditure of the TCAP funds are not met or if the TCAP funds are not expended for eligible project costs.

As described in Section B of these guidelines, DHCD will review TCAP applications in order, based on the year in which the project first received a DHCD award of credit and/or soft loan subsidy. For example, TCAP applications for 2007 Projects will be reviewed before 2008 Projects. Further, DHCD will announce TCAP awards to 2007 Projects upon completion of the review process for all 2007 Projects. At that time, DHCD will announce the 2007 Projects selected for TCAP awards based on required minimum scores and total score received.

As soon as DHCD has completed the review process for the 2007 Projects, DHCD will begin reviewing the 2008 Projects. The Department will follow the same process in reviewing, selecting, and announcing TCAP awards to the 2008 Projects. However, project sponsors should note that there may not be sufficient funds to make full TCAP awards to all 2008 Projects that apply. If that is the case, sponsors who do not receive the requested TCAP awards may submit applications instead to the tax credit exchange program or, if TCAP funds remain, to a second TCAP competition.

As indicated previously, DHCD anticipates awarding between 75% and 90% of the TCAP funds during the first competition. However, DHCD reserves the right to award 100% of the funds during the first competition, in which case it is possible that no additional competitive rounds will be held.

E. Underwriting Standards for TCAP-Eligible Projects

DHCD's standards for underwriting TCAP-eligible projects are included in Appendix B to these guidelines. All applications will be underwritten to determine the minimum amount of TCAP necessary to fill an equity gap and allow the project to proceed to closing on all financing within 120 days. Project sponsors should carefully review the DHCD standards.

In accordance with the HUD notice, every project receiving TCAP assistance must either have a tax credit award in place or must receive an award simultaneous with receiving a TCAP award. Most or all project sponsors seeking TCAP assistance have been unable to attract investors. As part of the TCAP application, project sponsors must indicate a willingness to allow DHCD to appropriately adjust the existing tax credit award, including possible reduction to a nominal amount. If DHCD makes such an adjustment, DHCD will make a TCAP award sufficient to replace the tax credit equity that cannot be raised. DHCD shall reduce awards if DHCD determines that a proposed investor's terms are unacceptable (as described in the underwriting standards attached as Appendix B) or that the project sponsor has been unable to find an investor on any terms.

9% projects:
Very few if any 9% projects eligible for the first TCAP competition have been able to attract an investor on acceptable terms. During the TCAP review process, DHCD will require sponsors to accept an appropriate adjustment to the existing 9% credit award on the projects with investor terms that are unacceptable to DHCD and will incorporate the reduced credit amount into the underwriting process. To be eligible for TCAP, a sponsor must make a good faith effort to sell as many of the awarded credits as circumstances and market conditions allow and on terms acceptable to DHCD. TCAP-eligible 9% projects with investors will be underwritten using the amount of credit to be purchased on terms acceptable to DHCD. If a subsequent credit sale yields a higher equity raise than anticipated, DHCD will require that a portion of any unanticipated equity raise be used to repay a portion of the TCAP award. This requirement will be incorporated into the TCAP loan documents.

4% projects:
At the sponsor's request, during the TCAP review process, DHCD will issue a 4% Eligibility Determination. Very few if any 4% projects eligible for the first TCAP competition have been able to attract an investor on acceptable terms. A project sponsor must submit evidence of a firm commitment of equity on terms acceptable to DHCD or otherwise demonstrate how the credits will be used in a manner acceptable to DHCD. TCAP-eligible 4% projects with investors will be underwritten using the amount of credit to be purchased on terms acceptable to DHCD. If a subsequent credit sale occurs or if a credit sale yields a higher equity raise than anticipated, DHCD will require that a portion of any unanticipated equity raise be used to repay a portion of the TCAP award. This requirement will be incorporated into the TCAP loan documents.

F. Application Requirements:

The application requirements for projects seeking TCAP funds are set forth in Appendix A to these guidelines. Sponsors must submit three full sets of the required documents, along with the application fee, to:

Department of Housing & Community Development
Division of Housing Development
100 Cambridge – Suite 300
Boston, MA 02114

The full and complete application documents must be received at DHCD no later than close of business on the date of the TCAP competition, as published on DHCD's web site.

Appendix A

Application Requirements for TCAP Funds in Massachusetts

Full and complete application documents and the application fee must be received at DHCD no later than close of business on the date of the TCAP competition, as published on DHCD's web site two weeks prior to the deadline. Project sponsors also should refer to Section C of these guidelines.

Section I. Brief narrative describing the project:

Section II. Detailed narrative on readiness to proceed, including:

- Status of zoning
- Status of construction drawings and specifications, with architect's certification
- Status of construction bids, including evidence of Davis-Bacon wage structure
- Status of all project financing, including commitment letters from sources
- Status of all required reviews – environmental, historic, wetlands (if applicable), etc, with evidence of sponsor compliance

Section III. Financial information:

- Updated sources and uses and development and operating pro formas in One-Stop format (three hard copies and one disk)
- Updated commitment letters from all sources other than DHCD
- Narrative describing all efforts over time to attract syndicators/investors for project
- Recent financial statements of the project sponsor and an explanation of any adverse change in the financial status of the project sponsor since the date of the most recent financial statements previously submitted to DHCD
- Evidence of equity commitment from an investor or information regarding other use of the credit award.

