<u>2011 LOW INCOME HOUSING TAX CREDIT</u>

<u>QUALIFIED ALLOCATION PLAN</u>

CITY OF NEW YORK

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

April 2011

TABLE OF CONTENTS

I. INTRODUCTION

Since 1988 the New York City Department of Housing Preservation and Development ("HPD" or "Agency") has been making direct allocations of Low Income Housing Tax Credits to eligible projects in New York City by mutual agreement with the New York State Homes and Community Renewal (HCR). Under procedures authorized by federal statute and state law, HPD is officially designated by HCR as a Local Housing Credit Agency, a designation that is renewed annually.

As a Housing Credit Agency, HPD is required to make allocations according to a "Qualified Allocation Plan" (the Plan), which may be adopted only after providing opportunity for public comment and gaining approval of the Mayor. HPD's Plan was first issued and received mayoral approval in 1990. The Plan was found by NYC Corporation Counsel to be consistent with Section 42 of the Internal Revenue Code (the Code), and was approved by HCR as consistent with the 1990 State of New York Allocation Plan.

Modifications have been made to the Plan as needed in response to federal law and industry practice. In 1991, HPD made several changes to facilitate the administration of its Tax Credit Program and to ensure that amendments required by the 1990 Federal Budget Reconciliation Act were incorporated into the Plan. In 1993, a description of compliance monitoring procedures was incorporated into the Plan, as was required under new IRS regulations that became effective that year. In 1998, in response to changes in federal law, HPD made additional changes in the Compliance Monitoring section of the Plan, as well as changes in sections dealing with Administrative Processes, Selection Criteria and Project Underwriting. The 1999 revisions included changes in the Selection Criteria and Project Underwriting sections of the Plan. For 2000, minor changes and clarifications were made in sections on Administrative Processes, Selection Criteria, Project Underwriting, and Compliance Monitoring. In 2001, several sections of the Plan (Administrative Processes, Assessment of Housing Needs, Selection Criteria, and Compliance Monitoring) were revised in response to federal rule changes. No substantive changes were made for 2002 or 2003. In 2004, changes were made to the Administrative Process, Selection Criteria, and Project Underwriting sections of the Plan. No substantive changes were made for 2005. For 2006, changes were made to the Administrative Process, Selection Criteria and Project Underwriting sections of the Plan. In 2007, a number of sections of the Plan were updated including Administrative Process, Project Financing and Development Costs, Competitive Criteria, Project Underwriting, and Compliance Monitoring. Changes in 2008 were made in Administrative Process, Threshold Criteria, Competitive Criteria, and Project Underwriting. In 2009, substantive changes have been made to Competitive Criteria. For 2010, changes were made to the Administrative Process, Selection Criteria, Project Underwriting and Compliance Monitoring sections of the Plan. In 2011, changes were made to the Administrative Process, Selection Criteria, Project Underwriting and Competitive Criteria.

The Plan presented herein sets forth the goals and administrative procedures to be undertaken by HPD in allocating credits to projects, including application submission, evaluation and selection criteria, standards to be used in underwriting credit amounts and monitoring compliance pursuant to Section 42 of the Code ("Section 42"). This Plan fully conforms to Section 42 and State Executive Order 135.

II. CREDIT ALLOCATION AUTHORITY

HPD has a long and successful history as a provider of housing assistance including direct subsidies for the construction, substantial rehabilitation, and moderate rehabilitation of affordable residential buildings. The Agency also administers the City's housing code and acts as a Public Housing Agency in order to provide Federal tenant-based rent subsidies through the Section 8 Voucher program. Together these activities constitute far and away the largest locally sponsored housing program in the nation.

HPD also has substantial experience in awarding and administering the Low Income Housing Tax Credit Program. Since 1988, HPD has served as a Local Housing Credit Agency. By the end of calendar year 2010, HPD had cumulatively awarded nearly $245 million in tax credits to create nearly 28,000 low-income units. (The $245 million figure represents annual allocation amounts that are repeated for 10 years, or $2.45 billion in total credits. These credits resulted in over $2 billion of direct private equity investments in low-income housing.)

As in the past, HPD will work cooperatively with HCR by furnishing periodic reports and summary information on the administration of its tax credit program. In addition, where HCR receives a proposal for projects located in HPD's five-county New York metropolitan jurisdiction, HCR will notify HPD of the proposal prior to making their decision to allocate credit to the project. Any unused New York City credit authority (i.e., credit authority for which no funding reservation has been issued) will be recaptured by HCR. Should HPD exhaust its allocation of credit authority, the Agency may request additional authority from the statewide pool of recaptured credit or from any national pool credits available.

III. GEOGRAPHIC JURISDICTION

HPD's allocation authority covers the entire City of New York, including the five counties of New York, Kings, Queens, the Bronx, and Richmond. However, selection criteria will target the use of credits to those neighborhoods with the greatest need.

