

NORTH CAROLINA *REGISTER*

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NORTH CAROLINA REGISTER
 Publication Schedule for January 2006 – December 2006

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule (first legislative day of the next regular session)	270 th day from publication in the Register
20:13	01/03/06	12/08/05	01/18/06	03/06/06	03/20/06	05/01/06	05/09/06	09/30/06
20:14	01/17/06	12/21/05	02/01/06	03/20/06	04/20/06	06/01/06	01/07	10/14/06
20:15	02/01/06	01/10/06	02/16/06	04/03/06	04/20/06	06/01/06	01/07	10/29/06
20:16	02/15/06	01/25/06	03/02/06	04/17/06	04/20/06	06/01/06	01/07	11/12/06
20:17	03/01/06	02/08/06	03/16/06	05/01/06	05/22/06	07/01/06	01/07	11/26/06
20:18	03/15/06	02/22/06	03/30/06	05/15/06	05/22/06	07/01/06	01/07	12/10/06
20:19	04/03/06	03/13/06	04/18/06	06/02/06	06/20/06	08/01/06	01/07	12/29/06
20:20	04/17/06	03/24/06	05/02/06	06/16/06	06/20/06	08/01/06	01/07	01/12/07
20:21	05/01/06	04/07/06	05/16/06	06/30/06	07/20/06	09/01/06	01/07	01/26/07
20:22	05/15/06	04/24/06	05/30/06	07/14/06	07/20/06	09/01/06	01/07	02/09/07
20:23	06/01/06	05/10/06	06/16/06	07/31/06	08/21/06	10/01/06	01/07	02/26/07
20:24	06/15/06	05/24/06	06/30/06	08/14/06	08/21/06	10/01/06	01/07	03/12/07
21:01	07/03/06	06/12/06	07/18/06	09/01/06	09/20/06	11/01/06	01/07	03/30/07
21:02	07/17/06	06/23/06	08/01/06	09/15/06	09/20/06	11/01/06	01/07	04/13/07
21:03	08/01/06	07/11/06	08/16/06	10/02/06	10/20/06	12/01/06	01/07	04/28/07
21:04	08/15/06	07/25/06	08/30/06	10/16/06	10/20/06	12/01/06	01/07	05/12/07
21:05	09/01/06	08/11/06	09/16/06	10/31/06	11/20/06	01/01/07	01/07	05/29/07
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21:07	10/02/06	09/11/06	10/17/06	12/01/06	12/20/06	02/01/07	05/08	06/29/07
21:08	10/16/06	09/25/06	10/31/06	12/15/06	12/20/06	02/01/07	05/08	07/13/07
21:09	11/01/06	10/11/06	11/16/06	01/01/07	01/22/07	03/01/07	05/08	07/29/07
21:10	11/15/06	10/24/06	11/30/06	01/15/07	01/22/07	03/01/07	05/08	08/12/07
21:11	12/01/06	11/07/06	12/16/06	01/30/07	02/20/07	04/01/07	05/08	08/28/07
21:12	12/15/06	11/22/06	12/30/06	02/13/07	02/20/07	04/01/07	05/08	09/11/07

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

Note from the Codifier: This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

**The 2007 Low-Income Housing Tax Credit Qualified Allocation Plan
For the State of North Carolina**

I. INTRODUCTION

The 2007 Qualified Allocation Plan (the Plan) has been developed by the North Carolina Housing Finance Agency (the Agency) as administrative agent for the North Carolina Federal Tax Reform Allocation Committee (the Committee) in compliance with Section 42 of the Internal Revenue Code of 1986, as amended (the Code). For purposes of the Plan, the term "Agency" shall mean the Agency acting on behalf of the Committee, unless otherwise provided.

The Plan was reviewed in one public hearing and met the other legal requirements prior to final adoption by the Committee. The staff of the Agency was present at the hearing to take comments and answer questions.

The Agency will only allocate low-income housing tax credits in compliance with the Plan. The Code requires that the Plan contain certain elements. These elements, and others added by the Committee, are listed below.

- A. Selection criteria to be used in determining the allocation of federal low-income housing tax credits:
 - 1. Project location and site suitability.
 - 2. Market demand and local housing needs.
 - 3. Serving the lowest income tenants.
 - 4. Serving qualified tenants for the longest periods.
 - 5. Design and quality of construction.
 - 6. Financial structure and long-term viability.
 - 7. Use of federal project-based rental assistance.
 - 8. Use of mortgage subsidies.
 - 9. Experience of development team and management agent(s).
 - 10. Serving persons with disabilities and the homeless.
 - 11. Willingness to solicit referrals from public housing waiting lists.
 - 12. Tenant populations of individuals with children.
 - 13. Projects intended for eventual tenant ownership.
 - 14. Projects that are part of a Community Revitalization Plan.
- B. Threshold, underwriting and process requirements for project applications and tax credit awards.
- C. Description of the Agency's compliance monitoring program, including procedures to notify the Internal Revenue Service of noncompliance with the requirements of the program.

In the process of administering the low-income housing tax credit and Rental Production Program (RPP), the Agency will make decisions and interpretations regarding project applications and the Plan. Unless otherwise stated, the Agency is entitled to the full discretion allowed by law in making all such decisions and interpretations. The Agency reserves the right to amend, modify, or withdraw provisions contained in the Plan that are inconsistent or in conflict with state or federal laws or regulations. In the event of a major natural disaster the Agency may disregard any section of the Plan, including point scoring and evaluation criteria, that interferes with an appropriate response.

II. SET-ASIDES, AWARD LIMITATIONS AND COUNTY DESIGNATIONS

The Agency will determine whether applications are eligible under Section II(A), II(B) or II(C).

A. PRESERVATION SET-ASIDE

The Agency will award up to \$750,000 in tax credits to applications proposing to rehabilitate the following:

- 1. properties with existing U.S. Department of Agriculture, Rural Development (RD) Section 515 financing and project-based rental assistance for at least fifty percent (50%) of the units;

2. projects allocated 9% tax credits in 1991 or earlier.

See Section II(E)(3) for award limitations for this set-aside.

B. REHABILITATION SET-ASIDE

The Agency will award up to twenty percent (20%) of tax credits available after forward commitments and the preservation set-aside to projects proposing rehabilitation of existing housing. Adaptive reuse projects and entirely vacant residential buildings will be considered new construction.

C. NEW CONSTRUCTION SET-ASIDES

The Agency will award tax credits remaining after awards described above and any under Section II(G)(2) to other new construction projects, starting with those earning the highest scoring totals within each geographic set-aside and continuing in descending score order through the last project that can be fully funded. The Agency reserves the right to revise the available credits in each set-aside.

NEW CONSTRUCTION GEOGRAPHIC SET-ASIDES

WEST: 20%	CENTRAL: 25%	METRO: 30%	EAST: 25%
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WEST		CENTRAL		METRO	EAST	
Alexander	Jackson	Alamance	Montgomery	Buncombe	Beaufort	Johnston
Alleghany	Lincoln	Anson	Moore	Cumberland	Bertie	Jones
Ashe	Macon	Cabarrus	Orange	Durham	Bladen	Lenoir
Avery	Madison	Caswell	Person	Forsyth	Brunswick	Martin
Burke	McDowell	Chatham	Randolph	Guilford	Camden	Nash
Caldwell	Mitchell	Davidson	Richmond	Mecklenburg	Carteret	New Hanover
Catawba	Polk	Davie	Rockingham	Wake	Chowan	Northampton
Cherokee	Rutherford	Franklin	Rowan		Columbus	Onslow
Clay	Surry	Granville	Scotland		Craven	Pamlico
Cleveland	Swain	Harnett	Stanly		Currituck	Pasquotank
Gaston	Transylvania	Hoke	Stokes		Dare	Pender
Graham	Watauga	Iredell	Union		Duplin	Perquimans
Haywood	Wilkes	Lee	Vance		Edgecombe	Pitt
Henderson	Yadkin		Warren		Gates	Robeson
	Yancey				Greene	Sampson
					Halifax	Tyrrell
					Hertford	Washington
					Hyde	Wayne
						Wilson

D. NONPROFIT AND CHDO SET-ASIDES

If necessary, the Agency will adjust the awards under the Plan to ensure that the overall allocation results in:

- ten percent (10%) of the state's federal tax credit ceiling being awarded to projects involving tax exempt organizations (nonprofits) and
- fifteen percent (15%) of the Agency's HOME funds being awarded to projects involving Community Housing Development Organizations certified by the Agency (CHDOs).

Specifically, tax credits that would have been awarded to the lowest ranking project(s) that do(es) not fall into one of these categories will be awarded to the next highest ranking project(s) that do(es) until the overall allocation(s) reach(es) the necessary percentage(s). The Agency may make such adjustment(s) in any set-aside.

IN ADDITION

In order to qualify under subsection (D)(1) above, an application must either not involve any for-profit Principals or comply with the material participation requirements of the Code, applicable federal regulations and Section VI(A)(2). In order to qualify under subsection (D)(2) above, an application must meet the requirements of subsection (D)(1) above, 24 CFR 92.300(a)(1) and any other regulation regarding the federal CHDO set-aside. The Agency may determine that the requirements of the federal CHDO set-aside have been or will be met without implementing subsection (D)(2).

E. LIMITATION OF AWARDS TO PRINCIPALS AND PROJECTS

1. The maximum award to any one Principal will be a total of \$1,000,000 in tax credits, including all set-asides. Forward commitments will count towards the maximum applicable in the year they are allocated.
2. The maximum award to any one project will be the lesser of (a) \$800,000 or (b) \$8,000 per qualified low-income unit. The per-unit limit will be \$8,500 for adaptive reuse projects or where the residential buildings meet all Energy Star standards (as defined in **Appendix B**).
3. Awards under Section II(A) will be limited to \$250,000 and will not be eligible for the federal acquisition tax credit pursuant to Section 42 of the Code.

F. COUNTY award LIMITS and INCOME DESIGNATIONS

1. No county will be awarded tax credits for new construction exceeding \$1,500,000 unless doing so is necessary to meet another set-aside requirement of this Plan. Forward commitments will count towards this limit in the year they are allocated. No county will be awarded more than two projects under the rehabilitation set-aside. The Agency may waive the county-based limits for revitalization efforts characterized by a high degree of committed public subsidies.
2. Pursuant to N.C.G.S. § 105-129.42(c) the Agency is responsible for designating each county as High, Moderate or Low Income. Five criteria were used for making this determination:
 - (a) County median income
 - (b) Poverty rate
 - (c) Percent of population in rural areas
 - (d) Regional growth patterns
 - (e) Enterprise area tier (one through five)

Each county was considered as a whole and evaluated relative to others in the state. Based on this process, the Agency designates counties as follows:

HIGH	MODERATE		LOW		
Alamance	Alexander	Lee	Alleghany	Graham	Pasquotank
Cabarrus	Brunswick	Lincoln	Anson	Greene	Pender
Catawba	Buncombe	Moore	Ashe	Halifax	Perquimans
Chatham	Burke	Nash	Avery	Hertford	Richmond
Durham	Caldwell	Onslow	Beaufort	Hoke	Robeson
Forsyth	Carteret	Person	Bertie	Hyde	Rockingham
Guilford	Cleveland	Pitt	Bladen	Jackson	Rutherford
Iredell	Craven	Polk	Camden	Jones	Sampson
Johnston	Cumberland	Randolph	Caswell	Lenoir	Scotland
Mecklenburg	Dare	Rowan	Cherokee	Macon	Surry

IN ADDITION

New Hanover	Davidson	Stanly	Chowan	Madison	Swain
Orange	Davie	Stokes	Clay	Martin	Tyrrell
Union	Franklin	Transylvania	Columbus	McDowell	Vance
Wake	Gaston	Watauga	Currituck	Mitchell	Warren
	Granville	Wayne	Duplin	Montgomery	Washington
	Harnett	Wilson	Edgecombe	Northampton	Wilkes
	Haywood	Yadkin	Gates	Pamlico	Yancey
	Henderson				

G. OTHER AWARDS

1. The Agency may award tax credits remaining from the four geographic set-asides to the next highest scoring eligible new construction application(s) statewide and/or one or more eligible rehabilitation applications. The Agency may also carry forward any amount of tax credits to the next year.
2. The Agency may award 2007 tax credits outside of the normal process to projects that: a) allow the Agency to comply with HUD regulations regarding timely commitment of funds, b) prevent the loss of state or federal investment, c) provide housing for underserved populations or d) are part of a settlement agreement of legal action brought against a local government. The total amount of such awards(s) shall not exceed \$1,000,000.
3. The Agency may also make a forward commitment of the next year's tax credits in an amount necessary to fully fund project(s) with a partial award or to any project application that was submitted in a prior year if such application meets all the minimum requirements of the Plan. In the event that credits are returned or the state receives credits from the national pool, the Agency may elect to carry such credits forward, make an award to any project application (subject only to the nonprofit set aside), or a combination of both.
4. The Agency may exceed the limitations on awards contained in Sections II(A), II(B), II(E)(1), II(F)(1) and this Section II(G) in order to completely fund a project request.

III. DEADLINES, APPLICATION AND FEES

A. APPLICATION AND AWARD SCHEDULE

The following schedule will apply to the 2007 application process for 9% tax credits. The Agency will announce the application schedule for bond allocation and 4% tax credits at a later time.

January 12	Deadline for submission of preliminary applications (12:00 noon)
March 5	Market analysts will mail studies to the Agency and applicants
March 16	Notification of final site scores
March 23	Deadline for market-related project revisions
April 2	Market analysts will mail comments on revisions to the Agency and applicants
May 11	Deadline for full applications (12:00 noon)
August	Notification of tax credit awards

The Agency reserves the right to change the schedule as necessary.

B. APPLICATION, ALLOCATION AND PENALTY FEES

1. All applicants are required to pay a nonrefundable fee of \$5,300 at the submission of the preliminary application. This fee covers the cost of the market study or physical needs assessment and a \$1,100 preliminary application

processing fee (which will be assessed for every electronic application submitted). The Agency may charge additional fee(s) to cover the cost of direct contracting with other providers (such as appraisers).

2. All applicants are required to pay a nonrefundable processing fee of \$1,100 upon submission of the full application.
3. Entities receiving 9% tax credit awards are required to pay a nonrefundable allocation fee equal to the greater of:
 - (a) 0.58% of the project's total qualified basis or,
 - (b) seventy-five hundred dollars (\$7,500).

The allocation fee must be paid to the Agency upon the earlier of return of the reservation letter or carryover allocation agreement. Failure to return the required documentation (such as ownership entity information) and fee by the date specified may result in cancellation of the tax credit reservation.

4. Entities receiving tax exempt bond volume are required to pay a nonrefundable allocation fee equal to forty (40) basis points of the awarded bond volume. (For example, the fee due on a \$10 million bond award would be \$40,000.) The allocation fee will be due at the time the bond volume is awarded. Failure to return the required documentation and fee by the date specified may result in cancellation of the bond allocation. The Agency may assess other fees for additional monitoring responsibilities.
5. If expenses for legal services are incurred by the Committee or Agency to correct mistakes of the Owner which jeopardize use of the tax credits, such legal costs will be paid by the Owner in the amount charged to the Agency or the Committee.
6. The Agency may assess applicants or owners a fee of up to \$500 for each instance of failure to comply with a written requirement, whether or not such requirement is in the Plan. The Agency will not process applications or other documentation relating to any Principal who has an outstanding balance of fees owed; such a delay in processing may result in disqualification of application(s).

C. APPLICATION PROCESS AND REQUIREMENTS

1. The Agency may require applicants to submit any information, letter or representation relating to Plan requirements or point scoring as part of the application process. Unless otherwise noted, the Agency may elect to not consider information submitted after the relevant deadline.
2. Any failure to comply with an Agency request under subsection (C)(1) above or any misrepresentation, false information or omission in any application document may result in disqualification of that application and any other involving the same owner(s), Principal(s), consultant(s) and/or application preparer(s). Any misrepresentation, false information or omission in the application document may also result in a revocation of a tax credit allocation.
3. The Agency may elect to treat applications involving more than one site or population type (family/elderly) as separate for purposes of the Agency's preliminary application process. Each application would require a separate initial application fee. Projects may be considered as one application in the full application submission if all sites are secured by one permanent mortgage and are not intended for separation and sale after receipt of the tax credit allocation.
4. The Agency will notify the appropriate unit of government about the project after submission of the full application. The Agency reserves the right to reject applications opposed in writing by the chief elected official (supported by the council or board), but is not obligated to do so.
5. For each application one individual or validly existing entity must be identified as the applicant. An entity may be one of the following:
 - (a) corporation, including nonprofits,
 - (b) limited partnership, or

- (c) limited liability company.

Only the identified applicant will have the ability to make decisions with regard to that application. The applicant may enter into joint venture or other agreements but the Agency will not be responsible for evaluating those documents to determine the relative rights of the parties. If the application receives an award the applicant must become a managing member or general partner of the ownership entity.

D. MONITORING FEES

The following must be paid prior to the issuance of a federal form 8609:

Project Type	
Tax credit projects without an Agency loan, including projects using tax-exempt bond financing and 4% credits	\$550 per unit
Projects receiving an RPP loan.	\$650 per unit

The monitoring fee is applied to **all units in a project**, including all market rate units and units reserved for employees, managers or other personnel.

IV. SELECTION CRITERIA AND THRESHOLD REQUIREMENTS

New construction applications must meet all threshold requirements and receive 200 points to be considered for award and funding. Preservation and rehabilitation applications will not receive point scores but instead will be evaluated using the criteria listed in Section IV(H)(3) (thus all references to receipt of points only apply to new construction projects). All threshold requirements also apply to preservation and rehabilitation projects unless otherwise noted. Scoring and threshold determinations made in prior years are not binding on the Agency for the 2007 cycle.

A. SITE AND MARKET EVALUATION (MAXIMUM 140 POINTS)

The Agency will not accept a full application where the preliminary application does not meet all site and market threshold requirements.

1. SITE EVALUATION (MAXIMUM 140 POINTS)

(a) General Site Requirements:

- (i) Sites must be sized to accommodate the number and type of units proposed. The applicant or a Principal must have site control by the preliminary application deadline, which may be evidenced by an option, contract or deed. The documentation of site control must include a plot plan.
- (ii) Required zoning must be in place by the full application submission date, including special/conditional use permits, and any other necessary land use approval other than approval of subdivision plats or building permits.
- (iii) Utilities (water, sewer and electricity) must be available with adequate capacity to serve the site. Sites should be accessed directly by existing paved, publicly maintained roads. If not, it will be the applicant's responsibility to extend utilities and roads to the site. In such cases, the applicant must explain and budget for such plans at the preliminary application stage and document the right to perform such work.

(b) Criteria for Site Score Evaluation:

Site scores will be based on the following factors. Each will also serve as a threshold requirement; the Agency may remove an application from consideration if the site is sufficiently inadequate in one of the categories. Evaluation of sites will involve a relative comparison with other applications in the same geographic set-aside, with an emphasis on those the Agency considers to be within the same market area. Criteria involving consideration of land uses will focus on the area within approximately one-half mile. The Agency will consider revitalization plans and other

proposed development based on certainty, extent and timing. Where appropriate, the score for a particular category will reflect the project's tenant type (family/elderly/special needs).

- (i) NEIGHBORHOOD CHARACTERISTICS (MAXIMUM 40 POINTS)
 - Trend and direction of real estate development and area economic health.
 - Physical condition of buildings and improvements.
 - Concentration of affordable housing.

- (ii) SURROUNDING LAND USES AND AMENITIES (MAXIMUM 65 POINTS)
 - Suitability of surrounding development
 - Land use pattern is residential in character (single and multifamily housing) with a balance of other uses (particularly retail and amenities).
 - Availability, quality and proximity of services, amenities and features: grocery store; mall/strip center; gas/convenience; basic health care; pharmacy; schools/athletic fields; day care/after school; supportive services, public park, library, hospital, community/senior center, basketball/tennis courts, fitness/nature trails, public swimming pool, restaurants, bank/credit union, medical offices, professional services, movie theater, video rental, public safety (fire/police).
 - Effect of industrial, large-scale institutional or other incompatible uses, including but not limited to: wastewater treatment facilities, high traffic corridors, junkyards, prisons, landfills, large swamps, distribution facilities, frequently used railroad tracks, power transmission lines and towers, factories or similar operations, sources of excessive noise, and sites with environmental concerns (such as odors or pollution).
 - Amount and character of vacant, undeveloped land.

- (iii) SITE SUITABILITY (MAXIMUM 35 POINTS)
 - Adequate traffic controls (stop lights, speed limits, turn lanes, etc.).
 - Burden on public facilities (particularly roads).
 - Access to mass transit (if applicable).
 - Degree of on-site negative features and physical barriers that will impede project construction or adversely affect future tenants; for example: power transmission lines and towers, flood hazards, steep slopes, large boulders, ravines, year-round streams, wetlands, and other similar features (for adaptive reuse projects- suitability for residential use and difficulties posed by the building(s), such as limited parking, environmental problems or the need for excessive demolition).
 - Similarity of scale and aesthetics/architecture between project and surroundings.
 - Visibility of buildings and location of project sign(s) in relation to traffic corridors.

2. MARKET ANALYSIS

The Agency will administer the market study process based on this Section and the terms of **Appendix A** (incorporated herein by reference).

- (a) The Agency will contract directly with market analysts to perform studies. Applicants may interact with market analysts and will have an opportunity to revise their project (unit mix, targeting). Any revisions must be submitted in writing to both the market analyst and to the Agency, following the schedule in Section III(A), and will be binding on the applicant for the full application.

- (b) The Agency **WILL NOT ACCEPT A FULL APPLICATION** in a primary market area containing one or more projects with 9% tax credits or Agency loans which have:
 - (i) a history of high vacancy rates, or
 - (ii) not reached stabilized occupancy.

The Agency may waive this limitation if the existing project has a different population type (family/elderly). The Agency will limit the number of projects awarded in the same application round to those that it determines can be supported in the market.

- (c) The following four criteria are threshold requirements for new construction applications.
 - (i) The project's capture rate.
 - (ii) The project's absorption rate.
 - (iii) The vacancy rate at comparable properties (what qualifies as a comparable will vary based on the circumstances).
 - (iv) The project's effect on existing or awarded properties with 9% tax credits or Agency loans.
- (d) The Agency is not bound by the conclusions or recommendations of the market analyst(s), and will use its discretion in evaluating the criteria listed in this subsection (A)(2).
- (e) Projects may not give preferences to potential tenants based on residing in the jurisdiction of a particular local government.

