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Oregon Housing and Community Services

**Amended 2009 Qualified Allocation
Plan**

LOW INCOME HOUSING TAX CREDIT PROGRAM

Effective as of January 27, 2009



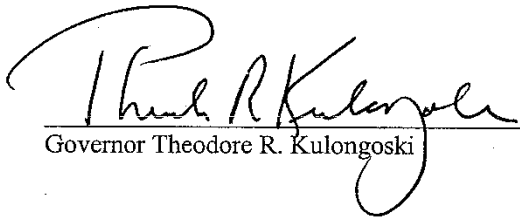
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OREGON HOUSING AND COMMUNITY SERVICES DEPARTMENT
2009 AMENDED LOW INCOME HOUSING TAX CREDIT QUALIFIED ALLOCATION PLAN

Approval of the State of Oregon
Amended 2009 Low Income Housing Tax Credit Program
Qualified Allocation Plan

I, Theodore R. Kulongoski, Governor of the State of Oregon, do hereby approve for implementation the Amended 2009 Low Income Housing Tax Credits Qualified Allocation Plan as presented to me by the Oregon Housing and Community Services Department under the provisions of IRC Section 42, Executive Order EO-87-06 and OAR Chapter 813, Division 90.



Governor Theodore R. Kulongoski

1/27/09
Date

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LIHTC QUALIFIED ALLOCATION PLAN

For the Period beginning with the allocation of 2009 Tax Credits

ADMINISTRATIVE AUTHORITY

The Low-Income Housing Tax Credit Program was created under the provisions of the Tax Reform Act of 1986. The LIHTC program is jointly administered by the Internal Revenue Service (IRS) and state tax credit allocation agencies, such as Oregon Housing and Community Services (the "Department" or "OHCS"). Under Executive Order EO-87-06 the Governor of Oregon has designated OHCS as administrator of the Low-Income Housing Tax Credit (LIHTC) Program with the responsibility of allocating the State's annual per capita and non-competitive credit authority in accordance with an approved Qualified Allocation Plan. Section 42 of the Internal Revenue Code ("IRC"), as amended, specifies the requirements for said Qualified Allocation Plan. The Department shall further administer the Program in accordance with OAR Chapter 813, Division 90, and shall maintain a record of allocations and the balance of Credit Authority remaining for each calendar year. The records shall account separately for Credit Authority set-asides under OAR 813-90-025.

This Qualified Allocation Plan contains substantial revisions, clarifications and changes to the 2009 Qualified Allocation Plan previously approved on September 24, 2008. A public hearing to gather comments on the plan will be held on January 5, 2009, after appropriate notice as required by law.

Pursuant to ORS 456.555(6)(a), the State Housing Council (the "Council"), with the advice of the Director of the Department, sets policy and approves or disapproves rules and standards for housing programs of the Department. The Council's Oregon Affordable Housing Policy Statement that outlines these principles is included in Exhibit "B". The specific policy changes made to the 2009 QAP are included as Exhibit "F" in the Amended 2009 QAP. The State Housing Council has reviewed the amended plan contained herein on January 8, 2009 and has recommended it for the Governors approval. The Honorable Theodore R. Kulongoski, Governor of the State of Oregon, approved this Qualified Allocation Plan on January 27, 2009, which will become its effective date.

INTRODUCTION

The Low Income Housing Tax Credit (LIHTC) was enacted by Congress to encourage new construction and rehabilitation of rental housing for low-income households. In establishing the tax credit incentive, Congress recognized that developers may not receive enough rental income from a low income housing development to: 1) cover the costs of developing and operating the project, and 2) provide a return to investors sufficient to attract the equity investment needed for development. To spur investment, Congress authorized the states, within specified limits, to allocate tax credits to qualifying housing projects. The credits may be shared among owners (equity investors), much as income and losses are shared among business partners for tax purposes. Generally, syndicators recruit the investors, and ownership rights are controlled by limited partnership agreements.

This Allocation Plan was written to adhere to the established evaluation criteria and preference categories mandated by the federal tax credit program regulations (Section 42), as amended (both proposed and final).

The LIHTC Program is a regulated and highly complex program. Final interpretations of certain rules and regulations governing various aspects of the program have not been issued by the U.S. Department of Treasury, especially as related to the provisions in the Housing and Recovery Act of 2008 (HERA) enacted on July 30, 2008. As such, additional requirements or conditions applying to the tax credit program may be forthcoming. **It is strongly suggested that project sponsors interested in the LIHTC Program contact their tax accountant and/or attorney prior to the development of projects under the LIHTC Program. While OHCS will strive to assist those persons applying for an allocation of tax credits, OHCS will not provide tax and/or legal advice.**

In the event of a major natural disaster or disruption in the financial markets, OHCS may at its sole discretion disregard any section of the Plan, which interferes with the necessary or appropriate response to the disruption.

Qualified Allocation Plan Overview

Oregon's Low-Income Housing Tax Credit Qualified Allocation Plan (QAP or Plan) establishes the administrative process governing the allocation of federal housing tax credits to qualifying developments that address low income housing priorities throughout the state. This process will be described on the following pages, and will cover the following topics:

- LIHTC Program Elements
- LIHTC Administrative Procedures
- Application Process
- Allocation Procedure
- State & Federal LIHTC Policies
- Compliance Monitoring Policies
- Public Comments
- Amendments to QAP

Requirements of the Qualified Allocation Plan

Each state-allocating agency for the federal Low Income Housing Tax Credit is required to publish a plan describing how it intends to award the credit. The requirement that states publish a plan was established in the Omnibus Reconciliation Act of 1989. The plan is called the Qualified Allocation Plan or QAP.

The State of Oregon, Oregon Housing and Community Services (OHCS or Department), is the allocating agency for tax credits. OHCS is responsible for preparing the allocation plan and making it available for review by interested members of the public before approval by the Governor.

Section 42 of the Internal Revenue Code, is the federal statute governing the tax credit program. In accordance with Section 42 (m), each state-allocating agency must include the following in the allocation plan:

- Selection criteria for projects receiving tax credit allocations
- Preference for projects serving the lowest income tenants and for projects serving tenants for the longest period of time
- Preference for projects located in qualified census tracts (QCT), the development of which will contribute to a concerted community revitalization plan.

In addition, Section 42(m) states that the selection criteria must take into consideration the following project, community, or development team attributes:

- Location
- Need for affordable housing
- Project characteristics
- Sponsor capacity
- Tenants with special needs as a target population
- Public housing wait lists
- Individuals with children as a target population
- Projects intended for tenant ownership

Projects requesting an allocation of Tax Credits must meet at least one of the preferences listed above or the project will receive a deduction of one-point (1) on their competitive application.

Documentation of Discretion

OHCS may, at its sole discretion, award credits in a manner not in accordance with the requirements of the Qualified Allocation Plan. Should an award be made that is not in accordance with the requirements of the Qualified Allocation Plan, OHCS must document this allocation in writing to the general public.

Public Comment and Hearing Requirements

The Draft Qualified Allocation Plan is subject to a 30-day public comment period. Opportunities to review the Draft QAP are announced via posting to the OHCS website, mailing to interested

parties upon request, Department stakeholder meetings (public hearings), and an announcement(s) published in the Oregonian Newspaper. The Department accepts written comments either through letters or e-mail to mariana.negoita@hcs.state.or.us or susan.bailey@hcs.state.or.us or through testimony at the scheduled public hearings.

Amendments to the Qualified Allocation Plan

Upon approval of the overall plan, the Department may make minor and technical amendments to this Allocation Plan when changes are necessary to administer the Low-Income Housing Tax Credit Program, to effectively serve Oregon's low-income housing needs, and to conform with amendments to IRC Section 42. Major amendments to the QAP require formal approval and a public process.

If any provision of this Allocation Plan (and documents included herein by reference) is inconsistent with the provisions of amended IRC Section 42, including any future amendments thereto, or any existing or new State Administrative Rules governing the LIHTC Program, the provisions of IRC Section 42 and/or the State Administrative Rules take precedence and the plan will be amended accordingly.

The State Housing Council recommended the amended 2009 plan contained herein on January 23, 2009. Public hearing was held on January 5, 2009 after appropriate notice was provided. The comment period began on December 18, 2008 and closed on January 13, 2009 at 5 p.m. State Housing Council approved the final plan on January 23, 2009.

Temporary Public Notices to the Qualified Allocation Plan

OHCS recognizes that current market conditions remain uncertain. As such, the Department reserves the option to issue temporary public notices or guidance through which, procedurally, the Department will continue to efficiently administer the LIHTC program, in a manner consistent with this Plan, and with the Department's goals.

Temporary public notices will be posted on the LIHTC webpage on the OHCS website and will be announced through as many venues as possible, including but not limited to email notices, Department's Bulletins or any other viable communication venue.

Public notices to procedurally administer the LIHTC program will be issued for a minimum period of 30 days not to exceed a maximum period of 6 months.

Program Annual Allocation

Credits are provided to states to allocate for eligible affordable housing projects. Currently, each state is allocated annual tax credits in an amount equal to \$2.20 per state resident as of 2008 with annual increases indexed to inflation. For calendar year 2009 the inflation adjusted housing tax credit amount used under Section 42(h)(3)(C)(ii) is anticipated to be \$2.30. These credits are considered to be under the State's per capita credit authority and are a limited and scarce resource. Oregon is also provided with access to tax credits associated with the State's Private Activity Bond Authority. These credits are not subject to the per capita credit authority but are

only available to projects that are financed using tax-exempt bond proceeds. Credit types are more specifically defined below:

Types of Credits

9% Credits

Traditionally, the 9% credit reflects approximately 70 percent of the qualified basis for new construction or substantial rehabilitation of qualified low-income buildings. Though federal subsidies¹ will continue to play a role in the financing structure of LIHTC projects, these are not necessarily removed from eligible basis according to HERA. OHCS suggests that Sponsors contact their legal or tax counsel in making project specific determinations as to inclusion of federal subsidies in eligible basis.

The 9% credit is subject to the per capita credit authority and is generally awarded annually under a competitive application process called the Consolidated Funding Cycle (CFC). The 9% credit may also be awarded via other competitive processes (such as request for proposal) from time to time.

Competitive 4% Credits

Reflect approximately 30 percent of the qualified basis of acquired buildings that are substantially rehabilitated, and are used for federally funded developments such as Rural Development 515 projects.

Non-Competitive 4% Credits

Reflect approximately 30 percent of the qualified basis of newly constructed or acquired buildings that are substantially rehabilitated and financed with tax-exempt bond proceeds.

All Credit Types

Although the terms 9% and 4% are used, the 9% and 4% figures are approximate. The IRS sets the actual credit percentages on a monthly basis. Due to HERA, the 9% credit percentage rate is amended as follows per section 3002(a)(2): in the case of any new building which is placed in service by the taxpayer after July 30, 2008 and before December 31, 2013 and which is not federally subsidized for the taxable year, the applicable percentage shall not be less than 9 percent. No such provision has been made for the 4% credits and as such the rate continues to float on a monthly basis. A project can qualify for one of the three credits or a combination of the credits.

Eligible Basis

The cost of acquiring, rehabilitating, and constructing a building constitutes the building's **eligible basis**. The portion of the eligible basis attributable to low-income units is the building's qualified basis. In general, the qualified basis excludes the cost of land, obtaining permanent financing, rent reserves, syndication and marketing. The applicable percentage (that is the 9% and 4% approximations outlined in the previous paragraph) of the qualified basis may be claimed

¹ Federal subsidy is defined by Section 42 of the IRC as any debt obligation the interest of which is exempt from tax under IRC§103.

annually for 10 years as the low-income housing tax credit. The amount of LIHTC that may be awarded to a building is based upon the depreciable cost of the building and the portion of the project that low-income households will occupy and can be no more than needed to make the project financially feasible.

