THE PLAN OF THE
VIRGINIA HOUSING DEVELOPMENT AUTHORITY
FOR THE ALLOCATION OF
LOW-INCOME HOUSING TAX CREDITS

This plan of the Virginia Housing Development Authority (the "Authority") for the allocation of low-income housing tax credits (the "Plan") made as of May 16, 1995, and amended February 19, 1996, February 12, 1997, February 10, 1998, March 10, 1999, January 24, 2000, March 22, 2000, April 9, 2001, January 9, 2002, April 2, 2003, January 12, 2004, January 14, 2005, January 1, 2006, February 4, 2008, January 1, 2009, July 1, 2009, January 1, 2010, January 6, 2011, January 1, 2012, January 1, 2013, January 1, 2014, January 1, 2015, January 1, 2017, January 1, 2019, January 1, 2022, and January 1, 2025, is amended effective December 17, 2025, for the purpose of governing the distribution, reservation and allocation of federal low-income housing tax credits (the "credits") available under §42 for housing developments located throughout the Commonwealth of Virginia for occupancy by low-income persons and families, all in accordance with the requirements of the IRC.

Part I hereof sets forth the pools into which the Commonwealth's total credit authority has been divided.

Part II hereof is comprised of the full text of the Authority's Rules and Regulations governing the process of reserving and allocating the credits, as published within 13 VAC 10-180.

PART I

ALLOCATION POOLS

Under the low-income housing tax credit program established by §42 of the Internal Revenue Code (the "IRC"), the Commonwealth of Virginia has a certain per capita dollar amount of low-income housing tax credits to be allocated each calendar year under §42(h)(3)(C)(i) of the IRC (the "Annual Credit Authority") to qualified low- income housing developments located therein. The Commonwealth of Virginia also has additional sources of low- income housing tax credits (i.e. unused, returned, national pool and future year's per capita credits) that may be allocated ("Additional Credits") to qualified low-income housing developments located therein. In order to promote a distribution of the Annual Credit Authority and Additional Credits ("Total Credit Authority") which effectively address the low-income housing needs of the Commonwealth, the Authority hereby divides the Total Credit Authority, less pre-reservations, into several pools, all as set forth below:

	% of Total Credit Authority
1. Nonprofit Pool	**15.00%**

Each development which is eligible for inclusion in this pool under the Rules and Regulations will initially compete in this pool regardless of where it is located within the state. Each development competing in this pool will be scored according to the rent burdened population characteristics of the geographic pool to which such development would be assigned if it did not compete in this pool. Each new construction or adaptive re-use development eligible for the New Construction Pool below that is not funded in this pool will move to the New Construction Pool. All other developments not funded in this pool will move to their applicable geographic pool.

2. Local Housing Authority ("LHA") Pool **15.00%**

Each development sponsored by local housing authorities or industrial development authorities (from localities that do not have a local housing authority), as sole general partner or managing member (either directly or through a wholly-owned subsidiary) or as landlord or seller of the land to the tax credit applicant, in the jurisdiction of the local housing authority or industrial development authority will compete in this pool only. Provided, however, that the development will not compete in this pool if (i) the local housing authority or industrial development authority is the landlord or seller of the land to the tax credit applicant but is not a principal in the applicant (the landlord or seller being the grantee of a right of first refusal or purchase option, with no ownership interest in the applicant, shall not make the landlord or seller a principal in the applicant) and (ii) no more than the greater of 5 units or 10% of the units have project-based subsidy provided by the local housing authority or industrial development authority. Each development competing in this pool will be scored according to the rent burdened population characteristics of the geographic pool to which such development would be assigned if it did not compete in this pool. Developments not funded in this pool will move to Tier 1.

3. New Construction Pool (funded with 15.00% of the next year's Annual Credit Authority)

Each new construction or adaptive re-use development (including excess nonprofit developments) which is located within one of the jurisdictions listed below will compete in this pool. Each development not funded in this pool will move to its applicable geographic pool.

Alexandria City	Fairfax County	Loudoun County	Manassas Park City
Arlington County	Falls Church City	Manassas City	Prince William County
Fairfax City			

4. Northern Virginia / Planning District 8 (Inner Washington MSA) Pool **18.02%**

Each development (including excess nonprofit and new construction or adaptive re-use developments) which is located within one of the jurisdictions listed below will compete in this pool. This pool is a pool with an increasing rent burdened population.

Alexandria City	Fairfax County	Loudoun County	Manassas Park City
Arlington County	Falls Church City	Manassas City	Prince William County
Fairfax City			

% of Total Credit Authority

5. Northwest / North Central Virginia Area Pool **9.20%**

Each development (including excess nonprofit and new construction or adaptive re-use developments) which is located within one of the jurisdictions listed below will compete in this pool. This pool is a pool with an increasing rent burdened population.

Albemarle County	Fredericksburg City	Nelson County	Spotsylvania County
Augusta County	Frederick County	Orange County	Stafford County
Charlottesville City	Greene County	Page County	Staunton City
Clarke County	Harrisonburg City	Rappahannock County	Warren County
Culpeper County	King George County	Rockingham County	Waynesboro City
Fluvanna County	Madison County	Shenandoah County	Winchester City
Fauquier County			

6. Richmond MSA Pool **11.63%**

Each development (including excess nonprofit and new construction or adaptive re-use developments) which is located within one of the jurisdictions listed below will compete in this pool. This pool is a pool with an increasing rent burdened population.

Amelia County	Colonial Heights City	Hopewell City	Petersburg City
Caroline County	Dinwiddie County	King & Queen County	Powhatan County
Charles City County	Goochland County	King William County	Prince George County
Chesterfield County	Hanover County	Louisa County	Richmond City
Cumberland County	Henrico County	New Kent County	Sussex County

7. Tidewater MSA Pool **17.00%**

Each development (including excess nonprofit and new construction or adaptive re-use developments) which is located within one of the jurisdictions listed below will compete in this pool. This pool is a pool with an increasing rent burdened population.

Chesapeake City	James City County	Portsmouth City	Virginia Beach City
Gloucester County	Mathews County	Poquoson City	Williamsburg City
Hampton City	Newport News City	Suffolk City	York County
Isle of Wight County	Norfolk City	Surry County	

8. Balance of State Pool (Remaining Geographic Areas) **14.15%**

Each development (including excess nonprofit and new construction or adaptive re-use developments) which is not eligible to compete in any of the geographic pools 4-7 above will compete in this pool. This pool is a pool with little or no increase in rent burdened population.

9. Accessible Supportive Housing Pool (funded with 10% of next year's Annual Credit Authority)

Each development that (i) will be assisted by a documented and binding form of rental assistance in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director for at least 15% of the units in the development; (iv) has budgeted for the ongoing provision of services; (v) maintains dedicated services staff; and (vi) has a principal with a demonstrated capacity for supportive housing evidenced by prior services funding contracts, a certification from a certifying body acceptable to the executive director or other preapproved source, and the applicant's completion on behalf of the principal of the authority's supportive housing certification form. ASH pool reservations made in any calendar year may be up to 10% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year. If the ASH pool application deadline is simultaneous with the deadline for the other pools, the unsuccessful applicants in the ASH pool will also compete in the applicable geographic pool.

10. Preservation Pool (funded with 10.00% of next year's Annual Credit Authority)

Each development seeking credit resyndication that is currently operating within an extended compliance period. Prior to application, applicants must have completed more than 20 years of compliance under the existing extended use agreement issued in connection with the respective development's most recent credit allocation, and the credit investor or syndicator in place at the time of the allocation must have transferred all of its ownership interest in the development. Applicants awarded credits from this pool shall be subject to additional rent increase limits, as determined by the authority in the best interest of the plan, for a period of five years beginning on the first day of the new credit period. Preservation pool reservations made in any calendar year may be up to 10% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year. Unsuccessful applicants in the preservation pool will also compete in the applicable geographic pool.

11. At-Large Pool **Unreserved Credits from Pools 1, 2 and 4 – 8**

Each development that does not initially rank high enough to receive a reservation of credits in pools 4-8 above will compete in this pool.

Tier 1 Developments. The following type of developments shall be designated "Tier 1" developments and shall be eligible to receive a reservation of credits prior to all Tier 2 developments: the highest ranked eligible development ranked above threshold that would receive a partial reservation of credits from pools 4-8 above, if all the credits available to such pool were reserved to developments in the pool.

Tier 2 Developments. The following type of developments shall be designated "Tier 2" developments and shall receive a reservation of credits after all Tier 1 developments: any Tier 1 developments not fully-funded in Tier 1 and all remaining developments ranking above threshold.

Credits pre-allocated to developments from the New Construction Pool or At-Large Pool will not change Total Credit Authority in the geographic pools.

The reservation and allocation of credits to developments shall be governed by Part II of the Plan.

PART II

RULES AND REGULATIONS FOR ALLOCATION OF LOW-INCOME HOUSING TAX CREDITS 13VAC10-180

13VAC10-180-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Applicant" means an applicant for credits under this chapter and also means the owner of the development to whom the credits are allocated.

"Authority" means the Virginia Housing Development Authority.

"Credits" means the low-income housing tax credits as described in § 42 of the IRC.

"Elderly housing" means any development intended to provide housing for elderly persons as an exemption to the provisions regarding familial status under the United States Fair Housing Act (42 USC § 3601 et seq.).