Section IV. Mandatory certifications:

Sponsor certifications that project conforms with all requirements of TCAP notice:

- Davis-Bacon Prevailing Wages
- National Environmental Policy Act and Related Laws
- Fair Housing Act
- Title VI of the Civil Rights Act of 1964
- Age Discrimination Act of 1975
- Affirmatively Furthering Fair Housing
- Section 504 of the Rehabilitation Act of 1973
- Lead-Based Paint Poisoning Act and Related Laws
- "Anti-Lobbying" Restrictions
- The Drug-Free Workplace Act of 1988
- OMB Regulations and Circulars (2 CFR Part 2424 "Non-procurement Debarment and Suspension.")

Additional sponsor certifications:

- That the project conforms with DHCD QAP
- That all project financing will close within 120 days of TCAP commitment
- That sponsor accepts that TCAP commitment will be withdrawn if closing does not timely occur
- That construction start will begin 45 days after closing
- That sponsor accepts that TCAP commitment will be withdrawn if construction does not timely begin
- That all information is true and accurate
- That sponsor acknowledges that the 9% and 4% tax credit award will be appropriately adjusted, in some cases to a nominal amount, if terms of any equity commitment are not acceptable to DHCD.
- That sponsor shall enter into a written agreement that requires compliance with the Low Income Housing Tax Credit and TCAP requirements for the period required by Section 42 of the Code must be entered into by the project owner.

Section V: Job Creation/Retention Matrix

Submission of job creation/retention matrix provided by DHCD

Application/Processing Fees:

Project sponsors must submit a check payable to DHCD in the amount required by the 2009 Qualified Allocation Plan for all initial tax credit applications. Both 9% and 4% sponsors must submit the application fee check with their TCAP applications. The processing fee will be based on the initial amount of the tax credit award to the project (9% projects) or the original amount of tax credits sought by the project sponsor (4% projects).

Appendix B

Underwriting Standards for TCAP Projects

DHCD will underwrite every TCAP application to determine the least amount of TCAP funding necessary for financial feasibility. DHCD's underwriting standards relative to debt service coverage, trending, rents, vacancy rates, operating costs, soft costs, total replacement costs, and budgeted reserves are described in this appendix as well as in the Low Income Housing Tax Credit Program Guidelines (May 2009). Sponsors may contact DHCD tax credit staff for further information.

In accordance with HUD requirements, the amount of the TCAP award can be no more than the amount of eligible basis as described in these underwriting standards.

If there are any cost savings identified at cost certification, DHCD reserves the right to reduce the amount of TCAP assistance and/or the amount of tax credits awarded to a project.

Calculating the Least Amount of Tax Credits or TCAP Necessary for Project Feasibility:

Federal law requires that the state credit agency allocate only the amount of credit necessary to make the project feasible. The HUD TCAP notice requires that the state credit agency allocate only the amount of TCAP necessary to ensure the project's financial feasibility. As indicated, the TCAP notice states that the amount of the TCAP award cannot exceed the project's eligible basis as determined under Section 42 of the IRS Code.

To calculate the minimum amount of credit and/or TCAP that a project must receive to ensure feasibility, DHCD will consider the sources and uses of funds and the total financing planned for the project, and/or the proceeds expected to be generated by the tax credit benefits. Some projects applying for TCAP may have tax credit investors, and some will not. For projects without investors, the sponsor must demonstrate how the credit will be used on terms acceptable to DHCD. DHCD will require that a minimum amount of credits be sold or used by each project receiving TCAP assistance.
DHCD must make a determination regarding the least amount of credit and/or TCAP necessary at three different times in the credit allocation process: 1) at the time of the project's application, 2) at the time of the project's tax credit carryover allocation, and 3) at the time the project is placed in service or when the sponsor applies for IRS form 8609. DHCD may reduce the final allocation of TCAP and/or tax credit as it appears on the 8609(s) for the project if:

- The project does not have enough basis to support the original tax credit allocation and/or does not have enough costs to support the TCAP award; or
- The project costs have changed since the credit/TCAP awards and are not acceptable to DHCD.

DHCD will use the following standards and guidelines to underwrite tax credit/TCAP projects.

Project Cost and Trending Assumptions:

Development and operating pro formas will be reviewed closely for accuracy and feasibility. The development cost per unit relative to unit size and location will be considered in light of the best

use of the tax credit and/or TCAP resource. All soft costs, including consulting, engineering, architectural and syndication fees, will be analyzed for reasonableness:

- Soft costs should not exceed 15-20% of the total development costs
- Operating costs should be consistent with other projects with similar unit types located in the area.
- Total development costs (TDC) must be reasonable relative to the TDC originally approved by DHCD.
- Debt service coverage ratio should equal at least 1.15 and cannot exceed the current industry standard for tax credit projects, as approved by DHCD.
- Required replacement reserves must be at least $325 per unit per year and cannot be excessive, as approved by DHCD.
- The reserves for operating expenses should be capitalized as needed to maintain the debt service coverage ratio or to meet the requirements of permanent lenders and investors.