IV. ADMINISTRATIVE PROCESS FOR CREDIT ALLOCATIONS

The allocation of Low Income Housing Tax Credits is administered by HPD's Tax Credit Unit within the Division of Housing Incentives. Tax Credit and HOME compliance monitoring is administered by the Tax Credit and HOME Compliance Unit within the Division of Asset Management. Specifically, the Tax Credit Unit is responsible for evaluating, underwriting, and scoring applications for tax credits, issuing determinations, reservations and allocations, and maintaining the waiting list. The Tax Credit and HOME Compliance Unit is charged with monitoring compliance of tax credit recipients with Federal tax credit regulations.

HPD will annually publish in the City Register a Notice of Credit Availability that informs applicants of submission dates and deadlines for future funding rounds. One or more funding rounds may be held each year in which credit allocations will be awarded on a competitive basis. HPD may establish set-asides of credit for projects that meet qualifications determined by the Agency to be current housing priorities. Specific details regarding set-asides, including amounts and eligibility requirements, will be published in the annual Notice of Credit Availability.

Pursuant to Section 42 of the Internal Revenue Service Code, at least 10% of the credits will be allocated to projects that involve a qualified non-profit organization. A qualified nonprofit organization is one which: a) Is tax exempt under Section 501(c)(3) or Section 501(c)(4); b) Has the fostering of low income housing as one of its purposes; and c) Is not controlled by a for-profit organization. The nonprofit organization must materially participate in the development and ownership of the project throughout the compliance period. Material participation shall mean being the managing general partner of the owner.

To receive consideration for a credit allocation, project owners must submit an application on or before the published submission deadline. Application forms may be obtained from the address below or from the HPD website: www.nyc.gov/hpd. Applications must be completed in their entirety, and the required supporting documentation must be attached. The Agency may reject any application that is incomplete.

The following fees apply:

1) A non-refundable fee will be charged for filing an electronic application for an allocation of credits from HPD's credit authority (9% applications). The fee shall be $1,000 for projects that involve a qualified non-profit organization and $2,000 for projects that do not involve a qualified non-profit organization. Applicants for 9% projects choosing to file a paper application will be charged an additional non-refundable fee of $1,000. Fees must be paid at the time the application is submitted to HPD.

2) A non-refundable fee will be charged for filing an electronic application for "as-of-right" 4% credits (for projects with tax-exempt bond financing). The fee shall be $2,000 for projects that involve a qualified non-profit organization and $3,000 for projects that do not involve a qualified non-profit organization. Applicants choosing to file a paper application will be charged an additional non-refundable fee of $1,500. Fees must be paid at the time the application is submitted to HPD.

3) An Allocation Fee of 5% of the requested credit amount will be collected at two stages. For allocations of credits from HPD's credit authority, one half of the fee (2.5%) must be received before HPD will issue the Carryover Allocation. The second half of the fee (2.5%) must be

received before HPD will issue the final Certification ("8609"). For "as-of-right" credit, one half of the fee (2.5%) must be received before HPD will issue a "determination of credit eligibility" (DOCE) letter. The second half of the fee (2.5%) must be received before HPD will issue the final Certification ("8609").

4) A Carryover Allocation extension fee of $5,000 will be charged for any project that requests and is granted an extension beyond the administrative deadline to submit a completed application for a Carryover Allocation. Carryover extension requests will be valid for a maximum of three months and will be issued solely at the discretion of HPD. HPD will not issue a Carryover Allocation extension beyond November 15th of any year.

5) A Compliance Monitoring Fee will be charged in the amount of $25 per tax credit unit per year.

6) A non-refundable fee of $2,000 per week will be charged for each week (or part thereof) that initial applications, requests for determination of credit eligibility, Carryover Allocations, Form 8609's, and other documentation required by HPD, are submitted beyond the due date or are incomplete. For the purposes of calculating the fee, a document will not be deemed submitted until the complete document is submitted. HPD may elect not to impose this fee in specific instances if, in HPD's sole discretion, it determines there is good cause for the document being submitted late or incomplete.

7) An expedited Financial Update for 8609 fee of $7,500 per project will be charged for any project that requests and is granted an expedited 8609. A cure letter will be sent to the applicant within one week of receipt of the 8609 request. It is the responsibility of the applicant to ensure all outstanding cure items are submitted to HPD expeditiously. The Tax Credit Unit will issue the 8609 within 4 weeks of the date in which it determines the Financial Update is complete. The Tax Credit Unit will not accept requests to expedite 8609s between December 1st and March 31st.

8) An 8609 extension fee of $10,000 will be charged for any project that requests and is granted an extension beyond the administrative deadline to submit a completed Financial Update for 8609. 8609 extension requests will be valid for a maximum of one year and will be issued solely at the discretion of HPD. Waivers may be issued at the sole discretion of HPD. The annual submission window for 8609 submissions is April 1st through November 30th for 4% and 9% projects.

Extension fees, expedite fees and late fees may not be included in a project's development or conversion budget.

HPD may request any and all information it deems necessary for project evaluation. If any submission is incomplete or if documentation is insufficient to complete any evaluation of the proposed project, processing will be suspended. HPD will notify applicants how the submission is incomplete and provide at least ten business days for the applicant to submit the requested documentation. The application will be disqualified and the package will be returned if the applicant fails to submit the requested documentation within the required period.