B. RENT AFFORDABILITY (MAXIMUM 50 POINTS)

1. FEDERAL RENTAL ASSISTANCE

- (a) Applicants proposing to convert tenant-based Housing Choice Vouchers (Section 8) to a project-based subsidy (pursuant to 24 CFR Part 983) must submit a letter from the issuing authority in a form approved by the Agency. Conversion of vouchers will be treated as funding source under Section VI(B)(6)(c); a project will be ineligible for an allocation if it does not meet requirements set by the Agency as part of the application and award process. Such requirements may involve the public housing authority's (PHA's) Annual Plan, selection policy, and approval for advertising.
- (b) Applicants must include a written agreement between the owner and all PHAs and Section 8 providers with jurisdiction inside the project's primary market area. The agreement must commit the PHAs to include the project in any listing of housing opportunities where households with tenant-based subsidies are welcome, and the project's management agent to actively seek referrals from the PHAs to apply for units at the proposed project. If one or more of the PHAs refuses to cooperate for any reason, an explanation must be submitted as well as a statement of commitment by the applicant to seek referrals from the PHA(s). This requirement does not apply to projects with rental assistance provided through RD.

2. MORTGAGE SUBSIDIES AND LEVERAGING (MAXIMUM 30 POINTS)

- (a) Eligible Sources:

Only loans from the following sources will qualify for points under this subsection (B)(2):

- (i) the local PHA,
- (ii) Community Development Block Grant (CDBG) program funds (for on-site improvements only),
- (iii) HUD Section 202 or 811,
- (iv) Federal Home Loan Bank Affordable Housing Program (AHP),
- (v) local government housing development funds, and
- (vi) RD Section 515.

IN ADDITION

Other sources of public funding may qualify **PROVIDED THEY ARE APPROVED IN WRITING IN ADVANCE** by the Agency. (Approval of a particular source in prior years does not meet this requirement.) Applications including market-rate units will be ineligible for points under subsection (B)(2). Adjustments to the purchase price of the land by the seller, uncommitted RPP funds or other Agency loans, state credits and bond financing are not considered sources of mortgage subsidy.

(b) Required Terms:

In order to qualify for points under subsection (B)(2), loans must be listed as a source in the full application, comply with the requirements of Section VI(B)(6)(b), and either:

- (i) have a term of at least twenty (20) years and an interest rate less than or equal to two percent (2%) or
- (ii) have a term of at least forty (40) years, an interest rate of the long-term applicable federal rate (AFR) and a source that must be treated as a "below market federal loan" under Section 42(i)(2) of the Code.

(c) Metro Region:

Applications will earn points based on the total amount of qualifying funds committed per unit (excluding an employee/manager's unit), as described below:

Funds/Unit	Points	Funds/Unit	Points
\$6,000	12	\$11,000	22
\$7,000	14	\$12,000	24
\$8,000	16	\$13,000	26
\$9,000	18	\$14,000	28
\$10,000	20	\$15,000	30

The calculation includes all units and amounts will not be rounded up. The funds-to-unit ratio approved by the lending source determines the score. The amount provided by a local government will be reduced by the amount included in the project budget for any impact, tap or related fees charged by that local government and the cost of land sold by that local government. The Agency will only recognize fifty percent (50%) of the amount of AHP funds committed for the purposes of making this calculation.

(d) East, Central and West Regions:

Applications will earn points based on the total amount of qualifying funds committed per unit (excluding an employee/manager's unit), as described below:

Funds/Unit	Points
\$2,000	10
\$4,000	15
\$6,000	20
\$8,000	25
\$10,000	30

The calculation includes all units and amounts will not be rounded up. The funds-to-unit ratio approved by the lending source determines the score. The amount provided by a local government will be reduced by the amount included in the project budget for any impact, tap or related fees charged by that local government and the cost of land sold by that local government. The Agency will only recognize fifty percent (50%) of the amount of AHP funds committed for the purposes of making this calculation.

- (e) Projects that will utilize federal and state historic rehabilitation tax credits and are funded entirely with equity and state low-income housing tax credits (no grants or debt sources other than deferred developer fees) will be awarded five (5) points. Any deferred fee must comply with Section VI(B)(5).

3. TENANT RENT LEVELS (MAXIMUM 15 POINTS)

The application may earn points under one of the following scenarios:

- (a) If the project is in a High Income county:
- Ten (10) points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of county median income.
 - Five (5) points will be awarded if at least fifty percent (50%) of qualified low-income units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.
- (The two options for point scoring in this subsection are mutually exclusive.)
- (b) If the project is in a Moderate Income county:
- Fifteen (15) points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.
 - Ten (10) points will be awarded if at least fifty percent (50%) of qualified low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income.
- (The two options for point scoring in this subsection are mutually exclusive.)
- (c) If the project is in a Low Income county, fifteen (15) points will be awarded for projects in which at least forty percent (40%) of qualified low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income.
- (d) Ten (10) points will be awarded to applications for new construction tax exempt bond projects that meet one of the following requirements:
- at least twenty percent (20%) of total units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income, or
 - at least ten percent (10%) of total units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.
- (The two options for point scoring in this subsection are mutually exclusive.)

C. PROJECT DEVELOPMENT COSTS AND RPP LIMITATIONS

1. MAXIMUM PROJECT DEVELOPMENT COSTS

- (a) Full applications for new construction projects must have less than \$95,000 per unit in total replacement costs to be eligible for an award of tax credits or RPP funds. The Agency will consider exceptions to development cost limits where a project faces extraordinary circumstances mandated by building code compliance requirements or development issues. Examples include:
- (i) all units are detached single family houses or duplexes,
 - (ii) serving persons with severe mobility impairments,
 - (iii) development challenges resulting from being within or adjacent to a central business district,
 - (iv) utilization of historic rehabilitation tax credits, or
 - (v) building(s) with both steel and concrete construction and at least four (4) stories of housing.

- (b) The following will be excluded from the calculation of total replacement costs in subsection (C)(1)(a) above:
 - (i) land costs (the lesser of the appraised value or amount in the evidence of site control),
 - (ii) reasonable reserves,
 - (iii) water and sewer tap fees and impact fees (provided that the applicant has included documentation from the local government verifying the amount of fees required), and
 - (iv) the costs directly associated with a Community Service Facility.

2. RESTRICTIONS ON RPP AWARDS

Projects requesting RPP funds may not:

- (a) request RPP loan funds in excess of the following amounts per unit- \$15,000 in High Income counties; \$20,000 in Moderate Income counties; \$25,000 in Low Income counties,
- (b) include market-rate units,
- (c) involve Principals who have entered into a workout or deferment plan within the previous year for an RPP loan awarded after January 1, 1999, or
- (d) request more than \$1 million per project.

The maximum award of RPP funds to any one Principal will be a total of \$2,000,000.

D. CAPABILITY OF THE PROJECT TEAM

1. DEVELOPMENT EXPERIENCE

- (a) At least one Principal must have successfully developed, operated and maintained in compliance either one North Carolina low-income housing tax credit project or six separate low-income housing tax credit projects totaling in excess of 200 units. The project(s) must have been placed in service between December 1, 2001 and January 1, 2006. (The Agency may waive this requirement for applicants with adequate experience in the North Carolina tax credit program.) Such Principal must:
 - (i) be identified in the preliminary application,
 - (ii) become a general partner or managing member of the ownership entity, and
 - (iii) remain responsible for overseeing the project and operation of the project for a period of two (2) years after placed in service.

The Agency will determine what qualifies as successful and who can be considered as involved in a particular project.

- (b) All owners and Principals **must** disclose all previous participation in the low-income housing tax credit program. Additionally, all owners and Principals that have participated in an out of state tax credit allocation must complete the Authorization for Release of Information form.
- (c) The Agency reserves the right to determine that a particular development team does not meet the threshold requirement of subsection (D)(1)(a) due to differences between its prior work and the proposed project. Particularly important in this evaluation is the type of subsidy program used in the previous experience (such as tax-exempt bonds, RD).

2. MANAGEMENT EXPERIENCE

The management agent must have at least:

- (a) one similar tax credit project in their current portfolio and
- (b) one staff person serving in a supervisory capacity with regard to the project who has been certified as a tax credit compliance specialist.

Such certification must be from an organization accepted by the Agency (refer to the list in **Appendix C**). None of the persons or entities serving as management agent may have in their portfolio a project with material or uncorrected non-compliance beyond the cure period. The management agent listed on the application must be retained by the ownership entity for at least two (2) years after project completion, unless the agent is guilty of specific nonperformance of duties.

3. PROJECT TEAM DISQUALIFICATIONS

The Agency may disqualify any owner, Principal or management agent, who:

- (a) has been debarred or received a limited denial of participation in the past ten (10) years by any federal or state agency from participating in any development program;
- (b) within the past ten years has been in a bankruptcy, an adverse fair housing settlement, an adverse civil rights settlement, or an adverse federal or state government proceeding and settlement;
- (c) has been in a mortgage default or arrearage of three months or more within the last five years on an FHA-insured project, an RD funded rental project, a tax-exempt bond funded mortgage, an Agency loan, a tax credit project or any other publicly subsidized project (resolution of all outstanding Agency concerns regarding the default or arrearage may be considered in assessing disqualification);
- (d) has been involved within the past ten years in a project which previously received an allocation of tax credits but failed to meet standards or requirements of the tax credit allocation or failed to fulfill one of the representations contained in an application for tax credits (this includes returning an allocation of tax credits to the Agency after the carryover agreement has been signed);
- (e) has been found to be directly or indirectly responsible for any other project within the past five years in which there is or was uncorrected noncompliance more than three months from the date of notification by the Agency or any other state allocating agency;
- (f) interferes with a tax credit application for which it is not an owner or Principal at public hearing or other official meeting;
- (g) has outstanding flags in HUD's national 2530 National Participation system;
- (h) has been involved in any project awarded tax credits in 2003 or earlier for which either the permanent financing or equity investment has not closed;
- (i) has been involved in any project awarded tax credits in 2003 or earlier for which the final cost certification requirements have not been met by December 22, 2006;
- (j) has been involved in any project awarded tax credits after 2000 where there has been a change in general partners or managing members during the last five years that the Agency did not approve in writing beforehand;
- (k) would be removed from the ownership of a property that is the subject of an application for under the preservation or rehabilitation set-asides in the current cycle; or
- (l) is not in good standing with the Agency.

A disqualification under this subsection (D)(3) will result in the individual or entity involved not being allowed to participate in the 2007 cycle and removing from consideration any application where they are identified.

E. UNIT MIX AND PROJECT SIZE

1. Ten (-10) points will be subtracted from any full application that includes market-rate units. This penalty will not apply where, as of the full application, the rents for all market rate units are at least five percent (5%) higher than the maximum allowed for a unit at 60% AMI and the market study indicates that such rents are feasible.
2. New construction 9% tax credit projects may not exceed 100 units.
3. New construction bond financed projects may not exceed 180 units.
4. All projects must have at least sixteen (16) qualified low-income units.

The Agency reserves the right to waive the penalties and limitations in this Section IV(E) for proposals that reduce low-income and minority concentration, and subsection (E)(2) for proposals that are within a transit station area as defined by the Charlotte Region Transit Station Area Joint Development Principles and Policy Guidelines.

F. SPECIAL CRITERIA AND TIEBREAKERS (MAXIMUM 20 POINTS)

1. HUD PROGRAMS (MAXIMUM 5 POINTS)

Five (5) points will be awarded to projects that have an obligation of funds from the HUD 202 or 811 programs, including project based rental assistance appropriate for the project.

2. COMMUNITY REVITALIZATION PLANS (MAXIMUM 10 POINTS)

Ten (10) points will be awarded to applications if all of the following apply:

- (a) the project is within the geographic area identified by a community revitalization plan (CRP);
- (b) the project is in a Qualified Census Tract or the CRP is primarily focused on an existing residential neighborhood;
- (c) completion of the project would contribute to one or more of the goal(s) stated in the CRP; and
- (d) the CRP either (i) was officially adopted or amended by a local government between January 1, 2002 and the preliminary application deadline or (ii) is actively underway.

Only documents or information included in the officially adopted CRP will be considered in evaluating the criteria in this subsection. The CRP must be included with the preliminary application to be eligible for points in this subsection.

3. UNITS FOR THE MOBILITY IMPAIRED

Five percent (5%) of all units in new construction projects must:

- (a) be fully accessible according to the standards set forth in Volume 1-C (1999) of the North Carolina State Building Code, (Chapter 30, Multi-Family Dwellings),
- (b) have at least one bathroom with a toilet located in a five foot by five foot clear floor space (may overlap with the five foot turning diameter described in Chapter 30), with no overlapping elements or fixtures; the toilet must be positioned in a corner with the centerline of the toilet bowl 18 inches from the sidewall, and

- (c) have at least one bathroom with a 36 inch by 60 inch (minimum size) curbless, roll-in shower. Such showers must also meet the requirements for accessible controls as required by Volume 1-C.

At least one unit in each class of fully accessible units must meet the above requirements. Unit classes are measured by the number of bedrooms, pursuant to Volume 1-C (1999) of the North Carolina State Building Code (Chapter 30, Section 30.3.2). **THESE UNITS ARE IN ADDITION TO MOBILITY IMPAIRED UNITS REQUIRED BY FEDERAL AND STATE LAW (INCLUDING BUILDING CODES).** Units for the mobility impaired should be available to all tenants who would benefit from their design and are not necessarily reserved under the Targeting Plan requirements of subsection (F)(4).

4. TARGETING PLANS

All projects will be required to target the greater of five (5) units or ten percent (10%) of the total units to persons with disabilities or homeless populations. (The five unit minimum does not apply to applications without federal project-based rental assistance.) Projects that are targeting units under this subsection are not required to provide onsite supportive services or a service coordinator. Project owners must demonstrate a partnership with a local lead agency and submit a Targeting Plan for review and certification by the N.C. Department of Health and Human Services (DHHS).

At a minimum, Targeting Plans must include:

- (a) A description of how the project will meet the needs of the targeted tenants including access to supportive services, transportation, proximity to community amenities, etc.
- (b) A description of the experience of the local lead agency and their capacity to provide access to supportive services, and to maintain relationships with the management agent and community service providers for the duration of the compliance period.
- (c) A Memorandum of Understanding (MOU) between the developer(s), management agent and the lead local agency. The MOU will include-
 - (i) A commitment from the local lead agency to provide, coordinate and/or act as a referral agent to assure that supportive services will be available to the targeted tenants.
 - (ii) The referral and screening process that will be used to refer tenants to the project, the screening criteria that will be used, and the willingness of all parties to negotiate reasonable accommodations to facilitate the admittance of persons with disabilities into the project.
 - (iii) A communications plan between the project management and the local lead agency that will accommodate staff turnover and assure continuing linkages between the project and the local lead agency for the duration of the compliance period.
- (d) Certification that participation in supportive services will not be a condition of tenancy (not required for projects where all of the units are providing transitional housing for the homeless).
- (e) Agreement that for a period of ninety (90) days after certificate of occupancy, the number of units specified in the application for persons with disabilities will be held vacant other than for such population(s).
- (f) Agreement to maintain a separate waiting list for persons with disabilities and prioritizing these individuals for any units that may become vacant after the initial rent-up period, based upon the minimum number of units specified in the application.
- (g) Agreement to affirmatively market to persons with disabilities.
- (h) Agreement to include a section on reasonable accommodation in property management's application for tenancy.

- (i) Agreement to accept Section 8 vouchers or certificates (or other rental assistance) as allowable income as part of property management income requirement guidelines for eligible tenants and not require total income for persons with rental assistance beyond that which is reasonably available to persons with disabilities currently receiving SSI and SSDI benefits.
- (j) A description of how the project will make the targeted units affordable to persons with extremely low incomes. NOTE: Key Program assistance is only available to persons receiving income based upon a disability. Projects targeting units to non-disabled homeless populations or persons in recovery with only a substance abuse diagnosis must have an alternative mechanism to assure affordability.

The requirements of this subsection (F)(4) may be fully or partially waived to the extent the Agency determines that they are not feasible. A Targeting Plan template and other documents related to this subsection are included in **Appendix D** (incorporated herein by reference). Applicants will agree to complete the requirements of this subsection (F)(4) and **Appendix D** by the earlier of July 28, 2008 or four months prior to the project's placed in service date. (The Agency may set additional interim requirements.) This subsection (F)(4) does not apply to tax-exempt bond applications.

5. LOCAL GOVERNMENT LAND DONATION (MAXIMUM 5 POINTS)

Applications that meet the following criteria will be awarded five (5) points:

- (a) the real estate that will contain the proposed project buildings is owned by a unit of local government as of the preliminary application deadline;
- (b) the local government did not purchase any portion of the real estate from the applicant or any owner, Principal or affiliate thereof; and
- (c) the application shows no more than a total of \$1,000 in the line-items for purchase of land and buildings (in the case of a ground lease, no more than \$50 per year).

6. TIEBREAKER CRITERIA

The following will be used to award tax credits in the event that the final scores of more than one project are identical.

- (a) First Tiebreaker: The project requesting the least amount of federal tax credits per unit based on the Agency's equity needs analysis.
- (b) Second Tiebreaker: Tenants with Children: Projects that can serve tenant populations with children. Projects will qualify for this designation if at least twenty-five (25%) of the units are three or four bedrooms. This tiebreaker will only apply where the market study shows a clear demand' for this population (as determined by the Agency).
- (c) Third Tiebreaker: Tenant Ownership: Projects that are intended for eventual tenant ownership. Such projects must utilize a detached single family site plan and building design and have a business plan describing how the project will convert to tenant ownership at the end of the 30-year compliance period.

In the event that a tie remains after considering the above tiebreakers, the project requesting the least amount of federal tax credits will be awarded.

G. DESIGN STANDARDS (MAXIMUM 80 POINTS)

All proposed measures must be shown on the plans or in specifications in the application in order to receive points.

1. THRESHOLD REQUIREMENTS

The minimum threshold requirements for design are found in **Appendix B** (incorporated herein by reference) and must be used for all projects receiving tax credits or RPP funding. These minimum requirements include, but are not limited to, standards in the following categories:

- on-site playground areas;
- on-site postal and laundry facilities;
- community/office space;
- on-site parking and refuse collection areas;
- exterior and interior building design;
- plumbing and electrical provisions;
- heating, ventilating and air conditioning provisions;
- sitework;
- bedrooms, bathrooms and kitchens;
- provisions for all elderly housing;
- building envelope and insulation;
- provisions for sight and hearing impaired residents;
- additional requirements for rehabilitation of existing apartments;
- additional requirements for adaptive reuse; and
- Fair Housing, Americans with Disabilities Act and the North Carolina State Accessibility Code requirements.

2. CRITERIA FOR SCORE EVALUATION

A maximum of eighty (80) points will be awarded based on the following criteria as applied to the site drawings submitted with the full application.

(a) Site Layout

The Agency will award up to ten (10) points based on its evaluation of the site layout. The following characteristics will be considered.

- (i) The extent to which the proposed site plan includes a scattered building layout focusing on visual appeal and privacy.
- (ii) The location of residential buildings in relation to site amenities, community building, postal facilities and trash collection areas.
- (iii) The degree to which site layout ensures a low, controlled traffic speed through the project.

(b) Quality of Design and Construction

The Agency will award up to seventy (70) points based on its evaluation of the quality of the building design, and the materials and finishes specified. The following characteristics will be considered:

- (i) The extent to which the design uses multiple roof lines, gables, dormers and similar elements to break up large roof sections.
- (ii) The extent to which the design uses multiple types, styles, and colors of siding and brick veneer to add visual appeal to the building elevations.
- (iii) The level of detail that is achieved through the use of porches, railings, and other exterior features.
- (iv) The degree to which building exteriors are designed for very low maintenance and extended useful life.

NOTE: In addition to the above criteria, all projects must meet or exceed all design requirements as specified in **Appendix B**. Owners may not start construction, including sitework, before the Agency has approved the project's plans and specifications (see **Appendix B**).

H. CRITERIA FOR SELECTION OF PRESERVATION AND REHABILITATION PROJECTS

1. GENERAL THRESHOLD REQUIREMENTS

In order to be eligible for funding under Sections II(A) or II(B), a project must:

- (a) have either (i) committed mortgage subsidies from a local government in excess of \$5,000 per unit or (ii) federal rental assistance for at least thirty percent (30%) of the total units, which may consist of a project-based contract, households with Section 8 vouchers as of the preliminary application deadline, or a combination of the two,
- (b) have been placed in service on or before December 31, 1992,
- (c) require rehabilitation expenses in excess of \$10,000 per unit for preservation projects under Section II(A) and \$15,000 per unit for rehabilitation projects under Section II(B) (both as supported by a physical needs assessment approved by the Agency),
- (d) not have an acquisition cost in excess of sixty percent (60%) of the total replacement costs,
- (e) not be feasible using tax exempt bonds (as determined by the Agency),
- (f) not have received an Agency loan in the last five (5) years,
- (g) not be deteriorated to the point of requiring demolition, and
- (h) not have begun or completed a full debt restructuring under the Mark to Market process (or any similar HUD program).

Rehabilitation expenses include hard construction costs directly attributable to the project, excluding costs for a new community building, as calculated using lines 2 through 7 (less line 6) in the Project Development Cost Description.

2. THRESHOLD DESIGN REQUIREMENTS

In addition to the relevant sections of **Appendix B**, the Agency will require owners to complete the following as appropriate for their project.

- (a) Improve site amenities and common areas by upgrading or adding a freestanding community building, making repairs and additions to landscaping, adding new site amenities such as playgrounds, and repairing parking areas.
- (b) Improve building exteriors by replacing deteriorated siding, replacing aged roofing, adding gutters and downspouts, adding new architectural features to improve appearance.
- (c) Upgrade unit interiors by replacing flooring, installing new cabinets and countertops, replacing damaged interior doors, replacing light fixtures, and repainting units.
- (d) Replace and upgrade mechanical systems and appliances including HVAC systems, water heaters and plumbing fixtures, electrical panels, refrigerators, and ranges.
- (e) Improve energy efficiency by replacing inefficient doors and windows, adding additional insulation in attics, and upgrading the efficiency of mechanical systems and appliances.
- (f) Improve site and unit accessibility for persons with disabilities by making necessary alterations at common areas, alterations at single story ground floor units, adding or improving handicapped parking areas, and repairing or replacing sidewalks along accessible routes.

3. EVALUATION CRITERIA

The Agency will evaluate applications under Sections II(A) and II(B) based on the following criteria, which are listed in order of importance. Each one will serve both to determine awards and as a threshold requirement; the Agency may remove an application from consideration if the proposal is sufficiently inadequate in any of the categories. For purposes of making awards, the Agency will not consider subsections (d) through (g) below if the outcome is determined by the criteria in subsections (a) through (c).

The Agency will give the highest priority to applications proposing to rehabilitate the state's most distressed existing housing, particularly buildings with accessibility or life, health and safety problems.