Section 3003 of HERA made several substantial modifications to the definition of eligible basis, as follows:

1. IRC Section 42(d)(5)(C) was amended by adding a third type of high cost area eligible for an enhanced credit. This third type is defined as any building designated by OHCS as requiring the enhanced credit in order for such a building to be financially feasible.
2. IRC Section 42(e)(3)(A)(ii) was amended and increases the rehabilitation expenditure requirements to equal the greater of an amount that is (1) at least 20% of the adjusted basis of the building being rehabbed; or (2) at least \$6,000 per low-income unit (indexed for inflation) in the building being rehabbed, for any building placed in service during any calendar year after 2009. The provision is effective for buildings which receive credit allocations after July 30, 2008 and substantially tax exempt bond financed buildings.
3. IRC Section 42(d)(4)(C)(ii) was amended and expands the size of the community facility with respect to the low income housing credit that may be claimed. The size of the community facility may not exceed the sum of :
 - a. 25% of so much of the eligible basis of the qualified low income housing credit project of which it is a part as does not exceed \$15,000,000; and
 - b. 10% of any excess over \$15,000,000 of the eligible basis, for all projects placed in service after July 30, 2008.
4. IRC Section 42(d)(5)(A) was clarified to identify that the basis reduction rule will apply to Federally funded grants received before the compliance period. The provision also directs the modification of section 1.42-16(b) of the Treasury regulations, for all buildings placed in service after July 30, 2008.
5. IRC Section 42(d)(2)(D)(iii) repeals the 10 percent attribution rule used to determine whether parties are related for purposes of determining whether an existing building qualifies for LIHTC.
6. IRC Section 42(d)(6) was amended to replace the first two exceptions to the ten year rule under the present law. One new exception was created which waives the ten year rule in the case of any Federally- or State-assisted building. For these purposes, the definition of Federally-assisted building is expanded to include any building which is substantially assisted, financed or operated under various sections of the United States Housing Act of 1937, The National Housing Act, the Housing Act of 1949 or any other housing program administered by Housing and Urban Development or Rural Housing Services of the Department of Agriculture.

OHCS Program Goals

OHCS is responsible for determining which applicants should receive the tax credit and the dollar amount of credits each should receive. In making these determinations, the Department must comply with federal requirements and meet the following OHCS program goals:

- Encourage approaches in design, planning, building and financing of low income housing that maintains quality and long term sustainability, durability and ease of maintenance of affordable units,
- Encourage equitable allocation of credits across the state,
- Encourage resident services and community involvement,
- Provide an allocation of tax credits in an amount sufficient to make the project financially feasible and viable as a low income housing project throughout the compliance period,
- Provide a preference for projects located in QCTs, a designated state or federal empowerment/enterprise zone or Public Improvement District (PIDs), or other area or zone where a city or county has, through a local government initiative, encouraged or channeled growth, neighborhood preservation or redevelopment. Any of these activities must contribute to a concerted community development plan.

In addition, the Department may supplement these general goals with more specific local goals in order to meet local low-income housing needs. This may include but not be limited to:

- Mixed income projects where appropriate,
- Mixed use projects where appropriate,
- Acquisition and rehabilitation of expiring use projects,
- Housing for families with children,
- Housing near employment centers,
- Other as determined locally or by the Department and as identified in the application materials.

Overview of the Credit Application and Allocation Process

Tax credits are awarded on a per building basis. For a particular building to qualify for tax credits, it must be a part of a low income housing "project". To qualify for consideration for credits a project must:

- be residential rental property
- make an election to restrict both rent and income as follows:
 - Rent: restrict rents (including utility charges) for tenants in low-income units to 30 percent of either the 50 percent area median income as adjusted for family size or the 60 percent of area median income as adjusted for family size. Rent may be further restricted based upon the limitation selected and other representations made in the application to the Department.
 - Income: maintain at least 20 percent of the available units for households earning up to 50 percent of area median income as adjusted for family size, or maintain at least 40 percent of the available units for households earning up to 60 percent of area median income as adjusted for family size,
- maintain habitability standards,
- if the project involves rehabilitation, there must be expenditures of at least \$6,000 per unit or 20 percent of the unadjusted basis of the building, whichever is greater, and,
- operate under the program's rent and income restrictions for a minimum of 30 years pursuant to extended use agreements.

To apply for tax credits, a developer must submit a detailed proposal to the Department on the form prescribed. The specifics of the application contents are available through the Department and generally include the following:

- Description of the housing project proposed, including the total number of units and the number expected to be LIHTC units,
- Sources and uses of funding,
- Development costs,
- Operating expenses and income,
- Project need, a market study and resident services to be offered,
- Other information as identified in the application.

The Department application process was created in accordance with the requirements of Section 42 of the Internal Revenue Code to select proposals for tax credits awards. The application process is more fully described later in this document. In evaluating projects, the Department must consider proceeds or receipts expected to be generated through tax benefits, as well as the reasonableness of the development hard and soft costs. In general, the IRS expects the Department to compare the proposed project's development costs with the non-tax credit financing, both private and public. The difference between the costs and the sources to finance the project is the financing gap. Tax credits may be used, subject to allocation requirements of the QAP, to attract the equity investment to fill this gap.

Once credits have been awarded to a developer, the developer typically sells the credit to private investors. The private investors use the credits to offset taxes otherwise owed to the federal government. The money paid by the private investors for the credits are paid into the project as

equity financing. This equity financing is generally used to fill the gap between the development cost of a project and the non-tax credit financing sources available, such as mortgages or other debt to be repaid from rental income.

Tax credits are considered awarded to a project at the time the Department issues a 9% Carryover Agreement or 8609's. (Four percent credit projects do not need to complete carryover requirements.) Owners must place the project in service no later than December 31 of the credit year (for 9% competitive projects), unless a Carryover allocation is obtained. If a Carryover allocation is obtained, the project must be placed in service no later than December 31 of the second year following the original allocation. Investors can claim the credits for each year of a ten-year period (called the "credit period") **as long as the project is operating in accordance with the representations made to the Department in its application for credits and in accordance with IRS regulations.** Individual and corporate investors must mail the original completed IRS Form 8609 (issued by the Department) the, "Low Income Housing Credit Allocation Certification" for the first year they claim the credits to Internal Revenue Service, PO Box 331 Attn: LIHC Unit, DP 607 South Philadelphia Campus Bensalem, PA 19020, a copy of the completed 8609 should be returned to OHCS Attn: Program Analysis and Enforcement Section (PA&E Section), OHCS, 725 NE Summer Street Suite B, Salem, OR 97301.

Once a project has been placed in service, the Department is responsible for monitoring the project for compliance with state and federal requirements concerning household income, rents, project habitability, resident services and other requirements as represented in the application, Declaration of Land Use Restrictive Covenants and other agreements. If noncompliance is discovered, the Department must report the event of noncompliance to the IRS and if the non-compliance is not corrected, the IRS may recapture or deny credit for previously used or issued tax credits. The IRS issues regulations on monitoring requirements that the Department follows. These regulations are described in the Tax Credit Compliance Guidebook (available from the Department upon request).

LIHTC PROGRAM ELEMENTS

Per Capita Authority (competitive credit)

The State's per capita tax credit authority, amounts of returned credits, and state award of National Pool are allocated on a competitive basis, based upon project rankings determined during the Consolidated Funding Cycle (CFC) application period(s) or special RFP solicitation. All LIHTC allocations, including any increase in the allocation of a project's per capita credits, will be governed by this plan.

Projects Financed with Tax Exempt Bonds (non-competitive credit)

Credit for buildings financed by tax-exempt bonds subject to volume cap will be determined as per Section 42(h)(4). If 50 percent or more of a project's aggregate basis of buildings and land are financed with tax-exempt bonds, the project may receive a maximum 30 percent present value credit calculated against the project's qualified basis without causing a reduction in the State's annual credit authority. Sponsors of projects financed by tax-exempt bonds must make application for tax credits, and such projects will be evaluated in a manner consistent with this plan. These projects will be subject to project evaluations. Consideration will be given to the sources and uses of the funds, any proceeds generated by reason of tax benefits, the total financing planned for the project, and the percentage of the housing credit dollar amount used for project costs other than soft costs. Provided the Department approves the sponsor's application, a Tax Credit Determination letter will be issued stating the amount of credit available to the project, and a Reservation and Extended Use Agreement will be executed.

Tax credit applications for projects financed with tax-exempt bonds may be filed **at any time during the year**. Sponsors must allow reasonable time for review and response. OHCS is also an issuer and allocating agency of tax exempt bonds. If OHCS is the bond issuer and allocated 4% tax credits to a project then, requests for 4% tax credits will be reviewed and approved simultaneously with a tax exempt bond allocation request. Projects financed with tax-exempt bonds seeking the 4% tax credit will be denied if the criteria outlined herein and presented in the required application are not met to the Department's satisfaction.

Project Eligibility and Considerations

In order to be eligible to receive an allocation of LIHTC, a project must be considered a "qualified low income housing project." To meet this test, a project must consist of **residential rental property**. For the purposes of Section 42, the definition attributed to "residential rental property" is generally the same as applied to tax-exempt rental housing bonds. This definition focuses on the following issues:

- Residential rental properties must include separate and complete facilities for living, sleeping, eating, cooking and sanitation. Unlike the requirements for units financed with tax-exempt bonds, certain single room occupancy housing used on a non-transient basis may qualify for the credit even though such housing may provide eating, cooking and sanitation facilities on a shared basis.

- In addition to actual residential units, functionally related and subordinate facilities may be included in eligible basis if they are available to all tenants with no additional fees attached to them.
- A scattered site project may be treated as a single project if all units in all buildings are rent-restricted. This includes buildings which would (but for their lack of proximity) qualify as a project for the purposes of Section 42, are owned by the same party, have a management plan pre-approved by the Department, and are financed under a common plan of financing.
- If a building consists of both residential and nonresidential areas, the nonresidential portion will not preclude the residential portion from qualifying for credit. Determinations will be made on a reasonable basis to ensure that the costs for the commercial use portion of such a mixed-use building are not in the credit computation.
- Residential rental units must be available for use by the general public in a nondiscriminatory manner. The Department of Housing and Urban Development (HUD) provides definitions and authority regarding public use and nondiscrimination.

Minimum Set-Asides

For a project to qualify for a credit award, it must meet a minimum low income set aside requirement. The minimum set aside requirement must be met no later than the close of the first year of the credit period for such building.

A building owner must elect and fulfill one of the following low-income set asides:

- **the 20/50 test:** at least 20% of the units must be both rent restricted and occupied by tenants with incomes at or below 50% of area median income as adjusted for family size (as determined by HUD)
- **the 40/60 test:** at least 40% of the units must be both rent restricted and occupied by tenants with incomes at or below 60% of area median income as adjusted for family size (as determined by HUD)

The minimum set aside is the election that commits the building owner to a specific income level that will serve to define low income for that building. Under a 20/50 election, an owner that claims 100% of units as eligible for LIHTC must rent all units to households at or below 50% of area median income as adjusted for family size in order to claim 100% of the credit.

Projects previously awarded credits that are currently in their initial compliance periods or and in their extended use period, will not be eligible to apply for additional credits until the extended use period is over unless the additional credits will provide a clearly demonstrable benefit to the tenants (beyond that promised in the original application).

Projects with serious construction or construction material concerns may be eligible for additional credits within the restrictions of Section 42 and at the discretion of the Department.

Eligible Applicants

There are no restrictions on who may apply to the Department for an allocation of LIHTC. However, please refer to Allocation Procedures under Organizational Capacity to determine eligibility.

Application Period

Applicants for annual per capita competitive credits must submit a complete Application for Low-Income Housing Tax Credits during the specified application periods within the Department's Consolidated Funding Cycle, or as announced by any request for proposals. For projects financed with tax-exempt bonds, applications can be received at any time as long as costs have been, or will be, incurred in the calendar year of application.

Long-Term Affordability

All projects must commit to an extended use term of a minimum of 30 years of affordability. Projects with tax-exempt bond financing must commit to an extended use term of the greater of 30 years or the outstanding term of the bonds. The owner must file a Restrictive Covenant (provided by Oregon Housing & Community Services) to waive the right to petition the Agency to terminate the extended use term as described in Section 42 of the Internal Revenue Service Code. Additional consideration will be given to projects, which agree to an extended use period beyond the minimum 30 years.