Tax credit applications and requests for information should be submitted to:

Tax Credit Unit
NYC Dept. of Housing Preservation and Development
100 Gold Street, Section 9-Y
New York, N.Y. 10038
(212) 863-5184

Tax Credit and HOME compliance inquires should be submitted to:

Tax Credit and HOME Compliance Unit
NYC Dept. of Housing Preservation and Development
100 Gold Street, Section 7-X2
New York, N.Y. 10038
(212) 863-7371

Tax credits will be awarded based upon the selection criteria outlined in Section VI of this document. Unless otherwise indicated in the Qualified Allocation Plan, tax credit applications will be evaluated and underwritten according to the guidelines in effect during the year a complete tax credit application is submitted to HPD.

Sponsors and developers whose action or inaction materially contributed to the return or recapture of credits previously allocated by HPD will be prohibited for three years from the date the credits were returned or recaptured from participation in any project applying for credits. The Commissioner of HPD may waive the prohibition where there is valid cause.

Applications for competitive credits received by the submission deadline will be reviewed for completeness and basic eligibility. Those that meet the threshold eligibility criteria will be scored to determine competitive ranking and underwritten to determine the maximum amount of credits for which they are eligible. Credit reservations will then be issued, in rank order, to as many projects as can be covered by the credit authority available in a given funding round. In the event of scoring ties, HPD will rank tied projects according to which require the least number of tax credit dollars per tax credit unit. After that, HPD reserves the right to select the last project or projects to be funded based on whose credit needs most closely approximate the remaining available credit.

Notwithstanding a project's competitive score, HPD may limit the number of awards to a developer in a given year, or make no awards to a developer if, in HPD's judgment, the developer does not have the current capacity to successfully complete any or all of the projects for which the applications have been submitted. In addition, HPD reserves the right not to commit tax credits to any project if it determines, in its sole discretion, that a reservation for such project does not further the goals set forth in the City's housing plan and shall have the power to allocate credits to a project irrespective of its point ranking, if such intended allocation is: in compliance with the code; in furtherance of the City's housing goals; and determined by the commissioner to be in the interests of the citizens of the City of New York. A written explanation shall be available to the general public for any allocation of a housing credit dollar amount which is not made in accordance with established priorities and the selection criteria set forth herein.

Any complete application which meets the eligibility review criteria but is not selected for a credit reservation will be placed on a waiting list to ensure a continuous flow of quality projects should additional credit authority become available before the next funding round. The waiting list will be terminated at the commencement of a new funding round.

The allocation of tax credits under HPD's credit authority will proceed as outlined below. Applicants will be notified in writing of the status of their application, and of any conditions to be met in order to proceed to subsequent stages of the allocation process.

ALLOCATION STEPS - APPLICATIONS FOR CREDITS UNDER HPD'S CREDIT AUTHORITY

1) Initial Review & Evaluation - Applications are accepted, reviewed for completeness, evaluated against threshold and competitive selection criteria and underwritten. If sufficient credits are available to fund the project in the current funding round, it proceeds to the Credit Reservation stage (below).

2) Credit Reservation Agreement - Reservations will be executed for projects selected during periodic funding rounds. The reservation document serves as a binding commitment. Applicants who execute Credit Reservation Agreements may elect to "lock in" the credit percentage rate for the month in which the agreement is made.

3) Carryover Allocation - Projects requiring credit allocations prior to completion of construction will be issued a Carryover Allocation if they meet all of the following requirements:

    a) Evidence is provided that 10% of the project's reasonably expected basis will be incurred by the close of the calendar year for which the allocation is made (or by such earlier date as HPD may, for administrative purposes, establish),

    b) Evidence is provided that all financing commitments have been executed (for loans included in basis, no forgiveness or grant language can be included),

    c) The project will be placed in service no later than the close of the second calendar year following the year of the allocation,

    d) The project has closed on its construction loan, and

    e) Final site control documentation.

Prior to Certification of Allocation (8609), if project ownership changes, entities will be required to submit at minimum:

    a) Information regarding the old ownership structure

    b) Legal documents for the new ownership structure, and

    c) Proof that all restrictive covenants and regulatory agreements are in full force and effect with the new ownership entity.

4) Certification of Allocation (8609) - Certification of the final credit amount will be issued after

projects are placed in service. The certification will be in the form of an IRS Form 8609 to be issued by the Agency on a per building basis. To request the 8609, project owners must submit a "Financial Update" and such other documentation as HPD may require. The submission must be received not later than November 30th of the second calendar year following the placed in service date (i.e. placed-in service date 12/31/2010, 8609 submission must be received within the April 1st through November 30th submission window in 2012). Prior to issuance of 8609, applicants must submit the final Enterprise Green Communities Certification. All final executed and recorded legal and loan documents, including final permanent loan documents, supporting the information represented in the Financial Update must be submitted prior to issuance of 8609. For multi-building projects, the Regulatory Agreement must include a schedule that includes the total number of units and total number of tax credit units per building. Applications for 8609 will be accepted between April 1st and November 30th. Any project unable to meet this timeline requirement must request an 8609 extension and pay the appropriate extension fee.