- (b) Applications will have a reduced likelihood of being awarded tax credits to the extent that the purpose is to subsidize an ownership transfer.
- (c) Shortcomings in the above three criteria will be mitigated to the extent that a tax credit allocation is necessary to prevent (i) conversion of units to market rate rents or (ii) loss of government resources (including past, present and future investments).
- (d) The Agency will give priority to applications that have mortgage subsidy resources committed as part of the application.
- (e) Applications will have priority to the extent that the rehabilitation improvements are a part of a community revitalization plan or will benefit the surrounding community. However, projects in severely distressed areas will have a reduced likelihood of being awarded tax credits.
- (f) Applications will have a reduced likelihood of being awarded tax credits based on the number of tenants that would be permanently relocated (including market-rate).
- (g) While the preservation and rehabilitation set-asides are not subject to any regional set-aside, the Agency will consider the geographic distribution of this resource and will attempt to avoid a concentration of awards in any one area of the state.

V. ALLOCATION OF BOND CAP

A. ORDER OF PRIORITY

The Committee will allocate the multifamily portion of the state's tax-exempt bond authority in the following order of priority:

1. Projects that serve as a component of an overall HOPE VI revitalization effort.
2. Rehabilitation projects.
3. Adaptive reuse projects.
4. Other new construction projects.

Applications will only be allocated bond authority if there is enough remaining after awarding all eligible applications in higher priority levels. Within each category, allocation priority will be based on the relevant scoring and threshold requirements of Section IV.

B. ELIGIBILITY FOR AWARD

Except as otherwise indicated, owners of projects with tax exempt bonds and 4% credits must meet all requirements of the Plan. Even with an allocation of bond authority, projects must meet the threshold requirements to be eligible for tax credits.

1. New construction applications must earn 160 points and agree to meet one of the following requirements:

- (a) at least ten percent (10%) of total units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income, or
 - (b) at least five percent (5%) of total units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.
2. Rehabilitation applications must:
- (a) have been placed in service on or before December 31, 1992,
 - (b) require rehabilitation expenses in excess of \$10,000 per unit,
 - (c) not have an acquisition cost in excess of sixty percent (60%) of the total replacement costs,
 - (d) not have begun or completed after December 31, 2001 a full debt restructuring under the Mark to Market process (or any similar HUD program) and
 - (e) not be deteriorated to the point of requiring demolition.

VI. GENERAL REQUIREMENTS

A. GENERAL THRESHOLD REQUIREMENTS FOR PROJECT PROPOSALS

- 1. **Projects with Historic Tax Credits:** Buildings either must be on the National Register of Historic Places or approved for the State Housing Preservation Office's study list at the time of the full application. Evidence of meeting this requirement should be provided.
- 2. **Nonprofit Set-Aside:** For purposes of being considered as a nonprofit sponsored application under Section II(D), at least one nonprofit entity (or, where applicable, its qualified corporation) involved in a project must:
 - (a) be qualified under Section 501(c)(3) or (4) of the Code,
 - (b) materially participate, as defined under federal law, in the acquisition, development, ownership, and ongoing operation of the property for the entire compliance period,
 - (c) have as one of its exempt purposes the fostering of low-income housing,
 - (d) own, directly or indirectly, an equity interest in the applicant and
 - (e) be a managing member or general partner of the applicant.

The Agency reserves the right to make a determination that the nonprofit owner is not affiliated with or controlled by a for-profit entity or entities other than a qualified corporation. There can be no identity of interest between any nonprofit owner and for-profit entity, other than a qualified corporation.

- 3. **Environmental Hazards:** All projects involving use of existing structures must submit a hazardous material report which provides the results of testing for asbestos containing materials, lead based paint, Polychlorinated Biphenyls (PCBs), underground storage tanks, petroleum bulk storage tanks, Chlorofluorocarbons (CFCs), and other hazardous materials. The testing must be performed by professionals licensed to do hazardous materials testing. A report written by an architect or building contractor or developer will not suffice. A plan and projected costs for removal of hazardous materials must also be included.
- 4. **Appraisals:** The Agency will not allow the project budget to include more for land costs than the lesser of its appraised market value or the purchase price. Any project involving an existing structure or budgeting more than \$15,000 per acre toward land costs must submit with the full application a real estate "as is" appraisal that is a) dated no more than six (6) months from the full application deadline, b) prepared by an independent, state certified appraiser and c) complies with the Uniform Standards of Professional Appraisal Practice. The Agency may require

appraisals where cost per acre is below this amount. Appraisals for preservation, rehabilitation and adaptive reuse projects must break out the land and building values from the total value.

5. Concentration: Projects cannot be in areas of minority and low-income concentration (measured by comparing the percentage of minority and low-income households in the site's census tract with the community overall). The Agency may make an exception for projects in economically distressed areas which have community revitalization plans with public funds committed to support the effort.
6. Displacement: For preservation and rehabilitation projects and in every other instance of tenant displacement, including temporary, the applicant must supply with the full application a plan describing how displaced persons will be relocated, including a description of the costs of relocation. The applicant is responsible for all relocation expenses, which must be included in the project's development budget. Applicants must also comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as revised in 49 C.F.R. Part 24.
7. Tax Information Authorization: Applicants and Principals must submit an executed Internal Revenue Service (IRS) Form 8821 with their full applications; every owner should submit a separate form.
8. Feasibility: The Agency will not allocate tax credits or RPP funding to applications that may have difficulty being completed or operated for the compliance period. Examples include projects that may not secure an equity investment or a Principal that has inadequate capacity to successfully carry out the development process.
9. Extended Use Period: Applicants must agree to record a thirty (30) year Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits (Extended Use Agreement) stating that the owner (a) will not apply for relief under Section 42(h)(6)(E)(i)(II) of the Code, (b) will not refuse to lease any residential unit in the Project to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder, and (c) will comply with other requirements under the Code, Plan, other relevant statutes and regulations and all representations made in the project application. The Extended Use Agreement may also contain other provisions as determined by the Agency.

B. UNDERWRITING THRESHOLD REQUIREMENTS

The following minimum financial underwriting requirements apply to all projects. Projects that cannot meet these minimum requirements, as determined by the Agency, will not receive tax credits or RPP funding.

1. Loan Underwriting Standards:
 - (a) Projects applying for tax credits only will be underwritten with rents escalating at three percent (3%) and operating expenses escalating at four percent (4%).
 - (b) All projects will be underwritten assuming a constant seven percent (7%) vacancy and must reflect a 1.15 Debt Coverage Ratio (DCR) for the term of any debt financing on the project. Projects with less than forty (40) units must also demonstrate \$150 per unit per year of net cash flow for the first fifteen (15) years. This does not apply to projects with rental assistance provided through RD.
 - (c) RPP loans will be underwritten using a twenty (20) year term and a two percent (2%) interest rate. The Agency may alter these terms to ensure project feasibility. Underwriting of applications with a commitment from RD will incorporate the requirements of that program, and any RPP loan will have a 30 year term (fully amortizing) and zero percent (0%) interest.

Applications requesting RPP funds may be required to comply with the HOME program, including 42 U.S.C. 12701 et seq., 24 C.F.R. Part 92 and all relevant administrative guidance.

- (d) The Agency may determine that the interest rate on a loan must be reduced where an application shows an excessive amount accruing towards a balloon payment.
2. Operating Expenses:

IN ADDITION

- (a) New construction (excluding adaptive reuse): minimum of \$2,600 per unit per year not including taxes, reserves and resident support services.
- (b) Renovation (includes preservation, rehabilitation and adaptive reuse): minimum of \$2,800 per unit per year not including taxes, reserves and resident support services.
- (c) Owner projected operating expenses will be used if they are higher than Agency minimums. The proposed management agent (or management staff if there is an identity of interest) must sign a statement (to be submitted with the full application) agreeing that the operating expense projections are reasonable.

3. Equity Pricing:

The Agency will conduct a survey of tax credit equity investors to determine appropriate pricing assumptions. Projects will be underwritten using the greater of this amount and the applicant's projection.

Equity should be calculated net of any syndication fees. Bridge loan interest typically incurred by the syndicator to enable an up front payment of equity should not be charged to the project directly, but be reflected in the net payment of equity. Equity should be based on tax credits to be used by the investor(s), excluding those allocated to the Principals unless these entities are making an equity contribution in exchange for the tax credits.

4. Reserves:

- (a) Rent-up Reserve: Required for all except bond financed projects. A reasonable amount must be established based on the projected rent-up time considering the market and target population, but in no event shall be less than \$300 per unit. These funds must be available to the management agent to pay rent-up expenses incurred in excess of rent-up expenses budgeted for in the project development costs. The funds are to be deposited in a separate bank account and evidence of such transaction provided to the Agency 90 days prior to the expected placed in service date. All funds remaining in the rent-up reserve at the time the project reaches ninety-three (93%) occupancy must be transferred to the project replacement reserve account.

For those projects receiving loan funds from RD, the 2% initial operating and maintenance capital established by RD will be considered the required rent-up reserve deposit.

- (b) Operating Reserve: Required for all projects except those receiving loan funds from RD. The operating reserve will be the greater of a) \$1,500 per unit or b) six month's debt service and operating expenses, and must be maintained for the duration of the low-income use period.

Projects receiving RPP funds must capitalize the operating reserve account prior to the RPP loan closing. The Agency must approve any withdrawals from the operating account to meet project's operating deficits.

The operating reserve can be funded by deferring the developer's fees of the project. If this method is utilized, the deferred amounts owed to the developer can only be repaid from cash flow if all required replacement reserve deposits have been made. For tax credit projects where no RPP loan applies, the operating reserve can be capitalized by an equity pay in up to one year after certificate of occupancy is received. This will be monitored by the Agency.

- (c) Replacement Reserve: All new construction projects must budget replacement reserves of \$250 per unit per year. Preservation, rehabilitation and adaptive reuse projects must budget replacement reserves of \$350 per unit per year. The replacement reserve must be capitalized from the project's operations, escalating by four percent (4%) annually. Projects with an RPP loan must have Agency approval of withdrawals for capital improvements throughout the term of the loan.

In both types of renovation projects mentioned above, the Agency reserves the right to increase the required amount of annual replacement reserves if the Agency determines such an increase is warranted after a detailed review of the project's physical needs assessment.

For those projects receiving RD loan funds, the required funding of the replacement reserve will be established, administered and approved by RD, and the replacement reserve will not escalate annually.

Funds remaining in the operating and replacement reserve accounts at the end of the RPP loan term must be used for project maintenance costs approved by the Agency or applied against the loan.

5. Deferred Developer Fees:

Developer fees can be deferred to cover a gap in funding sources as long as:

- (a) the entire amount will be paid within ten (10) years and meets the standards required by the IRS to stay in basis,
- (b) the deferred portion does not exceed fifty percent (50%) of the total amount as of the full application, and
- (c) payment projections do not negatively impact the operation of the project.

Each of these will be determined by the Agency. Nonprofit organizations must include a resolution from the Board of Directors allowing such a deferred payment obligation to the project. The developer may not charge interest on the deferred amount in excess of the long term AFR.

6. Financing Commitment:

- (a) For all projects proposing **private** permanent financing, a letter of intent is required. This letter must clearly state the term of the permanent loan is at least eighteen (18) years, how the interest rate will be indexed and the current rate at the time of the letter, the amortization period, any prepayment penalties, anticipated security interest in the property and lien position. The interest rate must be fixed and no balloon payments may be due for eighteen (18) years. The bank must complete a cover letter using the format approved by the Agency, and submit it with the letter of intent.
- (b) All projects proposing **public** permanent financing, binding commitments are required to be submitted by the full application due date. The Agency may grant an extension of this deadline for local governments if requested in advance of the full application due date. All loans must have a fixed interest rate and no balloon payments for at least eighteen (18) years after project completion. A binding commitment is defined as a letter, resolution or binding contract from a unit of government. The same terms described for the letter of intent (using the format approved by the Agency) from a private lender must be included in the commitment.
- (c) Applications may only include one set of proposed funding sources; the Agency will not consider multiple financial scenarios. A project will be ineligible for allocation if any of the listed funding sources will not be available in an amount or under the terms described in the application. The Agency may waive this limitation if the project otherwise demonstrates financial feasibility.

7. Developer/Builder Fees:

- (a) Developer's fees shall be the lesser of \$10,500 per unit or \$800,000 (the maximum for projects with tax-exempt bonds is \$1,500,000). In addition, a maximum developer's fee of four percent (4%) is allowed on the acquisition cost of buildings (not including land value/cost) unless (i) there is an identity of interest between the seller and one or more Principal(s) or (ii) the award is under Section II(A).
- (b) Builder's general requirements shall be limited to six percent (6%) of hard costs.
- (c) Builder's profit and overhead shall be limited to ten percent (10%) (8% profit, 2% overhead) of total hard costs including general requirements.
- (d) Where an identity of interest exists between the owner and builder, the builder's profit and overhead shall be limited to eight percent (8%) (6% profit, 2% overhead).

8. Consulting Fees: Consulting fees for a project must be paid out of developer fees, so that the aggregate of any consulting fees and developer fees is no more than the maximum developer fee allowed to that project.

9. Architects' Fees: The architects' fees, including design and inspection fees, shall be limited to three percent (3%) of the total hard costs plus general requirements, overhead, profit and construction contingency (total of lines 2 through 10 on the Project Development Cost Description).
10. Investor Services Fees: Investor services fees must be paid from net cash flow and not be calculated into the minimum debt coverage ratio.
11. Project Contingency Funding: All new construction projects shall have a hard cost contingency line item of NO MORE THAN three percent (3%) of total hard costs, including general requirements, builder profit and overhead. Preservation, rehabilitation and adaptive reuse projects shall include a hard cost contingency line item of NO MORE THAN six percent (6%) of total hard costs.
12. Project Ownership: There must be common ownership between all units and buildings within a single project for the duration of the compliance period.
13. Section 8 Project-Based Rental Assistance: For all projects that propose to utilize Section 8 project-based rental assistance, the Agency will underwrite the rents according to the tax credit and HOME limits. These limits are based on data published annually by HUD. If the Section 8 contract administrator is willing to allow rents above these limits, the project may receive the additional revenue in practice, but Agency underwriting will use the lower revenue projections regardless of the length of the Section 8 contract.

Given the uncertainty of long-term federal commitment to Section 8 rental assistance, the Agency considers underwriting to the more conservative revenue levels to best serve the project's long-term financial viability.
14. Any water, sewer, and tap fees charged to the project must be entered on a separate line item of the Project Development Costs page. Any application that does not include these costs must provide a letter from the local provider that no fees will be charged.

VII. POST-AWARD PROCESSES AND REQUIREMENTS

A. GENERAL REQUIREMENTS

1. The tax credit reservation amount will be the total anticipated qualified basis amount multiplied by eight and one half percent (8.5%), or three and three quarters percent (3.75%) for the 4% tax credit. The actual tax credits allocated will be the lesser of the tax credits reserved, the applicable federal rate multiplied by qualified basis (as approved by the Agency), or the amount determined by the Agency pursuant to its evaluation as required under Section 42(m)(2) of the Code.
2. Ownership entities must a) expend ten percent (10%) of the project's reasonably expected basis by a date to be determined by the Agency and b) submit to the Agency a completed carryover agreement and cost certification by a date to be determined by the Agency. (This requirement also applies to projects with partial allocations.) Failure to meet these deadlines will preclude the project from participation in the state credit program. Pursuant to Section VI(B)(6), the Agency may determine that an awarded application listing state tax credits as a source of funding is ineligible for allocation due to failure to comply with the requirements of this subsection (A)(2). Projects will be required to elect a project-based allocation.
3. Once approved, the ownership entity will proceed to acquire, construct or rehabilitate the project. Upon completion for occupancy, the ownership entity must notify the Agency and furnish a completed Final Cost Certification that complies with the Agency's guidelines and requirements. Project cash flow is a prohibited source of funds for the project budget.
4. Projects must meet all applicable federal, state and local laws and ordinances, including the Code and Fair Housing Act; the Agency may treat any failure to do so as a violation of the Plan.
5. Allocated tax credits may also be returned to the Agency under the following conditions: (a) credits have been allocated to a project building that is not a qualified building within the time period required by the Code, for example, because it is not placed in service within the period required under the Code, (b) credits have been

allocated to a building that does not comply with the terms of its allocation agreement, (c) credits have been allocated to a project that are not necessary for the financial feasibility of the project, or (d) by mutual written agreement between the allocation recipient and the Agency. Returned credits may include credits previously allocated to project that fails to meet the 10% test under Section 42(b)(1)(E)(ii) of the Code.

6. The Agency may conduct construction inspections for adherence to approved final plans and specifications.
7. The owner of the project must sign and record the Extended Use Agreement in the county in which the project is located by the end of the first year after the tax credits are allocated. The owner must have good and marketable title at that time, and must obtain the consent of any lienholder on the project property recorded prior to the Extended Use Agreement (other than a lienholder relative to the financing of the construction of the project that by its terms will be cancelled within one year of the last building in the project being placed in service) to be bound by the terms of this Extended Use Agreement.
8. The Agency may revoke tax credits if the Agency determines that the owner has failed to implement all representations in the application to the Agency's satisfaction. Owners will acknowledge that the following constitute conditions to their allocation:
 - (a) accuracy of the facts and compliance with representations contained in the project's final accepted application, including all exhibits and attachments,
 - (b) completion of construction as depicted on the site layout, floor plan and elevations submitted with the project application,
 - (c) adherence to the Plan, and
 - (d) provision and maintenance of those certain unit and project amenities for the benefit of the tenants described in the project application.

An owner's or project's failure to comply with all such conditions without written authorization from the Agency will entitle the Agency, in its discretion, to deem the allocation to be cancelled by mutual consent. After any such cancellation, the owner will acknowledge that neither it nor the project will have any right to claim tax credits pursuant to this allocation. The Agency reserves the right, in its discretion, to modify or waive any such failed condition.

9. Federal form 8609 will not be issued until:
 - (a) the owner and management company produces evidence of attending a low-income housing tax credit compliance seminar sponsored either by the Agency or a sponsor acceptable to the Agency within the last 12 months;
 - (b) the Agency confirms that the monitoring fees have been paid and that the project has adhered to all representations made in the application (including design elements); and
 - (c) the project demonstrates that it will meet all relevant Plan requirements.

The Agency may require evidence of escrowed funds to complete landscaping.

10. In making application for tax credits, the applicant agrees that the Committee, the Agency, and their designees will have access to any information pertaining to the project. This includes having physical access to the project, all financial records and tenant information for any monitoring that may be deemed necessary to determine compliance with the Code. Applicants are advised that the Agency, on behalf of the Committee, is required to do compliance monitoring and to notify the IRS and the owner of any discovered noncompliance with tax credit laws and regulations, whether corrected or uncorrected. The Agency intends to conduct desk audits and monitoring visits of projects for the purpose of evaluating continuing compliance with tax credit regulations, selection criteria, ensuring that the project continues to provide decent, safe and sanitary housing. The Agency will periodically modify monitoring procedures to ensure compliance with the requirements set forth in the Code and from time to time amended.

11. An allocation of tax credits does not constitute a representation or warranty that the ownership entity or its owners will qualify for or be able to use the tax credits. The Agency's interpretation of the Code is not binding on the IRS, and the Agency neither represents nor warrants to any owner, equity investor, Principal or other program participant how the Internal Revenue Service will interpret or apply any provision of the Code. Each owner and its agents should consult its own legal and tax advisors.

NOTE: Applicants are advised that some portion or all of a project's application may be subject to disclosure to the public under the North Carolina Public Records Act.

B. STATE TAX CREDITS

As the administrative agent for state credit refunds issued under N.C.G.S. § 105-129.42, the Agency has a responsibility to ensure that ownership entities do not receive resources ahead of corresponding value being created in the project. Therefore the following restrictions will apply to the state tax credit refund program.

1. Loan Option: Loans made by the Agency pursuant to N.C.G.S. § 105-129.42(d) will not be closed until the outstanding balance on the first-tier construction financing exceeds the total state credit amount; the entire loan must be used to pay down a portion of the then existing construction debt.
2. Direct Refund Option: The Agency and ownership entity will enter into an escrow agreement with regard to the refund dollars. The agreement will state, among other reasonable limitations, that issuance of the funds under N.C.G.S. § 105-129.42(g)(1) will not occur until all of the following requirements have been met:
 - (a) at least fifty percent (50%) of the activities included in the project's eligible basis have been completed;
 - (b) the Agency and local government inspector have conducted their framing inspections and approved all buildings (including community facilities); and
 - (c) the outstanding balance on the first-tier construction financing exceeds the total state credit amount (the entire refund must be used to pay down a portion of the then existing construction debt).

Applicants must indicate which of the two options will apply to the project as part of the full application process; such decision may not be changed for the carryover allocation. Ownership entities will have to fully comply with the Plan, including Section VII(A)(2), to be eligible for participation in the state tax credit program. The Agency may adopt other policies regarding the state tax credit after adoption of the Plan. Owners, partners, members, developers or other Principals (and their affiliated entities) that are involved in a violation of any state tax credit requirement or fail to place a project in service after taking a loan or refund may be assessed up to forty (-40) negative points or disqualified from participation in Agency programs.

C. COMPLIANCE MONITORING

1. Basic Requirements: Owners must comply with Section 42 of the Code, IRS regulations, rulings, procedures, decisions and notices, state statutes, local codes, the Plan, Agency loan documents, **Appendix F** (incorporated herein by reference), and any other legal requirements.
2. Agency Requirements: The Agency will adopt and revise standards, policies, procedures, and other requirements in administering the tax credit program. Examples include training and on-line reporting. Owners must comply with all such requirements regardless of whether or not they expressly appear in the Plan or **Appendix F**.

VIII. DEFINITIONS

The terms listed below will be defined in the Plan as indicated below regardless of capitalization, unless the context clearly indicates otherwise. Terms used in the Plan but not defined below will have the same meaning as under the Code and IRS regulations.

Affiliate: As to any person or entity (i) any entity of which a majority of the voting interest is owned by such person or entity, (ii) any person or entity directly or indirectly controlling (10% or more) such person or entity, (iii) any person or entity

under direct or indirect common control with any such person or entity, or (iv) any officer, director, employee, manager, stockholder (10% or more), partner or member of any such person or entity or of any person or entity referred to in the preceding clauses (i), (ii) or (iii).

Applicant: The entity that is applying for the tax credits and/or any RPP loan funds, as applicable.

Community Service Facility: Any building or portion of building that qualifies under Section 42(d)(4)(C)(iii) of the Code, Revenue Ruling 2003-77, and any Agency requirements for such facilities (which may be published as part of the Plan, an Appendix or separately).

Developer: Any individual or entity responsible for initiating and controlling the development process and ensuring that all, or any material portion of all, phases of the development process are accomplished. Furthermore, the developer is the individual or entity identified as such in the Ownership Entity Agreement and any and all Development Fee Agreements.

Displacement: The moving of a person or such person's personal property from their current residence.

Entity: Without limitation, any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, public agency or other entity, other than a human being.

