Georgia Housing and Finance Authority
Tax Credit Manual

This Manual is intended to be used as a basic resource for issues that arise regarding DCA's administration of the federal and state tax credit program for the State of Georgia. Due to the complexities of the Internal Revenue Code, the issuance of periodic private letter rulings and technical advisory memoranda issued by the Internal Revenue Services, DCA highly recommends that an accountant, tax counsel, or other tax credit professional be consulted on issues related to the allocation of tax credits, eligibility of all or a portion of certain soft costs, such as site development costs, developer fees, and construction financing costs, in the eligible basis, or other technical issues.

I. Overview

Federal Credit. The Low-Income Housing Tax Credit is made available under Section 42 of the Internal Revenue Code of 1986 as amended and offsets income taxes on a dollar for dollar basis. It is available to individuals (directly or through partnerships) and corporations that develop and own qualified low-income rental housing. Through the annual reduction of the taxpayer's ordinary income tax liability, the tax credit returns to the owner/investor a percentage of the cost of constructing, acquiring and/or rehabilitating low-income rental housing. In contrast to other types of tax credits for other purposes, such as the Historic Rehabilitation Tax Credit, the Low-Income Housing Credit provides a tax credit **only** for expenditures associated with units which are occupied by low-income persons and not for the entire development (unless, of course, the entire development is reserved for low-income persons). An Owner who receives the credit must agree to rent a minimum number of units in their buildings to low income tenants at restricted rents.

State Credit. The Georgia Housing Tax Credit, enacted in 2000, is a credit against Georgia income tax liability and/or insurance premium tax liability to the owner of an affordable housing development that has been allocated Federal low-income housing credits. The Department of Community Affairs, the Department of Revenue and the Office of the Insurance & Safety Fire Commissioner jointly administer the State Credits, which are in an amount equal to the Federal Credits and will be available to owners of projects placed in service after January 1, 2001.

The annual State Credit dollar amount will equal that of the Federal Credit. The State Credit will be automatically allocated on a dollar-for-dollar basis with the Federal Credit (for both 9% and 4% Federal Credit) and will be available for the same time period.

2007 Georgia Credit Ceiling. The Georgia Housing and Finance Authority is charged with administering the allocation of Federal and State tax Credits in Georgia, For 2007 the annual Federal Credit dollar amount allocated to the State of Georgia equals, $1.95 multiplied by the federal government's estimate of Georgia's population plus unused credit, returned credit, and any national pool credit available to the State. The total

estimated amount of Federal Credit available for 2007 is expected to be approximately $17 million. The state credit will equal the amount of Federal credit allocated.

Applicable Credit Percentage. Federal tax credits allocated to a project cannot exceed the amount calculated by multiplying the qualified basis by the applicable credit percentage. In 1987 only, the applicable percentage was 9 percent for new construction and rehabilitation and 4 percent for the acquisition of existing buildings and for all projects defined as Federally subsidized, whether new construction or rehabilitation. The 9 percent and 4 percent credit percentages over a 10-year period are intended to equal to the present value of 70 percent and 30 percent, respectively, of the qualified basis. After 1987, the above present value percentages remain constant; however, Treasury adjusts the applicable credit percentages monthly. The maximum credit percentage applicable to each building is that percentage that is in effect either during the month the building is placed into service, or at the election of the taxpayer, during the month a binding agreement between DCA and the tax credit recipient is made and a credit election is made. The credit recipient may elect to lock in the applicable credit percentage at the time of the carryover allocation. However, in 1990, and thereafter, the housing credit dollar amount allocated to a project cannot exceed the amount DCA determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period. An imputed credit percentage can be derived by dividing the DCA-determined credit amount by the project's qualified basis. [Section 42 (b) and 1990 Revenue Ruling, Applicable Credit Percentages]. **For underwriting purposes, in a 2007 application for 9% credits, the Applicable Credit Percentage for the month of April 2007 should be utilized for underwriting purposes. For purposes of an application for 4% credits (Tax-Exempt Bond financed applications), the Applicable Credit Percentage for the month preceding the submission of the application for tax credits should be utilized.**

Credit Period. In general, the tax credit is claimed in equal amounts for a period of ten (10) taxable years, beginning with the taxable year in which the building is placed in service or, if elected by the owner, the succeeding taxable year (the "Credit Period"). [Section 42 (f)]

If, after the first year of the credit period, there is an increase in the project's qualified basis, but no increase in the eligible basis, and there remains sufficient credit authority previously allocated by GHFA for such increase, the owner may take the additional credit in an amount equal to two-thirds of the applicable percentage. This two-thirds credit is then taken over the remaining Compliance Period, rather than the remaining Credit Period. Credits should not be claimed prior to the issuance of an 8609 by DCA.

Depending on the type of project, the federal credit will subsidize either 70% or 30% of the eligible cost of the low income units located in the project. With certain exceptions, Owners may receive annual Credits of the present value of 30% of the qualified basis for developments involving acquisition, and annual Credits of the present value of 70% of the qualified basis for developments involving new construction or rehabilitation.

Eligible Activities. There are three types of activities that are eligible for Federal and State Credits:

		Maximum Present Value Credit[*]
A.	New construction;	70%
B.	Rehabilitation of an existing structure at a cost of at least 10% of the adjusted basis of the building or $20,000 rehab hard costs per unit whichever is more for properties 20-years old or less and $25,000 for properties that exceed 20-years old. Please refer to the QAP for cost waiver information.	70%
C.	Acquisition of an existing structure with rehabilitation costs which meet the requirements above	30% (acquisition cost) 70% (rehab costs)

The conversion by the existing owner of an existing building from a higher income to a low-income project without the minimum required rehabilitation DOES NOT qualify for tax credits.

Acquisition Credits. Projects that have not previously received a tax credit allocation are eligible for acquisition tax credits if the following statutory requirements are met at the time of allocation:

- The building(s) have been or will be acquired by purchase as defined in the Internal Revenue Code Section 179(d)(2) and

- Either the building(s) was last placed in service at least 10 years prior to the date of acquisition by the new development owner, or a period of at least ten years has expired between the date of acquisition by the new development owner; and the most recent non qualified substantial improvement of the building placed in service by the new development owner or by any related persons specified in the Internal Revenue Code of 1986, as amended, Section 42(d)(2)(B) (iii).

Projects that have previously received a tax credit allocation and are applying for new credits are not eligible for acquisition credits unless the 15 year compliance period for all of the buildings in the project has expired.

Certain provisions of the law refer to "related persons with respect to the taxpayer" in determining whether a building qualifies for acquisition tax credits. Most importantly, the building must not have been acquired from a person who is related to the taxpayer**.** "Taxpayer" in this instance refers to the individual taxpayer to whom the tax benefits are passed through, e.g., the individual partners in a partnership In addition, there exists a

[*] Assumes conventional financing. All Federally assisted projects, including new construction or substantial rehabilitation, would be limited to a credit amount not to exceed the 30 percent credit.

prohibition, for purposes of low-income housing credit eligibility, against the owner, or a related person, occupying one or more of the units in a building of four units or less unless the project is part of a development plan of action sponsored by the State, a local government, or a qualified nonprofit organization.

DCA requires that the Owner submit a legal opinion from its own attorney that states that in that lawyer's opinion, the project is eligible for acquisition credits. The legal Opinion for previous tax credit properties should include sufficient documentation for GHFA to confirm that the Compliance period has ended.

II. DCA Administration Process under the 2007 QAP

Sources of information regarding the Georgia Tax Credit Allocation Process

1 .Each year, the final QAP is posted on the DCA website after it is signed by the Governor. The 2007 QAP is available on the DCA website at: http://www/housing/HousingDevelopment/programs/downloads/2007QAPdocs/2007%20Qualified%20Allocation%20Plan.pdf

2. Application and Application Instructions are posted on the DCA website.

3. DCA Application workshop will be held on February 15, 2007. Information can be found on the DCA website.

4. DCA Application Manual is posted on the DCA website during the month of January.

5. Each Year, DCA has a General Questions and Answers and a Project Specific Question and Answer period prior to the Application Submission deadline. Applicants are encouraged to resolve issues and clarify interpretations of the QAP during these Question and Answer periods. General Questions and DCA's answers are posted on the DCA website.

6. DCA advisories are periodically posted on the DCA website.

7. Georgia Open Record Act documents. In order to schedule an appointment to review DCA documents subject to the Georgia Open Record Act, please contact Gwen Walton at 404-679-4858.

2007 Competitive Round Tax Credit Deadlines

Pre Application request for Compliance score determination ~~and~~ are due no later than March 5, 2007.

Waivers for developer, manager and owner experience are due no later than 3/5/07, or no later than 30 days prior to the submittal of the 4% Tax Credit Application.

Operating Expense Waivers due no later than March 5, 2007 or not later than 30 days prior to the submittal of the 4% tax credit application.

2007 Application Submission. **Applications are due at DCA by 4:00 PM**. on **May 3, 2007.**

Formal Firm Commitments. Formal firm commitments for equity and non-DCA debt must be submitted to DCA within 75 days of the carryover allocation.

Design Documents. Design Development Documents as fully outlined in the Architectural Manual (9% credit deals) must be submitted to DCA for review and approval no later than 90 days from carryover allocation date. Design Documents as fully outlined in the Architectural Manual (4% credit deals) must be submitted to DCA for review and approval no later than 90 days from issuance of the Letter of Determination.