Financial Feasibility

Basic financial feasibility for both 4% and 9% project consideration criteria include but is not limited to:

- Debt Service Ratio as recommended by current real estate underwriting practices at 1.15 to 1.20, (1.10 for USDA Rural Development projects).
- Loan to Value Ratio to maximize debt and minimize the use of the competitive tax credit.
- Construction Costs per square foot as outlined in the CFC application.
- Developer Fees in accordance with Department policy discussed later in this plan.
- Reasonable operating expenses, as justified by the application with supporting documentation for assumptions.
- Replacement reserves of \$250 per unit per year for new construction of senior projects and \$300 per unit per year for all rehabilitation and new construction projects not for seniors.
- Operating reserves of 4 to 6 months of expenses (minimum). Reserves less than or in excess of this may be approved upon Department review and approval, after award.
- Itemized operating expenses and vacancy rate projections must be provided and supported by reasonable and credible evidence.

Project evaluations will be conducted to determine the appropriate amount of tax credits for which the project is eligible. Pursuant to amended IRC Section 42, credits reserved for a project

may not exceed the amount necessary for the financial feasibility of the project and its viability throughout the credit period. As mandated by IRC Section 42, a project evaluation will be made for each complete application received by the Department. Further evaluations will be conducted for tax credit reservation recipients as they proceed through the allocation process to confirm eligibility and the need for the credit allocation, as follows:

- Upon receipt of the Consolidated Funding Cycle Application, or Initial 4% Credit Application;
- Prior to providing a Tax Credit Carryover Allocation (for competitive, per capita credit requests); and
- No earlier than 30 days prior to issuance of IRS Form(s) 8609.

Market Assessment

IRC Section 42 requires a comprehensive market study for each Low Income Housing Tax Credit project. Beginning with the Spring 2007 Consolidated Funding Cycle the market study must be conducted by one of OHCS's approved Market Analysts, not be more than 6 months old prior to application and be submitted with the application. The applicant will pay for the study and OHCS will review and approve or reject the study prior to carryover for projects receiving LIHTC credits awarded on a competitive basis. The market studies for the 4% non-competitive tax credits will be reviewed and approved or rejected prior to approval of the credit award. A disinterested party approved by the allocating agency must conduct the study.

LIHTC applicants can download the list of approved Market Analysts at http://www.ohcs.oregon.gov/OHCS/HRS_LIHTC_Program.shtml#Market_Analysts or can contact the Department to obtain a list of approved market analysts. The analysts must conduct the market study in such a manner as to address the items described in the Consolidated Funding Cycle Application, the 4% LIHTC Application or Multi-Family Rental Housing Risk Sharing Program Application, Elderly and Disabled application and/or any additional program materials adopted or used by the Department. The market study may be included in an appraisal as long as the appraiser has followed the instructions provided by the Department (refer to instructions to appraiser) and is prepared by a Department approved market analyst. Following its review of the market study, the Department, at its sole discretion, may request additional market information from the applicant and additional comment from the local government before reserving tax credits, and may decline to reserve credits if the proposed project has a potential to disrupt the local housing market.

The Department may reject an application and revoke the credit reservation if it determines, in its sole discretion, that based on information submitted in the applicant's market study or information obtained by the Department from other sources, market demand and conditions do not justify the project as proposed. The Department will consider all facts and circumstances in making this determination, including the possible disruption caused by unneeded units entering the market.

Resident Services

Sponsors, who receive Department resources, including but not limited to LIHTC, must include in their affordable housing development a provision for residents to access services appropriate to the identified needs of the target population. The anticipated outcomes of the resident services plans are:

- Through coordination, collaboration, and community linkages, provide residents the opportunity to access appropriate services which promote self-sufficiency, maintain independent living, and support residents in making positive life choices; and
- To effectively maintain the fiscal and physical viability of the development by incorporating into the ongoing management appropriate services, which address resident issues as they, may arise.

Project evaluation will reward projects offering appropriate resident services. Sponsors are encouraged to build services provisions into their operating expenses.

Resident services are not intended to be limited to services provided on site, to residents at risk or with special needs, nor does it make participation in services mandatory for residents. It is intended to be a support system integrated into the housing and available to all residents, except where other funding sources require it. Resident services can be incorporated into the operation and management in a variety of ways. Common to many models, however, are the goals of helping residents achieve greater social and economic self-sufficiency and an enhanced quality of life. While supportive resident services offer assistance to residents facing a crisis, they should also focus on addressing problems and linking residents to community resources. The most effective resident service program encourages and supports resident participation in the decision making process.

In considering resources available for resident services, sponsors should investigate public and private social service agencies, schools, community directories and consultation with existing community residents. United Way, city or county government, libraries and non-profit agencies often operate resource and referral services. Beyond Shelter, a non-profit agency committed to combating chronic poverty, welfare dependency and homelessness has developed a handbook regarding service-enriched housing. Resources to develop supportive resident services for special needs populations are also available from the Corporation for Supportive Housing.

The required resident services plan is described in the Consolidated Funding Cycle **and/or the Multi-Family Rental Housing Risk Sharing and Elderly and Disabled Program Applications and/or any additional program materials adopted or used by the Department.**

Reservation and Extended Use Agreement (Extended Use Period)

After receiving an award of credits the owner of the Project will enter into a Reservation and Extended Use Agreement that shall specify, among other things, a minimum applicable unit fraction defined by IRC Section 42 (c)(1)(B) and the rent formula to be maintained for the Project to continue to qualify for the tax credit.

The Reservation Agreement will lock the applicable credit percentage rate (applicable rate) and must be fully executed subject to conditions of the offer letter for a competitive credit project or in the month in which the bonds are sold for a tax-exempt financed project. Failure to lock the rate at either of these points in time will postpone the rate lock to the Placed in Service date.

The Reservation and Extended Use Agreement shall include a commitment to meet the applicable fraction and rent restrictions for at least 15 years beyond the initial 15-year compliance period, or for the term of affordability and may postpone for a specific time the project owner's rights under IRC Section 42(h)(6) to terminate the commitment.

Carryover Application for Competitive Credits

NOTE: Applicants for 4% credits in association with tax-exempt bonds do not need to meet carryover requirements.

On or before December 1 (or the next business day) of the tax credit year, tax credit recipients must submit either an application for tax credit "Carryover Allocation" (if the project is still in the construction process), or a final application indicating "Placed-In-Service" (Certificates of Occupancy/Completion have been received and the project is ready for occupancy by tenants).

A complete hard copy of the carryover application must be received by the Department by December 1 of the credit year or the Department may assess a late charge. The Department will have the right to charge an hourly rate for applications that need additional review due to subsequent submissions or changes to the original application that would require a complete re-review of the application.

Application for Tax Credit Allocation (Placed-In-Service Projects) shall include:

All LIHTC applicants are required to complete a final application. Any changes from the original application are subject to Department approval. It is strongly advised that this approval be sought prior to or at a minimum in conjunction with submitting the final application. Any change to developer fee from the original application to the final application will require written approval from the Department prior to the final application. Approval will be at the sole discretion of the Department and will not be unreasonably withheld for justifiable increases in the scope of work, so far as the developer fee does not exceed the Department's approved limitations.

The final application must be submitted to the Department within 6 months of the last building receiving their certificate of occupancy or, in the case of acquisition/ rehabilitation, 6 months after the project is determined to be substantially complete. Projects submitting their final applications after the 6 months can be assessed a late charge and an additional review charge if more information is required to complete the review.

1. Final application, including but not limited to:
 - a) Certification of all project costs;
 - b) Updated Operating Statement;

- c) Certification of use of tax credit proceeds; and
 - d) Completed “Final Application Supplement” including documentation of cost changes, updated sources and uses and a 15-year cash flow analysis.
2. Certificate of Occupancy or the appropriate jurisdiction’s Final Inspection Report approving occupancy (indicating the project is suitable for occupancy).
 3. Copy of Cost Certification prepared by a third party such as a certified accountant or legal counsel. Please contact Oregon Housing and Community Services, Housing Resources Section for a sample cost certification format. OHCS reserves the right to hire a third party accountant to review the cost certification audit if deemed necessary by the Department. Owners will be required to pay for the review.
 4. Certification from the project or inspecting Architect that the project has been built in accordance with the final plans submitted to the Department, i.e., the project is built in accordance with all applicable local, state and federal laws, and those requirements of the Department set forth in this Allocation Plan. (See Exhibit “A” for format.)
 5. Copy of Placement Memorandum, Syndication Agreement or Limited Partnership Agreement indicating tax credit proceeds available to the project together with a contribution schedule.
 6. Copy of on-site property management plan acceptable to the Department and permanent lender.
 7. A copy of a site map with each building identified by address and listing the units by number to be found in each building.
 8. A Resident Services plan for approval if not already approved.

Departmental remedies may include, but are not limited to, rejection of the LIHTC application, termination of processing, failure to issue an IRS form 8609, or issuance of an IRS form 8823. The Department may rely upon its own investigations or other information the Department deems appropriate.

LIHTC ADMINISTRATIVE PROCEDURES

General Administrative Procedures

The QAP utilizes housing priorities pertinent to Oregon as designated by the State of Oregon Consolidated Plan (CP), local jurisdiction Consolidated Plans, or their successor documents, and other information that can demonstrate verifiable housing and community needs and priorities.

Architectural Requirements

Projects which receive Low-Income Housing Tax Credit Allocations will be constructed and rehabilitated in accordance with the Department's architectural standards as well as all applicable local, state and federal laws, local ordinances and building codes. Tax credits will not be awarded without the Department's architectural review and design concurrence.

Program requirements also include, but are not limited to, the Federal Fair Housing Act Amendments of 1988, which provide specific guidelines for multi-family dwellings with respect to minimum accessibility, adaptability and prohibition of discrimination. Project sponsors will be required to obtain a preliminary certification as in Exhibit "A" from their architect, which must be included on the architectural drawings indicating that the project design meets local, state and federal laws, local ordinances and building codes. At the end of the construction period, an "As-Built" architectural certification in Exhibit "A" will be required before the Department releases "Low-Income Housing Credit Allocation Certification," IRS Form(s) 8609. The Department assumes no responsibility to inspect developments for compliance with the above-stated construction standards and laws. Department staff will retain the right to visit developments during the construction period, and sponsors must provide access to the development following a 24-hour notification.

Application

During the application process, all applicants for tax credit reservations must supply documentation in accordance with specific application requirements. All materials must be complete and delivered to the Department by the established deadlines (see the CFC Application).

All applications for competitive credits will be reviewed under the evaluation process described in the Department's Consolidated Funding Cycle application; this includes competitive 4% credit application or any potential RFP. Offers to reserve competitive tax credits will be presented to those projects that receive the highest ranking in accordance with the evaluation process. Offers to reserve noncompetitive tax credits will be presented to those projects that meet all Department and federal criteria of award.

Allocation Process

LIHTC applications are reviewed by Department staff for completeness, eligibility with federal and state statute and policies. Projects that pass staff review are presented to the Department's Senior Management. The recommendation of Senior Management is forwarded to the Department Director for approval. Projects seeking additional LIHTC funds may also require Department Senior Management approval and/or State Housing Council approval. Projects are not considered awarded credits until a Reservation and Extended Use Agreement, and where applicable, a Carryover Agreement (for competitive credits) is executed between a project sponsor and the Department. These above mentioned documents are included by reference in the Declaration of Land Use Restrictive Covenants, which establishes the actual LIHTC award and is executed and recorded prior to issuing the IRS 8609 forms.

Selection Criteria

The state established selection criteria to be used by the Department in its decision-making for credits covered by this document may include, but is not limited to:

- Context of affordable housing in the community, proximity to services and amenities appropriate to the tenant population, access to transportation, etc
- Housing needs characteristics (as defined by a third party market study)
- Market considerations (see market study policy described herein)
- Affordability as compared to market rate (preference for projects with affordable rents that are at least 10% below market rents)
- The financial health of the sponsoring organization (based upon annual audited financial statements)
- Project characteristics in relation to the population to be housed
- Consistency with department architectural and design guidelines, including the historic nature of the buildings (see also Policy on Historic Preservation in the State and Federal LIHTC Policies Section of this QAP)
- Consistency with department energy efficiency guidelines, as identified in the Consolidated Funding Cycle
- Sponsor characteristics, capacity to carry out affordable housing development and compliance
- Past compliance record, past development record and quality of completed projects
- Proposed management agent record of performance
- Participation of local tax-exempt organizations
- Housing for families with children
- Housing in qualified census tracts and/or areas where community revitalization is a local priority
- Achievement of a jobs/housing balance
- Achievement of community goals for livability
- Achievement of goals articulated in the state or local consolidated plan
- Tenant populations with special housing needs, and
- Public housing waiting lists.