Homeless Populations: People who are living in places not meant for habitation (such as streets, cars, parks), emergency shelters, or in transitional or supportive housing but originally came from places not meant for habitation or emergency shelters.

Management Agent: Individual(s) or Entity responsible for the day to day operations of the project, which may or may not be related to the Owner(s) or ownership entity.

Market-Rate Units: Units that are not subject to tax credit restrictions; does not include manager units.

Material Participation: Involvement in the development and operation of the project on a basis which is regular, continuous and substantial throughout the compliance period as defined in Code Sections 42 and 469(h) and the regulations promulgated thereunder.

Net Square Footage: The outside to outside measurements of all finished areas that are heated and cooled (conditioned). Examples include hallways, community and office buildings, dwelling units, meeting rooms, sitting areas, recreation rooms, game rooms, etc. Breezeways, stairwells, gazebos and picnic shelters are examples of unconditioned outside structures that may not be used as net square footage.

Owner(s): Person(s) or entity(ies) that own an equity interest in the Ownership Entity.

Ownership Entity: The ownership entity to which tax credits and/or any RPP loan funds will be awarded.

Ownership Entity Agreement: A written, legally binding agreement describing the rights, duties and obligations of owners in the ownership entity.

9% Tax Credit: Low-income housing tax credits available for allocation under the state's volume cap pursuant to Section 42(h)(3) of the Code.

Person: Any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so requires.

Person with a Disability: An adult who has a permanent physical or mental impairment which substantially limits one or more major life activities as further defined in North Carolina's Persons with Disabilities Protection Act (N.C.G.S. § 168A-3 (7a)).

Principal: Principal includes (1) all persons or entities who are or who will become partners or members of the ownership entity, (2) all persons or entities whose affiliates are or who will become partners or members of the ownership entity, (3) all persons or entities who directly or indirectly earn a portion of the development fee for development services with respect to a project and/or earn any compensation for development services rendered to such project, which compensation is funded

directly or indirectly from the development fee of such project, and such amount earned exceeds the **lesser of twenty-five percent (25%)** of the development fee for such project or **\$100,000**, and (4) all affiliates of such persons or entities in clause (3) who directly or indirectly earn a portion of the development fee for development services with respect to any project in the current year and/or earn any compensation for development services rendered to any project in the current year, which compensation is funded directly or indirectly from the development fee of any such project, and such amount earned exceeds the **lesser of twenty-five percent 25%** of the development fee for such project or **\$100,000**. For purposes of determining Principal status the Agency may disregard multiple layers of pass-through or corporate entities. A partner or member will not be a Principal where its only involvement is that of the tax credit equity investor.

Qualified Corporation: Any corporation if, at all times such corporation is in existence, 100% of the stock of such corporation is held by a nonprofit organization that meets the requirements under Code Section 42(h)(5).

Rental Production Program (RPP): Agency loan program for multifamily affordable rental housing.

Stabilized Occupancy: Maintenance of at least ninety-three percent (93%) occupancy for six consecutive months.

APPENDIX A

Market Study Standards and Requirements

Section 42(m)(1)(A)(iii) of the IRS Code and Section IV(A)(2) of the 2007 Qualified Allocation Plan ("QAP") require market studies for all low-income housing tax credit ("LIHTC") allocations. In addition to the requirements of those provisions, applicants and analysts must follow the procedures and rules described in this Appendix.

I. Market Study Process

- A. **Bid:** Agency will accept bids from market analysts to perform third party market studies for the 2007 tax credit round between November 13 and December 8, 2006.
- B. **Market Study Fee:** A fee for the market study will be paid by applicant at the time of submission of the preliminary tax credit application.
- C. **Assigning Projects:** Upon receipt of the preliminary applications the Agency will contract with market analysts. The Agency will make its selections by January 22, 2007. The number of projects assigned will be based upon the following: stated capacity, number of preliminary applications submitted, conflicts of interest and the Agency's evaluation of the analyst's capacity based on prior studies submitted.
- D. **PMA Designation:** Analysts must provide the Agency with a proposed Primary Market Area (PMA) for review as soon as possible but no later than February 12, 2007. Each site must include a map of the PMA clearly depicting the census tracts on the map that make up the PMA. The analyst must use a conservative, market supported PMA delineation and conduct local interviews to determine cultural nuances, geographic factors or other relevant factors. The analyst must describe the methodology and reasoning used to define the PMA. The Agency will respond to the analyst via e-mail within 48 hours of receipt.
- E. **Analyst Contact with Applicants:** Once the PMA designation is complete, market analysts may contact the applicant to ensure they have all the information necessary to complete the market analysis. Analysts **must not discuss PMA delineations** with the applicant until the study is complete.
- F. **Schedule:**
 - after PMA completed- analyst may contact applicant regarding general information
 - March 5 - deadline for the Agency and applicant to receive a hard copy of the market study, including any analyst recommendations
 - March 23 - deadline for analyst and Agency to receive any revisions from the applicant

April 2 - deadline for the Agency and applicant to receive a hard copy of the revised market study, if applicable

- G. **Process for Revisions to Proposals:** The initial market study must be based solely on information contained in the preliminary application. The revised market study may only vary based on revisions from the Agency or applicant. The following alterations will be permitted: rent structure, project size, targeting and bedroom mix. The following alterations will not be permitted: change in location and/or project type (i.e. switching from a family proposal to elderly).

II. Market Study Requirements

A completed market study must include the following information:

A. Executive Summary

1. A brief summary of the proposed project including the population to be served.
2. The average vacancy rates for all comparable properties in the PMA and the average vacancy rate for the LIHTC projects among those comparable properties. See Section H.
3. A table outlining the capture rates determined in Section G(5)(b).
4. Absorption rate for the proposed project to reach stabilized occupancy.
5. Conclusions about the strength/depth of the market for the project as proposed, including suggested changes.
6. Any recommendations for altering the proposal. The analyst should provide a table that reflects what would be the new capture rate and absorption rate for the recommendation(s). The analyst may not recommend increasing rents.
7. A brief discussion of the impact of the proposed project on existing or upcoming low income housing tax credit ("LIHTC") projects in the PMA.

B. Project Description

1. Project location
2. Construction type (new construction/rehab/adaptive reuse)
3. Occupancy type (family, elderly)
4. Target income group (LIHTC and market rate, if applicable)
5. Special population target (if applicable)
6. Number of units by unit type
7. Unit size
8. Structure type (i.e. townhouse, garden apartment)
9. Rents and utility allowances
10. Existing or proposed project based rental assistance
11. Proposed project amenities (i.e. community building, playground, laundry)
12. Proposed unit amenities (i.e. washer/dryer hookups, dishwasher etc.)
13. If project is a rehab, include current rental rates, occupancy levels, and proposed scope of work including a dollar amount of investment, if included.

C. Site Evaluation

1. The market analyst **must** physically visit each site and the PMA.
2. Describe physical features of the site and adjacent parcels. Negative attributes of the site must be described in relation to their possible impact on overall project feasibility. This discussion must reflect any negative curb appeal, any problematic surrounding land uses in relation to marketability, lack of transportation, poor

amenities, etc. Only include site related pictures, not the surrounding amenities (e.g. grocery stores, etc.), with a description of vantage points.

3. Include a map clearly identifying the location of the proposed project, identifying the closest shopping areas, schools (not applicable for elderly projects), employment centers, medical facilities and other amenities that would be important to the targeted population. Indicate proximity in miles to the proposed project.
4. Include a map identifying existing subsidized low-income rental housing (LIHTC, Rural Development, public housing, HUD 202, project-based Section 8) within the PMA. Also include projects "in the pipeline" that have received funding but are not yet complete. Indicate proximity in miles of these properties to the proposed project.

D. Primary Market Area

Include a map of the PMA, the description of method(s) used and other relevant information listed in Section I(D) above. Secondary market areas are not permitted for purposes of calculating demand.

E. Market Area Economy

1. Employment by industry--numbers and percentages (i.e. manufacturing: 150,000 (20%)).
2. Major employers and anticipated expansions, contractions in their workforces, as well as newly planned employers and their impact on employment in the market area.
3. Employment and unemployment trends for the PMA since 2000 and, where possible, the county-total workforce figures and number and percentage on both. Provide annualized figures on these trends (i.e. average annual increase of employment of 1.2%).
4. A narrative analysis of data provided, including overall conclusions. Relate data to impact on rental housing demand.
5. Analysts should use recent data sources (less than one year old) at the county level (or smaller) where available. Non-traditional data sources are acceptable if identified as such and linked to housing demand.

F. Community Demographic Data

Information on population and household trends from 2000 to 2006 projected to 2009. Projections must be prepared by a reputable source such as Claritas, ESRI, NC State Demographic Unit or the State Data Center. U.S. Census data prior to the 2000 Census is only acceptable as historical data. The market analyst should provide the reasoning for any disagreements with these projections, along with substitute projections. Both numbers and percentages must be shown for the data below, including annualized growth figures. Please include a narrative description of the data including significant changes and overall conclusions.

1. **Population Trends**
 - a. Total Population
 - b. Population by age group
 - c. Number of elderly and non-elderly (elderly projects only)
2. **Household Trends**
 - a. Total number of households, average household size and group quarters
 - b. Household by tenure; that is, the number of owner and renter households; (if appropriate, breakout by elderly and non-elderly)
 - c. Households by income and by tenure (elderly proposals should reflect the income distribution of elderly households only)
 - d. Renter households by number of persons in the household

G. Project-Specific Demand Analysis

Market analysts must use the most recent rent and income limits effective at the time market studies (or preliminary applications) are assigned from the Agency's website: <http://www.nchfa.com/Rental/Mincomelimits.aspx>

1. **Income Restrictions:** Market studies must evaluate the proposed project based on the occupancy restrictions indicated in the preliminary application. Analysts should be aware of specific income restrictions in the QAP, such as 25% of qualified units affordable to and occupied by those at 30% of area median income.

The study must include data for each income group targeted by the proposed project as described in the application. For example, if the proposed project targets households between 40% to 50% of the median income and households between 50% to 60% of the median income, demand projections using the methodology below must be provided **for each group and bedroom size**. Additional data deemed by the analyst to provide further explanation should be referenced in an appendix.

2. **Affordability:** Analysts are required to assume no family households are able to pay more than 35% of gross income towards total housing expenses and that no elderly households are able to pay more than 40% of gross income towards total housing expenses. The demand analysis must clearly indicate the minimum income and maximum income range for each targeted group.

For the maximum household income for one bedroom units the analyst must use the average of one and two person households. For three bedroom units the analyst must use the average of four and five person households. Note: For elderly projects, the analyst must use a maximum income based on two person households.

Studies may only include one demand calculation for projects proposing federal project-based rental assistance. Analysts are required to use the lesser of maximum allowable tax credit rents or the proposed project rents based on income targeting designated in the application.

For proposed projects with market rate units, the analyst must make some reasonable determination of a maximum income level beyond which a household would not likely be a participant in the rental market. The analyst must clearly state the assumptions used in making this determination.

3. **Demand:** Demand must be derived from the following sources below using data from a reputable source such as Claritas, ESRI, NC State Demographic Unit or the State Data Center.
 - a. **Demand from New Renter Households:** Determine **new** units in the PMA based on the projected renter household growth. This must be determined by using the current base year of 2006 projected to 2009.

The population projected must be limited to the age and income cohort. The demand for each income group targeted (i.e. 50% of median income) must be shown separately.

- Proposed projects targeting elderly households age 55+ must pull data for age 55 and older. Proposed projects targeting elderly households age 62+ or utilizing the RD/HUD elderly designation must pull data for age 65 and older. (The latter corresponds to Census data breaks; interpolation to age 62 is not acceptable).
- In instances where a significant number (more than 20%) of proposed units are comprised of three-and four-bedroom units, the analyst must refine the analysis by factoring in the number of large households (generally 4+ persons).

- b. **Demand from Existing Households:** This source of demand must be derived from the 2000 census.

- **Rent over-burdened households**, if any, within the age group, income cohorts and tenure (renters) targeted for the proposed project. In order to achieve consistency in

IN ADDITION

methodology, analysts must assume the rent-overburdened analysis includes households paying greater than 35% or, in the case of elderly, 40% of their incomes toward gross rent.

- **Households living in substandard housing** (units that lack complete plumbing or are overcrowded) must be adjusted for applicable age, income bands and tenure. The analyst must use a conservative, market supported estimate of demand from both households that are rent-overburdened or living in substandard housing.
- **Income eligible elderly homeowners likely to convert to renting** must not add more than 20% of total demand. For urban markets analysts may add up to 2% of income eligible senior homeowners in demand calculations and up to 5% for rural markets. Data from the Annual Housing Survey and interviews with property managers of active projects regarding renters who have come from homeownership must be used to refine the analysis. Include a narrative of the steps taken in arriving at this demand figure.
- Analysts may not use household turnover rates other than for elderly projects.

4. Method

- a. **Demand:** The two overall demand components added together 3(a) and 3(b) above represent demand for the project.
- b. **Supply:** Comparable units (vacant or occupied) funded, under construction or placed in service in 2006 must be subtracted to calculate net demand. Vacancies in projects placed in service prior to 2006 which have not reached stabilized occupancy (at least 93% occupied) must also be considered as part of the supply. Analysts may not subtract other units, such as those in other existing, stabilized LIHTC properties.
- c. **Capture rate:** calculated by dividing the number of units in the proposed project by net demand. Capture rate analysis must be completed for each targeted income group and bedroom size proposed. The analyst must include a narrative on what the capture rate means for the project proposal (i.e. given the market area, is this the average capture rate or is it one that should cause concern?).

5. Example of Method:

a. Demand and Net Demand

	HH at 50% Median Income (min. income to max. income)	HH at 60% of Median Income (min. income to max. income)
Demand from New Households (age and income appropriate)		
+		
Demand from Existing Households Rent-Overburdened		
+		
Demand from Existing Households Renters in Substandard Housing		
+		
Demand from Existing Households Elderly Homeowner Turnover		
=		
Total Demand		
-		

IN ADDITION

Supply (As indicated in Section II(G)(4)(b))		
=		
Net Demand		

b. Net Demand and Capture Rates

Bedrooms	Total Demand	Supply	Net Demand	Units Proposed	Capture Rate
1 Bedroom at ___% AMI					
2 Bedroom at ___% AMI					
3 Bedroom at ___% AMI					
4 Bedroom at ___% AMI					
Market Rate					
Overall					

6. Absorption rate is the estimated time needed to reach 93% occupancy. The absorption rate determination should take into consideration the overall estimate of new household growth, the available supply of competitive units, observed trends in absorption of comparable units, and the availability of subsidies and rent specials. (The absorption period starts as soon as the first units are released for occupancy.) If a comparable project's absorption rate is unusually rapid, the analyst must research and state the reason.

H. Supply Analysis (Comparable Rental Projects)**

- 1.** The analyst must determine which properties in the PMA are most comparable to the proposed project ("Comps"). Elderly projects cannot be included as Comps for family (open occupancy) projects. Representative sample/survey of the PMA rental stock should be included in an appendix.
 - a. Provide the overall average vacancy rates for all Comps. In the case of proposed rural projects where a sufficient number of Comps do not exist, include data on at least three (3) projects in adjacent markets with similar characteristics.
 - b. Separate out the LIHTC properties among the Comps and provide the overall vacancy rates for such properties. Do not provide average vacancies for assisted properties (RHS, Section 8) if the proposed is not receiving rental assistance.
 - c. Other information about vacancies should be separated from the data above.
 - d. Analysts should provide an explanation of vacancy rates that he or she feels are not indicative of the market. For example a Comp may have occupancy problems due to poor management.

The analyst must contact all Comps and indicate the date, the person they made contact with, and how contact was made at each. Indicate all Comps on a map of the PMA.

2. Specifically describe the proposed project's impact on existing or awarded LIHTC properties. For example, the analyst may conclude that lower rents and/or better amenities will likely lead some tenants to relocate to the proposed project. In this example, the analyst should also indicate what the vacancy rate might increase to at the existing project(s) due to the proposed project. Vague comments such as "may have a limited effect" do not meet this requirement.

** Comparable being defined as properties that are similar to the proposed in terms of rents, amenities, unit size and unit mix in the PMA. This can include both market rate and LIHTC properties.

- 3.** The following information must be included for each Comp:
 - a. Name, address and phone number of the comparable property
 - b. Photograph
 - c. Breakdown of unit sizes by bedroom count
 - d. Square footage for each comparable unit type
 - e. Monthly rents and what utilities are included in the rent

- f. Year built
- g. Description of amenities
- h. Concessions given, if any
- i. Current vacancy rates by bedroom size
- j. Type of affordable housing program, if applicable (i.e. LIHTC, Rural Development, etc.)
- k. Number of units receiving project based rental assistance
- l. In rural areas lacking sufficient three or four bedroom rental comparables, provide data on three and four bedroom single-family rentals, or provide information on rental trailer homes and single family homes in an attempt to identify where potential tenants are currently living.

The above information must be provided in a comparative framework with the proposed project. For example, in addition to providing a page of information along with a picture for each comparable, the analyst must also provide comparative charts or tables that show such factors as the proposed project's rents, square footages, amenities, etc. as compared to the other projects.

4. If the proposed project represents an additional phase of an existing project, include a tenant profile as well as additional information related to households on a waiting list of the existing phase.
5. The analyst must also provide a description of any multi-family projects in the PMA currently under construction, or scheduled to begin construction within the year, and the following for each:
 - a. address/location,
 - b. name of owner,
 - c. number of units,
 - d. unit configuration,
 - e. rent structure,
 - f. estimated date of market entry, and
 - g. any other relevant market analysis information.

I. Interviews

Analysts must interview property managers, town planning officials and others with information relating to the demand for the proposed project. The results of these interviews should appear in an appendix at the end of the market study.

J. Recommendations

Analysts must provide any suggested alterations to optimize the proposed project's fit to the market. If recommended alterations affect demand, include a table reflecting the new capture rate and absorption rate, preferably in tabular format. (Refer to Section I (G) for restricted alterations/recommendations)

K. Analyst Qualifications

The market analyst must have an undergraduate degree in Economics, Business, City and Regional Planning, or other relevant course of study. Additionally, the analyst must have at least two (2) years experience as the primary author of market studies for LIHTC projects.

L. Signed Statement Requirements

The signed statement must include the following language:

I affirm the following:

- I have made a physical inspection of the site and market area and that information has been used in the study.
- I have followed Agency's market study requirements.
- The information included is accurate and that the report can be relied upon by the Agency to present a true assessment of the market.

- I understand that any misrepresentation of this statement may result in the denial of further participation in the North Carolina Housing Finance Agency's rental housing programs.
- I have no interest in the project or relationship with the applicant, developer, ownership entity or application preparer.

APPENDIX B

Design Quality Standards and Requirements

The terms of this Appendix B are the minimum requirements for any project awarded tax credits in 2007. Required documents must be prepared by an engineer or architect licensed to do business in North Carolina.

Once final plans and specifications have been completed, owners must submit them to the Agency and receive written approval before commencing sitework or construction.

At all times after award the owner is responsible for promptly informing the Agency of any difficulties in completing the approved plans and specifications. In particular owners must not take action on any material change in the site layout, floor plan, elevations or amenities without written authorization from the Agency. This includes changes required by local governments to receive building permits.

I. DESIGN DOCUMENT STANDARDS

A. GENERAL PROVISIONS

1. Minimum size for all design documents is 24"x36".
2. All drawings should be to scale, using the minimum required scale as detailed below.
3. Required documents must be prepared by an engineer or architect licensed to do business in North Carolina.

B. SITE PLAN

Must indicate the following:

1. Location of, and any proposed changes to, existing buildings, roadways, and parking areas.
2. All existing site and zoning restrictions including set backs, right of ways, boundary lines, wetlands and any flood plains.
3. Existing topography of site and any proposed changes including retaining walls.
4. The finished floor elevations for all buildings.
5. Landscaping and planting areas (a plant list is not necessary). If existing site timber or natural areas are to remain throughout construction, the area must be marked as such on the site plans.
6. Locations of site features such as playground(s), gazebos, walking trails, refuse collection areas, postal facilities, and site entrance signage.

C. FLOOR PLANS

1. Include floor layouts using a minimum scale of 1/16" = 1' for each building; identifying the location of units, common use areas and other spaces.
2. Show dimensioned floor plans for all unit types using a minimum scale of 1/4" = 1'.
3. Indicate net building square footage and heated square footage. See "Definitions" in this Appendix.
4. For projects involving renovation and/or demolition of existing structures, show proposed changes to building components and design and also describe removal and new construction methods.
5. For projects involving removal of asbestos and/or lead based paint removal, show general notes identifying location and procedures for removal.

D. ELEVATIONS FOR NEW CONSTRUCTION

1. Minimum scale for elevations is 1/16" = 1'.
2. Include front, rear and side elevations of all building types.
3. Identify all materials to be used on building exteriors.

II. BUILDING AND UNIT DESIGN PROVISIONS

A. EXTERIOR DESIGN AND MATERIALS

1. Building design must use different roof planes and contours to "break" up roof lines. Wide window and door trim must be used to better accent siding. If horizontal banding is used between floor levels, use separate color tones for upper and lower levels. If possible, use horizontal and vertical siding applications to add detail to dormers, gables, and extended front facade areas.
2. The use of no or very low maintenance materials is required for exterior building coverings on all new construction projects. These include high quality vinyl siding, brick, or fiber cement siding. The use of metal siding is prohibited.
3. All exterior trim, including fascia and soffits, window and door trim, gable vents, etc, must also be constructed of no or very low maintenance materials.
4. All buildings must include seamless gutters.
5. All building foundations must have a minimum of 12 inches exposed brick veneer above finished grade level (after landscaping).
6. Breezeway and stairwell ceilings must be constructed of materials rated for exterior exposure.
7. Buildings and units must be identified using clearly visible signage and numbers. Building and unit identification signage must be well lit from dusk till dawn.
8. Exterior stairs must have a minimum clear width of 40 inches and be completely under roof cover.
9. Exterior railings must be made of vinyl, aluminum, or steel (no wood).
10. Anti-fungal shingles with a minimum 25-year warranty are required for all shingle roof applications.

B. DOORS AND WINDOWS

1. All primary unit entries must either be within a breezeway or have a minimum roof covering of 3 feet deep by 5 feet wide, including a corresponding porch or concrete pad.
2. High durability, insulated doors (such as steel and fiberglass) are required at all exterior locations. Single lever deadbolts and eye viewers are required on all main entry doors to residential units.
3. Exterior doors for fully accessible units ("Type A") must include spring hinges.
4. Insulated, double pane, vinyl windows with a U-factor of 0.40 or below and a SHGC of 0.48 or below are required for new construction.
5. Windows must not be located over tub or shower units.