DHCD will evaluate the long-term operating pro forma submitted as part of the credit/TCAP application, using the following annual trending assumptions:

Rents	Year 1	Years 2-3	Years 4-15
Low income, regulated rent units	2%	2%	2%
Project-based rental assistance units	2%	2%	2%
Rental assistance certificate units	2%	2%	2%
Market-rate units	2%	2%	2%

Operating expenses

- Water and sewer--should be trended annually as appropriate for the area of the proposed project.
- Real estate taxes-- should be trended annually by 2.5%.
- All other operating expenses--should be trended at 4% annually.

Vacancy rates

- Low income rental projects should use a minimum vacancy rate of 5%.
- Low income rental projects that have commercial space and market rate units should apply a minimum vacancy rate of 10% and 5% to the commercial space and market rate units, respectively.
- DHCD reserves the right to limit vacancy rate assumptions that appear high in relation to the market.

Rental rates

- All tax credit rents in a project's One-Stop application should be set at 90% of the maximum tax credit rents.

The Value of the Credit:

When analyzing projects for the least amount of credit and/or TCAP necessary for financial feasibility, DHCD will assume that a project to be syndicated will obtain a net equity raise of $.75 unless the applicant provides documentation indicating otherwise. However, DHCD reserves the right to make a downward adjustment in the amount of credits awarded to any project with a raise lower than $.75. Notwithstanding the adjustment, the tax credit award remaining after the adjustment must be syndicated, sold, or otherwise used by the sponsor in a manner acceptable to DHCD.

Developer's Fee:

The maximum allowable developer's fee and overhead will be calculated according to the schedule set forth in the 2009 tax credit Qualified Allocation Plan (QAP). The QAP is available at **http://www.mass.gov/Ehed/docs/dhcd/hd/lihtc/09qapfinal.pdf**.

If the developer's fee or overhead for a project is determined to be unreasonable, DHCD reserves the right to reduce the permissible fee, even though that fee may otherwise meet program guidelines based on the project's size.

Identity-of-Interest:

Project sponsors also should refer to the 2009 Low Income Housing Tax Credit Program Guidelines to determine limits on builder's profit and overhead in identity-of-interest projects (p.11). Project sponsors also should review the 2009 Program Guidelines to determine allowable acquisition costs (p.11).

Rental Subsidies:

When underwriting tax credit/TCAP projects, DHCD will allow Section 8 rents to exceed the allowable tax credit rents for the low-income units only if the sponsor can meet certain conditions. Sponsors should immediately contact the tax credit staff at DHCD to discuss the conditions.

Exhibit 1 to Appendix B
CALCULATING MAXIMUM AMOUNT ELIGIBLE CREDITS AVAILABLE

	9% Rehab/New Construction	4% Acquisition
Total Acquisition Cost		_____
Minus Land Cost		-_____
Acquisition Eligible Basis		=_____
Total Development Cost (including developer's fee and excluding acquisition)	_____	
Minus Non-Depreciable Expenses	-_____	
Minus Non-Qualified Financing Sources	-_____	
Minus Costs Allocated To Commercial Space	-_____	
Minus Federal Historic Rehab Credit Amount	-_____	
Rehab/New Construction Eligible Basis	=_____	
Eligible Basis(*)	_____	_____
Multiply by the Applicable Fraction(**)	X_____	X_____
Qualified Basis	=_____	=_____
Multiply by the Applicable Percentage	X_____	X_____
Maximum Eligible Annual Tax Credit	=_____	=_____

The total maximum eligible annual tax credit amount is equal to the sum of the acquisition and rehabilitation/new construction maximum eligible annual tax credit amounts. Multiply the total maximum eligible annual tax credit amount by 10 to determine the total maximum eligible tax credit amount available over the 10-year credit period.

TOTAL MAXIMUM ELIGIBLE ANNUAL TAX CREDIT _____ X 10 =_____

* The eligible basis of a new building and the eligible basis of rehabilitation expenditures in an existing building may be multiplied by 1.3 if the proposed project is located in an area determined by the IRS or DHCD to be difficult to develop.

** Applicable Fraction is the lesser of:

$$\frac{\text{\# of Low Income Units}}{\text{Total \# of Units}} \quad \text{OR} \quad \frac{\text{Square Footage of Low Income Units}}{\text{Total Residential Rental Square Footage}}$$

Appendix C

Cross-Cutting Federal Requirements

In accordance with the TCAP notice issued by HUD, project sponsors and owners must comply with all of the following federal requirements and must certify to DHCD as part of the application process that they will so comply:

1. Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR Part 100 and the regulations at 24 CFR Part 107 (Equal Opportunity in Housing).
2. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR Part 1.
3. The Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146 "Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance."
4. Affirmatively Furthering Fair Housing

   Owners must establish and follow an affirmative fair housing marketing plan when marketing units. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market to the available housing without regard to race, color, national origin, sex, religion, familial status or disability. The affirmative marketing requirements and procedures adopted must include:

   (a) Methods for informing the public, owners and potential tenants about Federal fair housing laws.

   (b) Requirements and practices each owner must adhere to in order to carry out affirmative marketing procedures and requirements,

   (c) Procedures to be used by owners to inform and solicit applications from persons in the housing market areas that are not likely to apply for the housing without special outreach. Special outreach, as appropriate, includes but is not limited to, the translation of marketing material for persons who are limited English proficient; the placement of translated marketing material in minority owned media; and the provision of meaningful access concerning the residential rental project (e.g. providing translated information about application procedures, tenancy and other project amenities).