Each of these items will be evaluated in the context of a given proposal and the feasibility of that proposal to fulfill each item. All tax-exempt bond financed projects requesting an allocation of LIHTC must adhere to the selection criteria as stated in both the QAP and the LIHTC application materials.

Subsection (h)(4) of Section 42 pertaining to projects utilizing tax exempt financing shall not apply to any project unless the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan and application materials applicable to the area in which the project is located. The Department reserves the right to determine, in its sole discretion, whether the Letters of Interest or Intent, Award Letters, or Commitment Letters are satisfactory, and whether a lender or investor possesses the financial or other capacity to make a specific loan or investment. A change in the financing source or financing terms after reservation of credits may, in the sole discretion of the Department, result in all or a part of the credits being recaptured or reduced by, or returned to, the Department.

The housing credit dollar amount allocated to each building in a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period. In making this determination the Department will examine all aspects of the financial packaging of the application, including but not limited to:

- The sources and uses of funds and the total financing planned for the project,
- Any proceeds or receipts expected to be generated by reason of tax benefits,
- The percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries, and
- The reasonableness of the developmental and operational costs of the project. Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

APPLICATION PROCESS

Introduction

The Department has two application processes to award its LIHTC allocation. One is required for the per capita competitive credit and the other is required for tax-exempt bond financed projects seeking the non-competitive 4% credits. Both applications request identical information in most respects. Where differences exist between the processes, the specific difference will be called out and explained, otherwise, the information below should be considered to be applicable to both processes.

At its sole discretion, the Department, may request proposals for applications outside of the normal application process for specifically identified and recognized affordable housing needs.

Allocation Protocol: Competitive Credits

Timetable

In each calendar year, the Department generally holds two competitive consolidated funding cycle (CFC) application rounds for the competitive 9% Low Income Housing Tax Credits.

All applications for the Low Income Housing Tax Credits must be in the format as prescribed by the Department. This is available by contacting the Department at 503-986-2054, or viewing the application at the Department website http://www.ohcs.oregon.gov/OHCS/HRS_CFCApp.shtml.

Applications shall include but not be limited to the requisite supporting data listed below (under Application Requirements) and completion of all forms requested by the Department. Applicants must pay the required Department charges as set forth in the application format at each stage of the application process and as outlined, for general reference, in Exhibit H of this document. The Department will have the authority to request additional information from the applicant, as necessary.

Set-asides

The Department will maintain IRS required set-asides and may, from time to time, establish targeted, discretionary set-asides for projects which target specific low-income housing needs or which have certain designated characteristics. These set-asides will be designated in advance as a priority for the Department and will be described in the Consolidated Funding Cycle application or through an advertised Request for Proposals.

- The IRS required non-profit set-aside of 10%
- The Department discretionary 15% set-aside for USDA Rural Development funded Rural and/or Farmworker projects. In accordance with the MOU between OHCS and

Oregon USDA Rural Development Rural Housing Services (RHS) herein attached in Exhibit D, OHCS will set-aside 15% of the state allocation of credits for USDA Rural Development 515, 514/516, 538 program eligible projects and other rural/farmworker targeted projects. A reservation or allocation of tax credits from this set-aside will be limited to projects that receive direct funding from Rural Housing Services or meet rural/farmworker housing targets. For additional information please see Item 16 of Exhibit D, MOU between OHCS and Oregon USDA RD RHS.

- A 25% set aside for preservation projects. Preservation projects include but are not limited to those federally financed existing projects where at least 25% of the existing projects' units have project based rental assistance or are expiring LIHTC projects which are offering rents 10% below market.
- Preservation projects include, but are not limited to: those federally financed existing projects where at least 25% of the existing project's units have project based rental assistance which are currently offering rents below market, such as financing by HUD and USDA Rural Development; projects participating in programs that include the replacement of existing affordable housing units, including the HOPE VI program, as long as 25% of the units have project based assistance. Expiring LIHTC projects are also considered preservation. In funding preservation projects, the Department will give preference to those preservation projects where at least 25% of the units have project based rental assistance.

If, in response to applications for a discretionary set aside, the Department is not able to fully allocate to viable applications the amount of credits designated, the Department may allocate the remaining Housing Credits to other qualified Projects which, in its judgment, best achieve the general purposes of the LIHTC Program. Applications under the discretionary set-aside must meet all application criteria.

In 2000, the Department entered into a Memorandum of Understanding with USDA Rural Development, Exhibit D. If maintaining the targeted USDA Rural Development funded, Rural and/or Farmworker set-asides in the Department's judgment jeopardizes the ability to effectively allocate credit, the Department may, at its discretion, eliminate or reduce the set-asides and only adhere to the federally-mandated level for tax-exempt organizations.

Project information must be submitted to the Department at each stage of the allocation process as follows:

1. Initial Application (initial request for LIHTC award, application must be complete to be considered): An application charge as identified in the CFC and must accompany the Initial Application. There shall be no refund of application charges.
2. The applicant must acknowledge acceptance of the Department's offer to Reserve Tax Credits (made after review of the initial application).
3. Execution of Reservation and Extended Use Agreement will establish the parameters of the LIHTC award regarding rent and income restrictions for the project. A reservation charge

will be assessed on the estimated annual allocation of credits and must accompany execution of this agreement.

4. Carryover Allocation (made if the project will not be completed in the year of the tax credits allocation): An application for a carryover allocation must be submitted by December 1 of the year of the tax credit allocation and include all required documentation. However, the time for meeting the 10% test and submitting related documentation will be twelve months after the date of carryover allocation, or December 31 of the year following the tax credit allocation year. If the owner has not secured title to the land, nor the land is otherwise neither secured nor encumbered for the duration of the period of project affordability, the applicant must continue to maintain site control until the time required for meeting 10% of the reasonably expected basis. **Please contact Oregon Housing and Community Services to obtain the carryover application materials required to apply for a carryover allocation or download from the OHCS web site**
http://www.ohcs.oregon.gov/OHCS/HRS_LIHTC_Program.shtml#LIHTC_Carryover_Application.
5. Placed-In-Service/Final Application: (Once the project has received its Certificate of Occupancy by the local jurisdiction, the equivalent local approval for occupancy; or for acquisition and rehabilitation projects the date of the completion of the rehabilitation).
6. Copy of on-site property management plan acceptable to the Department and permanent lender.
7. A copy of a site map with each building identified by address and listing the units by number to be found in each building.
8. Copy of Placement Memorandum, Syndication Agreement or Limited Partnership Agreement indicating tax credit proceeds available to the project together with a contribution schedule.
9. Execution and recordation of a Declaration of Land Use Restrictive Covenants.
10. Release of IRS form 8609.

All cost certifications prepared by a third party tax professional such as a Certified Public Accountant or Tax Attorney will be required from all applicants at the time of the Carryover application (i.e., for the 10% test). A cost certification is required with the Final application, as well and in the Department's recommended certification format as shown in the carryover application and final application.

Sponsors who have received credit reservation under the competitive process must comply with the policy as stated later in this document under Policy on Applications By Sponsors Who Request Additional Tax Credits After Initial Award. If the Department approves the award of additional credits, developer fees will be held to the same dollar amount as reflected in the initial application.

Allocation Protocol: Non-Competitive Credits Issued in Conjunction with Tax-exempt Financing

As a means to ensure that all projects requesting credits in conjunction with tax-exempt bonds are eligible for and have no serious deviation from the QAP, project information must be submitted to the Department at each stage of the allocation process as follows:

- Provide a copy of the 4% application, pre-application or proposal materials submitted for review to the tax-exempt bond issuer. Incomplete applications will not be accepted. The Department reserves the right to provide comment to the bond issuer regarding the use of LIHTC in conjunction with tax-exempt bonds. These comments will be restricted to eligibility for LIHTC based upon criteria outlined in the QAP.
- Initial Application (initial request for LIHTC award, application must be complete to be considered): An application charge as outlined in the CFC and 4% Tax Credit applications must accompany the Initial Application.
- Prior to allocation of bonds from the State of Oregon Private Activity Bond Committee (PABC), an initial application for 4% Low Income Housing Tax Credits must be received and reviewed by the Department. Department comment to the PABC on all tax-exempt bond/4% LIHTC proposals is required prior to bond issuance. These comments will be restricted to eligibility for LIHTC based upon criteria outlined in the QAP.
- The Department may provide written comment regarding the 4% LIHTC application to the bond issuer prior to final approval of the tax-exempt bonds.
- Complete applications with adequate materials for evaluation will be heard by the Department Finance Committee for recommendation to the Director.
- Upon receipt of Finance Committee recommendation and Department Director approval, an Offer to Reserve Tax Credits will be made. The applicant must acknowledge acceptance of this offer within thirty days of its receipt.
- Execution of Reservation and Extended Use Agreement will establish the parameters of the LIHTC award regarding rent and income restrictions for the project. The reservation charge must accompany execution of this agreement.
- Ongoing project monitoring and progress reports are due during the construction and lease up phases of the development
- Placed-In-Service/Final Application: (Once the project has received its Certificate of Occupancy by the local jurisdiction, the equivalent local approval for occupancy, or for acquisition and rehabilitation projects, the date of the completion of the

rehabilitation). **The Department must receive the complete final application within 6 months of the last building being placed in service or in the case of acquisition rehabilitation when the project is determined to be substantially complete. A late charge may be assessed on projects exceeding the 6 month requirement.** See the CFC application materials for the amount of the Late Charge. IRS Forms 8609 are released after an executed Declaration of Land Use Restrictive Covenants is recorded against the property.

Applications shall include but not be limited to the requisite supporting data listed below (under Application Requirements) and completion of all forms requested by the Department. Applicants must pay the required Department charges as set forth in the application format at each stage of the application process. The Department will have the authority to request additional information from the applicant as necessary. The Department, at its sole discretion, also may require the payment of a review charge. In determining whether or not to charge such an additional review charge, and the amount thereof, the Department may consider factors including, but not limited to the following: (a) the Department's actual or projected costs in reviewing an application for tax credits and the project related thereto; (b) the extent of underwriting scrutiny performed or deemed necessary by the Department; (c) the amount and nature of staff resources utilized or projected for researching or reviewing a proposal or application; and (d) the amount and nature of outside resources utilized or projected for researching or reviewing a proposal.

Sponsors who have received credit reservations may request additional credits if there is a justifiable increase in project costs, which is directly related to the project's Eligible Basis. If the Department approves additional credit requests, developer fees will be held to the same dollar amount as reflected in the initial application.

Application Requirements: Both Competitive and Non-Competitive Credits

A. Application for Offer to Reserve Tax Credits shall include but not be limited to:

- 1) Complete application form, as prescribed by the Department for the type of credit being requested, including, but not limited to:
 - a) Complete, detailed breakdown of estimated project costs;
 - b) The amount of credit requested, qualified basis calculation, elections made by the Project owner under Section 42 and a complete breakdown of the anticipated proceeds from the sale of tax credits;
 - c) Confirmation of proposed subsidies (e.g., Trust Fund, HOME, CDBG, FHLB, local funding sources, etc.);
 - d) Implementation schedule, including planning, construction and lease-up;
 - e) Complete summary of sources of funds for project;
 - f) Pro forma Operating Statement with corresponding assumptions and justifications;

- g) Documentation substantiating utility allowance calculations;
 - h) Preliminary Financing Proposals; and
 - i) All application materials and questions must be complete, factual and legible.
 - j) Beginning with the Spring 2007 application a complete Market Study will be required with the application.
- 2) Description of project, including discussion explaining community need. An independent third party market analysis may be required for all projects receiving a reservation. The Department reserves the right to verify all market information.
 - 3) Legal description of site. This cannot change in size or description without prior approval of the Department.
 - 4) A detailed location map, as outlined in the application.
 - 5) Site plan and preliminary architectural plans, as described in the application materials.
 - 6) Evidence of initial site control (e.g., purchase agreement, option, land sale contract, evidence from the local government demonstrating their intent to transfer property).
 - 7) Evidence project is in compliance with local planning and zoning codes applicable to the proposed use of site or evidence of application for conditional use approval, as required by the local jurisdiction. (Note: Sites requiring zoning variances, or where the use is neither allowed out right or conditionally, will not be accepted.)
 - 8) Resume of development team members.
 - 9) Most recent annual financial statement of the sponsoring organization.
 - 10) Certifications or other documentation substantiating evaluation criteria.
 - 11) Applicable Department charges, as identified in the CFC application and outlined, for general reference, in Exhibit H of this document.
 - 12) Nonprofit Organizations (only) - Articles of Incorporation and IRS documentation indicating tax-exempt status has been granted (IRS Form 1023 for 501(c)(3) organizations, Form 1024 for 501(c)(9), or other organizations).
 - 13) A Resident Services Plan for residents in the proposed Project, including a description of how and why those services are appropriate and how those services will be integrated and administered by management.
 - 14) All application information must be complete, factual and legible.
 - 15) A signed certification by the applicant attesting to the validity of the application materials presented.
 - 16) Completion of IRS Form 8821.