C. UNIT DESIGN AND MATERIALS

1. All residential units must meet minimum unit size requirements. The square footage measurements below will be for heated square feet only, measured interior wall to interior wall, and do not include exterior wall square footage. Unheated areas such as patios, decks, porches, stoops, or storage rooms cannot be included.

Single Room Occupancy ("SRO")	250 square feet
Studio	375 square feet
Efficiency	450 square feet
1 Bedroom	660 square feet
2 Bedroom	900 square feet
3 Bedroom	1,100 square feet
4 Bedroom	1,250 square feet

For additional requirements see the "Definitions" section at the end of this Appendix.

2. All units must have a separate dining area, except for SRO, Studio and Efficiency units (see "Definitions" for description).
3. Newly constructed residential units containing two (2) or more bedrooms must have an exterior storage closet with a minimum of 16 unobstructed square feet. The square footage utilized by a water heater in the exterior storage closet may not be included in the 16 square foot calculation.
4. Carpet and pad must meet FHA minimum standards.
5. Kitchens, dining areas, and entrance areas must have vinyl, VCT or other non-carpet flooring.
6. The minimum width of interior hallways in residential units is 40 inches.

IN ADDITION

7. For new construction, interior doors must be constructed of six panel hardboard, solid core birch or solid core lauan. Hollow core wood doors are prohibited.
8. Bi-fold, pocket and by-pass doors are prohibited.
9. Fireplaces are prohibited.
10. Residential floors must be separated by sound insulation.

D. BEDROOMS

1. The primary bedroom must have at least 130 square feet, excluding the closet(s).
2. Secondary bedrooms must have at least 110 square feet, excluding the closet(s).
3. Every bedroom must have a closet with a shelf, closet rod and door. The average size of all bedroom closets in each unit type must be at least 7 linear feet.

E. BATHROOMS

1. A medicine cabinet must be installed in every full bathroom in each residential unit.
2. Exclusive of fully accessible units, the average size of all vanities in each unit type must be at least 36 inches.
3. Mirrors in bathrooms must be low enough to reach the counter backsplashes.
4. All bathrooms must include an exhaust fan rated at 70 CFM vented to the exterior of the building using hard ductwork along the shortest run possible. The exhaust fan must either be controlled by a humidistat or wired to run whenever the bathroom light is on.
5. For ceramic tile applications, tile should be applied over cement backer board rather than directly to drywall.
6. All new construction projects must comply with QAP Section IV(F)(3) regarding additional accessible bathrooms, including roll-in showers.

F. KITCHENS

1. New cabinets must include dual side tracks on drawers. Door fronts, styles, and drawer fronts must be made with solid wood or wood/plastic veneer products. Particle board or hardboard doors, stiles, and drawer fronts are prohibited.
2. The minimum aisle width between cabinets and/or appliances is 42 inches.
3. A pantry cabinet or closet in or near each kitchen must be provided (does not include SRO, studio or efficiency units).
4. All residential units must have either a dry chemical fire extinguisher mounted and readily visible and accessible in every kitchen, including kitchen in community building if present, or an automatic fire suppression canister mounted in each range hood.
5. Each kitchen must have at the least the following minimum linear footage of countertop, excluding the sink space (only include countertops that are at or below 36 inches in height above finished floor):

SRO	4.5 linear feet
Studio	5.0 linear feet
Efficiency	5.0 linear feet
1 Bedroom	10.0 linear feet
2 Bedroom	12.0 linear feet
3 Bedroom	13.0 linear feet
4 Bedroom	13.0 linear feet

6. All residential units must have a frost-free Energy Star rated refrigerator with a freezer compartment. For fully accessible ("Type A") units the refrigerator must be [side by side]. The following are the minimum sizes:

0-2 Bedroom	14 cubic feet
3 Bedroom	16 cubic feet
4 Bedroom	18 cubic feet

7. All residential units must have an Energy Star rated dishwasher (excluding elderly properties).

G. PROVISIONS FOR ALL ELDERLY HOUSING

IN ADDITION

1. All elderly residential units must be equipped with emergency pull chains in the master bedroom and full bathroom. The pull chains must be wired to an exterior warning device which consists of a strobe light and an audible alarm.
2. Provide loop or "D" shape handles on cabinet doors and drawers.
3. Exhaust vents and lighting above ranges must be wired to a remote switch near the range in an accessible location.
4. Provide solid blocking at all water closets and tub/shower units for grab bar installation.
5. Provide a minimum 12" grab bar in all tub/shower units. The grab bar will be installed horizontally at 48" A.F.F. on the wall opposite the controls.
6. Corridors in any common areas must have a continuous suitable handrail on one side mounted 34 inches above finished floor, and be 1 ¼ inches in diameter.
7. All doors leading to habitable rooms must have a minimum 2'-10" door and include lever handle hardware.
8. Hallways must have a minimum width of 42 inches.
9. The maximum threshold height at any entry door is ½ inch.

H. PROVISIONS FOR SIGHT AND HEARING IMPAIRED UNITS

Applies ONLY to projects using Rental Production Program funds. Under Section 504 of the Rehabilitation Act of 1973, two percent of the total number of units constructed, or a minimum of one, must be able to be equipped for residents with sight and hearing impairments. These requirements include the following:

1. The unit(s) must be roughed in to allow for smoke alarms with strobe lights in every bedroom and living area.
2. The units must have a receptacle next to phone jacks in units for future installation of TTY devices.
3. Each overhead light fixture and receptacle must be wired to accommodate a 150 watt load.
4. The unit must also be fully accessible ("Type A").

The requirements of this provision can be satisfied by adding the elements described above to the additional fully accessible units with roll-in showers required by QAP Section IV(F)(3) such that at least two percent (2%) of all units are properly equipped to serve persons with sight and or hearing impairments.

III. MECHANICAL, SITE AND INSULATION PROVISIONS

A. PLUMBING PROVISIONS

1. Zero to two bedroom units require at least one (1) full bathroom.
2. Three bedroom units require at least 1.75 bathrooms (including one bath with upright shower and one bath with full tub).
3. Four bedroom units require at least 2 full bathrooms.
4. All tubs and showers must have slip resistant floors.
5. All electric water heaters must have an Energy Factor of at least .93. All natural gas water heaters must have an Energy Factor of at least .61.
6. All water heater tanks must be placed in an overflow pan piped to the exterior of the building, regardless of location and floor level. The temperature and relief valve must also be piped to the exterior.
7. Whirlpool baths or spas are prohibited.
8. A frost-proof exterior faucet must be installed on an exterior wall of the community/office building.
9. All tub/shower control knobs must be single lever handled and offset towards the front of tub/shower.
10. Roll-In showers may not have a curb or threshold.
11. Provide lever faucet controls for the kitchen and bathroom sinks.

B. ELECTRICAL PROVISIONS

1. Provide overhead lighting, a ceiling fan, telephone jack and a cable connection in every bedroom and living room. Any walk-in closets must also have a switched overhead light.
2. Switches and thermostats must not be located more than 48 inches above finished floor height.
3. Receptacles, telephone jacks and cable jacks must not be located less than 16 inches above finished floor height.
4. Exterior lighting is required at each unit entry door.
5. Additional exterior light fixtures not specific to a unit will be wired to a "house" panel. The fixtures will be activated by a photo cell placed on the east or north side of the buildings.
6. All exterior stairways must have light fixtures wired to a "house" panel and activated by a photo cell placed on the east or north side of the buildings.

7. Electric baseboard heating systems are not permitted.
8. All non-residential and residential spaces must have separate electrical systems.

C. HEATING, VENTILATING AND AIR CONDITIONING PROVISIONS

1. All non-residential areas and residential units must have their own separate heating and air conditioning systems.
2. Through the wall HVAC units are prohibited in all but Studio, Efficiency and SRO units. They are allowed in laundry rooms and management offices where provided.
3. HVAC systems, including the air handler, must be rated at 13.0 SEER or greater and properly sized for the unit.
4. Connections in duct system must be sealed with mastic and fiberglass mesh.
5. All openings in duct work at registers and grills must be covered after installation to keep out debris during construction.

D. BUILDING ENVELOPE AND INSULATION

1. Buildings with residential units must be wrapped with an exterior air and water infiltration barrier.
2. Framing must provide for complete building insulation including the use of insulated headers on all exterior walls, framing roofs and ceilings to allow the full depth of ceiling insulation to extend over the top plate of the exterior walls of the building, and framing all corners and wall intersections to allow for insulation.
3. Seal at doors, windows, plumbing and electrical penetrations to prevent moisture and air leakage.

E. SITework AND LANDSCAPING

1. Provide positive drainage at all driveways, parking areas, ramps, walkways and dumpster pads to prevent standing water.
2. Provide a non-skid finish to all walkways.
3. All water from roof and gutter system must be piped away from buildings and discharged no less than 6' from building foundation.
4. Lots must be graded so as to drain surface water away from foundation walls. The grade away from foundation walls must fall a minimum of 6 inches within the first 10 feet.
5. Burying construction waste on-site is prohibited.
6. No part of the disturbed site may be left uncovered or unstabilized once construction is complete.
7. Minimum landscaping budgets of \$300 per residential unit are required. This allowance is for plants and trees only and may not be used for fine grading, seeding and straw or sod.
8. Plant material must be native to the climate and area.
9. All plants must be mulched within two days after planting by covering entire planting area with a 4 inch layer of mulch.
10. Trees at streetscape must be at least 2 ½ inch caliper. Trees sited for building landscaping must be at least 2-inch caliper.
11. All shrubs must be a minimum size of 2 gallons.
12. Foundation plantings must be spaced an appropriate distance away from buildings to assure proper maintenance and growth.

IV. ENERGY STAR CERTIFICATION

Developers of projects utilizing tax credits have the opportunity to receive allocation of additional credits by choosing to have their projects certified as compliant with the requirements of the ENERGY STAR program which is administered by the U. S. Environmental Protection Agency. In general, ENERGY STAR qualified homes are at least 15% more energy efficient than homes built to the 2006 International Energy Conservation Code (IECC). ENERGY STAR qualified homes achieve energy savings through established, reliable building technologies that address 5 critical elements:

- Effective Insulation
- High-Performance Windows
- Tight Construction and Ducts
- Efficient Heating and Cooling Equipment
- Lighting and Appliances

IN ADDITION

Additionally, to receive ENERGY STAR certification, developers must work with independent, third-party experts who assist with project design, verify construction quality, and test completed units to certify energy efficiency.

Additional information regarding the requirements for energy star certification can be found on the EPA website. (http://www.energystar.gov/index.cfm?c=new_homes.nh_features)

V. COMMON AREA AND SITE AMENITY PROVISIONS

All common use areas must be fully accessible to those with disabilities in compliance with all applicable State and Federal laws and regulations.

A. REQUIRED SITE AMENITIES

All projects are required to include a minimum of six (6) tenant amenities. There are four (4) amenities that are mandatory and the additional two (2) can be selected from the list below.

The required amenities vary by project type:

	Family	Senior
Playground		Indoor or Outdoor Sitting Areas (min. of 3 locations)
Resident Computer Center (min. of 2 computers)		Multi-Purpose Room (250 sq.ft.)
Covered Picnic Area (150 sq.ft. with 2 tables and grill)		Resident Computer Center (min. of 2 computers)
Outdoor Sitting Areas with Benches (min. of 3 locations)		Tenant Storage Areas

In addition to the required amenities, projects must also include at least two (2) of the following additional amenities:

- covered drive-thru or drop-off at entry
- covered patio with seating (150 sq. ft.)
- covered picnic area with tables and grilles (150 sq. ft.)
- exercise room (must include new equipment)
- garden plots (8 ft. x 8 ft. boxes, 12 inches deep, one plot per 10 residents, elderly projects only)
- gazebo (100 sq. ft.)
- high-speed Internet access (involves both a data connection in the living area of each unit that is separate from the cable/telephone connection and support from a project-wide network or a functional equivalent)
- sunroom with chairs (150 sq. ft.)
- screened porch (150 sq. ft.)
- tot lot (family projects only)
- walking trails (4 ft. wide paved continuous around property)

Dimensions listed are the minimum required. Amenities must be located on the project site.

B. PLAYGROUND AREAS

1. Wherever possible tot lots and playgrounds must be located away from areas of frequent automobile traffic and situated so that the play area is visible from the office and maximum number of residential units.
2. A bench must be provided at playgrounds to allow a child's supervisor to sit. The bench must be anchored permanently, weather resistant and have a back.

C. POSTAL FACILITIES

1. Postal facilities must be located adjacent to available parking and sited such that tenants will not obstruct traffic while collecting mail.
2. On-site postal facilities must have a roof covering which offers residents ample protection from the rain while gathering mail.
3. Postal facilities must include adequate lighting on from dusk to dawn.

D. LAUNDRY FACILITIES

1. Laundry facilities are required at all projects with twenty (20) or more residential units.
2. There must be a minimum of one washer and one dryer per twelve (12) residential units if washer/dryer hookups are not available in each unit. If hookups are available in each unit, there must be a minimum of one washer and one dryer per twenty (20) units.
3. Laundry facilities must be located on an accessible route.
4. The entrance must have a minimum roof covering of 20 square feet.
5. The threshold height of the entrance door to the laundry room must not exceed ½ inch above finished interior grade level.
6. A "folding" table or countertop must be installed. The working surface must be 28 to 34 inches above the floor, and must have a 27 inch high clear knee space below. The working surface must be a minimum 48 inches long, and have a 30 by 48 inch clear floor space around it.
7. The primary entrance door to the laundry must be of solid construction and include a full height tempered glassed panel to allow residents a view of the outside/inside.
8. The laundry room must be positioned on the site to allow for a high level of visibility from residential units or the community building/office.
9. The laundry room must have adequate entrance lighting that is on from dusk to dawn.
10. If the project has only one laundry facility, it must be adjacent to the community building/office (if provided) to allow easy access and provide a handicap parking space(s).
11. One washer and one dryer must be front loading and usable by residents with mobility impairments (front loading), including at least a 30 by 48 inch clear floor space in front of each.

E. COMMUNITY / OFFICE SPACES

1. All projects must have an office on site of at least 200 square feet (inclusive of handicapped toilet facility) and a maintenance room of at least 100 square feet. This includes subsequent phases of a multi-phase development.
2. Projects with twenty four (24) or more units and more than one residential building must have a separate community building.
3. The community building must contain a both a handicapped toilet facility and a kitchen area that includes a refrigerator and sink.
4. The community building/space, including toilet facilities and kitchenette but excluding maintenance room and site office, must contain a minimum of seven (7) square feet for each residential unit.
5. The office must be situated as to allow the site manager a prominent view of the residential units, playground, entrances/exits, and vehicular traffic.
6. The community building/office must be clearly marked as such by exterior signs, placed at a visible location close to the building. The signs must use contrasting colors and large letters and numbers.

F. PARKING

1. Two parking spaces per unit are required for family projects.
2. Elderly projects require a minimum of two-thirds (2/3) parking space per unit.
3. If local guidelines require less parking, the number of parking spaces required by the Agency may be reduced to meet those standards upon receiving Agency approval.

G. REFUSE COLLECTION AREAS

1. Fencing consistent with the appearance of the residential buildings must screen the collection area. The fencing must be made of PVC or treated lumber and constructed for permanent use.
2. The pad for the refuse collection area, including the approach area, must be concrete (not asphalt).
3. The refuse collection areas may not be at the entrances or exits of the project.
4. Signs must be at all refuse collection areas to prohibit parking in front of collection facilities.
5. A concrete parking bumper, pipe bollards or 8 inch x 8 inch treated timber must be installed behind dumpsters.

VI. ADDITIONAL PROVISIONS FOR REHABILITATION OF EXISTING HOUSING

The following requirements apply to rehabilitation of existing units. Replacement of materials and methods during rehabilitation must comply with the design standards for new construction.

- A. Design documents must show all proposed changes to existing and proposed buildings, parking, utilities, and landscaping. An architect or engineer must prepare the design drawings.
- B. Submit a hazardous material report that provides the results of testing for asbestos containing materials, lead based paint, Polychlorinated Biphenyls (PCBs), underground storage tanks, petroleum bulk storage tanks, Chlorofluorocarbons (CFCs), and other hazardous materials. Professionals licensed to do hazardous materials testing must perform the testing. A report written by an architect, building contractor or developer will not suffice. A plan and projected costs for removal of hazardous materials must also be included.
- C. Submit an engineer's report assessing the structural integrity of the building(s) being renovated.
- D. Submit a current termite inspection report.
- E. Show "reserves for replacements" adequate to maintain and replace any existing systems and conditions not being replaced or addressed during rehabilitation.

VII. ADDITIONAL PROVISIONS FOR ADAPTIVE RE-USE OF EXISTING STRUCTURES

- A. Mechanical Systems: All mechanical systems (including HVAC, plumbing, electrical, fire suppression, security system, etc.) must be completely enclosed and concealed. This may be achieved by utilizing existing spaces in walls, floors, and ceilings, constructing mechanical chases or soffits, dropping ceilings in portions of units, or other means. Where structural or other significant limitations make complete enclosure and concealment impossible, the applicant must secure approval from the Agency prior to installation of affected systems.
- B. Windows: Retain original window sashes, frames, and trim where possible. All original sashes must be repaired and otherwise upgraded to insure that all gaps and spaces are sealed so as to be weather tight. All damaged or broken window panes must be replaced. Where original window sashes cannot be retained, install replacement sashes be installed into existing frames. In all cases, windows must be finished with a complete coating of paint.
- C. Floors: All wood flooring is to be restored as closely to original condition as possible. Where repairs are necessary, flooring salvaged from other areas of the building must be utilized as fill material. If salvaged wood is not available, flooring of similar dimension and species must be used. All repairs must be made by feathering in replacement flooring so as to make the repair as discreet as possible. Cutting out and replacing square sections of flooring is prohibited. Where original flooring has gaps in excess of 1/8 inch, the gaps must be filled with an appropriate filler material prior to the application of final finish.
- D. Hazardous Materials: Submit a hazardous material report that provides the results of testing for asbestos containing materials, lead based paint, Polychlorinated Biphenyls (PCBs), underground storage tanks, petroleum bulk storage tanks, Chlorofluorocarbons (CFCs), and other hazardous materials. Professionals licensed to do hazardous materials testing must perform the testing. A report written by an architect or building contractor or developer will not suffice. A plan and projected costs for removal of hazardous materials must also be included.

VIII. APPLICABLE ACCESSIBILITY REGULATIONS

A. FAIR HOUSING AMENDMENTS ACT

All new construction projects are required by law to meet the handicap-accessibility standards outlined in the Fair Housing Laws, including the Federal Fair Housing Amendments Act of 1988 (the "Act"). The law provides that failure to design and construct certain residential dwelling units to include certain features of accessible design will be regarded as unlawful discrimination. Renovation projects may be exempt from design guidelines.

The law applies to all housing built after March 13, 1991 with four or more units. All units in buildings with four or more units must meet the requirements of the law if the buildings have one or more elevators. All ground floor units in other buildings containing four or more units must meet the requirements of the law. Certain sites with steep terrain may have some exclusions.

B. THE AMERICANS WITH DISABILITIES ACT

All projects are required by law to meet the handicap accessibility standards outlined in the Americans With Disabilities Act (ADA). The law provides that failure to design and construct certain public accommodations to include certain features of accessible design will be regarded as unlawful discrimination.

ADA Legislation became effective on July 26, 1992. Title III deals with non-discrimination on the basis of disability by public accommodations and in commercial facilities. Public accommodations include all new construction effective January 26, 1993 and impacts any rental office, model unit, public bathroom, building entrances, or any other public or common use area. Existing public accommodations must be retrofitted or altered beginning January 26, 1992, unless a financial or administrative burden exists.

The ADA guidelines do not affect residential units, since these are covered under Fair Housing and Section 504 laws.

C. NORTH CAROLINA STATE ACCESSIBILITY CODE

All projects are required by law to meet the handicap accessibility standards as outlined in the North Carolina State Building Code. State and/or local building code officials enforce the design and construction guidelines. Compliance with these guidelines is mandatory in order to receive a Certificate of Occupancy for your proposed development.

A main feature of the state accessibility code is the provision requiring all multifamily residential projects intended as full time residences for rent or lease that have eleven or more living units to have a minimum of five percent of the units, or a minimum of one, that meet the requirements. These fully accessible designated units must also be distributed throughout the project, and not placed all in one building or just in one area of the site.

DEFINITIONS

Efficiency Apartment: A unit with a minimum of 450 heated net square footage (assuming new construction) in which the bedroom and living area are contained in the same room. Each unit has a full bathroom (shower/bath, lavatory and water closet) and full kitchen (stove top/oven, sink, full size refrigerator) that is located in a separate room.

Heated Square Feet: The floor area of an apartment unit, measured interior wall to interior wall, not including exterior wall square footage. Interior walls are not to be deducted, and the area occupied by a staircase may only be counted once.

Net Square Feet: Total area, including exterior wall square footage, of all conditioned (heated/cooled) space, including hallways and common areas.

One Bedroom Apartment: A unit of at least 660 heated net square feet (assuming new construction) containing at least four separate rooms including a living/dining room, full kitchen, a bedroom and full bathroom.

Single Room Occupancy (SRO) Unit: A single room unit with a minimum of 250 heated net square feet (assuming new construction) that is the primary residence of its occupant(s). The unit must contain either food preparation or sanitary facilities. At least one component of either a full bathroom (shower, water closet, lavatory) and/or a full kitchen (refrigerator, stove top and oven, sink) is missing. There are shared common areas in each building that contain elements of food preparation and/or sanitary facilities that are missing in the individual units.

Studio Apartment: A unit with a minimum of 375 heated net square feet (assuming new construction) in which the bedroom, living area and kitchenette are contained in the same room. Each unit has components of a full bathroom (shower/bath, lavatory and water closet) and full kitchen (stove top/oven, sink, refrigerator).

Three Bedroom Apartment: A unit with a minimum of 1,100 heated net square feet (assuming new construction) containing at least seven separate rooms including a living/dining room, full kitchen, three bedrooms and 1.75 bathrooms, with each unit including a minimum of one bath with a full tub and one bath with an upright shower stall.

Two Bedroom Apartment: A unit with a minimum of 900 heated net square feet (assuming new construction) containing at least five separate rooms including a living/dining room, full kitchen, two bedrooms and full bathroom.

Appendix F

Monitoring Compliance with Low-Income Housing Tax Credit Requirements

(a) **General.**

Owners of low-income housing tax credit properties must comply with the following rules and procedures.

(b) Recordkeeping and record retention.