ALLOCATION STEPS - APPLICATIONS FOR "AS-OF-RIGHT" CREDITS FOR TAX EXEMPT BOND FINANCED PROJECTS

Rental projects which meet the rent, income and occupancy requirements of Section 42, and for which more than 50% of aggregate basis is financed by tax exempt bond financing may qualify for "as-of-right" allocations of tax credits which are not charged against the credit ceiling of either HPD or the State of New York. Such projects must apply to a Housing Credit Agency for two purposes: (a) for a determination that the project satisfies the threshold requirements for an allocation under the qualified allocation plan applicable to the area in which the project is located, and (b) for a determination of the amount of tax credits to be allocated to the project. Applications for "as-of-right" credit allocations will be subject to such administrative deadlines as HPD may establish, and to the same threshold requirements (except as specified in Section VI of this document) and underwriting guidelines as apply to applications for credits under HPD's credit authority. Unless otherwise indicated in the Qualified Allocation Plan, applications are evaluated and underwritten according to the guidelines in effect during the year a complete tax credit application is submitted to HPD.

As-of-right projects must apply for and receive a determination of credit eligibility from the Agency prior to commencement of construction. The Commissioner of HPD may waive the prohibition where there is valid cause.

Projects that apply to HPD for "as-of-right" allocations shall be processed as follows:

1) Initial Review & Evaluation - Applications are accepted, reviewed for completeness, evaluated against threshold criteria (but not competitive criteria) and underwritten. (See Section VI "Selection Criteria", and Section VII "Project Underwriting".) Applications must be submitted a minimum of 8 weeks prior to the anticipated closing date. Late submissions are required to pay a $2,000 per week late fee.

2) Determination of Credit Eligibility - Projects found to be eligible shall receive a Determination of Credit Eligibility, which is a non-binding statement of the amount of credit for which the project is eligible. The Determination will also list conditions and requirements for obtaining an allocation. Once a Determination has been issued by HPD, the owner may elect to lock in a credit rate for the month in which the bonds are issued, by executing and returning to HPD an original statement to that effect, along with evidence of the date of bond issuance, within 5 days of the month the bonds

are issued. It is the responsibility of the Applicant to ensure that HPD receives the original rate lock form within the required timeframe. Applicants must submit Letter of Satisfaction from Enterprise Green Communities prior to issuance of the Determination of Credit Eligibility letter.

Certification of Allocation (8609) - Certification of the final credit amount will be issued after projects are placed in service. The certification will be in the form of an IRS Form 8609 to be issued by the Agency on a per building basis. To request the 8609 project owners must submit a "Financial Update" and such other documentation as HPD may require. The submission must be received no later than November 30th of the second calendar year following the placed in service date (i.e. placed-in service date 12/31/2010, 8609 submission must be received within the April 1st through November 30th submission window in 2012). Prior to issuance of 8609, applicants must submit the final Enterprise Green Communities Certification. In accordance with Section 42, all final executed and recorded legal and loan documents, including final permanent loan documents, supporting the information represented in the Financial Update must be submitted prior to issuance of 8609. For multi-building projects, the Regulatory Agreement must include a schedule that includes the total number of units and total number of tax credit units per building. Applications for 8609s will be accepted April 1st through November 30th.

Official written notice of Determination of Credit Eligibility, Credit Reservation, Carryover Allocation, and Certification of Allocation must be signed by the Assistant Commissioner of HPD's Division of Housing Incentives or his/her designee.

Electronic versions of the tax credit applications, Carryover Allocation application, and Financial Update for 8609 can be found on the HPD website:
http://www.nyc.gov/html/hpd/html/developers/low_income.shtml

V. ASSESSMENT OF HOUSING NEEDS

Providing decent and affordable housing is a constant challenge throughout the State of New York. Nowhere is this challenge greater, however, than in New York City, where more than 42% of the state's total population resides and many of the most significant housing problems exist.

New York City is faced with an extreme shortage of housing units, especially low cost housing units. This shortage has led thousands to become homeless, and forced countless others to "double-up" with existing occupants or to settle for substandard accommodations. In addition, many of those who have found decent living conditions are paying excessive portions of their income for rent and consequently may be in jeopardy of being displaced themselves. Predictably, low and very low-income families are the hardest hit. These households include the elderly, as well as the mentally and physically disabled, whose incomes severely restrict their housing choices.

The New York City Housing and Vacancy Survey (HVS) is the primary data source used to analyze the City's housing needs. The HVS is conducted periodically by the U. S. Census Bureau for the Department of Housing Preservation and Development, and provides an assessment of the housing inventory in the City, including the condition of the rental housing stock, vacancy rates, rent levels, and ownership trends. Data from the HVS for 2005 revealed numerous critical housing issues with which the City must contend. The Survey disclosed:

- The overall vacancy rate for rental housing in New York City in 2005 was 3.09%. For units renting under $500 the vacancy rate was 1.38%; for units renting between $500 and $699 the vacancy rate was 2.30%; and 2.02% for units in the $700-$799 range.

- 13,806 renter households were living in buildings that were considered dilapidated.

- 28.5% of households were paying more than 50% of their household income in rent.

- 22.6% of all renters had incomes below the poverty level.