Applications under the CFC process, or RFP process and the competitive 4% credit process, will be reviewed and ranked according to an evaluation process (see the next section of this document and most current application package), and projects will be selected to receive conditional offers

to reserve tax credits. Upon issuing a conditional reservation, the Department will notify the Chief Executive of the designated jurisdiction where the planned housing development is located.

Those projects receiving a conditional offer to reserve tax credits must comply with all conditions outlined in the Offer Letter within 90 days in order to receive a tax credit commitment. Credit reservations offered to, but not accepted by, the Applicant may become available for distribution to other high-ranking Applicant(s). Following the offer to reserve credits; an extension beyond the initial 90-day period may be considered should the Department determine that there are circumstances to warrant this consideration.

The Department may, at its discretion, establish a waiting list for projects competing for per capita credits. Projects with high rankings that did not receive an offer to reserve tax credits during the initial application period will be eligible to be placed on a waiting list. Waiting list status expires October 1st of the year for which the project sought a credit allocation (not necessarily the year of the application). The Department has established a process for awarding funding to projects that have tied in the ranking process; this will also be used in selecting projects off of the waiting list. The Department tiebreaker criteria are outlined in the CFC application.

Applications for non-competitive tax-exempt bond financed credits will be evaluated based upon criteria similar to the CFC criteria. While applicants will not be competitively scored there will be an expectation that projects meet basic standards of eligibility and community appropriateness. Non-competitive applicants may resubmit application materials with corrections.

B. Requirements for Reservation of Tax Credits shall include:

- 1) Receipt of all applicable items in A above.
- 2) All documentation required to evidence compliance with the Reservation Agreement conditions, may include but is not limited to:
 - a) Evidence of site control/purchase;
 - b) Letter of community support;
 - c) Conditional commitment of construction/permanent financing (sufficiency to be determined by the Department);
 - d) Architectural plans;
 - e) Evidence of compliance with local zoning codes;
 - f) Level I Environmental Study; and
 - g) Payment of 5 percent Reservation Charge.

NOTE: A Reservation and Extended Use Agreement will be required of all LIHTC applicants.

Applicants for 4% credits in association with tax-exempt bond financing will enter into a Reservation and Extended Use Agreement concurrent to reservation of credits by the Department Finance Committee and meeting any conditions of award. Applicants for 4% credits must enter into the Reservation and Extended Use Agreement no later than 60 days from the date of the Offer Letter or within the month the Bonds are sold. Applicants for credits subject to the state per capita authority will enter into a Reservation and Extended Use Agreement upon satisfaction of conditions of CFC award as they apply to the credit allocation. The LIHTC fee will be due and payable at the execution of the Reservation and Extended Use Agreement in both cases.

ALLOCATION PROCEDURE

Evaluation Process

All projects, including those competing for set-asides through requests for proposals, and both competitive and non-competitive credit applications, will be evaluated according to a process that includes consideration of the State's low-income housing priorities as designated by the State Consolidated Plan, a local level Consolidated Plan, if applicable, (or successor document(s) to the Consolidated Plan) and/or other information that can demonstrate verifiable housing and community needs and priorities, required under amended Section 42 of the Internal Revenue Code (IRC) and any other information the Department deems pertinent to the selection process as identified in the request for applications. IRC Section 42 specific requirements include consideration of:

- A. Project Location;
- B. Housing Needs Characteristics;
- C. Project Characteristics;
- D. Sponsor Characteristics;
- E. Tenant Population with Special Housing Needs;
- F. Tenant populations of individuals with children;
- G. Projects intended for eventual tenant ownership;
- H. Public Housing Waiting Lists;
- I. Participation by Local Tax Exempt Organizations, and;
- J. Resident Services.

Section 42 (m)(B) further states that preference in allocating housing credits be given to:

- projects serving the lowest income tenants, and,
- projects obligated to serve qualified tenants for the longest period of time.

As part of the Departments evaluation process applications will be reviewed based on the following criteria:

Market and Rent Assessment

- Documented market description
- Documented analysis of market trends
- Measurable differences in proposed rents and market rents (preference for a minimum of 10% below market rents)
- Evaluation and understanding of the local affordable housing need
- Housing gap addressed
- Impact on existing affordable housing developments

Resident Services

- Description of target population and their needs
- Services appropriate to meet the needs of the target population
- Description of proposed services including projected results in measurable terms

- Extent of collaboration and coordination of ongoing services after project completion

Sponsor Capacity

- Sponsor’s experience developing and owning housing.
- Prior project compliance with program regulations
- Readiness of sponsor’s entity to develop and maintain the project
- Development team’s experience developing housing

Financial Feasibility and Readiness to Proceed

- Source of financial estimates are researched and complete
- Length of time before project can begin construction
- Level of commitment of other resources
- Status of communication with HUD or RD, if applicable
- Level of planning for tenant relocation
- Appropriateness of the project for the targeted population(s)
- Reasonableness of construction and development costs for the construction type
- Reasonableness of operating cost
- Grants and tax credit program requirements
- Development fee reasonableness
- Demonstrated need for Department resources
- Required cost estimation materials are included and are complete and accurate

Pro Forma Spreadsheets

- Development and operating budgets reflect the project as represented in the application
- Eligible uses of resources
- Financial data and methodology are acceptable and explained in the application

Program Considerations

- Meets specific program criteria
- Minimal impact on existing residential or commercial tenants
- Reasonable request of program resources
- Eligible uses of resources
- Required materials are included and are complete and accurate
- Multiple funding sources work compatibly in project

Additionally, applicants competing for 9% and competitive 4% credits will complete a Self-Scored Section, which has a potential score of one-half of the total possible score. The Self-Scored Section will give an opportunity for the applicant to earn points for readiness-to-proceed criteria and Department preferences, including:

- Renting units to households with net incomes less than two times the amount of the rent
- The specific population(s) to be served

- Green building measures incorporated in project
- Identification of construction or rehabilitation costs
- Support from federal, state or local governmental offices and the community
- Commitment of non-OHCS resources

More specific guidelines and criteria regarding the evaluation of applications can be found in the application format (the Consolidated Funding Cycle and/or the 4% Credit Application and/or the Multi-Family Rental Housing Risk Sharing Program and Elderly and Disabled Loan Program Applications and/or any additional program materials adopted or used by the Department).

The above evaluation criteria are presented as considerations the Department makes for each LIHTC proposal. Because each project is so unique, there is no set standard for the criteria; rather, each is considered in the context of the given proposal.

“Threshold” Criteria

The Department has adopted “thresholds” to insure that the funds available are given to projects best able to produce housing in a timely manner.

LIHTC applications will be reviewed for compliance with the following four “thresholds”. The bond-financing threshold is applicable only to 4% credit applications.

Bond Financing (for non-competitive only)

If 50% or more of a project's aggregate basis of buildings and land are financed with tax-exempt bonds, the project may receive a maximum 30 percent present value credit calculated against the project's qualified basis without causing a reduction in the State's annual credit authority. If the project is less than 50% financed with tax-exempt bonds, the credits may be claimed only on the portion of the project being financed by tax-exempt bonds. Sponsors of projects financed by tax-exempt bonds must make application for tax credits, and such projects must address housing needs set forth in the Qualified Allocation Plan. These projects will be subject to project evaluations and the amount of credit offered to said project will be established by the Department. Consideration will be given to the sources and uses of the funds, any proceeds generated by reason of tax benefits, the total financing planned for the project and the percentage of the housing credit dollar amount used for project costs other than soft costs. Provided the Department approves the sponsor's application, a Tax Credit Commitment will be issued stating the amount of credit available to the project.

Threshold Requirements

Applications received through the Consolidated Funding Cycle (CFC) for either 9% credits or competitive 4% credits must meet the following threshold requirements or the application will be removed from further review. If that occurs, the applicant is welcome to correct and resubmit the application in a future CFC round.

Site Control -- All applicants must demonstrate site control. Evidence of site control can include: fee simple title, evidence from the local government demonstrating their intent to

transfer property, or a contract or agreement demonstrating site control, including an option on the property. Control of the project site for a period of time not less than the time period of project affordability is also acceptable. Site control requirements also include a minimum period during which the site control must be in effect. The CFC application states this required period of time.

Zoning -- Applicants must have their local planning department complete a zoning certification, indicating that the property is properly zoned for the use intended, or the intended use is allowed with conditions and application has been made for a conditional use permit. Under no circumstances will anything other than the Department's standard zoning certification form be accepted as evidence of proper zoning. Projects requiring zone changes or annexations will not meet threshold requirements.

Site Review and Environmental Review -- All applicants must complete the Environmental Review Checklist. The Department's Regional Advisor to the Department (RAD) will review the information on the form during the site review. The Environmental Review Checklist is included in the application materials.

Architectural Review -- Only the architectural plans specifically listed on the Application Submittal Checklist are to be submitted with the Application. Submitted plans will be reviewed during the Threshold Review by the Department Architect, Division Administrator and Department Director to confirm that the appropriate documents have been submitted and meet threshold requirements.

Sponsor Characteristics

Sponsors must be able to demonstrate an understanding of the Low-Income Housing Tax Credit Program, and proficiency with housing related development. No sponsors with limited multi-family experience will be excluded from the application process as long as they engage the services of qualified development team members. Additional consideration may be given to program sponsors who have consistently completed their projects in accordance with representations made in their applications, and who are maintaining their project in compliance with tax credit program policies and procedures and federal regulations.

The Department may reject applications from previous program participants who have failed to demonstrate proficiency with the LIHTC Program or other government-sponsored housing programs. The Department may reject or discount an application from previous program participants who have failed to complete their projects in accordance with their applications and/or certified plans presented to the Department or other public or private allocating agencies, or who have failed to effectively utilize previously allocated tax credits, or who have been found to be in chronic non-compliance with program rules as evidenced by Department or other public or private allocating agencies project monitoring. Program participants who fail to complete a project within the time schedule or budget indicated in the application may receive a reduction in the sponsor capacity scoring of any future application.

Capacity of previous program participation includes but is not limited to the past performance of any member of the development team, claims with contractor board and other considerations as deemed appropriate at the sole discretion of the Department.