- (1) *Recordkeeping.* Owners must keep records for each qualified low-income building in the project that show for each year in the compliance period—
 - (i) the total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
 - (ii) the percentage of residential rental units in the building that are low-income units;
 - (iii) the rent charged on each residential rental unit in the building (including any utility allowances);
 - (iv) the number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under Section 42(g)(2);
 - (v) the low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented;
 - (vi) the annual income certification of each low-income tenant per unit (for an exception to this requirement, see Section 42(g)(8)(B));
 - (vii) documentation to support each low-income tenant's income certification (other than as covered by the special rule for a 100 percent low-income building) as determined under Section 8 or by a public housing authority;
 - (viii) the eligible basis and qualified basis of the building at the end of the first year of the credit period; and
 - (ix) the character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d).
- (2) *Record retention.* Owners must retain the records described in paragraph (b)(1) of this section for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.
- (3) *Inspection record retention.* Owners must retain the original local health, safety, or building code violation reports or notices that were issued by the State or local government unit (as described in paragraph (c)(1)(vi) of this section) for the Agency's inspection under paragraph (d) of this section. Retention of the original violation reports or notices is not required once the Agency reviews the violation reports or notices and completes its inspection, unless the violation remains uncorrected.

(c) Certification and review.

- (1) *Certification.* Owners must certify at least annually to the Agency that, for the preceding twelve (12) month period—
 - (i) the project met the requirements of the 20-50 test under Section 42(g)(1)(A), the 40-60 test under Section 42(g)(1)(B), whichever is applicable to the project;
 - (ii) there was no change in the applicable fraction (as defined in Section 42(c)(1)(B)) of any building in the project, or that there was a change, and a description of the change;
 - (iii) the owner has received an annual income certification from each low-income tenant, and documentation to support that certification consistent with paragraph (b)(1)(vii) of this section;
 - (iv) each low-income unit in the project was rent-restricted under Section 42(g)(2);
 - (v) all units in the project were for use by the general public, including the requirement that no finding of discrimination under the Fair Housing Act occurred for the project (meaning an adverse final decision by HUD, a substantially equivalent state or local fair housing agency or federal court);
 - (vi) the buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the State or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project (owners must attach any violation report or notice to its annual certification and state whether the violation has been corrected);
 - (vii) there was no change in the eligible basis (as defined in Section 42(d)) of any building in the project, or if there was a change, the nature of the change;
 - (viii) all tenant facilities included in the eligible basis under Section 42(d) of any building in the project were provided on a comparable basis without charge to all tenants in the building;

- (ix) if a low-income unit in the building became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;
- (x) if the income of tenants of a low-income unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income; and
- (xi) an extended low-income housing commitment as described in Section 42(h)(6) was in effect, including the requirement under Section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937;
- (xii) all low-income units in the project were used on a non-transient basis (except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii) or single-room-occupancy units rented on a month-by-month basis under Section 42(i)(3)(B)(iv));
- (xiii) no tenants in low-income units were evicted or had their tenancies terminated other than for good cause and no tenants had an increase in the gross rent with respect to a low-income unit not otherwise permitted under Section 42;
- (xiv) the ownership entity meets the requirements of the nonprofit set-aside if the project was allocated as such; and
- (xv) no unauthorized changes in ownership or management agent(s) have occurred.

(2) *Review.*

- (i) The Agency will review the certifications submitted under paragraph (c)(1) of this section for compliance with the requirements of Section 42.
- (ii) With respect to each tax credit project—
 - (A) the Agency will conduct on-site inspections of all buildings in the project by the end of the second calendar year following the year the last building in the project is placed in service and, for at least twenty percent (20%) of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units; and
 - (B) at least once every three (3) years, the Agency will conduct on-site inspections of all buildings in the project and, for at least twenty percent (20%) of the project's low-income units, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.
- (iii) The Agency will randomly select low-income units and tenant records to be inspected and reviewed.

(3) *Frequency and form of certification.* The certifications and reviews of paragraph (c)(1) and (2) of this section will be made annually covering each year of the fifteen (15) year compliance period under Section 42(i)(1). The owner certifications will be made under penalty of perjury.

(d) Inspections.

- (1) *In general.* The Agency has the right to perform an on-site inspection of any tax credit project at least through the end of the extended use period.
- (2) *Inspection standard.* For the on-site inspections of buildings and low-income units required by paragraph (c)(2)(ii) of this section, the Agency will review any local health, safety, or building code violations reports or notices retained by the owner under paragraph (b)(3) in order to determine whether—
 - (i) the buildings and units are suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards); or
 - (ii) the buildings and units satisfy, as determined by the Agency, the uniform physical condition standards for public housing established by HUD (24 CFR 5.703).

The HUD physical condition standards do not supersede or preempt local health, safety, and building codes. A tax credit project under Section 42 must continue to satisfy these codes. The Agency will report any violation of these codes to the Service.

(e) Notification-of-noncompliance.

- (1) *In general.* The Agency will give the notice described in paragraph (e)(2) of this section to the owner of a tax credit project and the notice described in paragraph (e)(3) of this section to the Service.
- (2) *Notice to owner.* The Agency will provide prompt written notice to the owner of a tax credit project if the Agency does not receive the certification described in paragraph (c)(1) of this section, or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described in paragraph (c)(2)(ii) of this section, or discovers by inspection, review, or in some other manner, that the project is not in compliance with the provisions of Section 42.
- (3) *Notice to Internal Revenue Service.*
 - (i) In general. The Agency will file Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the Service no later than 45 days after the end of the correction period (as described in paragraph (e)(4) of this section, including extensions permitted under that paragraph) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The Agency will explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis under paragraph (c)(1)(ii) and (vii) of this section, respectively, that results in a decrease in the qualified basis of the project under Section 42(c)(1)(A) is noncompliance that will be reported to the Service under this paragraph (e)(3). If the noncompliance or failure to certify is corrected within three (3) years after the end of the correction period, the Agency will file Form 8823 with the Service reporting the correction of the noncompliance or failure to certify.
 - (ii) Agency retention of records. The Agency will retain records of noncompliance or failure to certify for six (6) years beyond the Agency's filing of the respective Form 8823. In all other cases, the Agency will retain the certifications and records described in paragraph (c) of this section for three (3) years from the end of the calendar year the Agency receives the certifications and records.
- (4) *Correction period.* The correction period shall be that period specified in the monitoring procedure during which an owner must supply any missing certifications and bring the project into compliance with the provisions of Section 42. The correction period is not to exceed ninety (90) days from the date of the notice to the owner described in paragraph (e)(2) of this section. The Agency may extend the correction period for up to six (6) months for good cause.

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.

Statutory reference: G.S. 150B-21.2.

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Agriculture intends to adopt the rule cited as 02 NCAC 09E .0116.

Proposed Effective Date: February 1, 2007

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rule by submitting a request in writing no later than October 31, 2006, to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Reason for Proposed Action: State law prohibits the sale of unpasteurized milk for human consumption, but permits the sale of such milk for animal feed. The proposed rule would require a warning label for unpasteurized milk sold as animal feed and would require use of colorants to discourage its use for human consumption.

Procedure by which a person can object to the agency on a proposed rule: Any person may object to the proposed rule by submitting a written statement of objection(s) to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Comments may be submitted to: David S. McLeod, 1001 Mail Service Center, Raleigh, NC 27699-1001, phone (919) 733-7125 extension 249, fax (919) 716-0105, email david.mcleod@ncmail.net

Comment period ends: December 15, 2006

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions

concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- State
- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 09 - FOOD AND DRUG PROTECTION DIVISION

SUBCHAPTER 09E - FEED

02 NCAC 09E .0116 UNPASTEURIZED MILK

(a) Unpasteurized milk distributed as commercial feed shall be decharacterized with a food coloring which will render the milk charcoal gray in color. The use of the food coloring shall be in compliance with the Federal Food, Drug, and Cosmetic Act.

(b) Unpasteurized milk distributed as commercial feed shall include in its labeling the statement, "NOT FOR HUMAN CONSUMPTION," in letters at least one-quarter inch in height on packages of eight ounces or less and at least one-half inch in height on any other size package.

Authority G.S. 106-284.41.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC DHHS, Division of Facility Services intends to amend the rule cited as 10A NCAC 14C .2103.

Proposed Effective Date: February 1, 2007

Public Hearing:

Date: December 6, 2006

Time: 2:00 p.m.

Location: Dorothea Dix Campus, Council Building, 701 Barbour Drive, Raleigh, NC 27606, Room 201

Reason for Proposed Action: Pursuant to 10A NCAC 14A .0101, a Petition for an amendment for Rulemaking filed by Duke University Health System.

Procedure by which a person can object to the agency on a proposed rule: An individual may object to the agency on the

proposed rule by submitting written comments on the proposed rule. They may also object by attending the public hearing and personally voice their objections during that time.

Comments may be submitted to: Nadine Pfeiffer, NC Division of Facility Services, 2711 Mail Service Center, Raleigh, NC 27699-2711, phone (919) 855-4551, fax (919) 733-8274, email Nadine.Pfeiffer@ncmail.net

Comment period ends: December 15, 2006

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- State
Local
Substantive (>=\$3,000,000)
None

CHAPTER 14 – DIRECTOR, DIVISION OF FACILITY SERVICES

SUBCHAPTER 14C – CERTIFICATE OF NEED REGULATIONS

SECTION .2100 – CRITERIA AND STANDARDS FOR SURGICAL SERVICES AND OPERATING ROOMS

10A NCAC 14C .2103 PERFORMANCE STANDARDS

- (a) In projecting utilization, the existing, approved and proposed operating rooms shall be considered to be available for use five days per week and 52 weeks a year.
(b) A proposal to establish a new ambulatory surgical facility, to increase the number of operating rooms (excluding dedicated C-section operating rooms), to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall not be approved unless: unless the applicant documents that the average number of surgical cases per operating room to be performed in each facility owned by the applicant in the proposed service area, is reasonably projected to be at least 2.4 surgical cases per day for each inpatient operating room (excluding dedicated open heart and dedicated C-Section operating rooms), 4.8 surgical cases per day for each outpatient

or ambulatory surgical operating room, and 3.2 surgical cases per day for each shared operating room during the third year of operation following completion of the project.

- (1) the applicant documents that the average number of surgical cases per operating room to be performed in each facility owned by the applicant in the proposed service area, is reasonably projected to be at least 2.4 surgical cases per day for each inpatient operating room (excluding dedicated open-heart and dedicated C-Section operating rooms), 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room, and 3.2 surgical cases per day for each shared operating room during the third year of operation following completion of the project; or
(2) the applicant is a hospital licensed to operate 500 or more acute care beds and otherwise reasonably projects that all the operating rooms in each facility owned by the applicant in the proposed service area will be utilized more than an average of 1872 hours per year in the third year of the project.

(c) A proposal to develop an additional operating room to be used as a dedicated C-section operating room shall not be approved unless the applicant documents that the average number of surgical cases per operating room to be performed in each facility owned by the applicant in the proposed service area, is reasonably projected to be at least 2.4 surgical cases per day for each inpatient operating room (excluding dedicated open-heart and dedicated C-section operating rooms), 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room and 3.2 surgical cases per day for each shared operating room during the third year of operation following completion of the project.

(d) An applicant proposing to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide documentation to show that each existing ambulatory surgery program in the service area that performs ambulatory surgery in the same specialty area as proposed in the application is currently operating at 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room, 7.2 gastrointestinal endoscopy cases per day for each gastrointestinal endoscopy room, and 3.2 surgical cases per day for each shared operating room.

(e) An applicant proposing to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide documentation to show that each existing and approved ambulatory surgery program in the service area that performs ambulatory surgery in the same specialty areas as proposed in the application is reasonably projected to be operating at 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room, 7.2 gastrointestinal endoscopy cases per day for each gastrointestinal endoscopy

room, and 3.2 surgical cases per day for each shared surgical operating room prior to the completion of the proposed project. (f) The applicant shall document the assumptions and provide data supporting the methodology used for each projection in this Rule.

Authority G.S. 131E-177; 131E-183(b).

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Home Inspector Licensure Board intends to amend the rules cited as 11 NCAC 08 .1101, .1103, .1105, .1107, .1109 - .1114.

Proposed Effective Date: February 1, 2007

Public Hearing:

Date: November 3, 2006

Time: 9:00 a.m.

Location: Holiday Inn/ Biltmore East, Blue Ridge Parkway, 1450 Tunnel Road, Asheville, NC 28805

Reason for Proposed Action: The amendments are technical changes for clarification purposes.

Procedure by which a person can object to the agency on a proposed rule: The Home Inspector Licensure Board/ Department of Insurance will accept written objections to these rules until the expiration of the comment period on December 15, 2006.

Comments may be submitted to: Ellen K. Sprenkel, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone (919) 733-4529, fax (919) 733-6495, email esprenke@ncdoi.net

Comment period ends: December 15, 2006

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- State
Local

- Substantive (>=\$3,000,000)
None

CHAPTER 08 - ENGINEERING AND BUILDING CODES DIVISION

SECTION .1100 - N.C. HOME INSPECTOR STANDARDS OF PRACTICE AND CODE OF ETHICS

11 NCAC 08 .1101 DEFINITIONS

The following definitions apply to this Section:

- (1) "Automatic safety controls" means devices designed and installed to protect systems and components from excessively high or low pressures and temperatures, excessive electrical current, loss of water, loss of ignition, fuel leaks, fire, freezing, or other unsafe conditions.
(2) "Central air conditioning" means a system that uses ducts to distribute cooled or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room, and that is not plugged into an electrical convenience outlet.
(3) "Component" means a readily accessible and observable aspect of a system, such as a floor, or wall, but not individual pieces such as boards or nails where many similar pieces make up the component.
(4) "Cosmetic damage" means superficial blemishes or defects that do not interfere with the functionality of the component or system.
(5) "Cross connection" means any physical connection or arrangement between potable water and any source of contamination.
(6) "Dangerous or adverse situations" means situations that pose a threat of injury to the inspector, or those situations that require the use of special protective clothing or safety equipment.
(7) "Describe" means report in writing a system or component by its type, or other inspected characteristics, to distinguish it from other systems or components used for the same purpose.
(8) "Dismantle" means to take apart or remove any component, device or piece of equipment that is bolted, screwed, or fastened by other means and that would not be dismantled by a homeowner in the course of normal household maintenance
(9) "Enter" means to go into an area to inspect all visible components.
(10) "Functional drainage" means a drain is functional when it empties in a reasonable amount of time and does not overflow when another fixture is drained simultaneously.

PROPOSED RULES

- (11) "Functional flow" means a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.
- (12) "Inspect" means the act of making a visual examination.
- (13) "Installed" means attached or connected such that an item requires tools for removal.
- (14) "Normal operating controls" means homeowner operated devices such as a thermostat, wall switch, or safety switch.
- (15) "On-site water supply quality" means water quality is based on the bacterial, chemical, mineral, and solids content of the water.
- (16) "On-site water supply quantity" means the rate of flow of on-site well water.
- (17) "Operate" means to cause systems or equipment to function.
- (18) "Readily accessible" means approachable or enterable for visual inspection without the risk of damage to any property or alteration of the accessible space, equipment, or opening.
- (19) "Readily openable access panel" means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person; and its edges and fasteners are not painted in place. This definition is limited to those panels within normal reach or from a four-foot stepladder, and that are not blocked by stored items, furniture, or building components.
- (20) "Readily visible" means seen by using natural or artificial light without the use of equipment or tools other than a flashlight.
- (21) "Representative number" means, for multiple identical components such as windows and electrical outlets, one such component per room; and, for multiple identical exterior components, one such component on each side of the building.
- (22) "Roof drainage systems" means gutters, downspouts, leaders, splash blocks, and similar components used to carry water off a roof and away from a building.
- (23) "Shut down" means a piece of equipment or a system which cannot be operated by the device or control that a homeowner should normally use to operate it. If its safety switch or circuit breaker is in the "off" position, or its fuse is missing or blown, the inspector is not required to reestablish the circuit for the purpose of operating the equipment or system.
- (24) "Solid fuel heating device" means any wood, coal, fossil, or other similar organic fuel burning device, including but not limited to fireplaces whether masonry or factory built, fireplace inserts and stoves, wood stoves (room heaters), central furnaces, and combinations of these devices.
- (25) "Structural component" means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).
- (26) "System" means a combination of interacting or interdependent components, assembled to carry out one or more functions.
- (27) "Technically exhaustive" means an inspection involving the use of measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.
- (28) "Under floor crawl space" means the area within the confines of the foundation and between the ground and the underside of the lowest floor structural component.
- (29) "Habitable space" means a space in a building for living, sleeping, eating or cooking. "Habitable space" does not mean a bathroom, toilet room, closet, or any space used or designed for storage.

Authority G.S. 143-151.49.

11 NCAC 08 .1103 PURPOSE AND SCOPE

(a) Home inspections performed according to this Section shall provide the client with an understanding of the property conditions, as inspected at the time of the home inspection.

(b) Home inspectors shall:

- (1) Provide a written contract, signed by the client, before the home inspection is performed that shall:
- (A) State that the home inspection is in accordance with the Standards of Practice of the North Carolina Home Inspector Licensure Board;
- (B) Describe what services shall be provided and their cost; and
- (C) State, when an inspection is for only one or a limited number of systems or components, that the inspection is limited to only those systems or components;
- (2) Inspect readily visible and readily accessible installed systems and components listed in this Section; and
- (3) Submit a written report to the client that shall:
- (A) Describe those systems and components required to be described in Rules .1106 through .1115 of this Section;
- (B) State which systems and components designated for inspection in this Section have been inspected, and state any systems or components designated for inspection that were

- (C) not inspected, and the reason for not inspecting; State any systems or components so inspected that do not function as intended, allowing for normal wear and tear, or adversely affect the habitability of the dwelling;
- (D) State whether the condition reported requires repair or subsequent observation, or warrants further investigation by a specialist; and
- (E) State the name, license number, and signature of the person supervising the inspection and the name, license number, and signature of the person conducting the inspection.

(c) This Section does not limit home inspectors from:

- (1) Reporting observations and conditions or rendering opinions of items in addition to those required in Paragraph (b) of this Rule; or
- (2) Excluding systems and components from the inspection if requested by the client, and so stated in the written contract.

(d) Written reports required by this Rule for pre-purchase home inspections of three or more systems shall include a separate section labeled "Summary" that includes any system or component that:

- (1) does not function as intended or adversely affects the habitability of the dwelling; or
- (2) warrants further investigation by a specialist or requires subsequent observation.

This summary shall not contain recommendations for routine upkeep of a system or component to keep it in proper functioning condition or recommendations to upgrade or enhance the ~~function, efficiency, or safety~~ function or efficiency of the home. This summary shall contain the following statements: "This summary is not the entire report. The complete report may include additional information of concern to the client. It is recommended that the client read the complete report."

Authority G.S. 143-151.49.

11 NCAC 08 .1105 GENERAL EXCLUSIONS

(a) Home inspectors are not required to report on:

- (1) Life expectancy of any component or system;
- (2) The causes of the need for a repair;
- (3) The methods, materials, and costs of corrections;
- (4) The suitability of the property for any specialized use;
- (5) Compliance or non-compliance with codes, ordinances, statutes, regulatory requirements or restrictions;
- (6) The market value of the property or its marketability;
- (7) The advisability or inadvisability of purchase of the property;

- (8) Any component or system that was not inspected;
- (9) The presence or absence of pests such as wood damaging organisms, rodents, or insects; or
- (10) Cosmetic damage, underground items, or items not permanently installed.

(b) Home inspectors are not required to:

- (1) Offer warranties or guarantees of any kind;
- (2) Calculate the strength, adequacy, or efficiency of any system or component;
- (3) Enter any area or perform any procedure that may damage the property or its components or be dangerous to or adversely affect the health or safety of the home inspector or other persons;
- (4) Operate any system or component that is shut down or otherwise inoperable;
- (5) Operate any system or component that does not respond to normal operating controls;
- (6) Move personal items, panels, furniture, equipment, plant life, soil, snow, ice, or debris that obstructs access or visibility;
- (7) Determine the presence or absence of any suspected adverse environmental condition or hazardous substance, including but not limited to toxins, carcinogens, noise, contaminants in the building or in soil, water, and air;
- (8) Determine the effectiveness of any system installed to control or remove suspected hazardous substances;
- (9) Predict future condition, including but not limited to failure of components;
- (10) Project operating costs of components;
- (11) Evaluate acoustical characteristics of any system or component;
- (12) Inspect special equipment or accessories that are not listed as components to be inspected in this Section; or
- (13) Disturb insulation, except as required in Rule .1114 of this Section.

(c) Home inspectors shall not:

- (1) Offer or perform any act or service contrary to law; or
- (2) Offer or perform engineering, architectural, plumbing, electrical or any other job function requiring an occupational license in the jurisdiction where the inspection is taking place, unless the home inspector holds a valid occupational license, in which case the home inspector shall inform the client that the home inspector is so licensed, and therefore qualified to go beyond this Section and perform additional inspections beyond those within the scope of the ~~basic inspection.~~ Standards of Practice.

Authority G.S. 143-151.49.

11 NCAC 08 .1107 EXTERIOR

- (a) The home inspector shall inspect:
- (1) Wall cladding, flashings, and trim;
 - (2) Entryway doors and a representative number of windows;
 - (3) Garage door operators;
 - (4) Decks, balconies, stoops, steps, areaways, porches and applicable railings;
 - (5) Eaves, soffits, and fascias; ~~and~~
 - (6) ~~Vegetation, grading, drainage, driveways, Driveways, patios, walkways, and retaining walls with respect to their effect on the condition of the building, walls; and~~
 - (7) Vegetation, grading, and drainage with respect only to their effect on the condition of the building.
- (b) The home inspector shall:
- (1) Describe wall cladding materials;
 - (2) Operate all entryway ~~doors and a representative number of windows;~~ doors;
 - (3) Operate garage doors manually or by using permanently installed controls for any garage door operator;
 - (4) Report whether or not any garage door operator will automatically reverse or stop when meeting reasonable resistance during closing; and
 - (5) Probe exterior wood components where deterioration is suspected.
- (c) The home inspector is not required to inspect:
- (1) Storm windows, storm doors, screening, shutters, awnings, and similar seasonal accessories;
 - (2) Fences;
 - (3) For the presence of safety glazing in doors and windows;
 - (4) Garage door operator remote control transmitters;
 - (5) Geological conditions;
 - (6) Soil conditions;
 - (7) Recreational facilities (including spas, saunas, steam baths, swimming pools, tennis courts, playground equipment, and other exercise, entertainment, or athletic facilities); except as otherwise provided in 11 NCAC 08 .1109(d)(5)(F);
 - (8) Detached buildings or structures; or
 - (9) For the presence or condition of buried fuel storage tanks.

Authority G.S. 143-151.49.