Mayor Bloomberg's New Housing Marketplace Plan began on July 1, 2003 and was expanded in February 2006 to a 10-year plan to create and preserve 165,000 units of affordable housing. This $7.5 billion plan, which is the largest municipal affordable housing effort in the nation's history, will provide affordable homes for 500,000 New Yorkers. As part of this extended plan, the New York City Department of Housing Preservation and Development (HPD) will pioneer new tools and incentives to create affordable housing. In addition, the City will continue to emphasize preventing the abandonment of privately owned housing stock, along with the improvement and transfer to private ownership of City-owned occupied housing. Good progress has been made toward fulfilling the New Housing Marketplace Plan. By December 2010, over 110,000 units had been funded – over half of the 165,000 goal.
The key goals of our plan are to:

- Preserve 73,000 units of affordable housing for 220,000 New Yorkers, with a special emphasis on preserving units where subsidies are set to expire in the near future.

- Create 92,000 units of affordable housing for 280,000 New Yorkers, including an ambitious middle-class housing program for the 21st Century.

- Acquire the space we need to build these new units by pursuing innovative strategies that maximize one of New York's most precious resources: land.

The Low Income Housing Tax Credit, one of the Federal incentives created to stimulate private sector participation in low-income housing production, has been and will be an essential tool for meeting housing needs in New York City. While those needs are extremely broad, the limited availability of tax credit resources dictates that they be targeted to specific housing needs, as set forth below:

1) Projects that produce affordable standard housing units for low and moderate-income persons. Priority will be given to those projects that include a high percentage of low-income units, and to those that provide rents affordable to persons of very low income.

2) Projects that convert City owned land or buildings to private ownership including, among other options, eventual tenant ownership.

3) Projects that create permanent housing for special populations (homeless families with children, homeless individuals, the homeless mentally ill, other homeless groups, persons with AIDS, and mentally and/or physically disabled), and provide training and/or support services necessary to make the transition to independent living.

4) Projects that attract or retain HPD subsidies.

5) Projects that meet the Enterprise Green Communities Criteria.

6) Projects that commit to an affordability period beyond the 30 year minimum requirement.

A more detailed discussion of the City's priorities in awarding credit authority is included in the following section.

VI. SELECTION CRITERIA

As a Local Housing Credit Agency, HPD will evaluate all applications received to determine which projects should receive tax credits. (Note: Tax-exempt bond financed projects which qualify for "as-of-right" credit allocations must still be in conformance with the threshold requirements of the qualified allocation plan applicable to the area in which the project is located.)

THRESHOLD CRITERIA

To be considered for funding, a project must demonstrate that it meets each of the following threshold criteria:

1) Rent and Income Restrictions – Project conforms to the basic income, occupancy and rent restrictions of Section 42.

2) Readiness – Project is ready to proceed as documented by the following:

   (a) If the property is currently owned by the applicant or a related entity, applicant must submit a copy of an executed deed to the applicant or related entity;

   (b) If the property is currently owned by a private party and is not in foreclosure or the subject of a foreclosure sale, applicant must submit an unexpired contract of sale between the current owner and the applicant or related entity, or unexpired purchase option in favor of the applicant or related entity;

   (c) If the property is currently owned by the City of New York, then ULURP certification must have been obtained as of the time of application for the disposition of the property for the land use contemplated by the project and full ULURP approval must be obtained within 30 days of submission of application;

   (d) If the proposed development is not as-of-right, ULURP certification for the required zoning amendment must have been obtained and full ULURP approval for the zoning amendment must be obtained within 30 days of submission of application;

   (e) If the property is currently owned by a governmental entity other than the City, applicant must submit evidence satisfactory to HPD that the governmental entity has the authority to convey the property to applicant or a related entity;

   (f) If the property is currently owned by a private party and is the subject of a mortgage foreclosure, then the following is required:

      (i) If the foreclosure sale has taken place, applicant must provide an executed Memorandum of Sale including the Terms of Sale and showing either the applicant as the successful bidder at the foreclosure sale or an assignment of bid to the applicant as assignee of the successful bidder, as the entity that will ultimately close title with the foreclosure referee.

      (ii) If a judgment of foreclosure has been granted and entered but the foreclosure sale has not yet taken place, the applicant must be either the foreclosure judgment-creditor or the assignee of the foreclosure judgment-creditor and must submit the judgment of foreclosure and sale and a letter of intent stating that the applicant intends to serve and publish a Notice of Sale within thirty days of entry of the judgment and to credit bid up to the full amount of the foreclosure judgment and will close title with the foreclosure referee.

(iii) If a judgment of foreclosure and sale has not yet been granted and entered, applicant must be the owner of the Note and Mortgage and submit evidence consisting of a) the applicant being owner of the Note and Mortgage and b) the decision and order that summary or default judgment of foreclosure and order of reference has been granted to the mortgagee and c) a statement of intent that the applicant as the Note and Mortgage owner intends to pursue the foreclosure through Judgment of Foreclosure and Sale, serve and publish a Notice of Sale within thirty days of the entry of the foreclosure judgment and credit bid up to the full amount of the judgment.

In all instances, the project must meet the requirements of HPD's Distressed Asset Program. The Tax Credit Unit will confirm that all requirements have been met. HPD has the right to approve the members of the assignee. If title does not close with the foreclosure referee within a reasonable period of time, as determined by HPD, the application may be declared void at HPD's sole discretion.