"IRC" means the Internal Revenue Code of 1986, as amended, and the rules, regulations, notices, and other official pronouncements promulgated thereunder.

"IRS" means the Internal Revenue Service.

"Low-income housing units" means those units that are defined as "low income units" under § 42 of the IRC.

"Low-income jurisdiction" means any city or county in the Commonwealth with an area median income at or below the Virginia nonmetro area median income established by the U.S. Department of Housing and Urban Development (HUD).

"Plan" means the provisions of this chapter governing the distribution, reservation, and allocation by the authority of federal low-income housing tax credits available under § 42 of the IRC for housing developments located throughout the Commonwealth of Virginia for occupancy by low-income persons and families, all in accordance with the requirements of the IRC.

"Principal" means any person (including any individual, joint venture, partnership, limited liability company, corporation, nonprofit organization, trust, or any other public or private entity) that (i) with respect to the proposed development will own or participate in the ownership of the proposed development or (ii) with respect to an existing multifamily rental project has owned or participated in the ownership of such project, all as more fully described in this chapter. The person who is the owner of the proposed development or multifamily rental project is considered a principal. In determining whether any other person is a principal, the following guidelines shall govern: (i) in the case of a partnership that is a principal (whether as the owner or otherwise), all general partners are also considered principals, regardless of the percentage interest of the general partner; (ii) in the case of a public or private corporation or organization or governmental entity that is a principal (whether as the owner or otherwise), principals also include the president, vice president, secretary, and treasurer and other officers who are directly responsible to the board of directors or any equivalent governing body, as well as all directors or other members of the governing body and any stockholder having a 25% or more interest; (iii) in the case of a limited liability company that is a principal (whether as the owner or otherwise), all members are also considered principals, regardless of the percentage interest of the member; (iv) in the case of a trust that is a principal (whether as the owner or otherwise), all persons having a 25% or more beneficial ownership interest in the assets of such trust; (v) in the case of any other person that is a principal (whether as the owner or otherwise), all persons having a 25% or more ownership interest in such other person are also considered principals; and (vi) any person that directly or indirectly controls, or has the power to control, a principal shall also be considered a principal.

"Qualified application" means a written request for tax credits that is submitted on a form prescribed or approved by the executive director together with all documents required by the authority for submission and meets all minimum scoring requirements.

"Qualified low-income buildings" or "qualified low-income development" means the buildings or development that meets the applicable requirements to qualify for an allocation of credits under § 42 of the IRC.

13VAC10-180-20. Purpose and applicability.

The following rules and regulations will govern the allocation by the authority of credits pursuant to § 42 of the IRC.

Notwithstanding anything to the contrary in this chapter, the executive director is authorized to waive or modify any provision of this chapter where deemed appropriate by the executive director for good cause to promote the goals and interests of the Commonwealth in the federal low-income housing tax credit program, to the extent not inconsistent with the IRC.

The rules and regulations set forth in this chapter are intended to provide a general description of the authority's processing requirements and are not intended to include all actions involved or required in the processing and administration of the credits. This chapter is subject to change at any time by the authority and may be supplemented by policies, rules, and regulations adopted by the authority from time to time.

Any determination made by the authority pursuant to this chapter as to the financial feasibility of any development or its viability as a qualified low-income development shall not be construed to be a representation or warranty by the authority as to such feasibility or viability.

Notwithstanding anything to the contrary in this chapter, all procedures and requirements in the IRC must be complied with and satisfied.

13VAC10-180-30. General description.

The IRC provides for credits to the owners of residential rental developments comprised of qualified low-income buildings in which low-income housing units are provided, all as described therein. The aggregate amount of such credits (other than credits for developments financed with certain tax-exempt bonds as provided in the IRC) allocated in any calendar year within the Commonwealth may not exceed the Commonwealth's annual state housing credit ceiling for such year under the IRC. An amount not less than 10% of such ceiling is set-aside for developments in which certain qualified nonprofit organizations hold an ownership interest and materially participate in the development and operation thereof. Credit allocation amounts are counted against the Commonwealth's annual state housing credit ceiling for credits for the calendar year in which the credits are allocated. The IRC provides for the allocation of the Commonwealth's state housing credit ceiling for credits to the housing credit agency of the Commonwealth. The authority has been designated by executive order of the Governor as the housing credit agency under the IRC and, in such capacity, shall allocate for each calendar year credits to qualified low-income buildings or developments in accordance herewith.

Credits may be allocated to each qualified low-income building in a development separately or to the development as a whole in accordance with the IRC.

Credits may be allocated to such buildings or development either (i) during the calendar year in which such building or development is placed in service or (ii) if the building or development meets the requirements of § 42(h)(1)(E) of the IRC, during one of the two years preceding the calendar year in which such building or development is expected to be placed in service. Prior to such allocation, the authority shall receive and review applications for reservations of credits as described hereinbelow and shall make such reservations of credits to eligible applications in accordance herewith and subject to satisfaction of certain terms and conditions as described herein. Upon compliance with such terms and conditions and, as applicable, either (i) the placement in service of the qualified low-income buildings or development or (ii) the satisfaction of the requirements of § 42(h)(1)(E) of the IRC with respect to such buildings or the development, the credits shall be allocated to such buildings or the development as a whole in the calendar year for which such credits were reserved by the authority.

Except as otherwise provided herein or as may otherwise be required by the IRC, this chapter shall not apply to credits with respect to any development or building to be financed by certain tax-exempt bonds in an amount so as not to require under the IRC an allocation of credits hereunder.

The authority shall charge to each applicant fees in such amounts as the executive director shall determine to be necessary to cover the administrative costs to the authority, but not to exceed the maximum amount permitted under the IRC. Such fees shall be payable at such time or times as the executive director shall require.

13VAC10-180-40. Adoption of allocation plan; solicitations of applications.

The IRC requires that the authority adopt a qualified allocation plan that shall set forth the selection criteria to be used to determine housing priorities of the authority that are appropriate to local conditions and that shall give certain priority to and preference among developments in accordance with the IRC. The executive director from time to time may cause housing needs studies to be performed in order to develop the qualified allocation plan and, based upon any such housing needs study and any other available information and data, may direct and supervise the preparation of and approve the qualified allocation plan and any revisions and amendments to the qualified allocation plan in accordance with the IRC. The IRC requires that the qualified allocation plan be subject to public approval in accordance with rules similar to those in § 147(f)(2) of the IRC. The executive director may include all or any portion of this chapter in the qualified allocation plan. However, the authority may amend the qualified allocation plan without public approval if required to do so by changes to the IRC.

The executive director may from time to time take such action as the executive director deems necessary or proper to solicit applications for credits. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement that the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations, and conditions with respect to the submission and selection of applications as the executive director shall consider necessary or appropriate.

No application for credits will be accepted for any building that has previously claimed credits and is still subject to the compliance period for such credits after the year such building is placed in service; however, an applicant may submit an application for credits for a building in which an extended low-income housing commitment has been terminated by foreclosure, provided the applicant has no relationship with any owner of such building during its initial compliance period. No application will be accepted, and no reservation or allocation will be made, for credits available under § 42(h)(3)(C) of the IRC in the case of any buildings or development for which tax-exempt bonds of the authority, or an issuer other than the authority, have been issued and that may receive credits without an allocation of credits under § 42(h)(3)(C).

13VAC10-180-50. Application.

A. Prior to submitting an application for reservation, applicants shall submit on such form as required by the executive director the letter for authority signature by which the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located to provide such officers a reasonable opportunity to comment on the developments.

B. Application for a reservation of credits:

1. Shall be commenced by filing with the authority an application, on such forms as the executive director may from time to time prescribe or approve, together with such documents and additional information, including a market study that is prepared by a housing market analyst who meets the authority's requirements for an approved analyst, as set forth on the application form, instructions, or other communication available to the public, that shows adequate demand for the housing units to be produced by the applicant's proposed development, as may be requested by the authority in order to comply with the IRC and this chapter and to make the reservation and allocation of the credits in accordance with this chapter. The executive director may reject any application from consideration for a reservation or allocation of credits if in such application the applicant does not provide the proper documentation or information on the forms prescribed by the executive director. In addition to the market study contained in the application, the authority may conduct its own analysis of the demand for the housing units to be produced by each applicant's proposed development.

All sites in an application for a scattered site development may only serve one primary market area. If the executive director determines that the sites subject to a scattered site development are served by different primary market areas, separate applications for credits must be filed for each primary market area in which scattered sites are located within the deadlines established by the executive director.

2. Should include a breakdown of sources and uses of funds sufficiently detailed to enable the authority to ascertain what costs will be incurred and what will comprise the total financing package, including the various subsidies and the anticipated syndication or placement proceeds that will be raised.

3. Shall include the following cost information, if applicable, to determine the feasible credit amount:

a. Site acquisition costs;

b. Site preparation costs;

c. Construction costs;

d. Construction contingency;

e. General contractor's overhead and profit;

f. Architect and engineer fees;

g. Permit and survey fees;

h. Insurance premiums;

i. Real estate taxes during construction;

j. Title and recording fees;

k. Construction period interest;

l. Financing fees;

m. Organizational costs;

n. Rent-up and marketing costs;

o. Accounting and auditing costs;

p. Working capital and operating deficit reserves;

q. Syndication and legal fees;

r. Development fees; and

s. Other costs and fees.