11 NCAC 08 .1109 PLUMBING

- (a) The home inspector shall inspect:
- (1) Interior water supply and distribution system, including: piping materials, supports, and insulation; fixtures and faucets; functional flow; leaks; and cross connections;

- (2) Interior drain, waste, and vent system, including: traps; drain, waste, and vent piping; piping supports and pipe insulation; leaks; and functional drainage;
 - (3) Hot water systems including: water heating equipment; normal operating controls; automatic safety controls; and chimneys, flues, and vents;
 - (4) Fuel storage and distribution systems including: interior fuel storage equipment, supply piping, venting, and supports; leaks; and
 - (5) Sump pumps.
- (b) The home inspector shall describe:
- (1) Water supply and distribution piping materials;
 - (2) Drain, waste, and vent piping materials;
 - (3) Water heating ~~equipment;~~ equipment, including fuel or power source, storage capacity, and location; and
 - (4) The location of any main water supply shutoff device.
- (c) The home inspector shall operate all plumbing fixtures, including their faucets and all exterior faucets attached to the house, except where the flow end of the faucet is connected to an appliance.
- (d) The home inspector is not required to:
- (1) State the effectiveness of anti-siphon devices;
 - (2) Determine whether water supply and waste disposal systems are public or private;
 - (3) Operate automatic safety controls;
 - (4) Operate any valve except water closet flush valves, fixture faucets, and hose faucets;
 - (5) Inspect:
 - (A) Water conditioning systems;
 - (B) Fire and lawn sprinkler systems;
 - (C) On-site water supply quantity and quality;
 - (D) On-site waste disposal systems;
 - (E) Foundation irrigation systems;
 - (F) Bathroom spas, except as to functional flow and functional drainage;
 - (G) Swimming pools;
 - (H) Solar water heating equipment; or
 - (6) Inspect the system for proper sizing, design, or use of proper materials.

Authority G.S. 143-151.49.

11 NCAC 08 .1110 ELECTRICAL

- (a) The home inspector shall inspect:
- (1) Service entrance conductors;
 - (2) Service equipment, grounding equipment, main overcurrent device, and main and distribution panels;
 - (3) Amperage and voltage ratings of the service;

PROPOSED RULES

- (4) Branch circuit conductors, their overcurrent devices, and the compatibility of their ~~ampacities and voltages; ampacities;~~
 - (5) The operation of a representative number of installed ceiling fans, lighting fixtures, switches and receptacles located inside the house, garage, and on the dwelling's exterior walls;
 - (6) The polarity and grounding of all receptacles within six feet of interior plumbing fixtures, and all receptacles in the garage or carport, and on the exterior of inspected structures;
 - (7) The operation of ground fault circuit interrupters; and
 - (8) Smoke detectors.
- (b) The home inspector shall describe:
- (1) Service amperage and voltage;
 - (2) Service entry conductor materials;
 - (3) The service type as being overhead or underground; and
 - (4) The location of main and distribution panels.
- (c) The home inspector shall report the presence of any readily accessible single strand aluminum branch circuit wiring.
- (d) The home inspector shall report on the presence or absence of smoke detectors, and operate their test function, if accessible, except when detectors are part of a central alarm system.
- (e) The home inspector is not required to:
- (1) Insert any tool, probe, or testing device inside the panels;
 - (2) Test or operate any overcurrent device except ground fault circuit interrupters;
 - (3) Dismantle any electrical device or control other than to remove the covers of the main and auxiliary distribution panels; or
 - (4) Inspect:
 - (A) Low voltage systems;
 - (B) Security system devices, heat detectors, or carbon monoxide detectors;
 - (C) Telephone, security, cable TV, intercoms, or other ancillary wiring that is not a part of the primary electrical distribution system; or
 - (D) Built-in vacuum equipment.

Authority G.S. 143-151.49.

11 NCAC 08 .1111 HEATING

- (a) The home inspector shall inspect permanently installed heating systems including:
- (1) Heating equipment;
 - (2) Normal operating controls;
 - (3) Automatic safety controls;
 - (4) Chimneys, flues, and vents, where readily visible;
 - (5) Solid fuel heating devices;
 - (6) Heat distribution systems including fans, pumps, ducts and piping, with supports,

- insulation, air filters, registers, radiators, fan coil units, convectors; and
 - (7) The presence or absence of an installed heat source ~~in for each room;~~ habitable space.
- (b) The home inspector shall describe:
- (1) Energy source; and
 - (2) Heating equipment and distribution type.
- (c) The home inspector shall operate the systems using normal operating controls.
- (d) The home inspector shall open readily openable access panels provided by the manufacturer or installer for routine homeowner maintenance.
- (e) The home inspector is not required to:
- (1) Operate heating systems when weather conditions or other circumstances may cause equipment damage;
 - (2) Operate automatic safety controls;
 - (3) Ignite or extinguish solid fuel fires; ~~or~~
 - (4) Ignite a pilot light; or
 - (~~4~~)(5) Inspect:
 - (A) The interior of flues;
 - (B) Fireplace insert flue connections;
 - (C) Heat exchangers;
 - (~~C~~)(D) Humidifiers;
 - (~~D~~)(E) Electronic air filters; ~~or~~
 - (~~E~~)(F) The uniformity or adequacy of heat supply to the various ~~rooms;~~ rooms;
 - or
 - (G) Solar space heating equipment.

Authority G.S. 143-151.49.

11 NCAC 08 .1112 AIR CONDITIONING

- (a) The home inspector shall inspect:
- (1) Central air conditioning and through-the-wall installed cooling systems including:
 - (A) Cooling and air handling equipment; and
 - (B) Normal operating controls.
 - (2) Distribution systems including:
 - (A) Fans, pumps, ducts and piping, with associated supports, dampers, insulation, air filters, registers, fan-coil units; and
 - (B) The presence or absence of an installed cooling source in each ~~room;~~ habitable space.
- (b) The home inspector shall describe:
- (1) Energy sources; and
 - (2) Cooling equipment type.
- (c) The home inspector shall operate the systems using normal operating controls.
- (d) The home inspector shall open readily openable access panels provided by the manufacturer or installer for routine homeowner maintenance.
- (e) The home inspector is not required to:

PROPOSED RULES

- (1) Operate cooling systems when weather conditions or other circumstances may cause equipment damage;
- (2) Inspect window air conditioners; or
- (3) Inspect the uniformity or adequacy of cool-air supply to the various rooms.

Authority G.S. 143-151.49.

11 NCAC 08 .1113 INTERIORS

- (a) The home inspector shall inspect:
 - (1) Walls, ceiling, and floors;
 - (2) Steps, stairways, balconies, and railings;
 - (3) Counters and a representative number of built-in cabinets; and
 - (4) A representative number of doors and windows.
- (b) The home inspector shall:
 - (1) Operate a representative number of windows and interior doors; and
 - (2) Report signs of ~~abnormal or harmful~~ water penetration into the building or signs of abnormal or harmful condensation on building components.
- (c) The home inspector is not required to inspect:
 - (1) Paint, wallpaper, and other finish treatments on the interior walls, ceilings, and floors;
 - (2) Carpeting; or
 - (3) Draperies, blinds, or other window treatments.

Authority G.S. 143-151.49.

11 NCAC 08 .1114 INSULATION AND VENTILATION

- (a) The home inspector shall inspect:
 - (1) Insulation and vapor retarders in unfinished spaces;
 - (2) Ventilation of attics and foundation areas;
 - (3) Kitchen, bathroom, and laundry venting systems; and
 - (4) The operation of any readily accessible attic ventilation fan, and, when temperature permits, the operation of any readily accessible thermostatic control.
- (b) The home inspector shall describe:
 - (1) Insulation in unfinished spaces; and
 - (2) The absence of insulation in unfinished space at conditioned surfaces.
- (c) The home inspector is not required to report on:
 - (1) Concealed insulation and vapor retarders; or
 - (2) Venting equipment that is integral with household appliances.
- (d) The home inspector shall:
 - (1) Move insulation where readily visible evidence indicates the possibility of a problem; and
 - (2) Move floor insulation where ~~chimneys~~ penetrate roofs, where plumbing drain/waste

pipes penetrate floors, adjacent to earth-filled stoops or porches, and at exterior doors.

Authority G.S. 143-151.49.

TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Community Colleges intends to amend the rules cited as 23 NCAC 02C .0202 and 23 NCAC 02D .0101.

Proposed Effective Date: *February 1, 2007*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Requests for public hearing should be made in writing to the Rule-making Coordinator at the following address: North Carolina Community College System, 5001 Mail Service Center, Raleigh, NC 27699-5001*

Reason for Proposed Action:

23 NCAC 02C .0202 – *Southern Association on Colleges and Schools has substantively revised and renamed its publication, previously known as The Criteria for Accreditation. This amendment will recognize the publication's new name and the substantive changes made in the revised publication.*

23 NCAC 02D .0101 – *The State Board of Community Colleges seeks to alter the System's presidential salary schedule to give credit for as many as 20 years of prior experience. Currently credit is given for a maximum of 10 years of experience.*

Procedure by which a person can object to the agency on a proposed rule: *Written objections can be submitted to the following: Rule-making Coordinator, 5001 Mail Service Center, Raleigh, NC 27699-5001. Written objections must be received by 5:00 p.m. on December 15, 2006.*

Comments may be submitted to: *David J. Sullivan, 5001 Mail Service Center, Raleigh, NC 27699-5001, phone (919) 807-6961, fax (919) 807-7171*

Comment period ends: *December 15, 2006*

Procedure for Subjecting a Proposed Rule to Legislative Review: *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive*

those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- State
- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 02 – COMMUNITY COLLEGES

SUBCHAPTER 02C - COLLEGES: ORGANIZATION AND OPERATIONS

SECTION .0200 – PERSONNEL

23 NCAC 02C .0202 FACULTY

(a) General

- (1) Colleges shall employ faculty members so as to meet Southern Association of Colleges and Schools' criteria.
- (2) Colleges shall determine appropriate teaching and non-teaching loads for faculty and for technical assistants to the faculty so as to meet Southern Association of Colleges and Schools' criteria.
- (3) ~~The Criteria For Accreditation, The Principles of Accreditation: Foundations for Quality Enhancement~~ Commission on Colleges, Southern Association of Colleges and Schools, current edition is hereby adopted by reference including any subsequent amendments and editions of this book to apply to community colleges. Copies for ~~the Criteria for Accreditation~~ The Principles of Accreditation: Foundations for Quality Enhancement may be inspected in or obtained at no cost from the Office of the System President, Department of Community Colleges, 200 W. Jones Street, Raleigh, NC 27603-1379.

(b) Instructors for Extension Emergency Services Training. All instructors in the area of Emergency Services Training must be qualified as established by the respective emergency services certifying agency. Emergency services training means training delivered to personnel in law enforcement, fire and rescue services, and emergency medical services agencies.

Authority G.S. 115D-1; 115D-5; 115D-20; 150B-21.6; S.L. 1995, C. 625.

SUBCHAPTER 02D - COMMUNITY COLLEGES: FISCAL AFFAIRS

SECTION .0100 - SALARIES

23 NCAC 02D .0101 ESTABLISHING PAY RATES

(a) The monthly and annual salaries or hourly rates of pay from state funds for full-time and part-time personnel in community colleges shall be established by the college president and approved by the board of trustees within the budget approved for the college by the State Board and in accordance with the regulations approved by the State Board, except that the state-funded portion of the president's salary shall be approved by the System President in accordance with the state salary schedule for presidents. Salary increases shall be granted annually or upon promotion to a higher position. Legislative increases shall be granted according to requirements set forth by the General Assembly. The State Board shall adopt a minimum and maximum amount of state funds which may be paid to any individual working in a college. Individuals shall be paid no less than the minimum and not more than the maximum amounts at a level determined by the salary approving authority at the college.

(b) All hourly, monthly, and annual salaries for full-time or part-time personnel shall be certified by the president of the college and reported to the System Office.

(c) The State Board shall adopt a state salary schedule for presidents in the system. The System President shall determine the proper placement of a newly-hired president on the state salary schedule based on the size of the college and the individual's years of eligible experience in accordance with the following provisions:

- (1) For the purpose of this Paragraph, an increment is defined as an additional year of experience on the State salary schedule adopted by the State Board.
- (2) College size shall be determined by the total FTE served and reported in the enrollment reports furnished the System Office.
- (3) A president of a post-secondary education institution shall be allowed increments for prior experience on a year-for-year basis for a maximum of ~~10~~ 20 years.
- (4) An executive vice president, vice president, other senior administrator of a post-secondary institution, a state-level administrative department, or a superintendent of a public school system may be given increment experience on the president salary schedule upon recommendation of the board of trustees and approval of the System President as follows:
 - one increment for three years of actual experience;
 - two increments for five years of actual experience;
 - three increments for seven years of actual experience;
 - four increments for 10 or more years of actual experience.

A president, chief operating officer or chief financial officer of a business or industry may be granted increment experience as provided in this Part.

PROPOSED RULES

- (A) Progression from the minimum or "0" step to the midpoint or step "~~10~~""20" shall be based on additional years of experience;
 - (B) Advancement toward grade maximum after attaining the midpoint of the grade shall be based on merit increases as recommended by the local boards and within state allocations available;
 - (C) Newly-hired presidents shall not receive salary increments for any years in which a salary freeze was in effect for community college presidents.
- (5) Changes in grade levels:
- (A) Presidents with 0 to ~~10~~20 years of eligible experience moving to another grade shall be placed in the new grade's range at the current experience level; and
 - (B) Presidents with greater than ~~10~~20 years of experience moving to a lower grade will receive a salary adjustment only if the current salary exceeds the new salary grade's maximum salary limit, in which case, the salary will be adjusted to the maximum of the new grade.
- (6) Total salary compensation from all sources shall not exceed the maximum for the salary grade as determined by the college's size. Salary compensation is defined as those monies paid from whatever source for which no documentation or expense is required, or which is treated as salary for retirement benefit purposes.
- (7) An interim or acting president's salary will be set at the step of the salary grade for the respective college. Years of eligible experience will be awarded up to ~~10~~20 years for placement on the appropriate step. However, a board of trustees may grant a college employee appointed interim or acting president a 10 percent salary increase instead of placing the employee on the president's salary schedule.
- (8) Presidential salary grades shall reflect the following:
- FTE
 - Minimum
 - Midpoint
 - Maximum
- These data shall be increased annually based on legislative action and reviewed no less than every three years to assure their continued national competitiveness.
- (d) Post-secondary institution as used in this Rule means a junior college, community college or four-year institution of higher education.
- Authority G.S. 115D-5; 115D-54; S.L. 2005-276.*

TEMPORARY RULES

Note from the Codifier: *The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.*

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

EXPIRED TEMPORARY RULES - PENDING

The following temporary rules have expired and are removed from the NC Administrative Code. The dates shown to the right of the rule citation are the original effective date and the date the rule expired.

<u>Rule Citation</u>	<u>Effective Date</u>	<u>Expiration Date</u>
Department of Labor 13 NCAC 06 .0601	November 1, 2005	August 12, 2006

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday September 21, 2006, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jim R. Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Thomas Hilliard, III
Robert Saunders
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
John B. Lewis
Mary Beach Shuping
Judson A. Welborn
John Tart

RULES REVIEW COMMISSION MEETING DATES

October 19, 2006 November 16, 2006
December 14, 2006 January 18, 2007

**RULES REVIEW COMMISSION
SEPTEMBER 21, 2006
MINUTES**

The Rules Review Commission met on Thursday, September 21, 2006, in the Cabinet Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jim Funderburk, Jennie Hayman; Thomas Hilliard; John Lewis, Robert Saunders, Mary Shuping, John Tart, and Judson Welborn. Staff members present were: Joseph DeLuca, Staff Counsel; Bobby Bryan, Rules Review Specialist; Lisa Johnson and Barbara Townsend, Administrative Assistants.

The following people attended:

Linda Dupree	DENR
Alice Isley	DENR
Carolyn Bakewell	NCSBDE
Terry Friddle	NCSBDE
Don Rayno	DENR/DWR
Glenda Artis	DHHS
Christine O. Trottier	Carolina Legal Assistance
Nadine Pfeiffer	Division of Facility Services
Azzie Conley	Division of Facility Services
Hazel Slocumb	Division of Facility Services
Andy Ellen	NC Retail Merchant's Association
Ellie Sprenkel	Department of Insurance
Fred Fuller	Department of Insurance
Cindy Kornegay	DHHS/DMH/DD/SAS
Dana Sholes	OAH
Julie Edwards	OAH
Felicia Williams	OAH
Molly Masich	OAH
Donna White	DHHS
Harry Wilson	Board of Education
Larry Hughes	Department of Insurance
Nancy Pate	DENR
Linda Raynor	DENR
Bethany Goodwin	DENR

Julia Caviler	DENR
Ed Mussler	DENR
Geoff Little	DENR
Susan Loy	NC Psychology Board
Daisy Morris	Public Health
Ellen Lorscheider	DENR
Julian Mann	OAH

APPROVAL OF MINUTES

The meeting was called to order at 10:09 a.m. with Chairman Hayman presiding. Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the August 17, 2006 meetings. The minutes were approved as written.

FOLLOW-UP MATTERS

15A NCAC 2E .0611: Environmental Management Commission – The Commission approved the rewritten rule submitted by the agency.

21 NCAC 14J .0502: Cosmetic Art Examiners - The Commission did not receive any response from the agency therefore no action was taken.

23 NCAC 3A .0113: Board of Community Colleges - The Commission did not receive any response from the agency therefore no action was taken.

LOG OF FILINGS

Chairman Hayman presided over the review of the log of permanent rules. All rules were approved unanimously with the following exceptions:

10A NCAC 13J .0903: Medical Care Commission – The Commission objected to the rule due to ambiguity. In (b), it is not clear what standards the Department is to use in determining how long a period of time a license is for. In (g), it is not clear if the Department will automatically approve added services or if there are some standards that must be met for approval. If there are standards, it is not clear what they are. This objection applies to existing language in the rule.

10A NCAC 13J .1110: Medical Care Commission – The Commission objected to the rule due to ambiguity. It is not clear what the first sentence in (a) requires. It is unlikely that many, if any, occupational licensing boards have competency testing requirements for their licensees after they are licensed. This objection applies to existing language in the rule.

10A NCAC 26E .0603: Commission for Mental Health – This rule was withdrawn and .0604 was renumbered to .0603.

12 NCAC 7D .0707: Private Protective Services Board - This rule was reviewed by the Commission and approved. However it was subsequently determined that the Commission had received a request from the agency to withdraw the rule. There was a need for additional review of the rule expressed by the Attorney General’s office and the agency desired to comply with this request. The rule has been withdrawn and removed from the approved list of rules. It has been returned to the agency.

15A NCAC 13B .0533: Commission for Health Services – The Commission objected to the rule based on ambiguity. In (c)(6)(A), page 5 lines 2 and 3, it is unclear what standards the Division will use to determine “on the basis of requests” that there is “a significant degree of public interest” to require it to hold a public hearing. In (c)(6)(B), page 5 lines 13 and 14, it is unclear what standards the hearing officer will use in deciding whether to extend the public comment period.

15A NCAC 13B .0534: Commission for Health Services – The Commission objected to the rule based on ambiguity or lack of authority. In (b)(2)(H), page 2 lines 15 and 16, it is unclear what standards the Division will use to approve an extension of the 18 month deadline. Another way to look at this rule is that there is an 18 month limitation for commencing construction and this constitutes a waiver of the 18 month deadline. Waivers are permitted under G.S. 150B-19(6) if the rule establishes “specific guidelines the agency must follow in determining whether to waive or modify the requirement.” There are no guidelines for this waiver. The agency lacks authority to allow a waiver without specifying the guidelines.

15A NCAC 13B .0536: Commission for Health Services – The Commission objected to the rule based on ambiguity. In (c)(7), page 4 lines 15 and 16, the rule specifies that the “Department of Cultural Resources shall determine archeological or historical significance.” It is unclear what standards the Department of Cultural Resources should use in determining “archeological or historical significance.” Even though this determination is made by someone other than the rulemaking agency, the standards or criteria for making the determination must be set out in the rules. This could be done by referring to where the Department of Cultural Resources makes the determination in other circumstances or by reference to some other outside source. Whether a permit is granted, denied, or modified on this basis an applicant or challenger needs to have standards set out on which to contest the decision. In (c)(8), page 4 line 24, it is unclear what constitutes an “adverse impact” on the specified lands, or what the standards might be for determining it, or how those standards might be set.

25 NCAC 1I .2404: State Personnel Commission – The RRC extended the period of review on this rule in order to obtain additional information concerning this rule. The Commission wishes to determine the precise meaning of “substantially equivalent” and whether a separate definition is necessary. It also wishes to obtain some additional information concerning what the “substantial equivalency program” is.

COMMISSION PROCEDURES AND OTHER BUSINESS

Chairman Hayman reminded the Commissioners to complete all portions and requests on their reimbursement forms because Rules Review staff is no longer able to add or make corrections to forms.

Mr. DeLuca reviewed the commentary from the Board of Ethics concerning the substance of the new ethics law and its implementation.

Mr. Bryan informed the Commission of the October 18, 2006 court date scheduled for the Board of Pharmacy case.

The meeting adjourned at 12:03 p.m.

The next scheduled meeting of the Commission is Thursday, October 19, 2006 at 10:00 a.m.

Respectfully submitted,
Lisa Johnson

AGENDA
RULES REVIEW COMMISSION
October 19, 2006, 10:00 A.M.

- I. REMINDER OF GOVERNOR’S EXECUTIVE ORDER #1
- II. Review of minutes of last meeting
- III. Follow-Up Matters
 - A. Medical Care Commission – 10A NCAC 13J .0903 & .1110 (Bryan)
 - B. Commission for Health Services – 15A NCAC 13B .0533, .0534, & .0536 (DeLuca)
 - C. Cosmetic Art Examiners – 21 NCAC 14J .0502 (DeLuca)
 - D. Board of Community Colleges – 23 NCAC 3A .0113 (DeLuca)
 - E. State Personnel Commission – 25 NCAC 01I .2404 (DeLuca)

- IV. REVIEW OF RULES (LOG REPORT)
- V. REVIEW OF TEMPORARY RULES (IF ANY)
- VI. COMMISSION BUSINESS
- VII. NEXT MEETING: NOVEMBER 16, 2006

Commission Review/Permanent Rules

Log of Filings

August 22, 2006 through September 21, 2006

* Approval Recommended, ** Objection Recommended, *** Other

CHILD CARE COMMISSION

The Rules in Chapter 9 are child care rules including definitions (.0100); general provisions relating to licensing (.02000); procedures for obtaining a license (.0300); issuance of provisional and temporary licenses (.0400); age appropriate activities for centers (.0500); safety requirements for child care centers (.0600); health and other standards for center staff (.0700); health standards for children; (.0800); nutrition standards (.0900); transportation standards (.1000); building code requirements for child care centers (.1300); space requirements (.1400); temporary care requirements (.1500); requirements for voluntary enhanced program standards (.1600); family child care home requirements (.1700); discipline (.1800); special procedures concerning abuse/neglect in child care (.1900); rulemaking and contested case procedures (.0200); religious sponsored child care center requirements (.2100); administrative actions and penalties (.2200); forms (.2300); child care for mildly ill children (.2700); child care for school age children (.2500); criminal records checks (.2700) and voluntary rated licenses (.2800).