3) Financing commitments: At minimum, project must be able to demonstrate:

a) For "competitive" applications, evidence may include "soft" or conditional commitment letters indicating an intent to provide funding.

b) For "as-of-right" applications, evidence of *executed* construction financing commitment is required for financing issued by New York City Housing Development Corporation. There must be a provision of evidence, satisfactory to HPD, that the mortgage securing the tax-exempt bond financing will remain on the project in an amount not less than 50% of the aggregate basis at least until the date required by the Internal Revenue Service in order for the project to meet the "50% test". For other financing sources, evidence may include "soft" or conditional commitment letters indicating an intent to provide funding.

All commitments must be on company letterhead, executed and contain a dollar amount. All developments must demonstrate that sufficient sources are available to the project to assure feasibility.

4) Ownership Structure - All entities in the ownership structure are identified, including, for partnerships, all proposed general partners and managing general partners and, for limited liability companies, all members and managing members.

5) Regulatory Agreement / Extended Low Income Use / Waiver of Right to Qualified Contract – Owner is willing to enter into a regulatory agreement with HPD for extended low-income use of the project (i.e. a 30-year compliance period) that is in conformance with the requirements of Section 42. Owner agrees to maintain the Extended Use Period by including in the Regulatory Agreement a

waiver of the right to seek a qualified contract to purchase the project at the end of the 15-year compliance period.

6) Housing Needs – Project is of the appropriate type needed to address the housing needs in the area where the project is located as evidenced by a market study produced by HPD or a market study consultant approved by HPD. The market study must demonstrate a need for the proposed housing.

7) Design Standards and Minimum Construction Requirements - "Standalone" projects (projects receiving 9% credits and no other HPD subsidy or assistance) must adhere to HPD design standards and will be subject to post-construction audit. HPD's Division of Architecture and Engineering (DAE) will make a determination of compliance with HPD's Design Standards.

8) Marketing Requirements – "standalone" projects are subject to HPD's marketing requirements including the selection of initial tenants through an HPD supervised lottery. The HPD Marketing Unit will be notified when an allocation of credits is made to a "standalone" project.

9) Applicant Qualifications – Applicant must certify that the applicant and all principals of the applicant and the sponsor are not the subject of:

a) Arson conviction or pending case,

b) Harassment conviction or pending case,

c) City mortgage foreclosure proceedings or arrears,

d) *In-rem* foreclosure or substantial tax or water and sewer arrears,

e) Defaults under any City-sponsored program,

   i) Applicants or principals with defaults that have current Agency-approved remediation plans in place at the time the project applies for tax credits will pass threshold. However, competitive points will be deducted from the project's score. The applicant must submit a statement from the appropriate agency showing the agreement is in good standing.
   ii) Applicants or principals with defaults that do not have Agency-approved remediation plans in place at the time the project applies for tax credits will not pass threshold.

Note that applicants with <u>current</u> Agency-approved workout plans will pass threshold and may not be subject to point deductions.

f) De-designation as developer of any government sponsored or publicly assisted projects,

g) A record of substantial building code violations or litigation against properties owned by the applicant or by any entity or individual that comprises the applicant, or

h) Conviction for fraud, bribery, or grand larceny.

Applicants for "standalone" projects must complete HPD Sponsor Review Disclosure Statements.

Disclosure forms must be completed for the Applicant entity, Sponsor entity and all principals of the Applicant entity and submitted with the original tax credit application. Sponsor Review will be performed at the time the applicant submits an original tax credit application and again before issuance of the 8609.

10) Enterprise Green Communities Criteria - All projects will be required to meet the Enterprise Green Communities Criteria. The Agency requirement is for projects to comply with the 2008 Green Communities Criteria in calendar year 2011, however projects may elect to comply with the current 2011 criteria. The Enterprise Green Communities Criteria can be found online at www.greencommunitiesonline.com. As part of the tax credit application submission, applicants will be required to submit a Letter of Satisfaction from Enterprise. Additionally, applicants must submit final Enterprise Green Communities Certification prior to issuance of 8609s. Rehabilitation projects that do not meet the following scope of work may petition HPD for a waiver of the LIHTC Green Communities threshold requirement:

1. Replace heating system, and
2. Work in 75% of units including work within the kitchen and/or bathroom, and
3. Work on the building envelope, such as replace/add insulation, replace windows, replace/add roof insulation, new roof or substantial roof repair.

HPD may also issue a waiver of the final Green Communities Certification requirement for 8609s, if a project can demonstrate financial hardship that will threaten project viability. To be eligible for a hardship waiver, HPD must receive confirmation from Enterprise that all required documentation has been submitted. All LIHTC projects receiving this waiver of the Green Communities Criteria must comply with HPD's Standard Specification. In addition, any new construction or rehabilitation project (as defined above), which received a waiver by HPD from the Green Communities requirement will also be waived from the LIHTC Green Communities threshold requirement. Each project will be required to submit either a Letter of Satisfaction from Enterprise or a waiver from HPD along with the original tax credit application. Waiver requests may be sent to:

Assistant Commissionner
Planning, Sustainability and Marketing
Department of Housing Preservation and Development
100 Gold Street 9-G3
New York, NY 10038
212-863-8068
delatorb@hpd.nyc.gov

Projects that do not meet the threshold criteria will not be reviewed further. Applicants will be informed that the project is not eligible for a reservation of credits. Applicants may reapply for subsequent funding cycles, but must pay an additional application fee.