Tax Credit only Projects/Commencement of Construction/Rehabilitation. Owners of projects receiving 9% Tax Credits for new construction or rehabilitation in the 2007 round must commence construction or rehabilitation no later than September 30, 2008. Failure to commence construction as scheduled may cause an automatic recapture of the Credits. DCA will closely monitor construction start dates.

Completion of Work Scope. Owners of projects receiving Credits in the 2007 round for the rehabilitation of an existing property must perform 100% of the work scope in accordance with the original physical needs assessment submitted with the Application no later than December 31, 2009. Owners of properties receiving Credits for new construction in the 2007 round must perform 100% of the work scope as set forth in the DCA approved construction drawings and specifications no later than December 31, 2009. DCA will inspect projects requesting IRS Form(s) 8609 to ensure that all work has been completed prior to issuing Form(s) 8609. If a lesser percentage is completed, DCA reserves the right to recapture all Credits allocated. At its sole and absolute discretion, DCA may approve modifications to the proposed work scope upon written request.

Placement-In-Service. Owners of projects receiving Credits in the 2007 round must place all buildings in the project in service by December 31, 2009.

Compliance Monitoring Fee Payment Date. For “9% credit” projects, all compliance monitoring fees must be paid within 18 months of issuance of the carryover allocation document, but no later than the placed in service date. For "4% credit" projects, compliance monitoring fees are due within 18 months of issuance of Letter of Determination. Failure to do so may adversely affect the ability to compete in future funding rounds. In no case will the final Federal Credit allocation (IRS Form 8609) be issued before these fees are paid.

Final Allocation Deadline. Owners of projects receiving Credits in the 2007 round must apply for Final Allocation and request for issuance of IRS form(s) 8609 by February 15, 2010. IRS form(s) 8609 for a project will be issued only once for the entire project as proposed in the Application. Form(s) 8609 will not be issued as buildings are placed in service.

2007 QAP Award Limitations on Competitive Tax Credit Awards

- The 2007 QAP limits the amount of tax credits which may be awarded to one project. No project will be awarded more than Eight Hundred Thousand and No/100 Dollars ($800,000) of Georgia's annual Federal Credit authority and an equal amount of State Credit authority.

- Applicants will be limited to Ownership interest in projects in which the combined total Federal Credit from the 2007 competitive funding round cannot exceed $1,750,000. This limitation applies to Ownership interests of all proposed Project Participants, except Syndicators.

- 10% of the available 9% Credits are set-aside for nonprofit-sponsored Applications pursuant to the Code. Qualified nonprofit organizations must materially participate in the project within the meaning of Section 469(h) of the Code and meet all requirements set forth in Code Section 42(h)(5).

- 30% of the available 9% Credits will be set-aside for Applications proposing affordable housing developments in Rural areas.

Tax Credit Project Fees

2007 Credit (only) Application Fee (includes market study fee of $6,000), the balance of the fee may not be included in Eligible Basis.	**$8,500 For Profits** **$8,500 For Profit/Nonprofit Joint Venture** **$7,500 Nonprofit**	**Application Submission*** **May 3, 2007**

2007 HOME Loan/ Credit Application Fee (includes market Study fee of $6,000), the balance of the fee may not be included in Eligible Basis.	**$7,500 For Profits $7,500 For Profit/Nonprofit Joint Venture $7.500 Nonprofit**	**Application Submission* May 3,2007**
Credit Allocation Fee	**7% of annual allocation**	**At time carryover allocation sent in except for Non Profit sole general partners which can submit at or before construction commencement deadline***
Credit Compliance Monitoring Fee (calculated on a per unit basis- for all project units)	**$150 – USDA 515 projects $150 – URFA bond projects $600 – Bond/4% Credit projects $600 – Others**	**9% credit projects: within 18 months of Issuance of carryover allocation, but no later than the project placed in service date. Bond/4% credit projects: within 18 months of issuance of Letter of Determination.**
Bond/4% Credit Eligibility Opinion Letter (includes market study fee)	**$7,000**	**Application Submission no later than 75 days before bond closing (fee not required at application if submitted with Pre-Application)**
Bond/4% Credit Processing Fee	**7% of annual Federal Credit amount**	**Due within 30 calendar days of issuance of Letter of Determination**
Final Inspection Fee (for all LIHTC properties, both 4% and 9%, excluding those projects involving DCA HOME funds)	**$2,500**	**Due within 30 calendar days of final draw but no later than 30 days prior to the placed in service date**
Front End Analysis (applicable when an Identity of Interest exist between the Developer or Owner and the General Contractor)	**$2,200**	**Within 15 days of invoicing by DCA during underwriting. (DCA HOME Loans only)**
Appraisal Fee (HOME Loans only)	**Based on DCA cost**	**Upon invoicing by DCA during underwriting**
Environmental Review Costs	**Based on Actual Cost incurred by DCA to retain consultants**	**Upon Invoicing by DCA**
Project Application Amendments, Post Award	**$1,500 per request**	**At the time of submission of request for amendment**

Project Concept Amendments		

***Not applicable to 4% credit projects**

III. Eligible Sites and Buildings

Projects. Scattered site projects (defined as projects where the buildings lack "proximity" to each other, are permitted under Section 42 provided that 100 percent of the units in the project meet the section 42 rent restriction requirements. DCA has more stringent requirements that are applicable to scattered sites. **DCA** allows Scattered-site projects to apply for an award of tax credits only if they satisfy the following criteria:

> The project has no more than six (6) non-contiguous parcels within a ½ mile radius and a minimum of four residential units per parcel except for parcels on which a community center is located.

All DCA Applications proposing scattered sites must meet the following requirements:

- All of the residential units are income and rent restricted as set forth in Section 42 of the Code;
- All buildings in the project must be under the ownership of one entity;
- All units in the scattered site Application must be managed by one management entity;
- All buildings in the project must be developed under one plan of financing and considered as a single project by all funding sources;
- The scattered sites must be appraised as a single proposed development, if applicable; and,
- Each site within the proposed project must meet all applicable threshold and scoring criteria.

Eligible Buildings. For Housing Tax Credit purposes, the term "building" includes residential rental property that is an apartment building, a single family dwelling, a townhouse, a row house, a duplex or a condominium. However, IRS regulations define a "building" or "structure" as a man-made construction consisting of an independent foundation, outer walls, and room. A single unit which is not an entire building, but is merely part of a building, is not considered a "building" or "structure" for tax credit purposes. DCA imposes its own requirements for certain types of buildings.

Detached Single-Family Rental Housing. Detached single family housing proposals will be eligible for funding if they satisfy the following requirements:

- The Application must include in its development budget the costs associated with the continuous upkeep of each rental house, including ground maintenance, at the project Owner's expense. These costs must be supported by a detailed maintenance plan.

- The Application must have a detailed Replacement Reserve analysis and plan.
- The house designs must reflect architectural diversity through the use of different elevations and styles.
- Landscaping must be appropriate for detached, single family housing.
- For detached single-family housing projects that are using HOME and Tax Credits as a funding source, all of the units must be income and rent restricted in accordance with the Code and DCA requirements.

IV. Rent and Occupancy Restrictions

Minimum Section 42 Set aside Elections. For every tax credit project, the Owner must covenant and agree to one of the following tax credit set asides ("Section 42 Rent and Occupancy Restrictions"):

-At least 20% of the Units in the Project **[are and]** will continuously be maintained as both rent-restricted and occupied by individuals whose income is 50% or less of Area Median Gross Income. (If an Owner makes this election, all tax credit units will be rent and income restricted to 50% or less of Area Median Gross Income).

(or)

At least 40% of the Units in the Project **[are and]** will continuously be maintained as both rent-restricted and occupied by individuals whose income is 60% or less of Area Median Gross Income. (If an Owner makes this election, all tax credit units will be rent and income restricted to 60% or less of Area Median Gross Income).

In addition, if a project has a HOME loan which is included in the project's eligible basis, at least 40% of the units in ***each building*** will be rent and income restricted at the 50% or less level. DCA's requirement is more restrictive than Section 42 in that these units must be rent restricted as well as occupied by tenants earning 50% of AMI or less. Special care should be given by an Owner of a multi family project comprised of single family style units. In this case, each dwelling is considered a building. Therefore the project's rent and income limitation would apply to all units.

The owner has until the end of the first year of the tax credit period for the building to lease the specified number of units to eligible low-income tenants necessary to meet the minimum low-income occupancy requirements (20 percent or 40 percent based on the minimum percentage elected). **For projects consisting of more than one building, low-income occupancy compliance for the entire project must be met within this same time period.** [Section 42 (g)(3)]

GHFA Rent, Income and Occupancy Requirements. In the tax credit application submitted by the Owner of a project, the Owner may make additional representations to GHFA regarding rent, income and occupancy restrictions which may be more restrictive than those required by Section 42. These limitations may include by are not limited to:

- 50% Rent Restrictions/50% Income Restrictions where the Applicant agrees to set rents for a specified number of low-income units at or below 30% of 50%

AMI. Owners will be required to execute restrictive covenants stipulating the number of very low rent-restricted units to be rented to very-low income households for the term of the Compliance Period or the Period of Affordability, whichever is longer.

- 30% Rent Restrictions/40% Income Restrictions where the Applicant agrees to set rents for a specified number of low-income units at or below 30% of 30% of AMI. Owners will be required to execute restrictive covenants stipulating the number of very very low rent-restricted units to be rented to 40% of AMI households for the term of the Compliance Period or the Period of Affordability, whichever is longer.