4. All applications seeking credits for rehabilitation of existing units must provide for contractor construction costs of at least $10,000 per unit for developments financed with tax-exempt bonds and $15,000 per unit for all other developments.

C. Any application that exceeds the cost limits described in subsection B of this section shall be rejected from further consideration and shall not be eligible for any reservation or allocation of credits. The higher of the following two cost limit calculations: per-unit cost or per-square-foot cost may be utilized by an applicant.

The authority will at least annually establish per-unit and per-square-foot cost limits based upon historical cost data of tax credit developments in the Commonwealth. Such limits will be indicated on the application form, instructions, or other communication available to the public. The cost limits will be established for new construction, rehabilitation, and adaptive reuse development types. The authority will establish geographic limits. For the purpose of determining compliance with the cost limits, the value of a development's land and acquisition costs and such other expenses as the executive director determines are appropriate for the good of the plan will not be included in total development cost. Compliance with applicable cost limits will be determined both at the time of application and also at the time the authority issues the IRS Form 8609, with the higher of the two limits being applicable at the time of IRS Form 8609 issuance.

D. Each application shall include:

1. Plans and specifications in such form and from such person satisfactory to the executive director as to the completion of such plans or specifications.

2. In the case of rehabilitation, a physical needs assessment in such form and substance and prepared by such person satisfactory to the executive director pursuant to the authority's requirements as set forth on the application form, instructions, or other communication available to the public.

3. An environmental site assessment (Phase I) in such form and substance and prepared by such person satisfactory to the executive director pursuant to the authority's requirements as set forth on the application form, instructions, or other communication available to the public.

4. Evidence of (i) sole fee simple ownership of the site of the proposed development by the applicant; (ii) lease of such site by the applicant for a term exceeding the compliance period (as defined in the IRC) or for such longer period as the applicant represents in the application that the development will be held for occupancy by low-income persons or families; or (iii) right to acquire or lease such site pursuant to a valid and binding written option or contract between the applicant and the fee simple owner of such site for a period extending at least four months beyond any application deadline established by the executive director,

provided that such option or contract shall have no conditions within the discretion or control of such owner of such site.

Any contract for the acquisition of a site with existing residential property may not require an empty building as a condition of such contract, unless relocation assistance is provided to displaced households, if any, at such level required by the authority. A contract that permits the owner to continue to market the property, even if the applicant has a right of first refusal, does not constitute the requisite site control required in clause (iii) of this subdivision 4.

No application shall be considered for a reservation or allocation of credits unless such evidence is submitted with the application and the authority determines that the applicant owns, leases, or has the right to acquire or lease the site of the proposed development as described in this subsection.

In the case of acquisition and rehabilitation of developments funded by Rural Development of the U.S. Department of Agriculture (Rural Development), any site control document subject to approval of the partners of the seller does not need to be approved by all partners of the seller if the general partner of the seller executing the site control document provides (a) an attorney's opinion that such general partner has the authority to enter into the site control document and such document is binding on the seller or (b) a letter from the existing syndicator indicating a willingness to secure the necessary partner approvals upon the reservation of credits.

5. Written evidence satisfactory to the authority (i) of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable.

6. A certification, in a form required by the executive director, of previous participation listing all developments receiving an allocation of tax credits under § 42 of the IRC that shows:

a. The principals have or had an ownership or participation interest;

b. The location of such developments;

c. The number of residential units and low-income housing units in such developments; and

d. Such other information as more fully specified by the executive director.

7. Furthermore, for any such development, the applicant must indicate whether the appropriate state housing credit agency has ever filed a Form 8823 with the IRS reporting noncompliance with the requirements of the IRC and that such noncompliance had not been corrected at the time of the filing of such Form 8823. The executive director may reject any application from consideration for a reservation or allocation of credits unless the information described in subdivision 6 of this subsection is submitted with the application. If, after reviewing the information provided in this subsection or any other information available to the authority, the executive director determines that the principals do not have the experience, financial capacity, and predisposition to regulatory compliance necessary to carry out the responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance, and management of the proposed development or the ability to fully perform all the duties and obligations relating to the proposed development under law, regulation, and the reservation and allocation documents of the authority or if an applicant is in substantial noncompliance with the requirements of the IRC, the executive director may reject applications by the applicant.

8. No application will be accepted from any applicant with a principal that has or had an ownership or participation interest in a development at the time the authority reported such development to the IRS as no longer in compliance and is no longer participating in the federal low-income housing tax credit program.

9. A certification, in a form required by the executive director, that the design of the proposed development meets all applicable amenity and design requirements required by the executive director for the type of housing to be provided by the proposed development.

E. The application:

1. Should include pro forma financial statements setting forth the anticipated cash flows during the credit period as defined in the IRC.

2. Shall include a certification by the applicant as to the full extent of all federal, state, and local subsidies that apply or that the applicant expects to apply with respect to each building or development.

3. May be required by the executive director to include the submission of a legal opinion or other assurances satisfactory to the executive director as to, among other things, compliance of the proposed development with the IRC and a certification, together with an opinion of an independent certified public accountant or other

assurances satisfactory to the executive director, setting forth the calculation of the amount of credits requested by the application and certifying, among other things, that under the existing facts and circumstances the applicant will be eligible for the amount of credits requested.

F. Each applicant shall commit in the application to provide:

1. Relocation assistance to displaced households, if any, at such level required by the executive director. Each applicant shall commit in the application to use a property management company certified by the executive director to manage the proposed development.

2. Unless prohibited by an applicable federal subsidy program, a leasing preference to individuals:

a. In a target population identified in a memorandum of understanding between the authority and one or more participating agencies of the Commonwealth;

b. Having a voucher or other binding commitment for rental assistance from the Commonwealth; and

c. Referred to the development by a referring agent approved by the authority. The leasing preference shall not be applied to more than 10% of the units in the development at any given time. The applicant may not impose tenant selection criteria or leasing terms with respect to individuals receiving this preference that are more restrictive than the applicant's tenant selection criteria or leasing terms applicable to prospective tenants in the development that do not receive this preference, the eligibility criteria for the rental assistance from the Commonwealth, or any eligibility criteria contained in a memorandum of understanding between the authority and one or more participating agencies of the Commonwealth.

3. Free Wi-Fi access in the community room of the development and such access shall be restricted to resident only usage.

4. A disclosure, to be acknowledged by tenant, of the availability of renter education from the authority.

G. Each applicant shall commit in the application:

1. Not to require an annual minimum income requirement that exceeds the greater of $3,600 or 2.5 times the portion of rent to be paid by tenants receiving rental assistance.

2. To waive its right to request to terminate the extended low-income housing commitment through the qualified contract process, as described in the IRC.

Further, any application submitted by an applicant containing a principal that was a principal in an owner that has previously requested, on or after January 1, 2019, a qualified contract in the Commonwealth (regardless of whether the extended low-income housing commitment was terminated through such process) shall be rejected from further consideration and shall not be eligible for any reservation or allocation of credits.

H. The authority is committed to the long-term affordability of developments for the benefit of tenants and full compliance by applicants and principals with the provisions of the IRC, the extended use agreement, and other program requirements. The authority similarly has an interest in preserving the right of first refusal by a qualified nonprofit organization at the close of the compliance period, as authorized in § 42(i)(7) of the IRC.

The executive director is hereby authorized to require any or all of the following with respect to applications:

1. Provisions to be included in the applicant's organizational documents limiting transfers of partnership or member interests or other actions detrimental to the continued provision of affordable housing;

2. A designated form of right of first refusal document;

3. Terms in the extended use agreement requiring notice and approval by the executive director of transfers of partnership or member interests;

4. Debarment from the program of principals having demonstrated a history of conduct detrimental to long-term compliance with extended use agreements, whether in Virginia or another state, and the provision of affordable tax credit units; and

5. Provisions to implement any amendment to the IRC or implementation of any future federal or state legislation, regulations, or administrative guidance.

The decision whether to institute and the terms of any such requirements shall be made by the executive director as reasonably determined to be necessary or appropriate to achieve the goals stated in this subsection and in the best interest of the plan. Any such requirements will be indicated on the application form, instructions, or other communication available to the public.

I. Any application submitted by an applicant containing a principal that was a principal in an owner that has, in the authority's determination, previously participated, on or after January 1, 2019, in a foreclosure in Virginia (or instrument in lieu of foreclosure) that was part of an arrangement a purpose of which was to terminate an extended low-income housing commitment (regardless of whether the extended low-income housing commitment was terminated through such foreclosure or instrument) shall be rejected from further consideration for low-income housing tax credits and shall not be eligible for any reservation or allocation of credits.

J. If an applicant submits an application for reservation or allocation of credits that contains a material misrepresentation or fails to include information regarding developments involving the applicant that have been determined to be out of compliance with the requirements of the IRC, the executive director may reject the application or stop processing such application upon discovery of such misrepresentation or noncompliance and may prohibit such applicant from submitting applications for credits to the authority in the future.

K. In any situation in which the executive director deems it appropriate, the executive director may:

1. Treat two or more applications as a single application. Only one application may be submitted for each location.

2. Establish criteria and assumptions to be used by the applicant in the calculation of amounts in the application, and any such criteria and assumptions may be indicated on the application form, instructions, or other communication available to the public.