COMPETITIVE CRITERIA

A scoring system will be used to evaluate and rank those projects that meet the basic threshold criteria. This system has been established to conform to the selection criteria contained in the Federal law as well as fulfill the objectives outlined in the Assessment of Housing Needs (Section V). This scoring system has a maximum attainable score of 100 points, including special priority points that may be given to a project that the Commissioner of HPD determines to be an important initiative or unique opportunity to meet basic local housing objectives.

All elections made by the applicant on the original tax credit application will be included in the project's Regulatory Agreement and will remain in full force for the duration of the Regulatory Agreement unless otherwise specified. The elements for which competitive points will be awarded are:

A. <u>PROJECT OCCUPANCY</u> **(Maximum points 21)**

1) Permanent Housing for the Homeless – For this purpose, "homeless" shall be defined to mean either homeless singles or families referred by HPD, the NYC Department of Human Resources (HRA) or the NYC Department of Homeless Services (DHS).

   a) Projects that set aside at least 10% of residential rental units for homeless provided that Section 8 or comparable subsidy is available.

   b) Households with Children – Projects where at least 10%, 20% or 30% of the low-income units are two bedrooms or larger. Points are awarded on a sliding scale basis.

2) Low Income / Very Low Income Occupancy – Projects that exceed the minimum threshold requirements of Section 42 will receive additional points.

   a) Projects that set aside at least 50%, 65%, or 80% of units for low-income tenants (60% of median or lower). Points are awarded on a sliding scale basis.

   b) Projects that either elect the 20/50-threshold test, or otherwise set aside at least 20%, 30%, or 40% of units for very low-income tenants (50% of median or lower). Points are awarded on a sliding scale basis.

3) Special Needs Populations – Special needs groups include homeless persons and families, persons who are mentally ill or disabled, persons with AIDS, substance abusers, and survivors of domestic violence and their families.

   a) Projects that set aside 35% or more of units for Special Needs groups and provide evidence of adequate provision of support services for the intended population by including a letter of interest from a social service agency [e.g. Office of Alcoholism and Substance Abuse Services (OASAS), Office of Mental Health (OMH), Office of Mental Retardation and Development Disabilities (OMRDD), the NYC Human Resources Administration (HRA) or the Department of Homeless Services (DHS)], stating that the agency has reviewed the project and determined that the applicant will be eligible for operating subsidies and/or supportive housing services through the agency.

   b) Sponsors that have previous experience in this type of housing or service delivery.

4) Public Housing Waiting Lists – Scored on whether the sponsor has committed in writing to the Agency to designate at least 20% of the low-income units in which special priority will be given to households on waiting list for public housing for a period of 30 years.

B. PROJECT FINANCING AND DEVELOPMENT COSTS **(Maximum points 26)**

1) Public Financing – Projects that attract or retain HPD subsidies. Evidence of subsidy (a commitment letter from the appropriate HPD program) must be submitted identifying the subsidy and the terms and conditions for its receipt.

2) HOME subsidy – Projects that attract or retain HOME subsidy. Evidence of HOME subsidy (a commitment letter from the appropriate HPD program) must be submitted identifying the HOME subsidy and the terms and conditions for its receipt.

3) Firm Financing Commitments – Projects with evidence of firm commitments for financing. Firm financing commitments do not include proposals, letters of interest, term sheets, or financing contingent on either loan committee approval or availability of tax credits, or any similar document.

4) Developer Fees – Projects with developer fees of 13% or less of development costs (total development costs less developer fee, operating and other reserves, syndication and partnership costs). Points are awarded on a sliding scale basis.

5) Acquisition Costs – Projects that include acquisition costs of at least $100,000 for land and/or existing building(s).

6) Efficiency of Financing – Projects where proposed tax credit equity is 40% or less of total project cost.

C. PROJECT CHARACTERISTICS **(Maximum points 16)**

1) Targeted Areas – Scored on whether the project is located in a geographic area defined by HPD as an area of special need or where HPD determines the project will have a catalytic effect in that it will encourage further development or redevelopment in the community, such as inclusionary housing zoning areas.

2) Existing Housing – Rehabilitation projects that are part of an Urban Renewal plan.

3) Acquisition From the City – Projects where buildings are acquired from the City of New York.

4) Tenant Ownership - Scored on whether the sponsor has committed in writing to the Agency that the project is intended for eventual tenant ownership at the end of the extended use compliance period To receive points, the applicant must include a plan deemed acceptable by HPD for ensuring the feasibility for the affordability period.

5) Efficiency of Scale – Projects with at least 30 units per building.

6) Historic – Projects where an existing building is landmarked, designated as historic, or located in a historic district, as defined by local, state, or federal law.