- Mixed income projects in which a specified percentage of the units are designated as market rate units which are not subject to any rent or income restrictions. Market rate units cannot be rented for less than low-income units (gross rent less utility allowance).

The use of Project Based Rental Assistance is not prohibited for Very Low and Very, Very Low income units, but an owner cannot accept PBRA in excess of the applicable restricted rent amount for those units if points have been received for the deeper targeting.

These additional rent and income restrictions will be referenced in the Land Use Restrictive Covenant for the project.

Note: Applicants should review the final rule issued by HUD on October 13, 2005, which replaces the current project based certificate regulations. Under this rule, rent to the owner at LIHTC projects for project based voucher units is now limited, not only to 110 percent of FMR among other restrictions, but is also limited to the LIHTC rent (less utility allowances) of the project, whether or not the project is in a qualified census tract, and whether or not LIHTC rent is greater than or less than 110 percent of FMR. This contradicts HUD Notice PIH 2002-22 that allowed rent to the owner to be more than LIHTC rent, if LIHTC rent was less than 110 percent of FMR.

Minimum Period for Rent and Income Restrictions. Section 42 Rent and Occupancy Restrictions shall remain in effect throughout the "extended use period." In accordance with Section 42, the extended use period shall commence with the first day in the compliance period on which any building that is part of the Project is placed in service and end on the date which is 15 years after the close of the compliance period. (Generally a period of 30 years). The GHFA Rent, Income and Occupancy Restrictions shall remain in effect through the "Compliance Period." Compliance period shall be the period of fifteen (15) taxable years beginning with the 1st taxable year of the credit period.

Termination of Rent and Income Restriction prior to end of Extended Use Period. The extended use period for any building that is part of the Project shall terminate:

- On the date the building is acquired by foreclosure or instrument in lieu of foreclosure except that for a period of three years following the termination of the extended use period, the Owner shall not evict the tenant of a Low-Income Unit or terminate the tenancy of an existing tenant of any Low-Income Unit other than for good cause and shall not increase the gross rent above the maximum allowed under the Code with respect to any such Low-Income Unit.

- On the last day of the one-year period that begins on the date Owner properly submits a written request to the Authority, asking the Authority to assist in procuring a "qualified contract," as defined in Section 42(h)(6)(F), for the acquisition of the low-income portion of the building, but only if the Authority is unable to present a qualified contract during such one-year period; provided, however, such request may not be made before the end of the 14^{th} year of the compliance period or as agreed to by the Owner in its application.

Opt Out Provisions. After the 14^{th} year of the compliance period, the Owner may submit a written request to DCA to find a person to acquire the owner's interest in the low income housing tax credit project. The extended use period for any project shall terminate if the DCA is unable to present during such period a qualified contract for the acquisition of the project by a person who will continue to operate such project as a qualified low income project. The calculation of the qualified contract price shall be determined by reference to the IRC Section 42 and to DCA's written policies. This code provision effectively allows an Owner to "opt" out of the tax credit program after year 15 and before the expiration of the extended use period for the property. DCA has posted its "Year-15 Plan" on the DCA website.

Applicants may elect to waive their right to "opt" out of the program after year 14 in exchange for receiving points during the competitive round. Applicant's who make this election, will not be eligible to request that DCA present a qualified contract for the property during the period that has been waived by the Applicant. The Land Use Restrictive Covenant for the property will reflect any waiver of this right.

Combining tax credits with PBRA. Many projects that receive funding from DCA also have project based rental assistance contracts. However, the rules under the Section 8 PBRA program can conflict with tax credit rules. Applicants need to use care in identifying areas of both programs which can conflict so as to avoid situations where the allocated tax credits could be subject to recapture. To initially certify a tax credit unit, the occupant must meet the income election of his designated set aside regardless of whether there is a Section 8 PBRA contract. This means, that if you have a 40/60 election and 100% of the units are tax credit units, all of the initial tenants in the project must be certified at 60% AMI or less. Problems can arise in an existing tax credit rehab property, if you have a tenant that is receiving PBRA but has income over 60%, but within the 80% PBRA requirement. That tenant would not meet the first year tax credit requirements. However, under Section 8 PBRA rules you could not evict the tenant or refuse to renew his lease. In a 100% tax credit project, the conflict between the different program requirements could create an insurmountable problem. Projects combining tax credits and PBRA can also have problems dealing with waiting lists, and with certain tenancies such as students.

DCA recommends that Applicants in projects that are 100% PBRA not structure their tax credit project with 100% tax credit units. This provides some flexibility resolving conflicts between the two programs.

Land Use Restrictive Covenants (LURC). DCA requires that the low-income housing commitment be recorded as a restrictive covenant after it makes an allocation of the credit or no later than the bond issuance date for a 4% credit project. The Code stipulates that no credit will be allowed for any year unless the required extended low-income housing commitment is in effect as of the end of the taxable year. However, if during a taxable year, it is determined that the commitment is not in place, the credit is disallowed for that year if the failure is not corrected within one year from the date the determination was made.

The LURC shall reflect all representations made in the original Application and any changes made to the original Application that have been approved in writing by GHFA. The LURC will be drafted after GHFA's receipt of the certification of the 10% test, and must be recorded upon its execution. For "4% credit" applications, the LURC is sent as an attachment to the Letter of Determination. All construction and/or permanent financing for the project must be subordinated to that portion of the recorded LURC that sets forth the requirements of Section 42 (h)(6)(E)(ii) of the Code. The LURC for projects funded in the competitive round will reflect representations made in the application for the purpose of obtaining points.

LURCs are prepared by the DCA Legal Affairs Department and subsequently e-mailed to Owners for review. Changes in unit mix, tenancy characteristics, or rent structure may be considered substantive changes and are subject to DCA approval. Any approved changes to the LURC must be reflected in the Final Allocation Application submitted to DCA. For information on the status of a LURC, you can contact Gwen Walton, 404-679-4858. DCA's receipt of the original recorded LURC is required prior to issuance of any Form 8609.

IRS Revenue ruling 2004-83 provides that Section 42(h)(6)(B)(i) requires that an extended low income housing commitment must include a prohibition during the extended use period against (1) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low income unit (no cause-eviction protection) and (2) any increase in the gross rent with respect to the unit not otherwise permitted under Section 42.

General DCA Tax Credit Application Process

These procedures, instructions, and guidelines are subject to change at any time by DCA and may be supplemented by policies and procedures revised by DCA from time to time.

9% CREDIT PROJECTS

Applications for 9% tax credits must be submitted during one of DCA's announced application cycles. In determining when, during the project's development process, an application should be submitted, developers should do so no earlier than when all threshold requirements can be met. Credits should not be claimed prior to the issuance of an 8609 by

DCA. **Applicants are strongly advised to consult an accountant or tax attorney with tax credit expertise regarding issues related to the use of and requirements for tax credits.**

Applications that are complete and pass the threshold criteria are evaluated using the scoring and selection described in the State's Qualified Allocation Plan. Projects thus selected will be underwritten in a manner similar to loan underwriting. This is done in order to determine: (a) the credit amount necessary to support the low-income portion of the project; (b) the financial feasibility of the project; and (c) comparability and reasonableness of project cost. The amount of credit necessary to support the low-income portion of the project is calculated and carryover allocations are issued.

Rejection of Application Packages

The application package provided by DCA must be completed in its entirety. Required supporting documentation must accompany the application. DCA may reject any application that is incomplete or that is not accompanied by the appropriate application fee. Any application lacking the documentation needed to determine that the threshold criteria are met will not be evaluated. Applications will only be accepted during established cycles, except for tax-exempt bond financed projects that receive an allocation of tax credits independent of Georgia's Federal credit cap.

Disqualification of Applicants

Misrepresentation in any application or supporting documentation may result in recapture of tax credits by DCA, the barring of the project sponsor(s) or certifying independent certified public accountant from future program involvement, and notification to the Internal Revenue Service.

Project Award

Generally, the highest scoring Applications that meet all applicable threshold requirements will be allocated resources without regard to resource type requested or geographical location, except as noted below and elsewhere in the plan:

- DCA reserves the right to allocate resources to lower ranked proposals to achieve a better mix of resource usage or a better geographical distribution of resources.
- If funding Credit-only Applications will deplete available Credits, then DCA may elect to fund lower scoring Applications that are requesting a combination of Credits and a HOME Loan.
- If sufficient HOME funds are not available to fund the next ranked Credit/HOME Application or HOME-only Application, DCA may elect to fund a lower scoring Credit and HOME or HOME only project for which the remaining funds are sufficient.
- If a geographic area of the state will receive an inequitable share of the available resources as determined by the Competitive Scoring process, DCA may choose to fund other proposals even though they have a lower relative ranking.
- Applications that do not score high enough to receive an award will be placed on a waiting list. If additional funding becomes available the next highest-scoring Application on the list will be eligible, subject to DCA's discretion.

Project Changes
Since 9% credits are awarded competitively based on the project characteristics described in the initial application, any material changes that occur after initial application may trigger recapture of tax credits. Without DCA's prior written approval, certain project changes are clearly disallowed as follows :

- unit count and/or distribution,
- income and rent elections,
- rent structure,

Other project changes may also be disallowed as determined by DCA. Sponsors must consult with the tax credit program staff to obtain prior written approval before pursuing substantive project changes to avoid affecting the credits. Material changes, if approved, may require submittal of a revised application. DCA will charge a fee for reviewing project changes, including but not limited to unit mix, tenancy characteristics, rent structure and amenity changes.