Financial Feasibility

Tax credits for a project may not exceed the amount necessary for the financial feasibility of the project. The Department's project evaluation will utilize common lending standards and underwriting criteria for evaluating multi-family projects. Basic criteria include, but are not limited to:

- Primary Debt Service Ratio is recommended to be no lower than 1.15 (1.10 for projects using Rural Development loans) until initial stabilized occupancy and no higher than 1.20 (unless accompanied and supported with an explanation.) OHCS will consider vacancy rates, ability to raise rents and historic operating cost escalations typical in the marketplace in determining debt coverage before and after initial stabilized occupancy. Repayment of must pay debt, e.g., principal amount of deferred developer fee, may increase or decrease primary debt service ratio. Projects with deferred payment loans, cash flow only loans or partnership loans will have to provide a letter from either a Tax Accountant or Tax Attorney stating the there is a reasonable expectation the loan can be repaid at maturity or the loan will be treated as a grant and removed from basis.
- Maximization of Loan to Value ratios and documentation thereof from the project lender.
- Construction hard costs per square foot are consistent with industry standards for similar projects unless adequately justified by community constraints or building type.
- Developer fees in accordance with Department policy (as stated in the Department's application instructions).
- Reasonable operating expenses, as determined by the Department for the project size, type and population to be housed, including:
- Operating reserves of 4 to 6 months operating expenses (minimum). Reserves less than or in extreme excess to this will be approved on a case-by-case basis with justification.
- Adequate replacement reserves justified in the application and deemed reasonable by the Department.
- Itemized operating expense and vacancy rate projections supported by reasonable and credible evidence. Acquisition price for acquisition of buildings or land shall be limited to the appraised value as determined by an independent third party licensed appraiser.
- Ability of the project to demonstrate long-term viability (minimum of a 15-year cash flow projection).
- Tax Credit pricing at current market rates.

Note: Tax exempt bond projects with funding gaps requesting CFC funds to fill the gaps may be required to apply for these funds during the normal CFC application round.

Architectural/Site Review

In response to a legislative mandate for promoting good quality in the development, design and construction of publicly funded housing, the Department has adopted Architectural Requirements for all LIHTC projects. These requirements are minimum standards that apply to new construction and to the renovation of existing structures. They promote long-term livability and the wise use of public investment by addressing Site Design, Building Design and Unit Design issues. The standards and processes are included in the CFC **and/or the Multi-Family Rental Housing Risk Sharing and Elderly and Disabled Program Applications and/or any additional program materials adopted or used by the Department.**

The sponsor and/or architect may request a pre-application conference with the Department before submitting all documents necessary for the formal application.

Changes made to architectural designs after the award or reservation of credits must be documented and are also subject to Department architectural approval.

Project Evaluation for Appropriate Credit Amount

After projects in the competitive review are evaluated and ranked in order of their score, they will be presented to Department Senior Management and/or Finance Committee. Senior Management and/or Finance Committee will provide a recommendation to the Director. Non-competitive applications will be evaluated based upon the same criteria, and presented to the Department Finance Committee for recommendation to the Department Director.

Project evaluations will be conducted to determine the appropriate amount of tax credits eligible to the project. Pursuant to amended IRC Section 42 of the Internal Revenue Code, the amount of credit available for a project may not exceed the amount necessary for its "financial feasibility." Regulations require that allocating agencies conduct these evaluations at three specific times to determine the applicable credit amount:

- A. Upon receipt of the Consolidated Funding Cycle Application, or Initial 4% Credit Application;
- B. Prior to providing a Tax Credit Carryover Allocation (for competitive, per capita credit requests); and
- C. No earlier than 30 days prior to issuance of IRS Form(s) 8609.

During each evaluation, the Department will determine the amount of credit to be reserved committed or allocated by considering the following components:

1. Total project costs.
2. Funding sources available to the project:
 - a) Loans
 - b) Grants
 - c) Tax Credit Proceeds - (The Department will use current market guidelines, as well as sponsor representations, to estimate proceeds anticipated from the sale of tax credits. A copy of the Placement Memorandum or Syndication Agreement must be provided to the Department no later than the date upon which the sponsor applies for Placed-In-Service allocation. If said document has not been finalized, a draft Placement Memorandum or Syndication Agreement or Limited Partnership Agreement will be acceptable.

- d) When actual tax credit proceeds are determined, there may be an adjustment to the credit reserved or committed. Credit will not be increased beyond the amount originally reserved unless application amendments are submitted and the request meets the Policy on Applications by Sponsors Who Request Additional Tax Credits after Initial Award policy included in this QAP. In the case of non-competitive credits, the request is reviewed and approved by the Department Finance Committee or administrative approval, depending on the amount of credits requested. If actual project costs or funding sources differ substantially from the projections submitted in the application, the Department may reduce the final credit allocation or the Owner may establish project reserves to offset the deficit for allowable purposes. The conditions for such reserve accounts will be determined on a case-by-case basis, and must be approved by the Department.)
 - e) Owner Equity -- Owner equity is often in the form of deferred developer fees. Developer fees may not exceed 15 percent of total project cost per the developer fee policy described later in this document. The Department requires full disclosure of all fees paid to parties related to the sponsor and/or developer. The developer fee shall include developer overhead, profit, and consultant fees for services normally performed by the developer.
3. Percentage of the housing credit dollar amount used for hard costs (actual construction costs, including builder and contractor's fees).
 4. Projected operating income and expense, 15-year cash flow and tax benefits.
 5. Maximum tax credit eligibility - Additional eligible basis will be considered for projects located in HUD's designated "Difficult to Develop Areas" and "Qualified Census Tracts," if deemed necessary for the viability of a project by the Department. An evaluation process that examines the financial feasibility and public purpose of a given project will limit the amount of tax credits allocated to a project.
 6. Debt Service Coverage Ratio.
 7. Project reserves - four to six months operating reserves at a minimum. Reserves less than or in extreme excess of this will be approved on a case-by-case basis. Considerations will be made for lender and equity investor requirements.

Project costs will be evaluated against Department criteria and industry cost standards, as well as average costs from competing projects. Applicants will be required to provide documentation of their cost estimates. Projects with excessive costs will be subject to review and possible adjustment by the Department.

Reservation Period for Competitive 9% Credits

Approved projects will receive a reservation of credits. Project sponsors who receive a reservation will have a maximum timeframe (as identified and outlined in the current Consolidated Funding Cycle process, 75 days Reservation Period) in which to submit additional materials and fulfill specific project milestones which address readiness to proceed issues. If the sponsor does not satisfactorily complete the requirements of the Reservation Letter within the deadline identified in the timeframe outlined in the CFC process, the project will be subject to review and may have the reserved funds and tax credits rescinded. OHCS administration will review the wait list and may award the rescinded funds to another project on that list.

Allocation by Tax Credit Year

When making a reservation of LIHTC, the Department reserves the right to decide whether a project will receive an allocation from the current year credit ceiling or an allocation from the next year's credit ceiling (forward allocation). This decision shall be based on factors including, but not limited to, the project's readiness to proceed and the likely timing of a project's ability to satisfy the 10% of expected basis test. OHCS reserves the right to exchange a current year allocation with a future year's credit allocation if the Department is at risk of not allocating all of its current year credit ceiling.

Competitive Allocation Limitations

During the development process, the following limitations shall apply:

- The per capita tax credit cap for projects applying for a reservation of credits will be no more than 10% of the total per capita award from the previous year's allocation (the application cap).
 - The Department, at its sole discretion may approve the issuance of additional credits above the application cap, but no project may be allocated additional credits in excess of 25% of the application credit cap per project, if a project needs additional credits above the application cap to be financially feasible. For example, the application cap for the 2009 credit year is \$825,000 credits. If projects need additional credits once a reservation is issued, and resources are available, the Department, at its sole discretion, may award additional credits up to \$206,250 of additional credits per project, not to exceed \$1,031,250 per project.
- If credits are available and credit recipients request additional funding, in order to remain financially feasible, the project ceiling for the 9% credits may also be waived, at the sole discretion of the Department. Requests will only be considered after initial credit reservation and prior to applying for a carryover. The per capita maximum is waived for projects accessing 4% credits outside of the competitive process for use with tax-exempt bond financing.
- Tax Credit Offers to Reserve and/or Carryover Allocations may not be transferred without Department approval. For projects with a nonprofit sponsor applying for the 10% nonprofit set-aside, it is required that the nonprofit applicant(s) materially participate in the development of the project. Any changes in General Partner status without the consent of the Department may result in forfeiture of the Offer to Reserve or Carryover Allocation. (Material participation is described later in this document.)
- The Department will diligently enforce all agreements, warranties and representations of the sponsor regarding the project, especially those made in the Initial Application as well as those made in the Reservation and Extended Use Agreement. Failure to perform or demonstrate progress may jeopardize the reservation for Carryover Allocation, tax credits previously awarded, and potential future allocations.

- Tax Credit Reservations are made based upon representations in sponsor applications. Once a Reservation and Extended Use Agreement has been offered or executed, written approval for any changes to the project must be obtained from the Department. This approval shall be made in a timely manner and will not be unreasonably withheld. Changes requiring such approval include but are not limited to:
 1. Changes in the project's composition may be approved provided the project continues to maintain an evaluation ranking equal to or greater than those awarded to the original project. A re-evaluation of the project is necessary if there are material changes to the project scope. Applicants will be required to submit an amended application, and an additional application fee may be required.
 2. Composition of the partnership.
 3. Lender/Equity Investor Changes.
 4. Changes in the unit mix or number of units.
 5. Changes in cost.
 6. Changes in management agent.
 7. Other changes the Department, at its discretion, deems substantive.

- No executive, employee or agent of the Oregon Housing and Community Services Department or any other official of the State of Oregon, including the Governor thereof, shall be personally liable concerning any matters arising out of, or in relation to, the allocation of Low-Income Housing Tax Credits, or the approval or administration of this plan.

Documentation Requirements for Projects Awarded Credits

Once credits have been offered to a project, the following documentation is required:

- Reservation or Determination letter sent to the applicant and an acknowledgment of the reservation and agreement to the conditions by the applicant returned to the Department.
- Reservation and Extended Use and Hold Harmless Agreements will be executed between the Department and the applicant.
- Tax Credits reservation fees paid timely.
- Monthly Progress Reports will be required.
- An approved Carryover Application and Agreement for projects receiving competitive credits that will not be placed in service in the allocation year.
- A completed and approved Final Application an executed Declaration of Land Use Restrictive Covenants will be required prior to the release of the IRS form 8609 by the Department.

Project Denial

The Department reserves the right to disapprove any application for tax credits if, in its judgment, the proposed project is not consistent with the goals of providing decent, safe and sanitary housing for low-income persons as set forth in the Department’s enabling legislation or

the project does not meet the requirements of IRC Section 42 as amended, all regulations promulgated hereunder, and/or polices and preferences stated in the Qualified Allocation Plan. The Department may impose additional conditions on project sponsors for any project as part of the credit reservation process.

Revocation or Reduction of Housing Credit

The Department may revoke an offer of a credit allocation or may terminate a Reservation and Extended Use Agreement if the Department determines that:

- The proposed project owner will not obtain a construction loan or building permit, or close its equity agreement in a timely manner;
- The proposed project has not made adequate progress toward carryover requirements;
- The proposed project will not be placed in service by the date mutually agreed upon;
- The proposed project financing is not committed as indicated;
- The applicant has submitted misleading or false information in the application to obtain funds or in other correspondence with the department;
- The project does not fulfill the representations made in the application and no attempt to contact the department to describe the situation has been made;
- Or other just causes at the Department's discretion.

The Department may reduce the allocation amount identified in the Reservation and Extended Use Agreement prior to the issuance of the Declaration of Land Use Restrictive Covenants or Form 8609 if:

- upon analysis, the amount of credit originally assumed appropriate is in excess of the amount needed for financial feasibility,
- there has been a reduction in basis,
- the tax credit rate has changed since the original application and the rate was not locked at the Reservation and Extended Use Agreement.

The Department may revoke a reservation of credits if the Department in its discretion believes (based on analysis), that more than 10% of the total estimated project costs will not be expended within six months of the allocation date or end of the calendar year in which the Carryover Allocation is made (whichever is later). Furthermore the Department may revoke a reservation of credits if the Department in its discretion believes the project will not be placed in service within two years following the calendar year in which the a Carryover Allocation is made or by the dates mutually agreed upon.

STATE & FEDERAL LIHTC POLICIES

Public Records Disclosure Policy

Sponsors may request and receive a summation from the Department with respect to the evaluation of their specific project application; however, the written evaluation documents and related details of other projects will not be available. ORS 192.502(23) exempts Oregon Housing and Community Services from releasing to the public the following records, communications, and information submitted to the Department by applicants for and recipients of loans, grants and tax credits:

- Personal And Corporate Financial Statements And Information, Including Tax Returns
- Credit Reports
- Project Appraisals
- Market Studies And Analysis
- Articles Of Incorporation, Partnership Agreements And Operating Agreements
- Commitment Letters
- Project Pro Forma Statements
- Project Cost Certifications And Cost Data
- Audits
- Project Tenant Correspondence Requested To Be Confidential
- Tenant Files Relating To Certification
- Housing Assistance Payment requests

The purpose of ORS 192.502(23) is to protect from public disclosure the detailed personal and business information that applicants and businesses must submit to the state as a condition of participating in the subsidized housing program.