3. Prescribe such deadlines for submission of applications for reservation and allocation of credits for any calendar year as the executive director shall deem necessary or desirable to allow sufficient processing time for the authority to make such reservations and allocations. If the executive director determines that an applicant for a reservation of credits has failed to submit one or more mandatory attachments to the application by the reservation application deadline, the executive director may allow such applicant an opportunity to submit such attachments within a certain time established by the executive director with a 10-point scoring penalty per item.

L. After receipt of the local notification information data, if necessary, the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located and shall provide such officers a reasonable opportunity to comment on the developments.

M. The development for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such development is to be financed by the authority, the application for such financing shall be submitted to and received by the authority in accordance with its applicable rules and regulations.

N. The authority may consider and approve, in accordance with this section, both the reservation and the allocation of credits to buildings or developments that the authority may own or may intend to acquire, construct, or rehabilitate.

O. Any application seeking an additional reservation of credits for a development in excess of 10% of an existing reservation of credits for such development shall be rejected from further consideration and shall not be eligible for any reservation or allocation of credits pursuant to such application. However, such applicant may execute a consent to cancellation for such existing reservation and submit a new application for the aggregate amount of the existing reservation and any desired increase.

13VAC10-180-60. Review and selection of applications; reservation of credits.

A. The executive director may divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors the executive director deems appropriate to best meet the housing needs of the Commonwealth.

B. An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. A "qualified nonprofit organization" (as described in § 42(h)(5)(C) of the IRC) that is authorized to do business in Virginia and is determined by the executive director, on the basis of such relevant factors as the executive director shall consider appropriate, to be substantially based or active in the community of the development and is to materially participate (regular, continuous, and substantial involvement as determined

by the executive director) in the development and operation of the development throughout the "compliance period" (as defined in § 42(i)(1) of the IRC); and

2. a. The "qualified nonprofit organization" described in subdivision 1 of this subsection is to own (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity;

b. The executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization;

c. The executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools as defined in subsection D of this section established by the executive director; and

d. The executive director of the authority shall have determined that no staff member, officer, or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

3. In making the determinations required by subdivisions 1 and 2 b, 2 c, and 2 d of this subsection, the executive director may apply such factors as the executive director deems relevant, including:

a. The past experience and anticipated future activities of the qualified nonprofit organization;

b. The sources and manner of funding of the qualified nonprofit organization;

c. The date of formation and expected life of the qualified nonprofit organization;

d. The number of paid staff members and volunteers of the qualified nonprofit organization;

e. The nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development;

f. The relationship of the staff, directors, or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis; and

g. The proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities involved in the proposed development on a for-profit basis.

The executive director may include in the application of the factors described in this subdivision 3 any other nonprofit organizations that, in the executive director's determination, are related (by shared directors, staff, or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the requirements of this subsection, a qualified nonprofit organization shall be treated as satisfying such requirements if any qualified corporation (as defined in § 42(h)(5)(D)(ii) of the IRC) in which such organization (by itself or in combination with one or more qualified nonprofit organizations) holds 100% of the stock satisfies such requirements.

C. The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the requirements of this section have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the requirements of subsection B of this section.

D. The executive director may establish such pools (nonprofit pools) of credits as the executive director may deem appropriate to satisfy the requirements of this subsection. If any such nonprofit pools are so established, the executive director may rank the applications in each pool and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible in each pool described in this subsection (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as the executive director shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications for those nonprofit pools, and reserve credits to such

applications in accordance with the IRC and this chapter. In the event that during any round of application review and ranking, the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available in each nonprofit pool, the executive director may:

1. Leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent rounds;

2. Redistribute, to the extent permissible under the IRC, such unreserved credits to such other pools for which the executive director shall designate reservations in the full amount permissible under this section. Applications redistributed to other pools under this subdivision shall be referred to as "excess qualified applications"; or

3. Carry over such unreserved credits to the next succeeding calendar year for the inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year.

No reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than $950,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

Applicants using Hope VI funds from U.S. Department of Housing and Urban Development (HUD) in connection with the proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

E. The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. Readiness. Written evidence satisfactory to the authority of unconditional approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. (10 points)

2. Housing needs characteristics.

a. Submission of the form prescribed by the authority with any required attachments, providing such information necessary for the authority to send a letter addressed to the current chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. Any principal intending to provide more than five such submissions for one or more total proposed developments must first schedule a meeting with authority staff, and authority staff may, for good cause to promote the goals and interests of the Commonwealth in the federal low-income housing tax credit program, request evidence of site control as a prerequisite to the authority sending the letter prescribed by this subdivision 2 for each respective proposed development. (minus 50 points for failure to make timely submission)

b. A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. In any such letter, the chief executive officer must certify that the proposed development is not consistent with current zoning or other applicable land use regulations. Any such letter must also be accompanied by a legal opinion of the locality's attorney opining that the locality's opposition to the proposed development does not have a discriminatory intent or a discriminatory effect (as defined in 24 CFR 100.500(a)) that is not supported by a legally sufficient justification (as defined in 24 CFR 100.500(b)) in violation of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended) and the HUD implementing regulations. (minus 25 points)

c. Any proposed development that is to be located as follows:

(1) In a qualified census tract or federal targeted area, both as defined in the IRC, deemed under § 36-55.30:2 of the Code of Virginia to be designated as a revitalization area without adoption of a resolution (10 points);

(2) In any redevelopment area, conservation area, or rehabilitation area created or designated by the city or county pursuant to Chapter 1 (§ 36-1 et seq.) of Title 36 of the Code of Virginia and deemed under § 36-55.30:2 of the Code of Virginia to be designated as a revitalization area without adoption of a further resolution (10 points);

(3) In a revitalization area designated by resolution adopted pursuant to the terms of § 36-55.30:2 of the Code of Virginia (15 points);

(4) In a local housing rehabilitation zone created by an ordinance passed by the city, county, or town and deemed to meet the requirements of § 36-55.30:2 of the Code of Virginia pursuant to § 36-55.64 G of the Code of Virginia (15 points);

(5) In an opportunity zone designated by the Commonwealth pursuant to the Federal Tax Cuts and Jobs Act of 2017 (PL 115-97), and having a binding commitment of funding acceptable to the executive director pursuant to requirements as set forth on the application form, instructions, or other communication available to the public (15 points);

(6) In a locality that confirms, on a form prescribed by the authority, that the development as proposed to be constructed or rehabilitated will utilize new or existing housing as part of a community revitalization plan (15 points); or

(7) On land owned by federally recognized or Virginia-recognized Tribal Nations located within the present-day external boundaries of the Commonwealth (15 points). If the development is located in more than one such area, only the highest applicable points will be awarded, that is, points in this subdivision E 2 c are not cumulative.

d. Commitment by the applicant for any development without section 8 project-based assistance to give leasing preference to individuals and families (i) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant or (ii) on section 8 (as defined in 13VAC10-180-90) waiting lists maintained by the local or nearest section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (5 points)

e. Any (i) funding source, as evidenced by a binding commitment or letter of intent, that is used to reduce the credit request; (ii) commitment to donate land or buildings or tap fee waivers from the local government; or (iii) commitment to donate land, including a below market-rate land lease, from an entity that is not a principal in the applicant (the donor being the grantee of a right of first refusal or purchase option with no ownership interest in the applicant shall not make the donor a principal in the applicant). Loans must be below market-rate (the one-year London Interbank Offered Rate (LIBOR) rate at the time of commitment) or cash-flow only to be eligible for points. Financing from the authority and market rate permanent financing sources are not eligible. (The amount of such funding, dollar value of local support, or value of donated land (including a below market rate land lease) will be determined by the executive director and divided by the total development cost. The applicant receives two points for each percentage point up to a maximum of 60 points.) The authority will confirm receipt of such subsidized funding prior to the issuance of IRS Form 8609.

f. Any development receiving new project-based subsidy from HUD or Rural Development. For each project-based voucher up to a maximum of 40 points when competing in either the New Construction or Northern Virginia pool only (5 points); provided, however, that any points awarded under this subdivision 2 f will reduce, in equal measure, the maximum 60 points awarded within subdivision 2 e of this subsection.

g. Any development receiving a real estate tax abatement on the increase in the value of the development. (5 points)

h. Any development subject to (i) HUD's section 8 or section 236 program or (ii) Rural Development's 515 program at the time of application (20 points), unless the applicant is or has any common interests with the current owner, directly or indirectly. The application will only qualify for these points if the applicant waives all rights to developer's fee on acquisition and any other fees associated with the acquisition of the development, unless permitted by the executive director for good cause.

i. Any proposed elderly or family development located in a census tract that has less than a 3.0% poverty rate based upon Census Bureau data (30 points); less than a 10% poverty rate based upon Census Bureau data (25 points); or less than a 12% poverty rate based upon Census Bureau data. (20 points)

j. Any proposed development listed in the top 25 developments identified by Rural Development as high priority for rehabilitation at the time the application is submitted to the authority. (15 points)

k. Any proposed new construction development, including adaptive reuse and rehabilitation that creates additional rental space, that is located in a pool identified by the authority as a pool with an increasing rent-burdened population, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool. (up to 20 points)

l. Any proposed development located within an area identified by the executive director as possessing either medium or high levels of economic development activity. In determining such areas, the executive director will evaluate economic data, such as per capita job creation data from the Virginia Economic Development Partnership, and annually publish a guidance document available to the public establishing such areas. (5 points)

3. Development characteristics.

a. Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

(a) If a community or meeting room with a minimum of 749 square feet is provided. (5 points) Community rooms receiving points under this subdivision 3 a (1) (a) may not be used for commercial purposes. Provided that the cost of the community room is not included in eligible basis, the owner may conduct, or contract with a nonprofit provider to conduct, programs or classes for tenants and members of the community in the community room, so long as (i) tenants compose at least one-third of participants, with first preference given to tenants above the one-third minimum; (ii) no program or class may be offered more than five days per week; (iii) no individual program or class may last more than eight hours per day, and all programs and class sessions may not last more than 10 hours per day in the aggregate; (iv) cost of attendance of the program or class must be below market rate with no profit from the operation of the class or program being generated for the owner (owner may also collect an amount for reimbursement of supplies and clean-up costs); (v) the community room must be available for use by tenants when programs and classes are not offered, subject to reasonable "quiet hours" established by owner; and (vi) any owner offering programs or classes must provide an annual certification to the authority that it is in compliance with such requirements, with failure to comply with these requirements resulting in a 10-point penalty for three years from the date of such noncompliance for principals in the owner.