Bond/ "4% Credit" Projects and Applicable QAP

Projects of which fifty percent (50%) or more of the aggregate basis of the land and buildings are financed with the proceeds of obligations on which the interest is exempt from tax under section 103 of the Internal Revenue Code are eligible to receive Federal and State tax credits which are not subject to Georgia's annual credit cap. Unlike projects that are part of Georgia's annual credit cap, there is no reservation or carryover stage.

In order to receive tax credits, Section 42(m)(1)(D) of the Internal Revenue Code dictates that the tax-exempt bond-financed project must satisfy "the requirements for allocation of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located".

It is critical that owners of tax-exempt bond financed projects applying for tax credits read the allocation plan carefully. Owners of tax-exempt bond financed projects must meet all threshold requirements set forth in Appendix I of the Qualified Allocation Plan, with the exception of those threshold requirements which are specifically waived for tax-exempt bond financed projects and are so noted by an * (asterisk).–DCA shall be the sole entity responsible for making such a determination and must issue its opinion as to the project's 4% Credit eligibility prior to Bond closing. The project must comply with the Plan in effect at the time of the Application submission. However, prior to the Application Submission, an applicant may request to comply with the Plan in effect up to six months prior to the intended date of the Application submission. DCA will approve such a request upon receipt. DCA's approval may contain certain conditions if there is a major change(s) in the federal and/or state housing credit program requirements during the six-month period prior to the Application Submission.

Letter of Determination (LOD)

In making application for the Letter of Determination, an owner must complete the standard Application, as well as provide all supporting documentation necessary to meet all applicable threshold requirements and pay an appropriate bond/4% credit eligibility fee and applicable waiver fees. DCA will provide its determination within the timeframe specified in the QAP. DCA's determination notwithstanding, the issuer must still make its own eligibility determination. Please note that the QAP requires a determination from DCA that the project meets the QAP requirements prior to the issuance of 8609's. A letter of determination issued by an authority other than DCA will not guarantee that 8609's will be issued for the project.

If the project is deemed to be eligible for State and federal tax credits, a LOD will be issued to the owner. A LURC encompassing the federally-mandated extended use agreement as well as other representations made in the application, will also be sent to the owner with the LOD.

After a project is placed in service, owners of tax-exempt bond financed projects must apply for IRS Form(s) 8609 by completing a Final Allocation Application. If applicable, opinion letters from the bond issuer as to the project's eligibility for tax credits must be submitted with application for IRS Form(s) 8609.

Minimum Bond Application Review Requirements

Applicants are encouraged to submit their applications as soon as possible after the bond allocation, in order to allow completion of the Bond Application Review Requirements and market study. In all instances applications for 4% tax credits must be submitted no later 75 days prior to bond closing. All requests for architectural standard, operating cost, per unit cost and/or experience waivers must be submitted 30 days prior to Application submission.

DCA's Application review will include, at a minimum, a financial feasibility evaluation, architectural review, a physical inspection of the property, an environmental review to ensure the quality of construction, and a compliance review. The Bond Application Review Requirements are to ensure adherence to the state and federal requirements relating to the Tax Credit and all applicable DCA policies, threshold requirements and Application submission requirements. Additionally, DCA will commission a market study for the purpose of determining market feasibility pursuant to Appendix I, Section 9 of the Plan.

Market Study requirements. Effective January 1, 2001, federal law requires that every tax credit application be accompanied by a market study performed by a disinterested third-party analyst approved by DCA. For all 9% LIHTC applications submitted in a competitive round, DCA will commission the market studies. For all applications for 4% LIHTC to be used in conjunction with Tax-Exempt Bonds with a bond inducement after January 1, 2004, DCA will commission the market study. For projects with inducement dates prior to January 1, 2004 the applicant shall submit a market study with the application. Generally, the firms selected by DCA to prepare the market studies for the competitive application round will comprise its list of "approved analysts," and this list and a copy of DCA's market study guide are posted on DCA's website and will be issued to prospective applicants upon request. These guidelines must be followed for any market study submitted to DCA. If a market study has already been performed in conjunction with planning for the Bond

Allocation Application and is completed within six months of application submission, the applicant may request DCA's approval of the analyst. DCA will consider such requests, but approval or denial will be at DCA's sole and absolute discretion. For bond financed projects covered by the 2007 QAP DCA will commission the market study upon receipt of the pre-application or application for tax credits. Pre-Applications may be submitted for the purpose of DCA commissioning a market study for tax-exempt bond projects at any time utilizing the 2007 core application and instructions.

VI. Allocation of Credit

The allocation of State and Federal credits by GHFA will proceed in the following general steps:

1. Carryover Allocation (Not applicable to Bond / 4% Credit Projects)

Projects that are not completed in the credit allocation year must receive a carryover allocation. GHFA typically issues carryover allocations to the tax credit awardees within one month after the tax credit award notification.

2. 10% Test (Not applicable to Bond / 4% Credit Projects)

The Code permits tax credit recipients to carry over an allocation for a particular year and place their buildings in service up to two years after the end of the allocation year provided more than 10 percent of the project's reasonably expected total basis has been expended by the later of the end of the allocation year or six months after the allocation date. Information on the 10% test, including instructions, forms, and sample certification letters are available on DCA's website at least two months prior to the deadline of the 10% test.

3. Final Allocation

Final allocation of the credit amount to a project is made when the project is placed in service and corresponding evidence has been furnished to DCA with the owner's final allocation application. It is at this stage that the Form 8609/ Form IT-HC is issued. Although carryover allocations/Letters of Determination are issued on a project-wide basis, the final allocation must be made on a building-by-building basis.

The "maximum applicable percentage allowable" appearing on the IRS Form 8609 may not equal the applicable credit percentage elected or the one for the month the building is placed in service. DCA has the responsibility of determining how much credit a project needs for financial feasibility and viability as a low-income project. DCA may, therefore, reduce the applicable credit percentage in determining the credit amount.

Prior to issuance of Form 8609/Form IT-HC, DCA or a representative authorized by DCA will inspect the tax credit development to ensure construction quality, fulfillment of owner's representations made in the application, and compliance with all applicable laws and regulations. In addition, DCA will conduct a compliance review. All issues related to the construction inspection and compliance review must be resolved to DCA's satisfaction prior to issuance of any Form(s) 8609. All applicable fees must be paid. DCA must also receive the original recorded land use restrictive covenant.

The credit allocation is made to the ownership entity by the issuance of IRS Form 8609/ form IT-HCs. DCA issues only one copy of Form 8609 /Form IT-HC and it is the owner's responsibility to furnish the requisite copies to its partners for filing with the IRS Final Allocation Application will be reviewed in the order that they are received. Incomplete packages or non payment of fees may result in a delay in the issuance of 8609 forms.

Final allocation application forms are available on DCA's website at www.dca.state.ga.us.

VII. Basis Concepts

Eligible Basis

The eligible basis of a new building is its adjusted basis used to calculate depreciation, which is generally the development cost minus the cost of land, land related fees, and investment and permanent financing costs. [Section 42 (d)]. In all other cases, the following applies:

A. New construction:
The eligible basis of a new building is its adjusted basis as of the close of the first taxable year of the credit period. [Section 42 (d)(1)]

B. Acquisition:
The eligible basis of an existing building that is being acquired in accordance with the 10-year rule is:
(1) its adjusted basis as of the close of the first taxable year of the credit period (generally its acquisition cost), and
(2)zero in any other case.

C. Rehabilitation over $3,000 per low-income unit or 10 percent of adjusted basis:
The eligible basis for an existing building involving rehabilitation expenditures of at least 10 percent of its adjusted basis or $3,000 per low-income unit is equal to the allowable rehabilitation expenses incurred during any 24-month period with certain exceptions. [Section 42 (d)(2)]

Note: Although the Code establishes the minimum expenditure for rehabilitation projects at $3,000 per unit, DCA policy is more restrictive and requires a minimum of $20,000 per unit of

rehabilitation hard costs for properties 20-years old or less and a minimum of $25,000 for properties that exceed 20-years old.

For tax credit purposes, there is no basis adjustment for depreciation. Common areas or amenities available for use by all the tenants are taken into account in determining the adjusted basis if no separate user fees are charged. [Section 42 (d)(4)]

As originally enacted, the Tax Reform Act provided that a building's eligible basis would be determined on the day it was placed into service. As amended, the Code has been modified to permit eligible basis to be determined at the same time qualified basis is established, e.g., the end of the first year of the credit period. Project owners, therefore, may include the cost of items or work performed after the project is placed into service. Landscaping, usually done after the buildings are completed, is an example of work performed after the project is placed in service which may be included in the determination of eligible basis. These costs should **not** exceed $3,000 per unit.

The eligible basis is reduced if the low-income units are not "comparable" to the other units in the project. If the construction or acquisition costs are comparable and the units are provided in similar proportion for both low-income and other tenants, the units are considered to be of comparable quality. Federal regulations allow a differential in square footage cost of up to 15 percent for the market rate units. If any market rate units are of a higher quality or provide additional amenities, the adjusted basis for those units is subtracted from the eligible basis; or upon election, the excess cost is excluded from the eligible basis if the cost differential does not exceed 15%. The percentage of low-income units to the total project remains the same, but is applied against the lower eligible basis. [Section 42(d)(3)]

The eligible basis of a project may be increased in certain low-income and high cost areas as designated by HUD. In census tracts where at least 50 percent of the households have an income which is less than 60 percent of the area median income, or which has a poverty rate of at least 25 percent, ("qualified census tract") a project's eligible basis attributable to rehabilitation expenditures and new construction costs may be increased by up to 30 percent. This means that projects in very low-income neighborhoods can attract additional equity. A maximum 30 percent increase in basis will also apply to projects located in certain "difficult development areas," i.e., a limited number of metropolitan and non-metropolitan areas with high construction, land, and utility costs relative to the area median income.