   (d) Records that will be kept describing actions taken by owners to affirmatively market units and records to assess the results of these actions.
5. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) ("Section 504") and implementing regulations at 24 CFR Part 8 "Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development."

   Section 504 applies to all TCAP projects. For new construction projects and projects undergoing substantial rehabilitation, five percent (5%) of the units must be accessible to persons with mobility impairments and two percent (2%) of the units must be accessible to persons with hearing or vision impairments (See 24 CFR 8.22.) Substantial rehabilitation for a multifamily rental project is defined in Section 24 CFR 8.23 as a project with 15 or more units for which the alterations

would equal more than seventy five percent (75%) of the replacement cost. Modifications to projects to comply with Section 504 requirements are eligible costs. However, compliance with Section 504 requirements may be infeasible or impracticable for some projects, depending on where they are in the development process. A new construction or substantial rehabilitation project is ineligible if it cannot be modified to meet the Section 504 requirements. For projects in which the rehabilitation would not be considered substantial, the Section 504 provisions are applicable only to the maximum extent feasible, i.e., not required if it would impose undue financial and administrative burden. (See 24 CFR 8.23.)

6. National Environmental Policy Act and Related Laws (Environmental review responsibilities) and implementing regulations at 24 CFR Part 58.

   Once an owner applies for TCAP funds, committing TCAP or any other funds to or undertaking any "choice-limiting" activity prior to successful completion of the environmental clearance review (i.e., HUD approval of the Request for Release of Funds), is prohibited. See 24 CFR Part 58 for general information about environmental review requirements at http://www.access.gpo.gov/nara/cfr/waisidx_04/24cfr58_04.html or http://www.hud.gov/offices/cpd/environment/index.cfm.

7. The Lead-Based Paint Poisoning Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992 and implementing regulations at 24 CFR Part 35 are applicable to housing that receives Federal assistance.

8. Davis-Bacon Prevailing Wages

   Contractors and subcontractors required to pay prevailing wages to laborers and mechanics in compliance with the Davis-Bacon Act.

9. "Anti-Lobbying" Restrictions (Restrictions on lobbying in 31 USC 1352 and implementing regulations at 24 CFR Part 87 "New Restrictions on Lobbying".)

   This statute prohibits the use of funds appropriated by any act by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with covered Federal action.

10. The Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq., as implemented at 24 CFR Part 21 "Government-Wide Requirements for Drug-Free Workplace (Grants)".)

    This statute prohibits the receipt of a grant from any Federal agency unless the recipient agrees to provide and certify to a drug-free workplace.

11. OMB Regulations and Circulars (2 CFR Part 2424 "Non-procurement Debarment and Suspension.")

Appendix D

Affirmative Fair Marketing Housing Plan Guidelines

Consistent with standard practice, all applicants for TCAP funding must comply with the requirements established in DHCD's Affirmative Fair Housing Marketing Plan Guidelines. A copy of the AFHMP are provided below and may also be accessed on DHCD's website at: http://www.mass.gov/dhcd

Affirmative Fair Housing Marketing Plan (Including Resident Selection)

The Commonwealth of Massachusetts has a compelling interest in creating fair and open access to affordable housing and promoting compliance with state and federal civil rights obligations. Therefore, all privately assisted housing or housing for inclusion on the Subsidized Housing Inventory (SHI) shall have an Affirmative Fair Housing Marketing Plan (AFHMP). *The affordable Use Restriction documents of said housing must require that the AFHMP, subject to the approval of the subsidizing or funding agency, shall be implemented for the term of the Use Restriction.* Affirmative Fair Housing requirements apply to the full spectrum of activities that culminate with occupancy, including but not limited to means and methods of outreach and marketing through to the qualification and selection of residents. All AFHMP plans must, at a minimum, meet the standards set forth by the Department of Housing and Community Development (DHCD). In the case of M.G.L. c.40B projects, the AFHMP must be approved by the Subsidizing Agency.

The developer (Developer) is responsible for resident selection, including but not limited to drafting the resident selection plan, marketing, administering the initial lottery process, and determining the qualification of potential buyers and/or tenants. The Developer is responsible for paying for all of the costs of affirmative fair marketing and administering the lottery and may use in-house staff, provided that such staff meets the qualifications described below. The Developer may contract for such services provided that any such contractor must be experienced and qualified under the following standards.

Note: As used in these AFHMP Guidelines, "Developer" refers to the Project Developer and/or the entity with which the Developer has contracted to carry out any or all of the tasks associated with an AFHMP.

A. Developer Staff and Contractor Qualifications

The entity as well as the individual with primary responsibility for resident selection, whether in-house staff or a third-party contractor, must have substantial, successful prior experience in each component of the AFHMP for which the party will be responsible, e.g. drafting the plan, marketing and outreach activities, administering the lottery process and/or determining eligibility under applicable subsidy programs and/or qualifying buyers with mortgage lenders.

Subsidizing Agencies reserve the right to reject the qualifications of any Developer or contractor. However, generally, Developers or contractors that meet the following criteria *for each component*, as applicable, will be considered to be qualified to carry out the component(s) for which they are responsible:

- The entity has successfully carried out similar AFHMP responsibilities for a minimum of three (3) projects in Massachusetts *or* the individual with primary responsibility for the resident selection process has successfully carried out similar AFHMP responsibilities for a minimum of five (5) projects in Massachusetts.
- The entity has the capacity to address matters relating to English language proficiency.
- "Successfully" for the purposes of these Guidelines means that, with respect to both the entity and the relevant staff, (a) the prior experience has not required intervention by a Subsidizing Agency to address fair housing complaints or concerns; and (b) that within the past five (5) years, there has not been a finding or final determination against the entity or staff for violation of any state or federal fair housing law.