(b) If the exterior walls are constructed using brick or other similar low-maintenance material approved by the authority as indicated on the application form, instructions, or other communication available to the public covering up to 50% of the exterior walls of the development. (20 points times the percentage of exterior walls covered by brick)

If the exterior walls are constructed using fiber cement board covering up to 50% of the exterior walls. (20 points times the percentage of exterior walls covered by fiber cement board)

Points for brick and fiber cement board are independent and can both be awarded.

For purposes of making such coverage calculation, the triangular gable end area, doors, windows, knee walls, columns, retaining walls, and any features that are not a part of the façade are excluded from the denominator. Community buildings are included in the foregoing coverage calculations.

(c) If the development is built in accordance with development design requirements established by the Virginia Department of Behavioral Health and Developmental Services. (10 points)

(d) If points are not awarded pursuant to subdivision 3 f of this section for optional certification, if each bathroom contains only WaterSense labeled toilets, faucets, and showerheads. (3 points)

(e) If each unit is provided with free individual high-speed Internet access. (15 points)

(f) If each full bathroom's bath fans are wired to the primary bathroom light with a delayed timer, or continuous exhaust by ERV/DOAS. (3 points) If each full bathroom's bath fans are equipped with a humidistat. (3 points)

(g) If all cooking surfaces are equipped with fire suppression features that meet the authority's requirements as indicated on the application form, instructions, or other communication available to the public. (2 points)

(h) For rehabilitations, if each unit is equipped with dedicated space, drain, and electrical hook-ups for permanently installed dehumidification systems (2 points). For rehabilitations and new construction, providing permanently installed dehumidification systems in each unit. (5 points)

(i) If each interior door is solid core. (3 points)

(j) If each unit has at least one USB charging port in the kitchen, living room, and all bedrooms. (1 point)

(k) If each kitchen has LED lighting in all fixtures that meets the authority's minimum design and construction standards (2 points)

(l) For new construction only, if each unit has a balcony or patio with a minimum depth of five feet clear from face of building and a size of at least 30 square feet. (4 points)

(m) If construction or rehabilitation of the development includes installation of a renewable energy electric system in accordance with the manufacturer's specifications and all applicable provisions of the National Electrical Code. Qualifying installations must have either been performed by a licensed electrician or have passed a final inspection performed by a licensed electrician. (10 points)

(n) For rehabilitations, if each unit is provided with the necessary infrastructure for high-speed Internet or broadband service. (5 points)

(2) The following points are available to applications electing to serve elderly tenants:

(a) If all cooking ranges have front controls. (1 point)

(b) If all bathrooms have an independent or supplemental heat source. (1 point)

(c) If all entrance doors to each unit have two eye viewers, one at 42 inches and the other at standard height. (1 point)

(d) If each unit has a shelf or ledge outside the primary entry door in interior hallway. (2 points)

(3) The following points are available to all qualified applications:

a. If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)

b. Any development in which 10% of the units (i) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and (ii) are actively marketed to persons with disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of the application for credits. (20 points)

c. Any development located within one-half mile of an existing commuter rail, light rail, or subway station or one-quarter mile of one or more public bus stops either existing or to be built in accordance with existing proffers. (10 points, unless the development is located within the geographical area established by the executive director for a pool of credits for Northern Virginia or Tidewater Metropolitan Statistical Area (MSA), in which case, the development will receive 20 points if the development is ranked against other developments in such Northern Virginia or Tidewater MSA pool, 10 points if the development is ranked against other developments in any other pool of credits established by the executive director)

d. Each development must meet the following baseline energy performance standard applicable to the development's construction category. For new construction, the development must meet all requirements for EPA Energy Star certification. For rehabilitation, the proposed renovation of the development must result in at least a 30% post-rehabilitation decrease on the Home Energy Rating System Index (HERS Index) or score an 80 or lower on the HERS Index. For adaptive reuse, the proposed development must score a 95 or lower on the HERS Index. For mixed construction types, the applicable standard will apply to the development's various construction categories. The development's score on the HERS Index must be verified by a third-party, independent, nonaffiliated, certified Residential Energy Services Network (RESNET) home energy rater.

(1) Any development for which the applicant agrees to obtain (i) EarthCraft Gold or higher certification; (ii) U.S. Green Building Council LEED green-building certification; (iii) National Green Building Standard Certification of Silver or higher; or (iv) meet Enterprise Green Communities Criteria prior to the issuance of an IRS Form 8609 with the proposed development's architect certifying in the application

that the development's design will meet the criteria for such certification, provided that the proposed development's RESNET rater is registered with a provider on the authority's approved RESNET provider list. (10 points, points in this subdivision d (1) are not cumulative)

(2) Additionally, points on future applications will be awarded to an applicant having a principal that is also a principal in a tax credit development in the Commonwealth meeting (i) the Zero Energy Ready Home Requirements as promulgated by the U.S. Department of Energy (DOE) and as evidenced by a DOE certificate or (ii) the Passive House Institute's Passive House standards as evidenced by a certificate from an accredited Passive House certifier. (10 points, points in this subdivision d (2) are cumulative)

The executive director may, if needed, designate a proposed development as requiring an increase in credit in order to be financially feasible and such development shall be treated as if in a difficult development area as provided in the IRC for any applicant receiving an additional 10 points under this subdivision d, provided, however, that any resulting increase in such development's eligible basis shall be limited to 10% of the development's eligible basis. Provided, however, the authority may remove such increase in the development's eligible basis if the authority determines that the development is financially feasible without such increase in basis.

e. If units are constructed to include the authority's universal design features, provided that the proposed development's architect is on the authority's list of universal design certified architects. (15 points if all the units in an elderly development meet this requirement; 15 points multiplied by the percentage of units meeting this requirement for nonelderly developments)

f. Any development in which the applicant proposes to produce less than 100 low-income housing units. (20 points for producing 50 low-income housing units or less, minus 0.4 points for each additional low-income housing unit produced down to 0 points for any development that produces 100 or more low-income housing units.)

g. Any applicant for a development that, pursuant to a common plan of development, is part of a larger development located on the same or contiguous sites, financed in part by tax-exempt bonds. Combination developments seeking both 9.0% and 4.0% credits must clearly be presented as two separately financed deals, including separate equity pricing that would support each respective deal in the event the other were no longer present. While deals are required to be on the same or a contiguous site they must be clearly identifiable as separate. The units financed by tax-exempt bonds may not be interspersed throughout the development. Additionally, if co-located within the same building footprint, the property must identify separate entrances. All applicants seeking points in this category must arrange a meeting with authority staff at the authority's offices prior to the deadline for submission of the application in order to review both the 9.0% and the tax-exempt bond financed portion of the project. Any applicant failing to meet with authority staff in advance of applying will not be allowed to compete in the current competitive round as a combination development. (10 points if the aggregate number of units within the larger combined development totals more than 100 but fewer than 150 units and 30% or more of those units will be funded by tax-exempt bonds; 15 points if the aggregate number of units within the larger combined development totals at least 150 units and 30% of those units will be funded by tax-exempt bonds)

4. Tenant population characteristics. Commitment by the applicant to give a leasing preference to individuals and families with children in developments that will have no more than 20% of its units with one bedroom or less. (15 points; plus 0.75 points for each percent of the low-income units in the development with three or more bedrooms up to an additional 15 points for a total of no more than 30 points)

5. Sponsor characteristics.

a. Points shall be awarded on a sliding scale to applicants that enter into at least one contract for services provided by (i) a veteran-owned small business (VOSB) as certified by the U.S. Department of Veterans Affairs, Office of Small and Disadvantaged Business Utilization, or the U.S. Small Business Administration, or (ii) a business certified as service-disabled veteran-owned through the Commonwealth of Virginia's SWaM Certification Program; provided, however, that no points will be awarded for entering into contracts where a spousal relationship exists between any principal of the applicant and any principal of the service provider. The following services and roles qualify for points under this subdivision 5 a: (a) consulting services to complete the LIHTC application, (b) ongoing development services through the placed-in-service date, (c) general contractor, (d) architect, (e) property manager, (f) accounting services, or (g) legal services. An applicant seeking points in this

subdivision 5 a must provide in its application a certification, in a form to be developed by the executive director, certifying that a contract for services has been executed between the applicant and the service provider, describing the scope of the services provided or to be provided, and certifying that no spousal relationship exists between any principal of the applicant and any principal of the service provider. The application must also include a copy of the service provider's certification issued by the applicable certifying entity listed within this subdivision 5 a. (5 points for entering into one such contract; 7 points for entering into two such contracts; 10 points for entering into three or more such contracts)

b. Applicants with at least one principal having an ownership interest of at least 25% in the controlling general partner or managing member for the proposed development that is an individual with a VOSB certification, as described in subdivision 5 a of this subsection. An applicant seeking points in this subdivision 5 b must provide in its application a certification, in a form to be developed by the executive director, certifying that no spousal relationship exists between the principal with a VOSB certification and any other principal having an ownership interest in the development who does not also possess a VOSB certification. (30 points)

c. Applicants may receive negative points toward their application as follows:

(1) Any applicant that includes a principal that was a principal in a development at the time the authority inspected such development and discovered a life-threatening hazard under HUD's Uniform Physical Condition Standards and such hazard was not corrected in the timeframe established by the authority. (minus 50 points for a period of three years after the violation has been corrected)

(2) Any applicant that includes a principal that was a principal in a development that either (i) at the time the authority reported such development to the IRS for noncompliance had not corrected such noncompliance by the time a Form 8823 was filed by the authority or (ii) remained out-of-compliance with the terms of its extended use commitment after notice and expiration of any cure period set by the authority. (minus 15 points for a period of three calendar years after the year the authority filed Form 8823 or expiration of such cure period, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government, or governmental agency, in which case, no negative points will be assessed to the applicant, or 0 points, if the appropriate individual connected to the principal attend compliance training as recommended by the authority)

(3) Any applicant that includes a principal that is or was a principal in a development that (i) did not build a development as represented in the application for credit (minus two times the number of points assigned to the items not built or minus 50 points per requirement for failing to provide a minimum building requirement, for a period of three years after the last Form 8609 is issued for the development, in addition to any other penalties the authority may elect to seek under its agreements with the applicant), or (ii) has a reservation of credits terminated by the authority. (minus 10 points a period of three years after the credits are returned to the authority)

(4) Any applicant that includes a management company in its application that is rated unsatisfactory by the executive director or if the ownership of any applicant includes a principal that is or was a principal in a development that hired a management company to manage a tax credit development after such management company received a rating of unsatisfactory from the executive director during the compliance period and extended use period of such development. (minus 25 points)

(5) Any applicant that includes a principal that was a principal in a development for which the actual cost of construction (as certified in the Independent Auditor's Report with attached Certification of Sources and Uses that is submitted in connection with the Owner's Application for IRS Form 8609) exceeded the applicable cost limit by 5.0% or more (minus 50 points for a period of three calendar years after December 31 of the year the cost certification is complete; provided, however, if the board of commissioners determines that such overage was outside of the applicant's control based upon documented extenuating circumstances, no negative points will be assessed)

(6) Any applicant that includes a controlling general partner or managing member of the controlling general partner or managing member in the applicant that acted as a principal in a development receiving an allocation of credits from the authority where such principal made more than two requests for final inspection. (minus 5 points for two years)

6. Efficient use of resources. The percentage by which the total of the amount of credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the standard per unit credit amounts established by the executive director for a given unit type, based upon the number of such

unit types in the proposed development. (100 points multiplied by the percentage by which the total amount of the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director)

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount in this subdivision 6. For the purpose of calculating the points to be assigned pursuant to this subdivision 6, all credit amounts shall include any credits previously allocated to the development.

7. Bonus points.

a. Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision 7 a may not receive points under subdivision 7 b of this subsection. (Up to 50 points, the product of (i) 100 multiplied by (ii) the percentage of housing units in the proposed development both rent restricted to and occupied by households at or below 50% of the area median gross income; plus one point for each percentage point of such housing units in the proposed development that are further restricted to rents at or below 30% or 40% of the area median gross income up to an additional 10 points) If the applicant commits to providing housing units in the proposed development both rent-restricted to and occupied by households at or below 30% of the area median gross income and that are not subsidized by project-based rental assistance. (plus 1 point for each percentage point of such housing units in the proposed development, up to an additional 10 points)

b. Commitment by the applicant to impose rent limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision 7 b may not receive points under subdivision 7 a of this subsection. (Up to 25 points, the product of (i) 50 multiplied by (ii) the percentage of housing units in the proposed development rent restricted to households at or below 50% of the area median gross income; plus one point for each percentage point of such housing units in the proposed development that are further restricted to rents at or below 30% or 40% of the area median gross income up to an additional 10 points. Points for proposed developments in low-income jurisdictions shall be two times the points calculated in the preceding sentence, up to 50 points)

c. Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 30-year extended use period (as defined in the IRC). Applicants receiving points under this subdivision 7 c may not receive bonus points under subdivision 7 d of this subsection. (40 points for a 10-year commitment beyond the 30-year extended use period or 70 points for a 20-year commitment beyond the 30-year extended use period)

d. Participation by a local housing authority or qualified nonprofit organization (substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership) and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or right of first refusal to such local housing authority or qualified nonprofit organization or to a wholly owned subsidiary of such organization or authority, at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for-profit entity. The applicant must record such option or right of first refusal immediately after the low-income housing commitment described in 13VAC10-180-70. Applicants receiving points under this subdivision 7 d may not receive bonus points under subdivision 7 c of this subsection. (60 points; plus five points if the local housing authority or qualified nonprofit organization submits a homeownership plan satisfactory to the authority in which the local housing authority or qualified nonprofit organization commits to sell the units in the development to tenants)

e. Any development participating in the Rental Assistance Demonstration (RAD) program, or other conversion to project-based vouchers or project-based rental assistance approved by the authority, competing in the local housing authority pool will receive an additional 10 points. Applicants must show proof of a commitment to enter into housing assistance payment (CHAP) or a RAD conversion commitment (RCC).

f. Any applicant that commits in the application to submit any payments due the authority, including reservation fees and monitoring fees, by electronic payment. (5 points)

In calculating the points for subdivisions 7 a and 7 b of this subsection, any units in the proposed development required by the locality to exceed 60% of the area median gross income will not be considered when calculating the percentage of low-income units of the proposed development with incomes below those required by the IRC in order for the development to be a qualified low-income development, provided that the locality submits evidence satisfactory to the authority of such requirement.

After points have been assigned to each application in the manner described in this subsection, the executive director shall compute the total number of points assigned to each such application. Any application that is assigned a total number of points less than a threshold amount of 300 points (200 points for developments financed with tax-exempt bonds in such amount so as not to require under the IRC an allocation of credits under this chapter) shall be rejected from further consideration under this chapter and shall not be eligible for any reservation or allocation of credits.

F. During its review of the submitted applications in all pools, the authority may conduct:

1. Its own analysis of the demand for the housing units to be produced by each applicant's proposed development. Notwithstanding any conclusion in the market study submitted with an application, if the authority determines that, based upon information from its own loan portfolio or its own market study, inadequate demand exists for the housing units to be produced by an applicant's proposed development, the authority may exclude and disregard the application for such proposed development.

2. A site visit to the applicant's proposed development. Notwithstanding any conclusion in any environmental site assessment submitted with an application, if the authority determines that the applicant's proposed development presents health or safety concerns for potential tenants of the development, the authority may exclude and disregard the application for such proposed development.

G. The executive director:

1. May exclude and disregard any application that the executive director determines is not submitted in good faith or that the executive director determines would not be financially feasible.

2. May determine that an application is substantially incomplete and ineligible for further review.

3. May also choose to allow for the immediate correction of minor and immaterial defects affecting mandatory items (but not points items) in an application. Should the executive director choose to allow correction, applicants will be given 48 hours from the time of notification to cure defects with the application. If the executive director allows an applicant to cure minor defects, that does not constitute approval or acceptance of the application and is not an assurance that the application, upon further review, will be deemed acceptable.

Examples of items that may be considered as "curable" include:

a. If the applicant has failed to include a required document, the applicant may supply the document; provided, however, that the document existed on the application deadline date and, if the document is a legal agreement or instrument, the document was legally effective on the application deadline date;

b. If statements or items in the application are contradictory or mutually inconsistent, the applicant may present information resolving the contradiction or inconsistency; provided, however, that the information accurately reflects the state of affairs on the application deadline date;

c. The applicant may provide any required signature that has been omitted, except for applications that the executive director deems to be substantially incomplete; and

d. The applicant may cure any scrivener's error, missing or defective notarization, defective signature block, or defective legal name of an individual or entity.

4. Shall notify the applicant of any curable defects it discovers by telephone, and, simultaneously, in writing electronically (email). The applicant's corrective submission shall not be considered unless it is received by the executive director no later than 48 hours (excluding weekends and legal holidays) from the notification. If an applicant fails to respond to the notification of curable defects within the 48-hour cure period, or if an applicant's response fails to address the question asked, a negative conclusion shall be drawn. Failure to respond to an item in a cure notification will result in the denial of points in that category or the application may be deemed to not meet threshold. After the application deadline, telephone calls or other oral or written communications on behalf of a tax credit applicant (e.g., from a project's development team, elected

representatives) other than information submitted pursuant to this subdivision shall not be accepted or considered before preliminary reservation awards have been announced.

5. Upon assignment of points to all of the applications, shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Available credits will include unreserved per capita dollar amount credits from the current calendar year under § 42(h)(3)(C)(i) of the IRC, any unreserved per capita credits from previous calendar years, and credits returned to the authority prior to the final ranking of the applications and may include up to 50% of the next calendar year's per capita credits as shall be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. However, if any set-asides established by the executive director cannot be satisfied after ranking the applications based on the number of points, the executive director may rank as many applications as necessary to meet the requirements of such set-aside (selecting the highest ranked application, or applications, meeting the requirements of the set-aside) over applications with more points.

H. The authority shall, in the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the Commonwealth, and in the event that the amount of credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of all of the developments described in that pool, to the extent necessary to fully utilize the amount of credits available for reservation within such pool or, if none, within the Commonwealth, select one or more of the applications with the highest combination of points from subdivision E 7 of this section. Each application so selected shall receive, in order based upon the number of such points, beginning with the application with the highest number of such points, a reservation of credits. If two or more of the tied applications receive the same number of points from subdivision E 7 of this section and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the financial feasibility of all the developments described in the tied for points applications, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive in order of such selection by lot a reservation of credits.

I. The executive director:

1. For each application that may receive a reservation of credits, shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. In making this determination, the executive director shall consider:

a. The sources and uses of the funds;

b. The available federal, state, and local subsidies committed to the development;

c. The total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development; and

d. The percentage of the credit dollar amount used for development costs other than the costs of intermediaries.

2. Shall examine the development's costs, including developer's fees and other amounts in the application, for reasonableness, and if the executive director determines that such costs or other amounts are unreasonably high, the executive director shall reduce them to amounts that the executive director determines to be reasonable.

3. Shall review the applicant's projected rental income, operating expenses, and debt service for the credit period.

4. May establish such criteria and assumptions as the executive director shall deem reasonable for the purpose of making such determination, including:

a. Criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development;

b. Increases in the market value of the development and increases in operating expenses, rental income; and

c. In the case of applications without firm financing commitments at fixed interest rates, debt service on the proposed mortgage loan.

5. May, if the executive director deems it appropriate, consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review, and establish any or all of the items described in this subsection as to the larger development in making such determination for the development.

J. Maximum developer fee calculations will be indicated on the application form, instructions, or other communication available to the public. Notwithstanding such calculations of developer fee, (i) no more than $3 million developer fee may be included in the eligible basis of developments seeking 9.0% credits, (ii) no more than $3 million developer fee may be included in the eligible basis of developments seeking 4.0% credits, unless at least 30% of the developer fee is deferred, (iii) no developer fee may exceed $5 million, and (iv) no developer fee may exceed 15% of the development's total development cost, as determined by the authority.

K. The executive director:

1. Shall reserve credits to applications in descending order of ranking within each pool and tier, if applicable, until either substantially all credits in each pool and tier are reserved or all qualified applications in each pool and tier have received reservations at such time during each calendar year as the executive director shall designate. If there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool after reservations have been made, "substantially all" of the credits in such pool shall be deemed to have been reserved.

2. May rank the applications within pools at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool.

3. May establish more than one round of review and ranking of applications and reservation of credits based on such rankings.

4. Shall designate the amount of credits to be made available for reservation within each pool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of credits so reserved exceed the maximum amount permissible under the IRC.

5. Shall deem any development seeking more credits than are available within a credit pool in which it competes as financially infeasible and ineligible for any reservation or allocation of credits from any pool.

6. If any credits remain in any pool after moving proposed developments and credits to another pool, may for developments that meet the requirements of § 42(h)(1)(E) of the IRC only, reserve the remaining credits to any proposed development scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application with additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed development. The reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable discretion of the executive director if the executive director determines it to be in the best interest of the plan. In the event a reservation or an allocation of credits from the current year or a prior year is reduced, terminated, or canceled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

7. In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, may:

a. Leave such unreserved credits in such pools for reservation and allocation in any subsequent rounds;

b. Redistribute such unreserved credits to such other pools as the executive director may designate;

c. Supplement such unreserved credits in such pools with additional credits from the Commonwealth's annual state housing credit ceiling for the following year for reservation and allocation if in the reasonable discretion of the executive director, it serves the best interest of the plan;

d. Carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year; or

e. Move a development from the nonprofit or new construction pool to its appropriate geographic pool to more fully or fully utilize the total amount of credits made available during such round.

L. 1. The total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed 15% of Virginia's per capita dollar amount of credits for such credit year (credit cap).

2. However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth in this section shall be less than Virginia's dollar amount of credits available for such credit year, then the authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits.

3. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development. For purposes of this subsection, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments.

4. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits.

5. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date.

6. Substantial relationships shall include the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other):

a. The persons are in the same immediate family (including a spouse, children, parents, grandparents, grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household;

b. The entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners that (by themselves or together with any other related persons and entities) have, in the aggregate, 5.0% or more ownership interest in each entity;

c. The entities are under the common control (e.g., the same person and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities);

d. The person is a general partner, member, or employee in the entity or is an owner (solely or together with any other related persons and entities) of 5.0% or more ownership interest in the entity;

e. The entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5.0% or more ownership interest in the other entity; or

f. The person or entity is otherwise controlled, in whole or in part, by the other person or entity.

7. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such applicant if the executive director determines that:

a. Such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted;

b. Such person or entity has no agreement or understanding relating to such application or the tax credits requested within the application; and

c. Such person or entity will not receive a financial benefit from the tax credits requested in the application.

8. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such

limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits.

9. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant shall, upon notice from the authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as the executive director shall determine to best serve the interests of the program.

10. Each applicant and each principal of the applicant shall make such certifications, shall disclose such facts, and shall submit such documents to the authority as the executive director may require to determine compliance with the credit cap. If an applicant or any principal of the applicant makes any misrepresentation to the authority concerning such applicant's or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals of the applicant, and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described in this subsection) with the applicant or any principal of the applicant from submitting applications for credits for such period of time as the executive director shall determine.

M. The executive director:

1. Shall notify each applicant for such reservations of credits within a reasonable time after credits are reserved to any applications either:

a. Of the amount of credits reserved to such applicant's application by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director in the application, by the IRC, and by this chapter; or

b. That the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance with this section.

The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit developer fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director.

2. May reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years if credits are reserved to any applicants for developments that have also received an allocation of credits from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

3. Shall make a written explanation available to the general public for any allocation of housing credit dollar amount that is not made in accordance with established priorities and selection criteria of the authority.

a. The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to ensure compliance with the binding commitment issued or to be issued to the applicant, the IRC, and this chapter.

b. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall so notify the applicant.

4. May require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to ensure that the applicant will comply with all requirements under the IRC, this chapter, and the binding commitment (including any requirement to conform to all of the representations, commitments, and information contained in the application for which points were assigned pursuant to this section).

Upon satisfaction of all such requirements (including any post-allocation requirements), such deposit shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.

N. If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, this chapter, and the terms of any binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time allocate the credits to such qualified low-income buildings or development without first providing a reservation of such credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in subsection M of this section, nor to relieve the applicant from any other requirements for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided in subsection M of this section with respect to reservations.

O. The executive director may:

1. Require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as the executive director shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment, and any contractual agreements between the applicant and the authority.

2. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development that were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment:

a. Terminate the reservation of such credits and draw on any good faith deposit; or

b. Substitute the reservation of credits from the current credit year with a reservation of credits from a future credit year if the delay is caused by a lawsuit beyond the applicant's control that prevents the applicant from proceeding with the development.

If, in lieu of or in addition to this determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the credits, the executive director may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

3. Establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as the executive director shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant to such applications.

P. Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits as presented in the application shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with this chapter, the IRC, the binding commitment, and any other contractual agreement between the authority and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with respect to such credits. If such changes are made without the prior written approval of the executive director, the executive director may terminate or reduce the reservation of such credits, impose additional terms and conditions with respect to such credits, seek to enforce any contractual remedies to which the authority may then be entitled, draw on any good faith deposit, or perform any combination of such remedies.

In the event that any reservation of credits is terminated or reduced by the executive director under this section, the executive director may reserve, allocate or carry over, as applicable, such credits in such manner as the executive director shall determine consistent with the requirements of the IRC and this chapter.

Q. The executive director may make a reservation of credits:

1. In an accessible supportive housing pool (ASH pool) to any applicant that proposes a nonelderly development that (i) will be assisted by a documented and binding form of rental assistance in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director for at least 15% of the units in the development; (iv) has budgeted for the ongoing provision of services; (v) maintains dedicated services staff; and (vi) has a principal with a demonstrated capacity for supportive housing evidenced by prior services funding contracts, a certification from a certifying body acceptable to

the executive director or other preapproved source, and the applicant's completion on behalf of the principal of the authority's supportive housing certification form. ASH pool reservations made in any calendar year may be up to 10% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year. If the ASH pool application deadline is simultaneous with the deadline for the other pools, the unsuccessful applicants in the ASH pool will also compete in the applicable geographic pool.