Qualified Basis

The qualified basis is equal to the percentage, or "applicable fraction", of the eligible basis attributable to the low-income units. The applicable fraction is the smaller of (a) the percentage of low-income units to total units; or (b) the floor space of low-income units to the total floor space of the residential rental units. [Section 42 (c)]

Only those units that are occupied by low-income persons may be included in determining the qualified basis during the first year of the credit period. (Common space units are excluded in the applicable fraction calculation.) Subsequently, a unit previously occupied by low-income persons and then vacated may count as a low-income unit as long as no other unit of equal or smaller size is rented to a non-low income tenant following such vacancy.

Special rules apply for determining qualified basis where a portion of a building is used to provide supportive services for the homeless. The qualified basis may be increased by the lesser of (a) the eligible basis used annually to provide supportive services that assist tenants in finding and retaining permanent housing; or (b) 20 percent of the qualified basis of the building.

Eligible Financing

Almost all qualified rental projects are eligible for tax credits regardless of the type of financing or Federal subsidy. (One major exception is a non-single room occupancy project receiving Section 8 Moderate Rehabilitation Assistance. Such projects are not eligible for the Low-Income Housing Credit.) However, the allowable eligible basis or the credit percentage may vary depending on the financing type.

Tax credits can be used in conjunction with:

		Maximum Present Value Credit
A.	Conventional financing	70% New Construction
		70% Rehabilitation
		30% Acquisition

Conventional financing includes loans or grants from local or State entities that are not directly funded through Federal grant programs. The treatment of such local/State contributions must be determined on a case-by-case basis. Additionally, under the tax credit program, AHP loans provided through the Federal Home Loan Bank's Affordable Housing Program is considered as conventional and not Federally-subsidized financing.

A below-market interest rate Federal loan available under Sections 106, 107, or 108 of the Housing and Community Development Act of 1974, Community Development Block Grants, Federal guarantees, mortgage insurance, or direct rental subsidies such as Section 8 Existing Housing Certificates are treated as conventional financing for purposes of determining the maximum present value credit (70% new construction and 30% acquisition).

The 1993 Act provides that a below-market interest rate loan made available through HOME funds may be considered as conventional financing if at least 40 percent of the residential units in each building are rent and income restricted to households whose income is at or below 50 percent of area median gross income. However, the Act precludes owners taking advantage of this provision from also qualifying for the 30 percent increase in basis for projects located in high cost areas.

B. Federally-subsidized financing — 30% New Construction; 30% Rehabilitation; 30% Acquisition

Federally-subsidized housing involves a direct or indirect Federal loan, but not at an interest rate less than the prevailing Treasury interest rates (the "Applicable Federal Rate"); for example, Section 236, Section 221(d)(3) BMIR, and USDA/RD Section 515. Projects that received Federal subsidies in any prior taxable year are also considered Federally-subsidized.

In general, projects receiving Section 8 Moderate Rehabilitation Assistance are not eligible for the Low-Income Housing Tax Credit. However, projects participating in the Moderate Rehabilitation program for single room occupancy buildings under the Stewart B. McKinney Homeless Act may use tax credits.

C. Tax-exempt financing — 30% New Construction; 30% Rehabilitation; 30% Acquisition

Tax-exempt financing through the issuance of tax-exempt local or State bonds is a sub-category of Federally-subsidized financing and the lower credit percentage applies. If 50 percent or more of the aggregate basis is financed with bonds for which an allocation of the State private activity bond volume cap was awarded, a separate tax credit allocation from the housing credit agency is NOT required. However, the project is subject to the State Qualified Allocation Plan. If less than 50 percent of the cost of the aggregate basis is financed through the issuance of tax-exempt bonds, a credit allocation must be obtained for the non-bond portion through the State allocating agency from the State's authority.

D. Federal grants

Federal grants can be treated in one of two ways according to their financial structuring:

(1) A grant, which is structured as a grant to the project owner, must be excluded in its entirety from the eligible basis. The remainder of the eligible basis qualifies for up to a 70 percent or 30 percent discounted present value tax credit, as applicable.

(2) A grant (excluding a Community Development Block Grant), for instance, to a local government, which is structured as a below-market rate loan to the developer can be treated as:

   (a) a Federally-subsidized loan and receive up to 30 percent discounted present value tax credit, or
   (b) a Federal grant which is deducted from the eligible basis.

NOTE: It is more advantageous to treat a Federally subsidized loan as a grant, deduct it from the eligible basis, and use up to 70 percent discounted present value credit based on the balance of the eligible basis if the grant portion does not substantially exceed 50 percent of the total project cost, provided the non-grant portion of the cost is financed without Federal assistance and is a 70 percent credit activity (new construction or substantial rehabilitation).

E. Exception to Federal assistance provisions

Federal subsidies such as HUD Section 8 rental assistance or USDA/RD Rental Assistance Payments which are tenant-based rent subsidies are **not** considered subsidies for tax credit purposes and do not trigger an eligible basis adjustment or the 30 percent present value credit application. If tax-exempt bonds or a below-market interest rate Federal loan are used to provide construction financing for an identified property and the bonds or loan are repaid before the building is placed in service, the building is not considered Federally subsidized.

VIII CREDIT ALLOCATION PROCEDURES

DETERMINATION OF CREDIT AMOUNT

As required by law, the allocated tax credit amount cannot exceed the amount necessary to support the low-income portion of the project. [Section 42(m)(2)]

The credit amount will be calculated at each of the applicable application stages: application award, carryover allocation and final allocation. The amount of credit awarded to a project may change from stage to stage if any of the factors used in calculating the credit change. The following guidelines will apply in determining the amount of credit to be allocated to individual projects:

Project cost review. Each project will be evaluated for comparability and reasonableness of project cost. Costs will be reviewed against those from projects of past years, regional data, third party documentation, and other factors and data as determined at the sole and absolute discretion of DCA to bear upon the issues of comparability and reasonableness of project costs. Intermediary costs, defined as the project costs related to consultants and syndication, will be reviewed in accordance with the provisions of Section 42(m)(2)(ii) of the Code. Additional documentation from the project sponsors may be requested to assist in the review. Sponsors will be notified if any adjustments seem necessary.

Debt review. Projects will be evaluated for debt capacity. At the early stages of the development process, DCA recognizes that firm financing commitments usually are not in place. Applicants should provide preliminary conditional financing commitments and term sheets, which will be reviewed for feasibility. Rents, utility allowances, vacancy rates, and operating expenses will be reviewed for comparability and reasonableness in accordance with established policies (see below). Additional documentation from the project sponsors may be requested to assist in the review. Sponsors will be notified if any adjustments seem necessary.

> The debt coverage ratio and comparable financing terms used by DCA will be determined through consultation with banking and syndication experts, will reflect typical market terms, and will be updated as appropriate to reflect market changes. The maximum loan amount, including any subordinated debt the project is expected to receive, will constitute the debt figure used in the tax credit calculation.

Equity gap. The equity gap is defined as the total project cost minus all sources of funds, that is, the project cost not covered by debt financing and grants. The tax credit award is calculated such that, over ten years, the award amount equals the excess project cost, thereby “closing” the equity gap. This amount may be less than the 4 percent or 9 percent maximum allowable credit. If credits are syndicated, not all of the 10-year tax credit award is returned to the project as equity; a portion is consumed by syndication expenses, project reserves and return requirements of investors.

The credit calculation takes the amount of credit returning to the project into account through the **equity factor** (also referred to as “pricing”). The equity factor is the proportion of the 10-year credit returned to the project sponsor in the form of equity. A syndication contract or limited partnership agreement detailing the distribution of the gross syndication proceeds should be included in the application.

Credit Calculation. The credit calculation yields the amount of credit needed to fill the equity gap, thereby financing the project cost not covered by debt and other sources, making the project financially feasible.

To calculate the "equity gap amount", the following method is used:

Project Cost - Sources = Equity Gap

The owner provides information on the project cost and sources of funding in the application. The difference between the two is the equity gap, which needs to be "filled" to pay all project cost, thus enabling the project to be built. For example, Project A will cost $5,000,000 to build and the owner has obtained financing in the amount of $2,000,000. The equity gap to be filled equals $3,000,000. Since the credit amount can be taken each year for ten years, and the credit allocation to be calculated is the first year credit amount only, the equity gap is divided by 10 (the number of years in the credit period) to obtain the annual credit amount.

Equity Gap ÷ 10 = Annual Equity Amount

Dividing Project A's equity gap of $3,000,000 by 10 yields an annual equity amount of $300,000. That is, the owner needs to receive $300,000 cash from the tax credit each year to cover the cost of the project not financed by the mortgage.

The annual equity amount is then divided by the equity factor, to factor out that portion of the credit not going to the project. For example, 75 cents of every Federal tax credit dollar and 30 cents of every State tax credit dollar will go to the project (again, the balance is eaten up by syndication expenses and the time value of money), for a total of $1.05. The resulting credit figure is the amount needed to cover project cost for which no funds are available, taking into account the pay-in to the project of the credits.