7) Preservation Projects – Projects that preserve existing affordable housing that either: a) have, and continue to use if possible, project-based rental assistance and/or operating subsidy; b) have a loan

made prior to 1984 from any of the following loan programs: HUD 202/811, 221(d)3 or (d)4 or 236; c) an HPD LIHTC Preservation Program where HPD has approved a resyndication plan.

D. APPLICANT CHARACTERISTICS **(Maximum points 7)**

1) Experience – Applicants (owner and/or developer) with demonstrated capacity for undertaking the development, management and/or ownership of a Low Income Housing Tax Credit project.

a) Successful experience as developer Low Income Housing Tax Credit projects.

b) Success in the operation and/or management of Low Income Housing Tax Credit project.

2) CHDO Organizations – Applicants that are HPD certified Community Housing Development Organizations (CHDO) under the HOME program.

3) HPD Development History and Problems – Applicants who have previously received tax credit allocations or other development financing from HPD will be reviewed for outstanding problems on previous projects. Points will be deducted for applicants who are principals in any of the following:

a) Projects with outstanding instances of uncorrected Tax Credit noncompliance. (1 point deducted for each uncorrected finding, up to a maximum of 15 points)

b) Projects with outstanding instances of uncorrected HOME noncompliance. (1 point deducted for each uncorrected finding, up to a maximum of 15 points)

c) Projects whose credit allocations have been returned to or recaptured by HPD. (5 points deducted for any return or recapture of credits)

d) Projects that are in default or workout status. (10 points deducted for any such project)

E. EXTENDED LOW INCOME USAGE **(Maximum points 15)**

Additional Years of Affordability Projects which pledge to extend the low-income affordability period by 30 years beyond the 30 years required under Section 42. (Additional affordability period will be reflected in the Regulatory Agreement for the project.) To receive points, the applicant must include a plan deemed acceptable by HPD for ensuring the feasibility for the full 60 year affordability period.

G. PROJECT READINESS **(Maximum points 5)**

1) Approved Contractor Price – Projects that can provide evidence that the general contractor has been selected by the owner and, if necessary, approved by the construction lender, and that the contractor's price has been approved by the owner and construction lender.

2) Construction Start – Projects that have submitted construction permit documents to the New York City Department of Buildings (DOB) that indicate a construction start or an imminent start, as evidenced by printed documents from the DOB Buildings Information System (BIS) including the permit number, OR, adequate evidence of approval of construction documents by the construction lender, including HPD.

G. SPECIAL PRIORITY POINTS (Maximum points 10)

Projects the Commissioner of HPD determines to be an important initiative or unique opportunity to meet the basic local housing objectives.

HPD will evaluate projects according to their strength in meeting the selection criteria, and award points accordingly. The results of the evaluation will be determined by HPD in its sole discretion. Any complete application which meets the eligibility review criteria but is not selected for a credit reservation will be placed on a waiting list to ensure a continuous flow of quality projects should additional credit authority become available before the next funding round. The waiting list will be terminated at the commencement of a new funding round.

VII. PROJECT UNDERWRITING

The following guidelines apply equally to projects competing for an allocation of credits under HPD's Credit Authority and to "as-of-right" credits for tax-exempt bond financed projects. The determination of the amount of credit to be allocated to projects and the underwriting of projects will be made at each of the following times:

1) At Initial Review and Evaluation of the application for tax credits.

2) Prior to issuance of a Carryover Allocation of tax credits (not applicable to "as-of-right" credits).

3) Prior to Certification of Allocation, i.e., when the project is placed in service.

A pre-requisite for underwriting will be the submission of the rent structure, development and operating budgets, and financing and syndication plans. (Applications, Carryover Allocation forms and Financial Update forms specifying the information required may be obtained from HPD.)

HPD will establish underwriting guidelines to ensure project feasibility and determine that credit allocated does not exceed the amount needed. Section 42 requires that two forms of financial analysis be employed in determining the amount of the credit allocation:

1) Qualified Basis Analysis - Based on:

   a) Total qualified costs as adjusted, where allowable, for high cost areas.

   b) The "applicable fraction," the lower of low-income units or floor space.

   c) The monthly credit rate in effect; HPD will calculate the maximum credit amount for which the project could qualify.

2) Sources and Uses Analysis – HPD will compare total project costs (as adjusted to exclude the cost of Syndication Fees, Limited Partnership (or Upper Tier) Reserves, and Bridge Loan Fees and Interest) and total financing available to determine what, if any, gap in project financing exists. The amount of credit needed to generate equity to fill the gap is then calculated.

The amount of credit allowable will be the lower of the two amounts calculated above. (Actual allocation amounts may be lower than the amount allowable, depending on the availability of credit authority.)

The following guidelines will be employed in performing the financial analyses described above.

1) Development Costs – All development costs will be reviewed for reasonableness as required under Section 42. As general reference points, HPD may refer to development cost guidelines used by the Agency's own financing programs or to general industry standards. Costs may be reviewed both on a line-by-line basis, as well as on a total cost per unit basis. HPD will consider reasonable variations in cost based on project location, the scope of work involved, whether prevailing wage rules apply, and other factors unique to the project. The following specific guidelines will apply to all projects applying for tax credits: