

**TITLE 47: HOUSING AND COMMUNITY DEVELOPMENT
CHAPTER II: ILLINOIS HOUSING DEVELOPMENT AUTHORITY**

**PART 350
LOW-INCOME HOUSING TAX CREDIT ALLOCATION**

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SUBPART A: GENERAL RULES

Section 350.101 Purpose and Objectives

This Part is being established to set forth the standards for the Allocation of low income housing tax credits by the Illinois Housing Development Authority as State Housing Credit Agency for the State pursuant to Section 307.24 of the Illinois Housing Development Act and Section 42 of the Internal Revenue Code (26 U.S.C., Section 42) in connection with the acquisition, construction and rehabilitation of low-income housing.

Comment [1]: This is the final version per 2nd notice changes dtd 5/14/97

Section 350.102 Definitions

"Act": The Illinois Housing Development Act, [20 ILCS 3805].

"Allocation": The award of Tax Credits to a Project pursuant to Section 42.

"Applicable Fraction": The lower of the unit fraction or the floor space fraction. The unit fraction is the number of low-income housing units divided by the total number of units in the Project. The floor space fraction is the square footage of the low-income housing units divided by the Project's total square footage.

"Application": An application to the Authority submitted by a Sponsor, for Tax Credits for a Project including required supporting documentation.

"Authority": The Illinois Housing Development Authority.

"Authority Housing Credit Ceiling": The portion of the State Housing Credit Ceiling available for Allocation by the Authority.

"Compliance Period": The period during which the Project, is obligated to comply with the occupancy restrictions (both income and rent) of Section 42.

"Credit Period": The period of 10 years beginning with the year in which the Project is placed in service or, at the election of the Sponsor, the succeeding year.

"Governor": The Governor of the State of Illinois.

"Internal Revenue Code": The Internal Revenue Code of 1986 (26 U.S.C. Section 1 et seq.) and the U.S. Treasury regulations promulgated under it, all as they may be amended from time to time.

"Low Income": A household income that is less than or equal to 60% of the median income for the area in which a Project is located, as determined by the United States Department of Housing and Urban Development.

"Part": This Part 350.

"Project": The qualified building or buildings (as defined in Section 42) that are the subject of an Application.

"Qualified Allocation Plan": The Authority's qualified Allocation Plan required under Section 42.

"Reservation": The Authority's conditional Reservation of Tax Credits for a Project.

"Section 42": Section 42 of the Internal Revenue Code and the regulations and revenue rulings promulgated under it, all as they may be amended from time to time.

"Sponsor": An entity applying for or receiving Tax Credits for a Project pursuant to this Part.

"State": The State of Illinois.

"State Housing Credit Agency": The Authority.

"State Housing Credit Ceiling": The amount of Tax Credits available for Allocation in the State for any calendar year, as provided in Section 42.

"Tax Credits": Federal low income housing tax credits, as authorized by Section 42.

Section 350.103 Compliance with Federal Law

Notwithstanding anything herein to the contrary, this Part shall be construed in conformity and compliance with the Internal Revenue Code. To the extent that this Part conflicts with the Internal Revenue Code, the Internal Revenue Code shall control and prevail.

Section 350.104 Severability

If any clause, sentence, paragraph, subsection, Section, or Subpart of this Part is adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subsection, Section, or Subpart thereof as to which such judgment is rendered.

SUBPART B: LOW-INCOME HOUSING TAX CREDIT ALLOCATIONS

Section 350.201 Authority to Issue Tax Credits

For any calendar year, the Authority may allocate Tax Credits in an amount not to exceed the Authority Housing Credit Ceiling.

Section 350.202 Allocation Pursuant to Qualified Allocation Plan

The Authority shall allocate Tax Credits only pursuant to and in compliance with the Qualified Allocation Plan.

Section 350.203 Application Process

A Sponsor may apply for an Allocation by submitting an Application on forms prescribed by the Authority setting forth the following information:

- a) The name and location of the proposed Project;

- b) The name, address and telephone number of the Sponsor, owner, attorney, architect, contractor and consultant;
- c) A history of the Sponsor's experience in developing housing, and low-income housing in particular;
- d) A complete description of the proposed Project, including but not limited to the number and type of units and a projected rent schedule, and identifying any proposed tenant populations with special housing needs;
- e) The amount and status of the proposed financing for the Project, including a certification from the Sponsor certifying the amount of all federal, State and local subsidies which apply, or which the Sponsor expects to apply, with respect to the Project;
- f) Percentage of Low-Income units, and the amount of floor space of such units, to be included in the Project;
- g) The estimated total cost of the proposed Project, including the cost of land acquisition, the cost of construction, architects' fees, attorneys' fees, title insurance and all other costs associated with the Project;
- h) Dates of the Project's expected construction start and placement into service;
- i) The amount of Tax Credits requested;
- j) A certification from the Sponsor certifying to the Authority that all information contained in the Application and all accompanying information is true and accurate to the best of the Sponsor's knowledge; and
- k) Any additional documentation of the information provided in the Application which the staff of the Authority may require in order to confirm the information in the Application, e.g., financing commitment, legal description of the Project, etc.

Section 350.204 Notice of Application

The Authority shall send notice of each Application received to the chief executive officer (or the equivalent) of the local jurisdiction within which the Project is to be located. The official shall have 30 days from the date of notification in which to comment on the Project.

Section 350.205 Authority Review

The Authority shall review each complete Application and approve or reject it. The Authority's review of an Application shall include, but not be limited to, the following criteria:

- a) Section 42 Requirements. The ability of the Project to meet the requirements of Section 42 and other applicable sections of the Internal Revenue Code throughout the Compliance Period;
- b) Financial Feasibility. The financial feasibility of the Project, taking into the consideration the existing low-income housing in the area in which the Project will be located, the area's low-income housing needs, as determined by the Authority, the cost of the Project, the projected income of the Project, and all sources of financing for the Project, including owner's equity;
- c) Sponsor's Ability. The ability of the Sponsor to successfully construct the Project and place it in service, taking into consideration the Sponsor's schedule submitted with the Application, the Sponsor's experience in the development and rehabilitation of housing, and the size and scope of the Project;
- d) Evidence of site control for the Project, satisfactory to the Authority;
- e) Location. The geographical location of the Project in relation to other Projects for which the Authority has allocated Tax Credits for the calendar year. The Authority will not approve Projects located in a constitutional home rule unit (as defined in the Internal Revenue Code) that has its own Tax Credit program unless:
 - 1) the Sponsor has applied for housing assistance from the Authority or another State agency; or
 - 2) the constitutional home rule unit has already reserved all of its Tax Credits; or
 - 3) the constitutional home rule unit has requested the Authority to consider an application for a capital project located within the boundaries of the constitutional home rule unit;
- f) Housing Stock. The ability of the Project to increase the quality and quantity of housing stock and redevelop blighted areas or to prevent the occurrence of slum conditions;
- g) Involuntary Displacement. For rehabilitation Projects, the Sponsor must minimize involuntary displacement of current Low-Income tenants, taking into consideration the safety of the tenants during rehabilitation and the scope and nature of the proposed rehabilitation;
- h) Government Support. Assistance or financial support from federal, State, or local governmental units;

- i) Non-Profit Participation. Material participation of a qualified nonprofit organization in the development and operation of the Project, as provided in Section 42;
- j) Special Needs Populations. The availability and accessibility of the Project for the physically handicapped, the mentally ill, the developmentally disabled or other special needs populations, as required by federal and State law;
- k) Tax Credit Dollar Amount. The amount of Tax Credits necessary to make the Project economically feasible, as determined by the Authority;
- l) Compliance Period. Whether the Compliance Period of the Project exceeds the minimum requirements of Section 42;
- m) Lower Income Tenants. The ability of the Project to serve tenants with incomes less than the maximum Low-Income for the area in which the Project will be located, as determined by the Authority in evaluating the Project's proposed rent schedule;
- n) Public Housing Waiting Lists. The availability of the Project to Low-Income households who have applied for public housing and whose name is on a waiting list maintained by a public housing authority, as certified by the Sponsor in the application; and
- o) Preservation. The ability of the Sponsor to continue to provide low income housing for housing developments currently eligible to be converted to market rate housing. The Sponsor shall provide written evidence of the development's eligibility for conversion and the development's economic feasibility in the event of such conversion.

Section 350.206 Allocation Amount - Project Feasibility

The Authority shall not allocate Tax Credits to a Project in an amount greater than the amount the Authority determines is necessary for the financial feasibility of the Project and its viability as a qualified Low-Income housing project throughout the Credit Period. In making this determination, the Authority shall consider the sources and uses of funds and the total amount of financing for the Project:

- a) The date of the conditional reservation of the Tax Credits for the Project; and
- b) The date the Project is placed in service.

Section 350.207 Approval or Rejection

- a) Upon completion of its review of an Application, the Authority shall notify the Sponsor in writing of its approval or rejection of the Application considering the

availability of Tax Credits; the need for Low Income housing throughout the State, as determined by the Authority, based on census data, social surveys, published data, or on-site inspections; the geographic distribution of Tax Credits throughout the State; the information contained in the Application; comments received pursuant to Section 350.204; and any other criteria set forth in the Qualified Allocation Plan.

- b) Upon the approval of an Application, the Authority shall issue a Reservation Letter conditionally reserving Tax Credits for the Project.
- c) The conditional Reservation Letter shall set forth the terms and conditions upon which the Tax Credits will be allocated to the Project, including, but not limited to:
 - 1) Full compliance by both the Sponsor and the proposed Project with Section 42 and other applicable sections of the Internal Revenue Code;
 - 2) Certification from the Sponsor certifying to the Authority that the Sponsor and the Project are in full compliance with Section 42 and other applicable sections of the Internal Revenue Code and will continue to be in such compliance for such time as required by the Internal Revenue Code;
 - 3) Certification from the Sponsor that there will be no change in the Sponsor, the Sponsor's organizational structure or the structure of the Project without the prior written approval of the Authority.
 - 4) Execution of an Extended Use Agreement pursuant to Section 305.208 of this Part.

Section 350.208 Extended Use Agreement

The Sponsor and the Authority shall enter into an Extended Use Agreement before the Authority allocates Tax Credits to the Project. Pursuant to such Agreement, the Sponsor and its successors and assigns shall be required to meet the Applicable Fraction of Low-Income occupancy requirements of Section 42 for a period of at least fifteen (15) years beyond the Compliance Period. The Agreement shall contain any language necessary to comply with the requirements of Section 42(h)(6) and shall be recorded in the office of the Recorder of Deeds in the county where the Project is located as a restrictive covenant on the real estate on which the Project is located.

Section 350.209 Project Certification

As of the date the Project is placed in service, the Sponsor shall certify to the Authority as to all amounts of federal, State and local subsidies which apply, or which the Sponsor expects to apply, with respect to the Project. The Sponsor shall further certify as to the Sponsor's and the Project's compliance with Section 42 and other applicable sections of the Internal Revenue Code and shall provide to the Authority any documentation submitted to the Internal Revenue Service

which establishes compliance with the requirements of Section 42 and other applicable sections of the Internal Revenue Code.

Section 350.210 Tax Credit Allocation

After acceptance of Sponsor's Application and receipt by the Authority of all requested documentation, in a format acceptable to the Authority, which establishes to the satisfaction of the Authority that the Sponsor and the Project are in compliance with all the requirements of Section 42 and other applicable sections of the Internal Revenue Code, the Authority shall allocate Tax Credits to the Project and send Form 8609 to the Internal Revenue Service notifying it of the allocation of Tax Credits for the Project.

Section 350.211 Reservation of Tax Credits for Year Other Than Current Calendar Year

The Authority may approve a Sponsor's Application for a calendar year subsequent to the year of the Application, thereby reserving the Tax Credits from the Authority Housing Credit Ceiling for the subsequent year, if the Project meets the requirements of this Part. Such approval shall be contingent upon the availability of the Authority Housing Credit Ceiling for the subsequent year.

Section 350.212 Revocation of Reservations

The Authority reserves the right to revoke Reservations if a Sponsor fails to place the Project in service in the calendar year for which the Tax Credits have been reserved, or fails to meet the requirements for a carryover Allocation as set forth in Section 42, or if the Project would otherwise not comply with Section 42 and other applicable sections of the Internal Revenue Code or with this Part.

Section 350.213 Compliance Monitoring

The Authority shall monitor the Project for compliance with Section 42. If the Authority discovers that a Project which has received an Allocation is not in compliance with Section 42, the Authority shall notify the Internal Revenue Service of that noncompliance. This compliance monitoring will be effective for all Projects regardless of the date of Allocation. The Authority may charge the Sponsor an administrative fee not to exceed the greater of \$100 per year or \$ 7.50 per unit per year for administrative costs incurred by the Authority in monitoring compliance. This fee will be in addition to the fees set forth in Section 350.214 of this Part.

Section 350.214 Fees.

The Sponsor shall pay the following non-refundable fees in connection with its Application:

- a) An Application fee in the amount of \$500 for Projects having 25 or fewer units and \$1,000 for Projects having more than 25 units. If the Sponsor is applying as a non-profit Project, as provided in Section 42, the Application fee shall be \$500 regardless of the number of units in the Project.

- b) A Reservation fee of \$500 or 6.5% of the amount of the Reservation for the Project, whichever is greater, upon the issuance of a letter from the Authority to the Sponsor conditionally reserving Tax Credits in a specific amount for the Project. In the case of Projects financed with tax-exempt bonds, the fee shall be 6.5% of the amount of the Tax Credits for which the Authority determines, pursuant to Sections 350.203 and 350.205 of this Part, the Project is eligible.
- c) If the Sponsor requests an increase in the amount of Tax Credits for a Project, an increase fee of \$1,000.
- d) A modification fee equal to:
 - 1) \$250 for requests for changes in the name or ownership structure of the Sponsor, or for extensions of time for meeting conditions set forth in the Reservation Letter;
 - 2) \$500 for requests for modifications in the characteristics of the Project; and
 - 3) \$1,000 for issuance of an amended Form 8609 to the Internal Revenue Service due to errors in the submission of the documentation required by Section 350.210 of this Part and the Qualified Allocation Plan.
- e) If the Sponsor requests that the Authority do a subsidy layering review that is required by HUD, a fee of \$500.

Section 350.215 Carryover Allocations

If a Sponsor is unable to place its Project in service in the year in which it receives a Reservation, it may apply to the Authority for a carryover Allocation reserving the Tax Credits for the Project for two additional years, subject to the requirements of Section 42. If the Authority determines that the Project has met the carryover allocation requirements of Section 42, the Authority shall issue a carryover Allocation Letter carrying over the Reservation for two additional years.