Annual Equity Amount ÷ Equity Factor = Annual Credit Amount Required -

Continuing with the example of Project A, to determine the credit amount required by this project to fill the equity gap, the owner must divide $300,000 by the expected equity factor of $1.05 for every tax credit dollar (State and Federal combined). Based on this calculation, the owner needs $285,714 in Federal tax credits (plus $285,714 in State tax credits) allocated annually to raise sufficient funds to complete the project (at 75 cents on the dollar, if the project had to use Federal credits alone, it would require $400,000 in credits to fill the gap).

Maximum Credit Amount

The actual credit amount assigned to a project equals the lesser of the equity gap credit amount or the maximum credit amount. To calculate the maximum credit amount, the following method is used:

Qualified Basis x Applicable Credit Percentage = Maximum Credit Amount

The credit amount allocated is frequently less than the maximum credit amount. The allocated credit amount may be less than the requested amount if DCA determines that the proposed eligible basis is either financially infeasible or ineligible or for such other reasons as DCA may deem necessary or appropriate for the administration of the program. The credit amount may also change from stage to stage in the allocation process as initially proposed project costs, financing or syndication terms are finalized, but will not increase beyond the carryover allocation.

Maximum effort will be made not to jeopardize a project's viability by making minor adjustments in the tax credit amount for the project. Should the sources or uses of funds change after the original application, such that the equity gap is reduced, project improvements may be allowed, if possible, so that the tax credit amount can remain the same. Project improvements may include increasing project amenities, serving additional low-income tenants, or reducing rents on a portion of the project.

Credit Allocation Disclaimer

DCA makes no representations or warranties regarding the amount of credit or the appropriateness of credit allocation to any project. Project applicants are expected to provide DCA with sufficient information to document the eligible and qualified basis and the amount and terms of financing and equity contributions in any project.

Credit Recapture
Owners of projects not meeting program requirements may lose their tax credits. DCA will not refund any allocation fees to owners of projects whose credits are recaptured.

Tax Credit Computation/Underwriting

Credit calculation. Under the Code, tax credits cannot exceed the amount necessary to support the low-income portion of the project. The Code requires that the credit amount be calculated at application, allocation, and placed-in-service date. Credit amounts may fluctuate from stage to stage as project costs, operating expenses, financing and syndication terms are finalized. DCA will estimate the Federal and State credit amounts at reservation or carryover allocation. Generally, any increase in the credit amount will be based on changes in both the sources and uses of funds and not on increased project costs alone. Please note that if the amount of credit necessary for financial feasibility due to circumstances causing significant unforeseen cost increases over the amount shown on the Carryover Allocation, the Owner must apply and compete for additional credit in the funding round in the year the project is placed in service. Additionally, the applicant must meet the criteria for additional tax credits as outlined in the appropriate QAP.

Credit calculation assumptions. The credit calculation at the carryover stage will be, in most cases, based on cost and financing estimates rather than actual numbers. DCA will carefully review the estimates to determine that project costs are documented and/or reasonable, debt capacity has been determined using documented and/or reasonable income and expenses, debt capacity is fully utilized, subordinated debt is fully accounted for, and the calculated credit does not exceed the statutory limit (e.g., approximately 4 percent and 9 percent of qualified basis). The actual financing and syndication terms, as soon as available, will be used to calculate the tax credit amount (either at commitment or allocation).

2007 QAP DCA Underwriting policies to determine feasibility of tax credit projects

Annual Operating Expenses. Annual budgeted Operating Costs, excluding reserve contributions, must be no less than $3,000 per unit for urban projects, $2,600 per unit for rural and $2,400 per unit for projects that include USDA loans as a funding source. (The lower amount for an USDA project is allowable due to USDA's more restrictive underwriting policies.) However, DCA reserves the right to determine the reasonableness of budgeted operating expenses for all projects. DCA will consider waivers for projects that can clearly demonstrate that annual operating costs can be reasonably maintained at a lesser amount. Approval of such waivers shall be at DCA's sole and absolute discretion. If a determination is desired prior to Application Submission, requests for waivers and fees shall be forwarded to DCA on or before March 5, 2007, to the attention of the Director of the Office of Affordable Housing. For Bond Financed Projects, request for waivers and fees must be forwarded to DCA no later than 30 days prior to Application submission.

Assumptions for Building Basis. For purposes of underwriting acquisition Credits, the building basis must be limited to the lesser of the sales price or the appraised value of the building(s). The appraised value will be the basis for determining the appropriate sales price when an Identity of Interest exists between the buyer and seller.

- *Builder Cost Limitations.* Builder's overhead, general requirements, and builder's profit are limited to percentages of the total construction contract (net of builder's overhead, general requirements, and builder's profit) as follows: Builder's overhead – two percent (2%); General Requirements – six percent (6%); and Builder's profit – six percent (6%). General Requirements shall not include water tap and sewer fees. For Applications where there is an Identity of Interest between the owner and contractor or the developer and the contractor, the cost of obtaining a letter of credit or a construction loan in lieu of the payment and performance bond must be included in the general requirements.

- *Construction Contingency.* The construction contingency amount must be at least 5% but no greater than 7% of the total construction hard costs for new construction projects. For rehabilitation projects, the construction contingency amount must be at least 10% but no greater than 15% of the total construction hard cost. DCA reserves the right to adjust development budgets in this regard, for underwriting purposes, in its sole and absolute discretion.

- *Debt Coverage Ratio.* The debt coverage ratio for all tangible debt after funding expenses and other required reserve funding must be between 1.15 and 1.35 for the first full year of operation. For purposes of determining the debt coverage ratio, the deferred Developer Fee will not be considered tangible debt. As part of its financial feasibility analysis, DCA will require that a project meet at a minimum a 1.15 debt coverage ratio for each year after the first year of the credit period. Amounts set aside in a reserve funded in one year may not be withdrawn and treated as a gross receipt in a subsequent year to satisfy the debt service coverage ratio in the subsequent year. Amounts received in one year that exceed the debt service coverage target for that year will not be credited to another year. For purposes of this test, each year will stand alone. The debt coverage ratio cannot drop below 1.15 during the 15-year Compliance Period, HOME Loan term, or the Period of Affordability, whichever is longer. The Credits and/or HOME Loan amount may be reduced if DCA's underwriting indicates a debt coverage ratio greater than 1.35 in the first full year of operation

- *Developer Fee Limitation.* DCA restricts the maximum Developer Fee as follows:

  For New Construction and Rehabilitation projects, the Developer fee will be limited to 15% of Total Development Costs less the budgeted Developer Fee and the cost of Land and Existing Structures. For projects that are eligible for acquisition credits, the Developer Fee on the rehabilitation portion will be limited to 15% of the Total Development Cost less the budgeted Developer Fee, the acquisition cost of the Existing Structures (including Acquisition Legal Fees), and the cost of Land. The Developer Fee on the acquisition portion will be limited to 15% of the Existing Structures acquisition cost (including Acquisition Legal Fees). For rehab projects that are not eligible for acquisition credits, the developer fee will be limited to 15% of Total Development Cost less the budgeted Developer Fee, the cost of Land, Acquisition Legal Fees and Existing Structures. However, if the Development Agreement specifically states that a portion of the developer fee is attributable to the building acquisition, then the developer fee will be limited to 15% in determining the maximum Developer Fee.

When an Identity of Interest exists between the Developer and the General Contractor, the maximum Developer Fee is restricted to 15% of the Total Development Cost less the cost of the Land, the budgeted Developer Fee, and the Builder Profit. If the Application budgets a Developer Fee of less than 15%, the percentage proposed will be substituted for 15% in determining the maximum Developer Fee.

For projects awarded a cost waiver, the developer fee will be calculated using the allowable total development cost based on the DCA Per Unit Cost Limits.

Deferred Developer fee must be payable within fifteen years from available cash flow.

Consultant's Fees are considered part of the Developer Fee.

- *Distribution Across Unit/Bedroom Sizes*

  1. Rent. Projects with a multi-tiered rent structure must distribute the rents across unit sizes, unit types and buildings. These units need not be fixed but may float in the same way high HOME rent and low HOME rent units may float within a project.

  2. Accessibility. To the maximum extent feasible, accessible units must be distributed through the project and site so as not to limit choice.

Employee Unit Designation. For Applicants electing to house management, security, or maintenance personnel in a project unit, the employee unit can be either designated as part of the residential unit count or as part of the common space. If the employee unit is designated as part of the residential unit count, and is also designated as a low-income unit, then an income eligible household must occupy it. This income eligible household may be the on-site management, security or maintenance personnel. Rent can be charged or collected by the Owner for this unit. If the employee unit is designated as part of the common space, it need not be occupied by an income-eligible household, but must be occupied by a full time on-site manager, security or maintenance personnel. No rent can be charged or collected by the Owner for a unit designated as common space.

Project Participant- Identity of Interest between any Project Participant, other than the Syndicator, and the construction and/or permanent lenders is prohibited unless the financing terms and conditions are reasonable, customary, and consistent with industry standards. The determination *of* whether or not such terms and conditions are reasonable and customary is at DCA's sole and absolute discretion.

Land Purchase- For Applications where there is an Identity of Interest between the buyer and seller for any site(s) within the project, an appraisal no more than 6 months old and prepared by a certified general appraiser must be submitted with the Application as a basis for the determination of the appropriate sales price. The appraisal must be prepared in accordance with the DCA Appraisal Guide and must provide separate valuations for the land and existing buildings. The lesser of the sales price or the as is appraised value will be the basis for determining the appropriate sales price.. See Appendix II, Section 10(b) for further appraisal requirements.