General Provisions Related to Licensure of Homes 10A NCAC 09 .1701
Amend/*

HHS-FACILITY SERVICES

The rules in Chapter 14 concern services provided by the Division of Facility Services.

The rules in Subchapter 14C are Certificate of Need regulations including general provisions (.0100); applications and review process (.0200); exemptions (.0300); appeal process (.0400); enforcement and sanctions (.0500); and criteria and standards for nursing facility or adult care home services (.1100); intensive care services (.1200); pediatric intensive care services (.1300); neonatal services (.1400); hospices, hospice inpatient facilities, and hospice residential care facilities (.1500); cardiac catheterization equipment and cardiac angioplasty equipment (.1600); open heart surgery services and heart-lung bypass machines (.1700); diagnostic centers (.1800); radiation therapy equipment (.1900); home health services (.2000); surgical services and operating rooms (.2100); and stage renal disease services (.2200); computed tomography equipment (.2300); immediate care facility/mentally retarded (ICF/MR) (.2400); substance abuse/chemical dependency treatment beds (.2500); psychiatric beds (.2600); magnetic resonance imaging scanner (.2700); rehabilitation services (.2800); bone marrow transplantation services (.2900); solid organ transplantation services (.3000); major medical equipment (.3100); lithotripter equipment (.3200); air ambulance (.3300); burn intensive care services (.3400); oncology treatment centers (.3500); gamma knife (.3600); positron emission tomography scanner (.3700); acute care beds (.3800); criteria and standards for gastrointestinal endoscopy procedure rooms in licensed health service facilities (.3900); and criteria and standards for hospice inpatient facilities and hospice residential care facilities (.4000).

Filing Applications 10A NCAC 14C .0203
Amend/*

Definitions 10A NCAC 14C .1501
Amend/*

Information Required of Applicant 10A NCAC 14C .1502
Amend/*

<u>Performance Standards</u> Amend/*	10A NCAC 14C .1503
<u>Support Services</u> Amend/*	10A NCAC 14C .1504
<u>Staffing and Staff Training</u> Amend/*	10A NCAC 14C .1505
<u>Definitions</u> Amend/*	10A NCAC 14C .1601
<u>Information Required of Applicant</u> Amend/*	10A NCAC 14C .1602
<u>Performancy Standards</u> Amend/*	10A NCAC 14C .1603
<u>Staffing and Staff Training</u> Amend/*	10A NCAC 14C .1605
<u>Definitions</u> Amend/*	10A NCAC 14C .1901
<u>Definitions</u> Amend/*	10A NCAC 14C .2101
<u>Performance Standards</u> Amend/*	10A NCAC 14C .2103
<u>Performance Standards</u> Amend/*	10A NCAC 14C .2203
<u>Information Required of Applicant</u> Amend/*	10A NCAC 14C .2502
<u>Staffing and Staff Training</u> Amend/*	10A NCAC 14C .2505
<u>Information Required of Applicant</u> Amend/*	10A NCAC 14C .2602
<u>Definitions</u> Amend/*	10A NCAC 14C .2701
<u>Information Required of Applicant</u> Amend/*	10A NCAC 14C .2702
<u>Performance Standards</u> Amend/*	10A NCAC 14C .2703
<u>Support Services</u> Amend/*	10A NCAC 14C .2704
<u>Staffing and Staff Training</u> Amend/*	10A NCAC 14C .2705
<u>Definitions</u> Amend/*	10A NCAC 14C .2801
<u>Quality of Services</u> Repeal/*	10A NCAC 14C .2806
<u>Definitions</u> Repeal/*	10A NCAC 14C .3501
<u>Information Required of Applicant</u> Repeal/*	10A NCAC 14C .3502
<u>Support Services</u> Repeal/*	10A NCAC 14C .3504
<u>Staffing and Staff Training</u> Repeal/*	10A NCAC 14C .3505
<u>Information Required of Applicant</u> Amend/*	10A NCAC 14C .3702

<u>Performance Standards</u> Amend/*	10A NCAC 14C .3703
<u>Support Services</u> Amend/*	10A NCAC 14C .3704
<u>Definitions</u> Adopt/*	10A NCAC 14C .3901
<u>Information Required of Applicant</u> Adopt/*	10A NCAC 14C .3902
<u>Performance Standards</u> Adopt/*	10A NCAC 14C .3903
<u>Support Services</u> Adopt/*	10A NCAC 14C .3904
<u>Staffing and Staff Training</u> Adopt/*	10A NCAC 14C .3905
<u>Facility</u> Adopt/*	10A NCAC 14C .3906
<u>Definitions</u> Adopt/*	10A NCAC 14C .4001
<u>Information Required of Applicant</u> Adopt/*	10A NCAC 14C .4002
<u>Performance Standards</u> Adopt/*	10A NCAC 14C .4003
<u>Support Services</u> Adopt/*	10A NCAC 14C .4004
<u>Staffing and Staff Training</u> Adopt/*	10A NCAC 14C .4005

BUILDING CODE COUNCIL

<u>Fire Code 903.2.7 Group R Sprinklers (060314 Item B-3)</u> Amend/*	11 NCAC 08
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PRIVATE PROTECTIVE SERVICES BOARD

The rules in Chapter 7 are the rules of the Private Protective Services Board.

The rules in Subchapter 7D are from the N. C. Private Protective Services Board and cover general provisions (.0100); licenses and trainee permits (.0200); guard dog services (.0300); counterintelligence (.0400); polygraphs (.0500); psychological stress evaluators (PSE) (.0600); unarmed and armed security guards (.0700-.0800); firearms certificate (.0900); recovery funds (.1000); private investigator associates (.1100); firearms instructor trainers (.1200); and continuing education (.1300).

<u>Training Requirements for Unarmed Security Guards</u> Amend/*	12 NCAC 07D .0707
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ALARM SYSTEMS LICENSING BOARD

The rules in Chapter 11 are from the N.C Alarm Systems Licensing Board and cover the organization and general provisions (.0100); license applications and requirements (.0200); registration of employees of licensees (.0300); the recovery fund (.0400); and continuing education for licensees (.0500).

<u>Application for License</u> Amend/**	12 NCAC 11 .0201
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<u>Experience Requirements for License</u> Amend/*	12 NCAC 11 .0202
<u>Application for Registration</u> Amend/*	12 NCAC 11 .0301

LABOR, DEPARTMENT OF

The rules in Chapter 13 concern boiler and pressure vessel including definitions (.0100); administration (.0200); enforcement of standards (.0300); general requirements (.0400); non-standard boilers and pressure vessels (.0500); hot water vessels used for heating or for storage of hot water (.0600); nuclear energy systems (.0700); and forms (.0800).

<u>Menace to Public Safety Notice</u> Repeal/*	13 NCAC 13 .0817
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ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

The rules in Chapter 9 are from the Division of Forest Resources.

The rules in 9C concern division programs including administration (.0100); forest fire control (.0200); pest control (.0300); forest management (.0400); forest tree seedlings (.0500); custom forestry services (.0600); Bladen Lakes State Forest (.0700); educational state forests (.0800); forest development program (.0900); urban and community forestry (.1000); NC prescribed burning act (.1100); and Dupont State Forest (.1200).

<u>Forest Development Program Approved Practices</u> Amend/*	15A NCAC 09C .0903
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HEALTH SERVICES, COMMISSION FOR

The rules in Chapter 18 are from the Commission for Health Services and cover environmental aspects of health such as sanitation (18A), mosquito control (18B), water supplies (18C), and water treatment facility operators (18D).

The rules in Subchapter 18A deal with sanitation and include handling, packing and shipping of crustacean meat (.0100); sanitation of scallops (.0200) and shellfish (.0300 and .0400); operation of shellstock plants and reshippers (.0500); shucking and packing plants (.0600); depuration facilities (.0700); wet storage of shellstock (.0800); shellfish growing waters (.0900); summer camps (.1000); food and beverage vending machines (.1100); grade A milk (.1200); hospitals, nursing homes, rest homes, etc. (.1300); mass gatherings (.1400); local confinement facilities (.1500); residential care facilities (.1600); protection of water supplies (.1700); lodging places (.1800); sewage treatment and disposal systems (.1900); migrant housing (.2100); bed and breakfast homes (.2200); delegation of authority to enforce rules (.2300); public, private and religious schools (.2400); public swimming pools (.2500); restaurants meat markets, and other food handling establishments (.2600); child day care facilities (.2800); restaurant and lodging fee collection program (.2900); bed and breakfast inns (.3000); lead poisoning prevention (.3100); tattooing (.3200); adult day service facilities (.3300); and primitive camps (.3500).

<u>Lavatories and Baths</u> Amend/*	15A NCAC 18A .1809
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<u>Definitions</u> Amend/*	15A NCAC 18A .2201
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WATER TREATMENT FACILITY OPERATORS CERTIFICATION BOARD

The rules in Subchapter 18D concern water treatment facility operators including general policies (.0100); qualification of applicants and classification of facilities (.0200); applications and fees (.0300); issuance of certificate (.0400); rule-making procedures (.0500); contested cases (.0600) and operation and management (.0700).

<u>Water Treatment Facility Operators Certification Board</u> Amend/*	15A NCAC 18D .0205
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<u>Certified Operator Required</u>	15A NCAC 18D .0206
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Amend/*

PHYSICAL THERAPY EXAMINERS

The rules in Chapter 48 are from the Board of Physical Therapy Examiners.

The rules in Subchapter 48C concern the scope of physical therapy practice and include physical therapists (.0100); physical therapists assistants (.0200); recent graduates (.0300); physical therapy aides (.0400); physical therapy students (.0500); and other assistive personnel (.0600).

<u>Permitted Practice</u>	21	NCAC	48C	.0101
Amend/*				
<u>Responsibilities</u>	21	NCAC	48C	.0102
Amend/*				
<u>Prohibited Practice</u>	21	NCAC	48C	.0103
Amend/*				
<u>Supervision by Physical Therapist</u>	21	NCAC	48C	.0201
Amend/*				
<u>Function</u>	21	NCAC	48C	.0402
Amend/*				

The rules in Subchapter 48D concern examinations.

<u>Persons Refused Examination Permission</u>	21	NCAC	48D	.0107
Amend/*				

The rules in Subchapter 48E deal with the application for licensure including requirements (.0100); foreign-trained physical therapists (.0200); graduate students (.0300); PT assistant program graduates (.0400); and PT assistant licensure by equivalency (.0500).

<u>Foreign-Trained Physical Therapists</u>	21	NCAC	48E	.0110
Amend/*				

The rules in Subchapter 48F concern certificates, fees, investigation, and record of licensees.

<u>Fees</u>	21	NCAC	48F	.0102
Amend/*				
<u>Investigations</u>	21	NCAC	48F	.0103
Amend/*				

The rules in Subchapter 48G concern retention of license including licensure renewal (.0100); lapsed licenses (.0200); refusal to renew or grant license suspension or revocation (.0300); probation or warning (.0400); contested case hearings (.0500); and disciplinary action (.0600).

<u>Conditions on Renewal</u>	21	NCAC	48G	.0306
Adopt/*				
<u>Prohibited Actions</u>	21	NCAC	48G	.0601
Amend/**				
<u>Sanctions Reapplication</u>	21	NCAC	48G	.0602
Amend/*				

ADMINISTRATIVE HEARINGS, OFFICE OF

The rules in Chapter 2 are from the rules division and cover publication of The North Carolina Administrative Code (NCAC) and the North Carolina Register (NCR).

The rules in Subchapter 2C are the submission procedures for rules and other documents to be published in the North Carolina Register and the North Carolina Administrative Code including general provisions (.0100), codification of rules (.0200), the Register (.0300), the Administrative Code (.0400), and temporary rules (.0500).

<u>Electronic Version</u>	26	NCAC	02C	.0105
Amend/*				
<u>Publication of a Permanent Rule</u>	26	NCAC	02C	.0402
Amend/*				

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.

Beryl E. Wade

Beecher R. Gray

Melissa Owens Lassiter

A. B. Elkins II

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
Santos Ferman T/A Paraiso vs. ABC Commission	05 ABC 1828	Chess	05/31/06	
Owl's Eyes of Asheville, LLC, T/A Hooters v. ABC Commission	05 ABC 1989	Chess	06/07/06	
Carlos Salas T/A Boom Boom Boom Night Club, 1205 Elgin Avenue Hight Point, NC 27262 v. ABC Commission	06 ABC 0719	Chess	08/07/06	
<u>CRIME VICTIMS COMPENSATION</u>				
Timothy P. Webber v. Crime Victims Compensation Commission	05 CPS 1568	Lassiter	06/08/06	21:01 NCR 109
Valerie Joy McGill v. Crime Victims Compensation Commission	06 CPS 0038	Gray	06/08/06	
Charles Leon Champion v. Crime Victims Compensation Commission	06 CPS 0155	Elkins	06/08/06	
Sharron Smith v. Crime Control and Public Safety	06 CPS 0708	Gray	07/12/06	
Elaine B. Deloatch v. Crime Victims Compensation Commission	06 CPS 0736	Wade	08/15/06	
Christopher Lee Vess v. Crime Control Victims Compensation Services Division	06 CPS 0890	Gray	08/23/06	
Chris K. Daniels v. Crime Control and Public Safety, Div. of Victim Compensation Commission	06 CPS 0909	Lassiter	08/01/06	
Tamika L. Howard-Smith v. Crime Victims Compensation	06 CPS	1161	09/06/06	
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
<u>DEPARTMENT OF AGRICULTURE</u>				
Shacond Muse Bey v. Dept. of Agriculture	06 DAG 0985	Morrison	08/16/06	
<u>DEPARTMENT OF CULTURAL RESOURCES</u>				
William H. Miller v. Cultural Resources, State Historic Preservation	05 DCR 0439	Mann	07/03/06	
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>				
Andrea Green, Parent, on behalf of her Miner Child, Andrew Price	01 DHR 2149	Gray	06/29/06	
Marquelle's Enrichment Center for Edith James and Wilhelmenia Bridges v. Div. Child Development Regulatory Services Section	02 DHR 1537	Gray	08/21/06	
Gerald Wanamaker v. Ms Satana T. Deberry General Coun. DHHS	04 DHR 1513	Lassiter	06/14/06	
Restoration Church of God in Christ, d/b/a Restoration's Joys of the Heart Child Care Center v. DHHS, Div. of Child Development	05 DHR 0097	Elkins	08/30/06	
Restoration Church of God in Christ Inernation, d/b/a Joys of the Heart Child Care Center v. DHHS, Div. of Public Health, Child and Adult Care Food Program	05 DHR 0124	Elkins	08/30/06	
Handa of the Future, Sheila Martin v. DHHS, Child and Adult Care Food Program	05 DHR 0457	Wade	06/27/06	
Patricia Filyaw's FCCH vs. Div. of Child Development	05 DHR 0803	Gray	05/30/06	

CONTESTED CASE DECISIONS

Amanda M. Walters v. DHHS, DFS, Health Care Personnel Registry Section	05 DHR 1121	Chess	05/30/06	
Carolyn W. Cooper, Happy Days Child Care v. Div. of Child Development	05 DHR 1255	Lassiter	09/12/06	
Shari Ann Torain v. DHHS	05 DHR 1317	Elkins	06/08/06	
County of Buncombe & NC Radiation Therapy Management Services, Inc. d/b/a 21 st Century Oncology v. DHHS, DFS, Certificate of Need Section, & Asheville Hematology and Oncology Associates, P.A.	05 DHR 1369	Gray	05/26/06	21:01 NCR 115
Jamie Bluto, Guardian of Heather Bluto v. Mecklenburg County Area Mental Health and Developmental Disabilities	05 DHR 1427	Chess	05/17/06	
United Home Care, Inc v. DHHS, DFS, CON Section and Liberty Home Care II, LLC, Total Care Home Health of NC, INC.,	05 DHR 1456	Wade	06/19/06	
Total Care Home Health of NC, INC., v. DHHS, DFS, CON Section and Liberty Home , Care II, LLC, Total Care Home Health of NC, INC.,	05 DHR 1464	Wade	06/19/06	
Brookside Montessori School v. DHHS, Div. of Child Development	05 DHR 1465	Gray	06/28/06	
Novant Health, Inc. and Forsyth Memorial Hospital, Inc. d/b/a Forsyth Medical , Center v. DHHS, DFS, Certificate of Need Section	05 DHR 1490	Lassiter	05/31/06	
Duke University Health System d/b/a Durham Regional Hospital v. DHHS, DFS, Certificate of Need Section	05 DHR 1491	Lassiter	05/31/06	
Duke University Health System d/b/a Durham Regional Hospital v. DHHS, DFS, Certificate of Need Section	05 DHR 1492	Lassiter	05/31/06	
Community General Health Partners, Inc. d/b/a Thomasville Medical Center v. DHHS, DFS, Certificate of Need Section	05 DHR 1506	Lassiter	05/31/06	
LaBrenda Perry Bennett v. Health Care Personnel Registry	05 DHR 1579	Morrison	07/13/06	
Lisa D. Smith-Perri on behalf of Gibson Price Smith, Brother	05 DHR 1982	Gray	06/26/06	
All Braxton, The Braxton Home II v, DHHS, DFS	05 DHR 1986	Mann	07/20/06	
Bertha Graham v. DHHS, DFS, Health Care Personnel Registry	05 DHR 2040	McCotter	06/08/06	
Jeanette Clark v. State Board of Nursing, Raleigh, NC	05 DHR 2076	Gray	07/10/06	
Yavonka Renee Vann v. DHHS, DFS	05 DHR 2108	Gray	07/12/06	
Janet Johnson v. Health Care Personnel Registry	05 DHR 2127	Gray	08/15/06	
Zion Hill Ame Zion Church, Child Development Center v. DHHS, Div. of Child Development	05 DHR 2184	Gray	07/12/06	
Steven Thomas Safrit v. DHHS	05 DHR 2191	Mann	06/20/06	
Ruben Perez v. DHHS, Div. of Public Health Women and Children's Health Section	05 DHR 2225	Lassiter	05/10/06	
Hospice & Palliative Care Charlotte Region v. DHHS, DFS, CON Section and DHHS, DFS, Licensure and Certification Section	06 DHR 0022	Elkins	09/14/06	21:07 NCR 674
Jacqueline Hall v. DHHS, Div. of Child Development	06 DHR 0025	Lassiter	08/31/06	
Joshua B. Worley, by and through his Guardian as Litem, Bertha Gail Levi v. DHHS, Div. of Medical Assistance	06 DHR 0033	Mann	09/11/06	
Richard Wayne Baird v. DHHS, DMA	06 DHR 0177	Gray	06/15/06	
Rosemary Nwanko v. DHHS, DFS, Mental Health Licensure and Certification Section	06 DHR 0186	Gray	07/12/06	
JoAnn Baldwin v. DHHS, DFS, Child and Adult Care Food Program	06 DHR 0208	Wade	06/27/06	
Joyce Moore v. DHHS	06 DHR 0212	Morrison	08/15/06	
Jansala Walker v. Healthcare Personnel Registry	06 DHR 0213	Wade	06/07/06	
Bobby Locklear v. DHHS, DFS, Adult Licensure Section	06 DHR 0215	Mann	06/20/06	
Linwood B. Cameron d/b/a New Millennium Management Services v. DFS	06 DHR 0218	Elkins	06/08/06	
Selvia Chapel Child Care Center ID# 74000208, Bishop A. H. Hartsfield v. DHHS, Div. of Child Development	06 DHR 0268	Gray	08/21/06	
Deloris Johnson v. DHHS, Div. of Public Health, Child and Adult Care Food Program	06 DHR 0271	Gray	05/17/06	
Jack Williamson v. Div. of Medical Assistance Third Party Recovery	06 DHR 0300	Chess	08/04/06	
Shawqi Abdalla Ibtisam Omar v. OAH	06 DHR 0332	Gray	07/10/06	
Daniel Marshall v. DHHS	06 DHR 0340	Wade	06/27/06	
Katie Morris v. DHHS	06 DHR 0344	Gray	08/21/06	
Michael Glenn Shell v. Board of Health Care Workers Registry, DHHS	06 DHR 0358	Elkins	07/31/06	
Angel Allman v. Div. of Medical Assistance Medical Policy	06 DHR 0370	Wade	08/09/06	
Tammie L. Greene v. DHHS, Div. of Medical Assistance	06 DHR 0386	Chess	07/25/06	
Carol Denny v. DHHS	06 DHR 0395	Mann	09/05/06	
Myrna Diane Bunns v. DHHS, Division of Child Development	06 DHR 0399	Gray	06/19/06	
Joseph Randy Creech v. Dix, DHHS	06 DHR 0416	Mann	09/06/06	
Annette Alexander v. DHHS	06 DHR 0471	Elkins	06/23/06	
Bernice Norman v. Wash Co. Dept. of Social Services	06 DHR 0472	Elkins	06/23/06	
Daisey Fish v. Dorthea Dix Hospital	06 DHR 0473	Morrison	08/02/06	
Delisa Jean Scott v. DHHS, DFS	06 DHR 0475	Elkins	06/23/06	
Deloris Johnson v. DHHS, Div. of Public Health, Child and Adult Care Food Program	06 DHR 0488	Gray	05/17/06	
Myrna A. Batson v. Broughton Hospital	06 DHR 0503	Gray	07/12/06	
Digna A. Marte v. DHHS, Div. of Medical Assistance	06 DHR 0551	Mann	07/21/06	
Carolyn W. Cooper, Happy Days Child Care Center v. Div. of Child Development, DHHS	06 DHR 0565	Lassiter	08/01/06	
Eric Becton v. DHHS	06 DHR 0594	Elkins	06/23/06	
Bibian Nwanguma v. Health Care Personnel Registry	06 DHR 0651	Wade	08/14/06	
Regina A McLean v. DHHS, Citizen Affairs/Administration	06 DHR 0691	Gray	06/27/06	
Regina A. Mclean v. Human Health Client Assistant Program	06 DHR 0692	Gray	07/20/06	
Christy Laws v. DHHS	06 DHR 0698	Elkins	09/07/06	
Kara Elmore v. DHHS, DFS	06 DHR 0702	Gray	08/23/06	

CONTESTED CASE DECISIONS

James Soules v. DHHS	06 DHR 0718	Gray	08/01/06	
DeJuana Byrd Heavenly Angels Child Center v. Child Abuse/ Neglect	06 DHR 0720	Lassiter	06/14/06	
Angela M. Rhodes v. New Hanover County DSS	06 DHR 0730	Mann	09/05/06	
Full Potential, LLC v. DHHS	06 DHR 0781	Gray	07/21/06	
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