B. Affirmative Fair Housing Marketing Plan

The Developer shall prepare the following materials which shall comprise an AFHMP:

- Informational materials for applicants including a general description of the overall project that provides key information such as the number of market/affordable units, amenities, number of parking/garage spaces per unit, distribution of bedrooms by market and affordable units, accessibility, etc.
- A description of the eligibility requirements.
- Lottery and resident selection procedures.
- A clear description of the preference system being used (if applicable).
- A description of the measures that will be used to ensure affirmative fair marketing will be achieved including a description of the affirmative fair marketing and outreach methods that will be used, sample advertisements to be used, and a list of publications where ads will be placed.
- Application materials including:
  - The application form.
  - A statement regarding the housing provider's obligation not to discriminate in the selection of applicants, and such a statement must also be included in the application materials.
  - Information indicating that disabled persons are entitled to request a reasonable accommodation of rules, policies, practices, or services, or to request a reasonable modification of the housing, when such accommodations or modifications are necessary to afford the disabled person equal opportunity to use and enjoy the housing.[1]
  - An authorization for consent to release information.
- For homeownership transactions, a description of the use restriction and/or deed rider.

The Subsidizing Agency must approve the AFHMP before the marketing process commences. In the case of a Local Action Unit (LAU), DHCD and the municipality must approve the AFHMP.

[1] It is important to remember that legal obligations with respect to accessibility and modifications in housing extend beyond the Massachusetts Architectural Access Board requirements, including federal requirements imposed by the Fair Housing Act, the Americans with Disabilities Act, and the Rehabilitation Act. Under state law, in the case of publicly assisted housing, multiple dwelling housing consisting of ten or more units, or contiguously located housing consisting of ten or more units (see M.G.L. c. 151B, § 1 for definitions), reasonable modification of existing premises shall *be at the expense of the owner* or other person having the right of ownership if necessary for the disabled person to fully enjoy the premises. M.G.L. c. 151B, § 4(7A). See also 24 C.F.R. part 8 for Rehabilitation Act requirements of housing providers that receive federal financial assistance.

The AFHMP shall be applied to affordable units[2] upon availability for the term of affordability and must consist of actions that provide information, maximum opportunity, and otherwise attract eligible persons protected under state and federal civil rights laws that are *less likely to apply*.

Outreach and Marketing

Marketing should attract residents outside the community by extending to the regional statistical area as well as the state.

- Advertisements should be placed in local and regional newspapers, and newspapers that serve minority groups and other groups protected under fair housing laws. Notices should also be sent to local fair housing commissions, area churches, local and regional housing agencies, local housing authorities, civic groups, lending institutions, social service agencies, and other non-profit organizations.
- Affordable units in the Boston Metro Area (Boston-Cambridge-Quincy MSA) must be reported to the Boston Fair Housing Commission's Metrolist (Metropolitan Housing Opportunity Clearing House). Such units shall be reported whenever they become available (including upon turnover).
- Affordable and/or accessible[3] rental units must be listed with the Massachusetts Accessible Housing Registry whenever they become available (including upon turnover). See http://www.chapa.org.
- Available affordable ownership units must also be listed with CHAPA's lottery website (see http://www.chapa.org) and with the Massachusetts Affordable Housing Alliance (MAHA) website (see http://www.mahahome.org).

- Marketing should also be included in non-English publications based on the prevalence of particular language groups in the regional area. To determine the prevalence of a particular language by geographical area, see for example http://www.doleta.gov/reports/CensusData/LWIA_by_State.cfm?state=MA .

All marketing should be comparable in terms of the description of the opportunity available, regardless of the marketing type (e.g., local newspaper vs. minority newspaper). The size of the advertisements, including the content of the advertisement, should be comparable across regional, local, and minority newspapers.

Advertisements should run a minimum of two times over a sixty day period and be designed to attract attention. Marketing of ownership units should begin approximately six months before the expected date of project occupancy.

Pursuant to fair housing laws,[4] advertising must not indicate any preference or limitation, or otherwise discriminate based on race, color, disability, religion, sex, familial status, sexual orientation, national origin, genetic information, ancestry, children, marital status, or public assistance recipiency. Exceptions may apply if the preference or limitation is pursuant to a lawful eligibility requirement. All advertising depicting persons should depict members of classes of persons protected under fair housing laws, including majority and minority groups.

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[2] The advertising component of the AFHMP applies to all units.

[3] Note: The owner or other person having the right of ownership shall, in accordance with M.G.L. c. 151B, §4(7A), give at least fifteen days notice of the vacancy of a wheelchair accessible unit to the Massachusetts Rehabilitation Commission. Said statute also requires the owner or other person having the right of ownership to give timely notice that a wheelchair accessible unit is vacant or will become vacant to a person who has, within the past 12 months, notified the owner or person or person having the right of ownership that such person is in need of a wheelchair accessible unit.

[4] 42 U.S.C. § 3604(c); M.G.L. c. 151B, § 4(7B).

