42(m) Review Process

The IRC §42 Low Income Housing Tax Credit Program (LIHTC) was enacted by Congress as part of the Tax Reform Act of 1986 to encourage new construction and rehabilitation of existing buildings as low-income rental housing for households with income at or below specified income levels. Congress recognized that a private sector developer may not receive enough rental income from a low-income housing development to cover the costs of development and still provide a return to investors sufficient to attract the needed equity investment. The IRC §42 program provides tax incentives for investors to make equity investments. In exchange for equity, investors receive tax credits and other tax benefits associated with ownership of the project to offset federal income taxes for a ten year period. These tax benefits, plus the possibility of cash proceeds from the eventual sale of the project, represent the investors' return on investment.

An allocating agency is to provide no more credit than deemed necessary to ensure the project's financial feasibility throughout the 15-year compliance period. In general, the agency is to compare the proposed project's total developmental costs with the anticipated private and governmental financing (other than equity raised from tax credits). The difference between the total development costs and financing (other than equity raised through the credit) is commonly referred to as the "equity" gap the IRC §42 credit is intended to fill. The Agency will allocate to the project only the amount of credit necessary to fill this equity gap.

Connecticut Housing Finance Authority (CHFA) is the allocating agency for the State of Connecticut. Per Section 42(m)(1), CHFA is required to create a qualified allocation plan (QAP) that "sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions." While the code and regulations do prescribe a few selection criteria (e.g. the 10% set-aside for qualified non-profits) and require certain documents be submitted for review (e.g. a third-party market study), the QAP is mostly written at the tax credit allocating agency's discretion.

Developments receiving tax exempt bond (TEB) financing for at least 50 percent of the aggregate basis of the property including land are not required to submit an application for 9% LIHTC. However, the development must be evaluated by CHFA to assure that the proposal is in accordance with the priorities, Selection Criteria and other program requirements set forth in the Allocation Plan.

Per Section 42(m)(2), this review is undertaken to verify that the housing credit dollar amount allocated to a project shall not exceed the amount CHFA determines is necessary for the financial feasibility of the development. This analysis must be completed during the initial application review before reserving an award of credits.

Multifamily underwriter performs the 42(M) review to ensure a development's compliance with the QAP and issues a QAP review letter and forwards it to the Assistant Director, Multifamily who subsequently issues a 42(m) letter. The 42(m) letter is forwarded to the Interim Deputy Managing Director for Multifamily Programs for signature. The signed 42(m) letter is forwarded to the owner and CHFA Legal Department.