2. To developments having unique and innovative development concepts, such as innovative construction methods or materials; unique or innovative tenant services, tenant selection criteria, or eviction policies; or otherwise innovatively contributing to the authority's identified mission and goals. The applications for such credits must meet all the requirements of the IRC and threshold score. The authority shall also establish a review committee comprised of external real estate professionals, academic leaders, and other individuals knowledgeable of real estate development, design, construction, accessibility, energy efficiency, or management to assist the authority in determining and ranking the innovative nature of the development. Such reservations will be for credits from the next year's per capita credits and may not exceed 12.5% of the credits expected to be available for that following calendar year. Such reservations shall not be considered in the executive director's determination that no more than 50% of the next calendar year's per capita credits have been pre-reserved.

3. In a preservation pool to low-income housing tax credit developments seeking credit resyndication that are currently operating within an extended compliance period. Prior to application, applicants must have completed more than 20 years of compliance under the existing extended use agreement issued in connection with the respective development's most recent credit allocation, and the credit investor or syndicator in place at the time of the allocation must have transferred all of its ownership interest in the development. Applicants awarded credits from this pool shall be subject to additional rent increase limits, as determined by the authority in the best interest of the plan, for a period of five years beginning on the first day of the new credit period. Preservation pool reservations made in any calendar year may be up to 10% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year. Unsuccessful applicants in the preservation pool will also compete in the applicable geographic pool.

13VAC10-180-70. Allocation of credits.

A. At such time as one or more of an applicant's buildings or an applicant's development that has received a reservation of credits is (i) placed in service or satisfies the requirements of § 42(h)(1)(E) of the IRC and (ii) meets all of the preallocation requirements of this chapter, the binding commitment, and any other applicable contractual agreements between the applicant and the authority, the applicant shall so advise the authority, shall request the allocation of all of the credits so reserved or such portion of the credits reserved to which the applicant's buildings or development is then entitled under the IRC, this chapter, the binding commitment, and the contractual agreements, if any, and shall submit such application, certifications (including an independent certified public accountant's certification of applicant's actual cost, and an independent certified public accountant's certification of the general contractor's actual costs), legal and accounting opinions, evidence as to costs, a breakdown of sources and uses of funds, pro forma financial statements setting forth anticipated cash flows, and other documentation as the executive director shall require in order to determine that the applicant's buildings or development is entitled to such credits as described in this subsection. The applicant shall certify to the authority the full extent of all federal, state, and local subsidies that apply (or that the applicant expects to apply) with respect to the buildings or the development.

B. As of the date of allocation of credits to any building or development and as of the date such building or such development is placed in service, the executive director shall determine the amount of credits to be necessary for the financial feasibility of the development and its viability as a qualified low-income housing development throughout the credit period under the IRC. In making such determinations, the executive director shall consider the sources and uses of the funds, the available federal, state, and local subsidies committed to the development, and the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. The executive director shall also examine the development's costs, including developer fees and other amounts in the application, for reasonableness, and if the executive director determines that such costs or other amounts are unreasonably high, the executive director shall reduce the costs to amounts that the executive director determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses, and debt service for the credit period. The executive director may establish such criteria and

assumptions as the executive director shall then deem reasonable (or the executive director may apply the criteria and assumptions the executive director established pursuant to 13VAC10-180-60) for the purpose of making such determinations, including criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income, and, in the case of applications without firm financing commitments (as defined in 13VAC10-180-60) at fixed interest rates, debt service on the proposed mortgage loan. The amount of credits allocated to the applicant shall in no event exceed such amount as determined by the executive director by more than a de minimis amount of $100.

C. Prior to allocating credits to an applicant, the executive director shall require the applicant to execute and deliver to the authority a valid IRS Form 8821, Tax Information Authorization, naming the authority as the appointee to receive tax information. The Forms 8821 of all applicants will be forwarded to the IRS, which will authorize the IRS to furnish the authority with all IRS information pertaining to the applicants' developments, including audit findings and assessments.

D. Prior to allocating the credits to an applicant, the executive director shall require the applicant to execute, deliver, and record among the land records of the appropriate jurisdiction an extended low-income housing commitment in accordance with the requirements of the IRC. Such commitment shall require that the applicable fraction (as defined in the IRC) for the buildings for each taxable year in the extended use period (as defined in the IRC) will not be less than the applicable fraction specified in such commitment and that prohibits both (i) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of a low-income unit and (ii) any increase in the gross rent with respect to such unit not otherwise permitted under the IRC. The amount of credits allocated to any building shall not exceed the amount necessary to support such applicable fraction, including any increase in credits pursuant to § 42(f)(3) of the IRC reflected in an amendment to such commitment. The commitment shall provide that the extended use period will end on the day 15 years after the close of the compliance period (as defined in the IRC) or on the last day of any longer period of time specified in the application during which low-income housing units in the development will be occupied by tenants with incomes not in excess of the applicable income limitations; provided, however, that the extended use period for any building shall be subject to termination, in accordance with the IRC, on the date the building is acquired by foreclosure or instrument in lieu of foreclosure unless a determination is made pursuant to the IRC that such acquisition is part of an agreement with the current owner, a purpose of which is to terminate such period. In addition, such termination shall not be construed to permit, prior to close of the three-year period following such termination, the eviction or termination of tenancy of any existing tenant of any low-income housing unit other than for good cause or any increase in the gross rents over the maximum rent levels then permitted by the IRC with respect to such low-income housing units. Such commitment shall contain a waiver of the applicant's right to pursue a qualified contract. Such commitment shall also contain such other terms and conditions as the executive director may deem necessary or appropriate to ensure that the applicant and the development conform to the representations, commitments, and information in the application and comply with the requirements of the IRC and this chapter. Such commitment shall be a restrictive covenant on the buildings binding on all successors to the applicant and shall be enforceable in any state court of competent jurisdiction by individuals (whether prospective, present, or former occupants) who meet the applicable income limitations under the IRC.

E. In accordance with the IRC, the executive director may, for any calendar year during the project period (as defined in the IRC), allocate credits to a development, as a whole, that contains more than one building. Such an allocation shall apply only to buildings placed in service during or prior to the end of the second calendar year after the calendar year in which such allocation is made, and the portion of such allocation allocated to any building shall be specified not later than the close of the calendar year in which such building is placed in service. Any such allocation shall be subject to satisfaction of all requirements under the IRC.

F. If the executive director determines that the buildings or development is so entitled to the credits, the executive director shall allocate the credits (or such portion of credits to which the executive director deems the buildings or the development to be entitled) to the applicant's qualified low-income buildings or to the applicant's development in accordance with the requirements of the IRC. If the executive director shall determine that the applicant's buildings or development is not so entitled to the credits, the executive director shall not allocate the credits and shall notify the applicant within a reasonable time after such determination is made. In the event that any such applicant shall not request an allocation of all of its reserved credits or whose buildings or development shall be deemed by the executive director not to be entitled to any or all of its reserved credits, the executive director may reserve or allocate, as applicable, such unallocated credits to the buildings or developments of other qualified applicants at such time and in such manner as the executive director shall determine consistent with the requirements of the IRC and this chapter.

G. The executive director may prescribe (i) such deadlines for submissions of requests for allocations of credits for any calendar year as the executive director deems necessary or desirable to allow sufficient processing time for the authority to make such allocations within such calendar year and (ii) such deadlines for satisfaction of all preallocation requirements of the IRC the binding commitment, any contractual agreements between the authority and the applicant and this chapter as the executive director deems necessary or desirable to allow the authority sufficient time to allocate to other eligible applicants any credits for which the applicants fail to satisfy such requirements.

H. The executive director may make the allocation of credits subject to such terms as the executive director may deem necessary or appropriate to ensure that the applicant and the development comply with the requirements of the IRC.

I. The executive director may also, to the extent not already required under 13VAC10-180-60, require that all applicants make such good faith deposits or execute such contractual agreements with the authority as the executive director may require with respect to the credits (i) to ensure that the buildings or development are completed in accordance with the binding commitment, including all of the representations made in the application for which points were assigned pursuant to 13VAC10-180-60, and (ii) only in the case of any buildings or development that are to receive an allocation of credits and are to be placed in service in any future year, to ensure that the buildings or the development will be placed in service as a qualified low-income housing project (as defined in the IRC) in accordance with the IRC and that the applicant will otherwise comply with all of the requirements under the IRC.

J. In the event that the executive director determines that a development for which an allocation of credits is made shall not become a qualified low-income housing project (as defined in the IRC) within the time period required by the IRC or the terms of the allocation or any contractual agreements between the applicant and the authority, the executive director may terminate the allocation and rescind the credits in accordance with the IRC and, in addition, may draw on any good faith deposit and enforce any of the authority's rights and remedies under any contractual agreement. An allocation of credits to an applicant may also be canceled with the mutual consent of such applicant and the executive director. Upon the termination or cancellation of any credits, the executive director may reserve, allocate, or carry over, as applicable, such credits in such manner as the executive director shall determine consistent with the requirements of the IRC and this chapter.

K. An applicant that demonstrates a legitimate change in circumstances or delay beyond the applicant's reasonable control, as determined by the authority, may return a valid reservation of prior years' tax credits between September 1 and September 30 and receive an allocation of the same amount of current or future year tax credits. The authority must determine that the applicant is capable of completing and placing the development in service within the time required by the IRC for such current or future year tax credits. An applicant with a principal that, within three years prior to the current application, received an IRS Form 8609 for placing a separate development in service without returning credits to or requesting additional credits from the issuing housing finance agency will be permitted to increase the amount of developer fee included in the development's eligible basis by 10%.