The Fair Housing logo ( ) and slogan ("Equal Housing Opportunity") should be included in all marketing materials. The logo may be obtained at HUD's website at: http://www.hud.gov/library/bookshelf11/hudgraphics/fheologo.cfm .

Availability of Applications

Advertising and outreach efforts shall identify locations where the application can be obtained. **Applications shall be available at public locations including one that has some night hours; usually, a public library will meet this need.** The advertisement shall include a telephone number an applicant can call to request an application via mail.

Informational Meeting

In addition, the lottery administrator must offer one or more informational meetings for potential applicants to educate them about the lottery process and the housing development. These meetings may include local officials, developers, and local bankers. The date, time, and location of these meetings shall be published in ads and flyers that publicize the availability of lottery applications. The workshops shall be held in a municipal building, school, library, public meeting room or other accessible space. Meetings shall be held in the evening or on weekend days in order to reach as many potential applicants as possible. However, attendance at a meeting shall not be mandatory for participation in a lottery.

The purpose of the meeting is to answer questions that are commonly asked by lottery applicants. Usually a municipal official will welcome the participants and describe the municipality's role in the affordable housing development. The lottery administrator will then explain the information requested on the application and answer questions about the lottery drawing process. The Developer should be present to describe the development and to answer specific questions about the affordable units. It is helpful to have representatives of local banks present to answer questions about qualifications for the financing of affordable units. At the meeting, the lottery administrator should provide complete application materials to potential applicants.

Homeownership – Establishing Sales Prices

Sale prices shall be established at the time of the initial marketing of the affordable units. Thereafter, the prices of homes can not be increased for lottery winners, even if interest rates and HUD income guidelines change.

For large, phased developments maximum sale prices of units sold in subsequent phases will be calculated prior to the start of marketing for each phase, or approximately 6 months prior to expected occupancy of the units. In such cases, each phase will require its own affirmative fair marketing efforts and lottery.

C. Local Preference

If a community wishes to implement a local selection preference, it must:

- Demonstrate in the AFHMP the need for the local preference (e.g., the community may have a disproportionately low rental or ownership affordable housing stock relative to need in comparison to the regional area); and
- Demonstrate that the proposed local preference will not have a disparate impact on protected classes.

In no event may a local preference exceed more than 70% of the (affordable) units in a Project.

The Subsidizing Agency, and in the case of LAUs, DHCD as well as the municipality, must approve a local preference scheme as part of the AFHMP. Therefore, the nature and extent of

local preferences should be approved by the Subsidizing Agency (or DHCD in the case of LAUs) prior to including such language in the comprehensive permit or other zoning mechanism.

Allowable Preference Categories

1. Current residents: A household in which one or more members is living in the city or town at the time of application. Documentation of residency should be provided, such as rent receipts, utility bills, street listing or voter registration listing.
2. Municipal Employees: Employees of the municipality, such as teachers, janitors, firefighters, police officers, librarians, or town hall employees.
3. Employees of Local Businesses: Employees of businesses located in the municipality.
4. Households with children attending the locality's schools, such as METCO students.

When determining the preference categories, the geographic boundaries of the local resident preference area should not be smaller than municipal boundaries.

Durational requirements related to local preferences, that is, how long an applicant has lived in or worked in the residency preference area, are not permitted in any case.

Preferences extended to local residents should also be made available not only to applicants who work in the preference area, but also to applicants who have been hired to work in the preference area, applicants who demonstrate that they expect to live in the preference area because of a bona fide offer of employment, and applicant households with children attending the locality's schools, such as METCO students.

A preference for households that work in the community must not discriminate (including have a disproportionate effect of exclusion) against disabled and elderly households in violation of fair housing laws.

Advertising should not have a discouraging effect on eligible applicants. As such, local residency preferences must not be advertised as they may discourage non-local potential applicants.

Avoiding Potential Discriminatory Effects

The local selection preferences must not disproportionately delay or otherwise deny admission of non-local residents that are protected under state and federal civil rights laws. The AFHMP should demonstrate what efforts will be taken to prevent a disparate impact or discriminatory effect. For example, the community may move minority applicants into the local selection pool to ensure it reflects the racial/ethnic balance of the HUD defined Metropolitan Statistical Area as described below.[5] However, such a protective measure may not be sufficient as it is race/ethnicity specific; the AFHMP must address other classes of persons protected under fair housing laws who may be negatively affected by the local preference.

To avoid discriminatory effects in violation of applicable fair housing laws, the following procedure should be followed unless an alternative method for avoiding disparate impact (such as lowering the original percentage for local preference as needed to reflect demographic statistics of the MSA) is approved by the Subsidizing Agency. If the project receives HUD financing, HUD standards must be followed.

[5] Note: This protective measure may not be dispositive with respect to discriminatory effects. For example, the non-local applicant pool may contain a disproportionately large percentage of minorities, and therefore adjusting the local preference pool to reflect demographics of the regional area may not sufficiently address the discriminatory effect that the local preference has on minority applicants. Therefore, characteristics of the non-local applicant pool should continually be evaluated.