- *Land Use Restrictions.* When there is more than one financing source imposing land use restrictions on a project, e.g., a HOME Loan and Credits, there may be restrictions from one program that are more restrictive than similar restrictions in the other program(s). In such instances, the most restrictive requirements will apply to the project.

- *Local Government Fees. The development budget must include all water tap, sewer tap, impact and building permit fees. These local government fees cannot be part of General Requirements.*

  Management Fees. The operating budget should specify the management fee. DCA will review carefully the terms of the management agreement if the property is self-managed or if there is a related party relationship between the owner/developer and the management company. DCA reserves the right to limit or adjust management fees which appear to be excessive.

- *Market Studies*. Applicants seeking 4% Credits, 9% Credits and/or HOME Loans must pay a fee that includes the cost of a market study to be commissioned by DCA. Applicants must pay this fee at the time of Application or Pre-Application Submission. The resulting market study is the sole property of DCA. However, after the Letter of Determination is issued or the Competitive Scoring process is complete and awards have been announced, each Applicant will receive one copy of their respective project's market study.

- *Over-Income Tenant Restriction -* The Code provides that a tenant's income may increase during tenancy to exceed 140% of the allowable household income. DCA requires that the lease for tenants who exceed this limit for two (2) successive years may not be renewed for the third year. The penalty for failure to adhere to this DCA policy may be forfeiture of the right to participate in all DCA programs in one or more future years depending upon the severity and nature of the particular circumstances.

- *<u>Permanent Debt Financing</u>*. Permanent debt financing shall have a minimum term of 5 years. Any permanent debt financing maturing prior to the end of the Compliance Period shall be fully amortizing.

- *<u>Public Housing Units</u>*. HOME and/or Credits cannot be used for the construction or rehabilitation of public housing units except in mixed income projects that include public housing units and a portion of the Total Development Cost is from another clearly identified funding source.

- *<u>Relocation and Displacement of Tenants</u>*. For all HOME Loan and Credits projects, the completed and executed tenant household data forms must be submitted with the Application for every occupied unit in each building to be rehabilitated. The Applicant is responsible for the accuracy of the information on the data forms. Applications for HOME Loans that require relocation of existing tenants due to rehabilitation work will be accepted only with a relocation plan (including a sufficient budget) that in the opinion of DCA meets the requirements of the Uniform Relocation Act and any other applicable laws.

  Funding sources other than the DCA HOME Loan must be used to finance the relocation costs. For Credits projects, DCA will not allow permanent displacement of tenants, if avoidable. If the Applicant anticipates displacing tenants, the Applicant must include in the Application a detailed displacement plan, which sets forth the specifics of the displacement, including a projected budget, and an explanation of efforts planned by the Applicant to mitigate the impact of the displacement. Any displacement of tenants will be subject to DCA's prior written approval.

<u>Rent-up Reserves.</u> A reasonable rent-up reserve is required for all Projects based on the estimated projected lease up deficit. Absent information to the contrary, DCA will assume that 3 months of projected operating expenses constitutes a reasonable reserve. After lease-up any funds will be transferred to the Operating Deficit Reserve or will be utilized to pay down a deferred developer fee.

- *<u>Replacement Reserve</u>*. A Replacement Reserve, is required for all projects awarded funding under the Plan and must be included in the operating budget. Contributions must be made to the reserve account, starting at or before the conversion date of the construction loan to permanent loan and must be funded for the term of the loan in accordance with the Replacement Plan. The following minimum contributions must be used:

  1. Rehabilitation - $25.00 per unit per month ($300 per unit per year)
  2. New Construction - $20.00 per unit per month ($240 per unit per year)
  3. Single Family Units – $35.00 per unit per month ($420 per unit per year)

Replacement Reserve funds may be used only for capital improvements and system replacements, and must not be used for general maintenance expenses. Replacement Reserves must escalate at a rate of 3% per year. If the Replacement Plan indicates that an amount greater than the minimum reserve outlined above is necessary, then this greater amount will be required and must be escalated at a rate of 3% per year. DCA will, at its discretion, adjust the Replacement Reserve to reflect reasonable and customary capital and replacement expenditures. For Rehabilitation Projects, the physical needs assessment will also be reviewed in determining whether sufficient reserves have been established.

- *Revenue, Vacancy, and Expense Trends*. Revenue should be trended at 2% per year, operating expenses at 3% and vacancy and collection loss at 7%.

- *Section 8 Rental Assistance.* No Owner may deny a unit to applicants possessing a Section 8 Rental Assistance certificate or voucher unless those applicants fail to meet the minimum requirements for all leaseholders. Federal statutes prohibit discrimination against Section 8 certificate and voucher holders. DCA will closely monitor whether the tenant application process is structured to avoid such discrimination or whether any actions are taken to discourage Section 8 Rental Assistance certificate or voucher holders from applying. Likewise, all lease provisions must be compatible and not in conflict with Section 8 leases.

- *Soft Cost Contingency*. “Soft cost” or “total project” contingency, over and above the allowed construction contingency, will not be permitted as a budgeted line item.

- *Stabilization*. Projects will be considered stabilized when occupancy reaches 93% for three consecutive months, or actual revenue reaches 93% of budgeted revenues for three consecutive months.

- *Tax Credit Percentages*. For purposes of an application for 9% credits the Applicable Credit Percentage for the month of April 2007 should be utilized. For purposes of an application for 4% credits (Tax-Exempt Bond financed applications), the Applicable Credit Percentage for the month preceding the submission of the application for tax credits should be utilized.

- *Utility Allowance (UA).* Applicants should establish utility allowances for the property as follows:

  1. *USDA–Assisted Buildings* – If a building receives assistance from the USDA (formerly called the Farmer’s Home Administration, or FmHA), the USDA-prescribed utility allowance applies to all rent-restricted units in the building. The USDA-approved allowance applies even if the building is assisted by any other program or agency. Examples of USDA assistance include assistance provided under the USDA Section 515 rural rental loan program and USDA rental assistance.

2. *Buildings with USDA-Assisted Tenants*. If any resident of a building receives USDA rental assistance, the USDA-approved utility allowance applies to all rent-restricted units in the building. This is even the case if residents of some units receive rental assistance from the U.S. Department of Housing and Urban Development (HUD).
3. *HUD-Regulated Buildings*. If neither a building nor any resident in the building receives USDA assistance, and HUD annually reviews the rents and utility allowances for the property (such as for Section 8 and Section 236 projects), the HUD-prescribed utility allowance is used. This rule doesn't apply to buildings that have only FHA-insured mortgages.
4. *DCA HOME/Tax Credit buildings*. If a building is neither a USDA-assisted nor a HUD-regulated property, and no tenant in the building receives USDA rental assistance, there are two possible methods for establishing the utility allowance. These include:

    A. The allowance established by the local Public Housing Agency (PHA) for the Section 8 Program in the locality where the property is located. However, the electric allowances may be calculated as outlined in Section B below.

    B. A written project specific estimate by a Utility Provider for the electric allowance only may also be used. If a private estimate is obtained, it must be prepared in accordance with DCA Energy Simulation Tool Criteria requirements as outlined in the DCA Compliance Manual. The Energy Tool Criteria must be validated by a source acceptable to DCA as identified in the DCA Compliance Manual. Each year, the Utility Provider will recalculate the Utility Allowance based on the current rate and all other billing inputs to determine if there is any change in the allowance. See DCA Compliance Manual – Utility Allowances. Once this method of choosing a utility allowance is elected, the project must continue using this method during the entire compliance period for the project. However, any unit occupied by a resident with a Section 8 / Housing Choice Voucher must use the PHA utility allowance, even if a private estimate has been obtained.

XI UTILIZATION OF THE CREDITS

Credit Allocation Provisions

The credit taken during the Credit Period may not exceed the credit amount allocated by DCA (certain tax-exempt bond financed projects are an exception). An allocation is generally effective only if it occurs in the same year that the building is placed in service and if the allocation is made no later than the close of the calendar year in which the building is placed in service. The allocation will specify both the allocated maximum **qualified basis** and the **credit percentage**.

Allocation of Credits on a Project Basis

In general, in the case of a project which includes (or will include) more than one building, an allocation is effective only if:

- the allocation is made to the project for a calendar year during the project period which is the time between first building's allocation and the last building's allocation in the project;
- the allocation only applies to buildings placed in service during or after the calendar year for which the allocation is made; and
- the portion of such allocation, which is allocated to any building in such project, is specified not later than the close of the calendar year in which the building is placed in service. [42(h)(1)(F)]

Carryover and Reallocations

Post-1989 credit authority may be carried over on a statewide as well as project basis. Thus, DCA effectively has two years within which to allocate any particular year's credit ceiling. Credits not allocated by DCA by the end of the second year are to be reallocated among the states that have used all of their allotments. In any year, DCA can recapture allocations from projects that do not go forward or projects that do not become qualified low-income projects within the applicable period. Such amounts can then be reallocated to other projects. [Section 42(h)(3)]

First Year Credit Determination

The credit may first be claimed either for the year the building is placed in service or the next taxable year. [There is an exception for the acquisition credit. See Section 42(f)(5).] The owner must choose in which year the credit period begins and, once chosen, the election is irrevocable. The term "placed in service" has different meanings depending upon the type of activity as explained below:

<u>New Construction</u>

For new construction, a building shall be deemed placed in service on the date the building is available for occupancy (usually evidenced by a Certificate of Occupancy issued by the local government).