Policy on Native American Housing Assistance and Self-Determination Act and LIHTC

Native American Housing Assistance and Self-Determination Act funds may be combined with LIHTC and receive a 9% credit if at least 40% of the total units (not just the HOME units) in each building will be occupied by persons whose income is 50% or less of area median income and rented at rates affordable to persons whose income is 50% or less of area median income.

Policy on Use of LIHTC for Public Purpose

The legislative history of the LIHTC program provides that residential units must be available for use by the general public. Regulations require that use by the general public be consistent

with all applicable federal, state, and local law. The Department reserves the right to take any action it deems appropriate if the developer, general partners (or any affiliate), management agent or any other material participant, in the Department's judgment, is or has been found to be in violation of any applicable law including, but not limited to fair housing, housing accessibility or nondiscrimination laws. Material participants, but is not limited to, any entity that materially affect, in the Department's opinion, the development or the operation of the property. HERA as enacted July 30, 2008 indicates the allowance of LIHTC on developments that defines occupancy to include preference for tenants with special needs, or who are members of a specified group under a Federal or State housing program or policy, or who are involved in artistic or literary endeavors. Housing must be consistent with Federal Fair Housing rules. The provision applies retroactively to projects already placed in service, as well as projects to be placed in service after July 30, 2008.

Departmental remedies may include, but are not limited to, rejection of the LIHTC application, termination of processing, failure to issue an IRS form 8609, or issuance of an IRS form 8823. The Department may rely upon its own investigations or other information the Department deems appropriate.

Policy on the use of LIHTC with other Funding Sources, including HOME

HERA eliminated below-market federal loans from the definition of federally subsidized properties. In addition, several rules that applied to projects combining HOME funds with LIHTC have been eliminated. Federal subsidies that used to be disallowed from eligible basis may now be permitted for inclusion in eligible basis, including but not limited to HOME funding.

Policy on Material Participation by Nonprofit Organizations

For partnerships, turnkey or joint ventures that have as a general partner or co-general partner a local tax-exempt nonprofit organization, the Department expects material participation by the said local tax-exempt nonprofit organization to include, but not be limited to:

- Participation in developer fees and excess cash flows. Favorable consideration will be given to projects where non-profit participation in developer fees and excess cash flow is at least 25 percent. Excess cash flow will be defined here as cash flow remaining after contractual and/or partnership arrangements for cash flow sharing is taken into account.
- Participation in project oversight and decision making, such as direct involvement in application preparation, direct involvement in discussions for construction, bridge and debt financing, a close working relationship with the property management firm, and tenant selection. The project must demonstrate an ability to further the non-profit's charitable mission and there should be an ability on the part of the non-profit to override any fiduciary duty to the owners when that duty conflicts with the charitable mission of the non-profit.
- Provision of assistance that empowers the non-profit and enables it to gain expertise.

- It is further required that the said non-profit NOT be affiliated with or controlled by a for profit organization.

Material participation of the non-profit must be demonstrated if the applicant is applying under the 10% non-profit set aside.

Next Available Project List Policy (Wait List)

On an annual basis the Department will establish an LIHTC wait list of viable but not funded 9% applications resulting from the competitive application process. Projects will retain the score they received in the competitive application process. When tax credits are not awarded or are returned, the Department, at its sole discretion, may do any of the following:

1. If needed, and if available, fill project gaps for awarded projects that have not met carryover.
2. Fund the next LIHTC project on the LIHTC wait list that matches or is closest to the amount of LIHTC and other department resources available. The project sponsor will be given no more than 30 days to evaluate its own financial position and determine if the organization has the capacity to proceed with the OHCS LIHTC and/or other resources, if available. The Department will require that a waitlisted project have a reasonable timeline to proceed to completion. The project sponsor will be subject to timeframes outlined in this QAP as well as timeframes of award (e.g. the 75 day reservation letter conditions) as outlined in the CFC that all LIHTC awarded projects have received during that credit year. This may include, but is not limited to carryover application requirements.
3. To the best of its ability, the Department will maintain the Department desired funding split between rural and urban funded projects. Projects will remain on the wait list until the later of either all LIHTC resources for that year have been exhausted, or October 1st of each year, at which point when the list will expire.
4. The Department may issue Request for Proposals requesting that projects compete for the remaining tax credits.

Projects will be eligible and remain on the list for the entire credit period for which they apply for LIHTC only if:

- they were not funded within the previous funding cycle but received a score high enough to be considered a viable project.
- have not re-applied as a 4% non-competitive project and received a credit award.

If a funded project cannot meet Carryover, or becomes ineligible for the credits for any other reason, the next available project on the list will be notified. If this project can demonstrate that it can meet Carryover requirements, the project will be awarded credits. Other Department funding sources may also be reserved as well to fund wait listed projects based upon their availability.

Policy on the Use of the 9% Applicable Credit Percentage

OHCS will underwrite projects reserved 9% competitive credits after July 30, 2008 using the 9% credit rate, as indicated by HERA, if it is anticipating that projects will be placed in service no later than December 31, 2013.

Policy on the State's Use of the 130% Basis Boost

These designations are applicable to competitive 9% credit projects only.

Based on research of the types of projects and the areas in need of the 130% basis boost, the Department, in order to meet its housing goals, determined which areas and which buildings shall be designated difficult to develop areas and allocated additional credits to be financially feasible:

- a. Preservation projects
- b. Projects serving permanent supportive housing goals
- c. Projects that address workforce housing needs, as per the Needs Analysis currently included in the CFC
- d. Projects that are located in Transit Oriented Districts (TODs) or Economic Development Regions (EDRs) as designated by local governments, or projects in a designated state or federal empowerment/enterprise zone or Public Improvement District (PIDs), or other area or zone where a city or county has, through a local government initiative, encouraged or channeled growth, neighborhood preservation, redevelopment, or encouraged the development and use of public transportation.

The above notwithstanding and given the current financial market conditions and testing for financial feasibility of each project, the Department will consider the issuance of the state's 130% basis boost, for projects outside of Qualified Census Tracts and Difficult to Develop Areas, as identified by HUD, and projects not characterized above. At its sole discretion, the Department reserves the right to return to the above policy upon ample public notice (as outlined on page 10 of this document), as soon as market conditions improve or within 12 months from the date this Amended Plan becomes effective, **whichever date is later.**

Projects requesting a boost to their eligible basis during in the 2009 -2010 award cycles, which are not located in a HUD designated DDA/QCT will need to submit to OHCS the following, but prior to the carryover process:

- (1) An explanation of how and why the use of the boost is needed for the specific project
- (2) The most recent proforma and explanations of proforma assumptions which identify the need for the additional basis boost, to support the narrative.
 - (a) Substantial changes to the proforma from the original application or from the latest available to OHCS, will not be accepted without valid explanations of the reasons that have led to the substantial changes.
 - (b) Changes in the project income and project expenses will not be accepted.
 - (c) The Department will not consider a request for the use of the state's basis boost to fill gaps resulting from increased costs in the uses of funding.

Policy on Returning 9% Credit Allocations In Exchange For a Subsequent Year's Credit Allocation

Once a sponsor is in receipt of an allocation² of credits during an annual award cycle, the Sponsor has the responsibility to complete the project by the timelines identified in the IRC Section 42 and as outlined in this QAP.

At the sole discretion of the Department, to the extent a project continues to be financially feasible, OHCS will work collaboratively with Sponsors and reserves the authority to exchange **an allocation** of credits from one year to the exact same amount of credit from a subsequent credit year.

A Sponsor must determine good cause to return their reservation to the state, and as such the Sponsor has a one time option to return their allocation to the state, as follows:

1. No later than March 31 of the year following the allocation of credits, a Sponsor may request to return their allocation for the exact same project for which the credit was originally allocated at carryover and exchange it for an award of **the same** amount of credits from the next credit year, as the amount returned. For example, a 2009 awarded project that completed carryover may choose to return its award once carryover is complete and receive an award of 2010 tax credits of the exact same amount as allocated in 2009, if the project has not been placed in service and will not be placed in service by December 31, 2009.
2. After credits have been returned, Sponsors may apply for additional tax credits in accordance with the following:
 - o Policy on Applications by Sponsors Who Request Additional Tax Credits after an Initial Award (below)
 - o Policy on the use of the 9% Applicable Percentage
 - o Policy on the State's Use of the 130% Basis Boost (above).
3. Projects must comply with the requirements in the Plan applicable in the initial year of award and all representations made in the initial application (unless specifically and explicitly waived by the Departments)
4. The Department will not consider filling gaps resulting from increased costs in the uses of funding when evaluating an exchange request of credit reservation years.

The Department, at its sole discretion, will evaluate the request for an exchange of credit year awards and will underwrite the project for financial feasibility. For example, a project reserved credits in 2008 may return their allocation in exchange for an award of the same amount in 2009. Should a Sponsor determine that it needs additional credits to be financially feasible, the Department, at its sole discretion, will accept and review a request for additional credits, in accordance with the Policy on Applications by Sponsors Who Request Additional Tax Credits after an Initial Award, outlined below.

² For the purposes of this paragraph, reference to an allocation means an allocation made pursuant to the 10% incurred/two-year carryover rule. This is usually made by submitting to OHCS a completed carryover application and entering into a carryover agreement signed by both parties.

Policy on Voluntary Return of Credits

A Sponsor may voluntarily choose to return all or part of its awarded, reserved or allocated credits to the State. To efficiently manage the LIHTC Program, OHCS will accept voluntary returns of credits at any time after the award process. Any returns cannot be conditioned or predicated on any other funding source outside of the LIHTC program. Sponsors must acknowledge in writing their voluntary return of credits. OHCS will confirm receipt of the credits in writing and will re-award the credits in accordance with this Plan. No fees will be refunded at any time.

Policy on the Handling of Returned Credits

Annual per capita credits returned after January 1 and prior to October 1 of any given year will be reallocated as follows:

- Projects requesting additional credits to fill funding gaps and requests are approved by Department Finance Committee.
- Projects on an established waiting list that can meet carryover requirements.
- Projects solicited through a specific Request for Proposals process.

Policy on Applications by Sponsors Who Request Additional Tax Credits after an Initial Award

Once the Reservation Period ends (currently the 75 day period), the Department will not accept requests to fill financing gaps resulting from increases in construction costs, except as follows:

Sponsors who receive an initial reservation of annual per capita LIHTC, as a result of competing in the CFC process, may generally make one request for additional tax credits, if the project has experienced an unforeseen hardship³ since the time of the application and if eligible basis exists to allow the credits to be issued. (for additional information on existence of eligible basis see Policy on the Use of the 9% Applicable Percentage and Policy on the State's Use of the 130% Basis Boost, above)

Requests for additional per capita credits prior to a project receiving a carryover allocation do NOT require an application via the competitive funding round (CFC process). A project with a multiple year allocation of credits will NOT require a CFC application if a carryover allocation has NOT been issued for the latest year of credits. However these projects may NOT request an allocation of credits such that the project exceeds the maximum per capita funding cap outlined in this document. There will be a charge based on the amount of equity generated by the increase in credits (see CFC charges as outlined in Exhibit H to determine the amount of the charge) and this charge must accompany the increase request.

³ An unforeseen hardship that impacts the financial feasibility of a project may include but is not limited to: natural or economic disasters regionally, nationally or internationally.

A project that has been funded with Low Income Housing Tax Credits AND has received a carryover allocation for all of the credits it was awarded must compete for an award of additional tax credits.

The Department will evaluate all requests and may or may not grant such requests depending upon the need for the additional credits, other potential funding sources available and the availability of credits for allocation by the Department. Applications for additional credits must be made prior to the building(s) being placed in service.

Any increase in the annual allocation of tax credits made after the Department's offer to Reserve Tax Credits will require payment of an additional application charge and an additional reservation charge on any additional tax credits awarded.