A lottery for projects including a local preference should have two applicant pools: a local preference pool and an open pool. After the application deadline has passed, the Developer should determine the number of local resident minority households there are in the municipality and the percentage of minorities in the local preference pool. If the percentage of minority local resident households in the local preference pool is less than the percentage of minorities in the surrounding HUD-defined area, the Developer should make the following adjustments to the local preference pool:

- The Developer should hold a preliminary lottery comprised of all minority applicants who did not qualify for the local preference pool, and rank the applicants in order of drawing.
- Minority applicants should then be added to the local preference pool in order of their rankings until the percentage of minority applicants in the local preference pool is equal to the percentage of minorities in the surrounding HUD-defined area.
- Applicants should be entered into all pools for which they qualify. For example, a local resident should be included in both pools.
- Minorities should be identified in accordance with the classifications established by HUD and the U.S. Census Bureau, which are the racial classifications: Black or African American; Asian; Native American or Alaska Native; Native Hawaiian or Pacific Islander; or other (not White); and the ethnic classification Hispanic or Latino.

D. Household Size/Larger Households Preference

General

Household size should be appropriate for the number of bedrooms in the home. It is appropriate to set a minimum. A maximum household size for the units may be established provided that:

- Maximum allowable household size may not be more restrictive than the State Sanitary Code or applicable local bylaws, and may not violate state and federal civil rights laws.
- Maximum allowable household size may not be more restrictive than the Large Household Preference established below.

Larger Household Preference

Within an applicant pool first preference shall be given to households requiring the total number of bedrooms in the unit based on the following criteria:

a. There is at least one occupant per bedroom.[6]
b. A husband and wife, or those in a similar living arrangement, shall be required to share a bedroom. Other household members may share but shall not be required to share a bedroom.
c. A person described in the first sentence of (b) shall not be required to share a bedroom if a consequence of sharing would be a severe adverse impact on his or her mental or physical health and the lottery agent receives reliable medical documentation as to such impact of sharing.

Within an applicant pool second preference shall be given to households requiring the number of bedrooms in the unit minus one, based on the above criteria. Third preference shall be given to households requiring the number of bedrooms in the unit minus, two, based on the above criteria.

[6] Disabled households must not be excluded from a preference for a larger unit based on household size if such larger unit is needed as a reasonable accommodation.

A "household" shall mean two or more persons who will live regularly in the unit as their principal residence and who are related by blood, marriage, law or who have otherwise evidenced a stable inter-dependent relationship, or an individual.

Lottery drawings shall result in each applicant being given a ranking among other applicants with households receiving preference for units based on the above criteria. Household size shall not exceed State Sanitary Code requirements for occupancy of a unit (See 105 CMR 400).[7]

E. Lotteries

The Lottery Application

Resident selection must generally be based on a lottery, although in some cases it may be based on another fair and equitable procedure approved by the Subsidizing Agency.[8] A lottery procedure is preferred over a "first-come, first-serve procedure," as the latter procedure may disadvantage non-local applicants.

The application period should be at least 60 days. To ensure the fairness of the application process, applicants should not be required to deliver application materials and instead should be permitted to mail them.

The lottery application must address a household's:

- income
- assets
- size and composition
- minority status (optional disclosure by the household)
- eligibility as a first-time buyer (for ownership units)
- eligibility for local preference

The lottery administrator shall request verification (e.g., three prior year tax returns with the W2 form; 5 most recent pay stubs for all members of the household who are working, three most recent bank statements and other materials necessary to verify income or assets).

Applicants cannot be required to use a specific lender for their pre-approval letter or their mortgage.

Only applicants who meet qualification requirements should be included in the lottery.

Lottery Procedure

Once all required information has been received, qualified applicants should be assigned a registration number. **Only applicants who meet the eligibility requirements shall be entered into a lottery. The lottery shall be conducted after any appeals related to the project have been completed and all permits or approvals related to the project have received final action.**

Ballots with the registration number for applicant households are placed in all lottery pools for which they qualify. The ballots are randomly drawn and listed in the order drawn, by pool. If a project has units with different numbers of bedrooms, units are then awarded (largest units first) by proceeding down the list to the first household on the list that is of appropriate size for the largest unit available according to the appropriate-unit-size criteria

[7] Note, however, that fair housing exceptions may apply: see HUD Fair Housing Enforcement—Occupancy Standard; Notice of Statement of Policy, Docket No. FR-4405-01 (1998).

[8] In the case of project based Section 8 properties where resident selection is to be performed by the housing authority pursuant to a Section 8 waiting list, a lottery procedure is not required.

established for the lottery. Once all larger units have been assigned to appropriately sized households in this manner, the lottery administrator returns to the top of the list and selects appropriately sized households for smaller units. This process continues until all available units have been assigned to appropriately sized applicant households.

If the project includes units accessible or adaptable for occupancy by disabled persons, first preference (regardless of applicant pool) for those units shall be given to such disabled persons, including single person households, in conformity with state and federal civil rights laws.

The lottery administrator should retain a list of households who are not awarded a unit, in the order that they were drawn. If any of the initial renters/buyers do not rent/purchase a unit, the unit shall be offered to the highest ranked household on that retained list. This list may generally be retained and used to fill units for up to one year. However, other factors such as the number of households remaining on the list, the likelihood of the continuing eligibility of such households, and the demographic diversity of such households may inform the retention time of the list, subject to the approval of the Subsidizing Agency.

After the initial lottery, waiting lists should be analyzed, maintained, and updated (through additional marketing) so that they remain consistent with the objectives of the housing program and are adequately representative of the racial, ethnic, and other characteristics of potential applicants in the housing market region.