<u>Acquisition</u>

A transfer of the building ownership results in a new placed-in-service date if, as of that date, the building is occupied or ready for occupancy.

<u>Rehabilitation</u>

A building involving rehabilitation is treated as placed in service at the close of any 24-month period during which rehabilitation expenditures averaging at least 10 percent of the building's adjusted basis or $3,000 per low-income unit, whichever is more, were made. This placed-in-service date applies even if the building is occupied during the rehabilitation period.

<u>First Year Prorating</u>

During the first year of the Credit Period, the credit allowed based on the qualified basis for any building will not be the full amount of the credit allocated, if all of the planned low-income units are not occupied during the first month. To determine the amount of the credit to be taken, an averaging convention is used. The qualified basis is calculated at the close of each full month of the first credit year and added to the qualified basis of the preceding months. The cumulative total is then divided by 12 months. Any resulting reduction in the credit allocated for the first taxable year of the credit period may be taken in the first taxable year following the credit period which would generally be the eleventh year after the building has been placed in service. [Section 42 (f)]

Failure to use Previously Awarded Credits

DCA's policy is that projects awarded credits must be completed by the applicable Placed-In-Service date. An owner who cannot utilize awarded credits for any reason must still pay the credit allocation fee for the project. Provided the owner returns the credits and pays the applicable tax credit allocation fee in a timely manner, the project is eligible to be resubmitted in a future application round. If the resubmitted Application is approved, the Owner will pay a new credit allocation fee. The owner must inform DCA of its intent to return credits. DCA will then direct the owner on the proper timing and process for returning the credits. In very limited circumstances, DCA will consider a forward exchange of credit if a delay in completion is due solely to circumstances beyond the control of the owner/developer. Examples of such delays include unforeseen sewer issues, delays due to HUD policy and procedure or for extraordinary delays in the issuance of local development or building permits. In the event DCA does approve a forward exchange, the placed in service date will be extended for only a period of six months. Failure to meet that extended placed in service date (6 months) will be considered a major instance of non-compliance and will be considered in DCA compliance scoring.

X. OWNER REQUIREMENTS

1. Compliance with Low-Income Housing Tax Credit Requirements

Owners are responsible for operating projects in compliance with the Code. To assure compliance with the Code, the IRS has established minimum procedures, record keeping and reporting requirements for allocating agencies and owners to follow. DCA has prepared a compliance monitoring plan that complies with the regulations. The compliance monitoring plan is part of the State's Qualified Allocation Plan. DCA has also developed a separate compliance manual for project owners and managers in which it sets forth in more detail how projects will be monitored.

Representative(s) authorized by the owner/general partner are required to successfully complete a compliance training seminar provided by or sponsored by DCA. The owner of the Tax Credit property will be required to submit to DCA a copy of the certificate of successful completion for the training prior to the beginning of the lease-up or, prior to placing the first building in service. The owner(s) or representatives at the conference should be prepared to provide the following project information: the unit mix, the corresponding rent schedule, the name(s) of personnel authorized to sign credit program reports and related documents, and a mailing list that includes the addresses and telephone numbers of all persons to be contacted regarding project compliance. DCA will distribute copies of the compliance manual at this meeting.

2. Owner Certification to IRS

Following the close of the first taxable year in the Credit Period for any qualified low-income building, the credit user must file with IRS Form 8586, "Low-Income Housing Credit", Schedule A, "Annual Statement", and a copy of the IRS Form 8609 "Low-Income Housing Tax Credit Allocation Certification." If the credit user received a carryover allocation, a copy of that document must also be filed for the first tax year in which the credit is claimed. Form 8609 is the official allocation form from DCA to the owner and contains the following information:

A. **Allocation of Credit (**to be completed by GHFA). Identifies the owner, the building, the building identification number (BIN), and the housing credit dollar amount allocated.

B. **First-Year Certification** (this may be the taxable year in which the building was placed in service or the subsequent taxable year, at the taxpayer's election; to be completed by the owner only in the first credit year). Certification contains basis information for the building and various elections by the owner as to the set-aside requirement, start of credit period, and other selection.

Failure to submit the required IRS forms by the date specified will result in the credit being disallowed. [Section 42 (l)]

3. Owner Certification to the Georgia Department of Revenue/Department of Insurance

Following the close of the first taxable year in the Credit Period, and for each year of the Credit Period, for any qualified low-income building, the State Credit user must file Form(s) IT-HC and any required attachments with his/her Georgia income tax return or insurance premium tax return with the Georgia Department of Revenue and/or Department of Insurance. This format will identify the owner, the building, and the amount of State Credit assigned, as well as providing a mechanism to allow the user to document its connection to the ownership entity.

4. Qualified Nonprofit Organizations

By Federal statute, 10 percent of Georgia's tax credit authority is reserved for use by qualified nonprofit organizations, which collaborate in some manner with for-profit entities. Qualified nonprofit projects also benefit from a number of other privileges granted by the tax code under its at-risk rules and the 10-year rule. Qualified nonprofit organizations are those that:

A. have been granted tax-exempt status under paragraph (3) or (4) of Section 501(c) of the Internal Revenue Code; and

B. have as one of their exempt purposes the fostering of low-income housing (DCA requires that this purpose be clearly stated and not subject to interpretation or implication);

C. are not affiliated with or controlled by a for-profit organization; and

D. own an interest in the low-income project (directly or through a partnership).

In Federal regulations, Congress clarifies that the set-aside can be used by for-profit corporate subsidiaries of qualified nonprofit organizations, so long as 100 percent of the stock of such subsidiaries is owned at all times during the period such subsidiary is in existence by one or more qualified nonprofit organizations.

The qualified nonprofit is required to "materially participate in the development and operation of the project throughout the compliance period". As such, it must have a role in the development as well as in the ownership and continued management of the project. At present, there is no consensus on the amount of ownership interest that must be retained by the nonprofit partner in a syndication to maintain the qualified nonprofit project status for tax credit purposes. State and local laws may affect the minimum degree of ownership required to maintain the project's eligibility for the nonprofit set-aside. Treasury Regulation 1.469-5T states that to be considered as a material participant for any tax year, an individual can satisfy any one of the following tests:

-participates in the activity for more than 500 hours during the tax year
-participation in the activity for the taxable year constitutes substantially all of the participation in such activity for all individuals for that year.
-participation in the activity is more than 100 hours during the taxable year, and this participation is not less than the participation of anyone else.
-activity is a significant participation activity and all of the participation in all such activities exceeds 500 hours per tax year
-acts and circumstances show that the participation in the activity was on a regular, continuous, substantial basis during the tax year.

The requirements imposed by the Code for qualified nonprofits are ambiguous and subject to interpretation. In the absence of more definitive language or written guidance from the Internal Revenue Service, DCA is left to develop its own guidelines. Although such guidelines are highly desirable to provide uniformity in decision making and giving applicants some measure of predictability, it is difficult to establish such guidelines due to the number of factors that might affect a nonprofit's status. The determination of whether a nonprofit meets the requirements contained in the Code will be dependent on the facts relating to the individual nonprofit and DCA believes that it is more appropriate at this time to make such a determination on a case-by-case basis. In making a determination, DCA will be guided by answers to such questions as the following:

- If a neighborhood-based nonprofit organization, is the association or corporation duly organized to promote and undertake housing activities on a not-for-profit basis within a specified neighborhood? Is the majority of either its membership, clientele, or governing body residents of the neighborhood where activities are to be carried out?

- If the housing development organization is operating within a city or county, are its members and/or board representative of its area of operation? That is, are a majority of either its membership, clientele, or governing body residents of the city or county where the activities are to be carried out?

- If the housing development organization is operating within a defined region of the State, are its members and/or board representative of its area of operation? That is, are a majority of either its membership, clientele, or governing body residents of region where the activities are to be carried out?

- Is each member limited to one vote in the affairs of the organization?

- Does the membership reflect a variety of interests in the community or region with at least five of the members recognized as leaders in civic, governmental, fraternal, religious, and other community organizations of the community or region where the housing will be located?

- How many persons are on the Board of Directors and are they selected by a procedure that insures that the interests of minorities and women are adequately represented?

- Is a majority of the board of directors composed of people independent from, and unrelated to, entities transacting business with the nonprofit organization, such as developers, contractors, and management agents?

- Do the directors have experience and expertise in the area relative to the organization's exempt purpose and do they have sufficient general business experience such that they can exercise should judgment on business matters?

- Are all contracts or agreements entered into by the nonprofit at arm's length and for fair value?

- Is there any obligation to give income or property to a private person or entity other than by way of a fair market value sale?

- Does the Board of Directors have sole discretion regarding all income and property of the nonprofit?

In considering the answers to these questions, DCA will be guided by such guidelines as those from the North American Securities Administrators Association, Inc. for independent trustees in real estate investment trust transactions. These guidelines define an independent board member as a member who is not affiliated, directly or indirectly, with the entity from which the exempt organization acquired the facilities or with any entity with which such organization has a management contract or lease, whether by ownership of, ownership interest in, employment by, the existence of any material business or professional relationship with, or status as an officer or director of any affiliate thereof. In addition, an independent board member also means a member that performs no services for the acquired facility or for the company that manages the facility. For purposes of the foregoing definition, an indirect relationship includes members of the board member's immediate family (e.g., spouse, parents, children, siblings and in-laws) having one of the relationships with the entities set forth above. It is intended that the indirect relationship will include the relationships outlined in section 267 of the Internal Revenue Code of 1986, as amended, in addition to those mentioned herein.