(April 8, 2008 change to the third paragraph: addition of "(regardless of applicant pool)").

Lottery Example

This theoretical lottery has an OPEN pool that includes all applicants and a LOCAL PREFERENCE pool with only applicants from the local area.

- Total applicants in lottery: 100
- Total minority applicants: 20
- The community in which the lottery takes place falls within the HUD Boston Metropolitan Statistical Area which has a minority population of 20.7%.

1. Determine the number of applicants who claim a LOCAL preference according to approved criteria.
2. Determine the number of minority applicants in the LOCAL preference pool.
3. Determine the percentage of minority applicants in the LOCAL preference pool.

Total Applicants in Local Preference Pool	otal Minority Applicants in Local Preference Pool	% Minority Applicants in Local Preference Pool
60	10	16.7%

Since the percentage of minority applicants in the LOCAL preference pool is below the percentage of minority residents in the HUD defined statistical area (16.7% as opposed to 20.7%), a preliminary lottery is required.

4. The 10 minority applicants who do not have LOCAL preference are entered into a preliminary drawing and assigned a rank based on the order of their draw. Minority applicants are added to the LOCAL preference pool in order of their rank until the LOCAL preference pool has at least as great a percentage of minority applicants as the larger statistical area. In this example, 4 applicants will be added to the LOCAL preference pool to bring the percentage of minority applicants up to 21.8%.

Applicants in Supplemented Local Preference Pool	Total Minority Applicants in Supplemented Local Preference Pool	% Minority Applicants in Supplemented Local Preference Pool
64	14	21.8%

5. Draw all ballots from the adjusted LOCAL pool and assign rankings to each household. Preference for appropriately sized households will still apply and all efforts should be made to match the size of the affordable units to the legitimate need for bedrooms of each household.
6. Once all units for LOCAL residents have been allocated, the OPEN pool should proceed in a similar manner. All LOCAL residents should have ballots in both pools, and all minority applicants that were put in the LOCAL pool should remain in the OPEN pool as well.

F. Homeownership

1. Household Eligibility

A Subsidizing Agency housing program may establish eligibility requirements for homebuyers. In the absence of such provisions, the following requirements shall apply.

In addition to meeting the requirements for qualifying a Project or dwelling unit for the SHI (see Section II.A), the household shall not have owned a home within three years preceding the application, with the exception of:

a. displaced homemakers, where the displaced homemaker (an adult who has not worked full-time, full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family), while a homemaker, owned a home with his or her partner or resided in a home owned by the partner;
b. single parents, where the individual owned a home with his or her partner or resided in a home owned by the partner and is a single parent (is unmarried or legally separated from a spouse and either has 1 or more children of whom the individual has custody or joint custody, or is pregnant);
c. households where at least one household member is 55 or over;
d. households that owned a principal residence not permanently affixed to a permanent foundation in accordance with applicable regulations; and
e. households that owned a property that was not in compliance with State, local or model building codes and that cannot be brought into compliance for less than the cost of constructing a permanent structure.

Individuals who have a financial interest in the development and their families shall not be eligible.

2. Final Qualification and Closing

Once the lottery has been completed, applicants selected to purchase units must be given a reasonable pre-specified time period in which they must secure financing. The Developer should invite the lottery winners to a loan application workshop. The Developer should make prior arrangements with local financial institutions with respect to financing qualified purchasers. Often such institutions will give preliminary approvals of loans, which make the remainder of the process more efficient for all parties.

Before a Purchase and Sale Agreement is signed, the lottery agent should submit income and asset documentation of the applicant to the Subsidizing Agency (to DHCD and the municipality in the case of a LAU). Income verification should include tax returns and W-2s from the past three years, five most recent pay stubs, three months recent bank statements and 401 K reports, reliable documentation as to other sources of income and assets. The Subsidizing Agency (to DHCD and the municipality in the case of a LAU) will then verify that the household's annual income does not exceed 80% of the area median income, or such lower income limit as may have been established for the particular project. The Subsidizing Agency (to DHCD and the municipality in the case of a LAU) also will verify that household assets do not exceed the maximum allowed. Closing of the sale will also be contingent on the Subsidizing Agency's (to DHCD and the municipality in the case of a LAU) approval of the buyer's financing.

Non-household members should not be permitted as co-signers of the mortgage.

3. Resales

AFHMP requirements apply to the housing for its duration. The AFHMP must include a plan, satisfactory to the Subsidizing Agency (to DHCD and the municipality in the case of a LAU), to address AFHMP requirements upon resale. The proposal must, at a minimum, require that units for re-sale to eligible purchasers be listed with CHAPA and MAHA's homeownership lottery sites as described above and establish minimum public advertising requirements. The proposal cannot impose the AFHMP requirements upon a homeowner other than requiring compliance with requirements of a Use Restriction, reasonable public advertising, and listing with CHAPA and MAHA.

A "ready-buyer" list of eligible buyers maintained by the municipality or other local entity is encouraged. This list may be created through local, regional, and statewide lists and resources. As stated above, the list should continually be analyzed, maintained, and updated (through additional marketing) so that it remains consistent with the objectives of the housing program and is adequately representative of the racial, ethnic, and other characteristics of potential applicants in the housing market region.