The application for additional credits must include the following:

- A. Written confirmation from the direct investor or tax credit syndicator of their level of interest in the project, including their timelines and the terms and conditions of the equity investment
- B. A letter of interest from the construction lender that outlines construction financing has been identified and the project will be ready to proceed according to the timelines identified in the project's application for original award.
- C. A letter of interest from a permanent lender that outlines permanent financing is in process
- D. Indication that the project will proceed substantially as outlined in the original application and there will be no substantive changes to project's scope or scale, rent structure, architectural specifications, or any other permanent aspect of the project..

To carry out this policy, the Department, at its sole discretion, may consult directly with equity investors and lenders.

The Department will amend and restate all program documents, and request an additional reservation charge, including but not limited to the Reservation and Extended Use Agreement, for all applicants who receive additional tax credits AND for sponsors who might need a reallocation of credits for technical, legal and other reasons who meet the 24-month project completion schedule and Carryover Agreements.

Projects previously awarded credits that are currently in their initial compliance periods for pre-1990 projects and in their extended use period for post-1990 projects, will not be eligible to apply for additional credits until the extended use period is over unless the additional credits will provide a clearly demonstrable benefit to the tenants. Existing LIHTC projects are not eligible to receive additional acquisition credits until the end of the initial owner's fifteen-year compliance period.

Project owners who have chronic and uncorrected non-compliance findings may not be considered eligible to apply for credits for new projects until all compliance issues are resolved or a Department approved action plan has been identified and adhered thereto.

Projects that do not compete for their allocation of credits (4% credits) and need additional credits to remain financially feasible, will be subject to the requirements of this plan. Additional

credits may be awarded if, in the analysis and underwriting process at final application, it is determined that the projects needs additional credits to be financially feasible. All charges associated with additional resources, as outlined in Exhibit H, will apply for additional credit awards.

Policy of Split Year Tax Credit Allocations

Projects that receive split year credits as awarded by the Department will comply with the policies and procedures of the QAP in effect at the time of the award of the credits.

Projects that request additional credits, and receive those credits from the subsequent credit year authority, will have to comply with the policies and procedures in the QAP in effect at the time of the original credit award for their project. Example: If a project receives an award of 2008 tax credits of \$400,000 and is awarded another \$300,000 in 2009 tax credits the entire project allocation of \$700,000 credits must comply with the QAP in effect for the 2008 tax credits.

Policy on Applicable Credit Percentage Rate Lock

Projects receiving an award of competitive credits have the following opportunities to lock the Applicable Credit Percentage Rate (Applicable Rate).

- In general the Applicable Rate is determined the month the project is placed in service. The placed in service date for a new or existing building is the date the building is ready and available for its specific function and usually the date the first unit in each building is certified as suitable for occupancy as governed by state or local law.
- Rather than use the placed in service election the owner may elect to use the Applicable Rate determined the month the owner and Oregon Housing and Community Services enter into a binding agreement to reserve the Credit to each project. OHCS considers the fully and properly executed Reservation and Extended Use Agreement to be the binding agreement between the owner and OHCS.
- The Applicable Rate for projects receiving more than one year's allocation of credits will have the applicable rate set at the applicable rate established in the earliest binding agreement between the owner and OHCS. The Applicable Rate will be the same for each year of credit allocation.
- Owners of projects receiving an allocation of credits entirely from a different year(s) of credit ceiling than originally awarded to the project must enter into a new binding agreement IF they chose to establish the applicable rate prior to placed in service.

If the building is financed with tax-exempt bond proceeds the owner may elect to use the Applicable Rate for the month in which the bonds are sold or during the month in which the buildings are placed in service. The election statement must meet the requirements set forth in Internal Revenue Section Regulations Section 1.42-8.

Policy on Projects That Are Not Able to Meet the Carryover Allocation Timetable for Project Completion

Sponsors who are not able to perform according to their project schedules for any reason after they have received carryover allocations will be required to return tax credits previously awarded and re-compete in the application process.

An inability to utilize previous awards is a factor in the evaluation of sponsor characteristics and capacity. The Department may reject applications from previous program participants who have failed to demonstrate proficiency within the LIHTC Program or other government-sponsored housing programs. In addition, the Department may also reject or levy penalty points against an application from previous program participants who have failed to complete their projects in accordance with their applications and/or certified plans presented to the Department, or who have failed to effectively utilize previously allocated tax credits.

Policy on Requirement for Progress Reports

In the interest of utilizing Oregon's available credits fully, the Department will require each applicant for whom tax credits have been reserved to demonstrate through monthly reports that the project is making satisfactory progress towards completion. The progress reports are required to report on critical events and timelines such as site acquisition, meeting or failing to meet the 10% test, loan closings, groundbreaking, construction start, construction completion, etc. Each report must describe the applicant's actual progress in comparison to the original schedule submitted with the application, or any approved updated schedule. Progress reports should also report changes in project costs resulting from both savings and cost overruns. Progress report forms will be made available to each successful applicant of Department resources.

Policy on a Substantive Changes

During the entire tax credit process (during application, during review and especially after award), sponsors must keep the Department informed regarding substantive changes to the project being considered. Sponsor proposed substantive changes in the

- financing plan,
- rent structure,
- population to be served,
- assumed or awarded reservation amount,
- credit pay-in and/or equity investor,
- development team,
- partnership composition,
- management agent,
- or other aspects the Department deems substantive, upon which the initial analysis or approval of the application was based must be submitted to the Department for consideration before being finalized. Failure to report or failure to secure Department approval of substantive changes may result in rescission or modification of the credit

reservation amount or carryover allocation and may impact future considerations of LIHTC applications.

Subsidy Layering Review Policy

For projects which receive, either directly or indirectly, financial assistance from U.S. Department of Agriculture Rural Development (RD) or Department of Housing and Urban Development (HUD), the Department is required to follow guidelines established by RD and HUD with respect to the review of the financial assistance provided to the project. The subsidy layering review will include a review of the amount of equity capital contributed to a project by investors, and a review of project costs including developer fees, consultant fees, contractor's profit, syndication costs and rates, etc. The Department will take any other actions required of it, as set forth in the administrative guidelines and amendments published by RD or HUD, or otherwise required by state or federal law. HUD subsidy-layering guidelines were published in the December 15, 1994 Federal Register. Subsidy layering guidelines used by the Department are available from Oregon Housing and Community Services, Housing Resources Section.

Specifically:

If there is no identity of interest (Identity of interest is a financial, familial, or business relationship that permits less than arm's length transactions. It includes but is not limited to existence of a reimbursement program or exchange of funds, common financial interests, common officers, directors or stockholders; or family relationships between officers, directors, or stockholders, between the developer and general contractor/builder), the following general contractor/builder's profit applies:

- Builder's profit up to 8% of construction costs
- Builder's overhead up to 2% of construction costs
- General requirements up to 6% of construction costs (excluding contractors liability insurance)
- Builder's profit, overhead and general requirements may not exceed 14% of total hard construction cost (less profit, overhead and general requirements).

If there is an identity of interest, general contractor/builder's profit may not exceed 10% of total hard construction costs. (Builder's or general contractor's profit) includes builders' profit, builders' overhead, general requirements and project management fees associated with the hard construction of the project.)

Please Note: The Department will evaluate the cumulative profit received by developer/General Contractor in identity of interest cases and, based on industry standards and comparable projects, may reduce profits considered excessive.

Policy on Negative Timing Adjusters

As a matter of practice, the Department does not provide additional tax credits to fill financing gaps due to loss of project-specific resources which result from an adjustment to the yield on the tax credits, at any time during the development process.

Whatever the yield was in the original partnership agreement is the yield that will be used to determine credits at final application.

LIHTC Residential Rental Property Test: Service Enriched Housing

The Department is interested in working with project sponsors to create housing that fills a need in a given community. Frequently, this need is identified as service enriched housing such as Assisted Living Facilities (ALF) and other service intensive housing. As a means to ensure compliance with Section 42 of the Internal Revenue Code, all units, including ALFs and others, considered in basis for Low Income Housing Tax Credits must meet the residential rental property test as follows:

- Unit must be available to the general public. A unit will fail this test if, for instance, it is provided for use solely by members of a social organization or by an employer for its employees. LIHTC regulations adopt a general use requirement similar to the HUD housing policy governing non-discrimination. Therefore, preferences to certain classes of tenants (e.g., the homeless, disabled and/or handicapped) will not violate the general use requirement if such preference does not violate any HUD policy governing non-discrimination.
- Unit is not used on a transient basis. This test is met if the initial lease term for an LIHTC unit is a minimum of 6 months.
- Residential rental property may include any facilities that are functionally related and subordinate to the property, such as community rooms, if such spaces are available to all residents of the development free of charge.

LIHTC and Assisted Living Facilities or other Special Use Housing

A hospital, nursing home, sanitarium, lifecare facility, manufactured dwelling park used on a transient basis or intermediate care facility that provides significant services other than housing is generally not eligible for credit under Section 42. (Please also see Revenue Ruling 98-47.

However, if the following tests are met, the furnishing of services may not disqualify some of these properties as residential rental property:

- Services are optional. Services may be considered optional on a facts and circumstances basis. Services are optional if:
 - payment for the service is not a condition of occupying the residential unit;
 - residents have the option to decline the services, or;
 - residents have the right to obtain services from an alternative provider.
- Services are not optional if:
 - they are continual or frequent medical or nursing services, or;
 - they are required as a condition of tenancy and payment for services is not included in the LIHTC rent (within the LIHTC rent limits).

If services are not optional, the cost of services will be included in the LIHTC rent calculation and the unit may not qualify as a LIHTC unit and may be removed from basis.

- Charges for services that are not optional to low income tenants must be included in the gross rent calculation. In this case the combined rent and service charge cannot exceed the maximum LIHTC rent for the unit.
 - An exception is made for federally assisted projects for the elderly and handicapped (PLR 8921035). This exception applies to facilities authorized under 24 CFR § 278 to provide mandatory meals. To qualify for this exception, all provisions of 24 CFR § 278 must be met.
- Supplemental payments made by a state under its SSI program directly to the owner for the purpose of allowing low income elderly to live in assisted living facilities may be excluded in the determination of the tenants gross rent under Section 42 if that payment is made under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home or intermediate care facility for the mentally or physically handicapped (Treasury Regulation §1.42-11(b)(3)(ii)(A)).

Policy on Historic Preservation

The Department encourages all project sponsors working with properties 50 years old or older to consult with the State Historic Preservation Office to determine the historic significance of the building. If the buildings are determined significant, the Department encourages preservation of the historic elements in the most efficient and effective manner possible. The State Historic Preservation can be reached at: State Historic Preservation Office, 725 Summer St. NE, Salem OR 97301, telephone: 503-378-4168 x231, fax: 503-378-6447.

Policy on Disbursement of Units

It is the policy of the Department that all housing credit developments have affordable units disbursed throughout the development as well as throughout unit sizes. Projects will be considered unacceptable if:

- All affordable units (LIHTC eligible units) are located in one building, if a multi-building project.
- All affordable units are restricted to one unit type (i.e., number of bedrooms or square footage) in projects that have a variety of unit types.

Projects meet the Department disbursement policy if:

- LIHTC eligible units are located in all buildings of a multi building project.
- There are LIHTC eligible units available in all unit types.

Projects being built in phases should also meet the above disbursement policy for each phase of the development.

Policy on Property Management Units

A full-time resident manager's unit or other supportive units in an LIHTC project may be required based on the size and/or special needs of the individual project. Some projects may utilize more than one unit, again based on the size and/or special needs of the individual project. Currently OHCS requires sponsors to designate in the restrictive covenant documents any management units that will not be included in the applicable fraction.

For buildings placed in service after September 9, 1992, the manager's unit may be considered as "common area" within a rental development. Under this interpretation, (see IRS Revenue Ruling 92-61), the unit is excluded from the low-income occupancy calculation; and the unit may be used by the manager without concern for the effective rent charged to or the income level of the manager. If this option is elected, the unit occupied by the resident manager is included in the building's eligible basis; but excluded from the applicable fraction for the purposes of determining the building's qualified basis.

To qualify as a common area the unit must support or be reserved for the benefit of all the rental units. The unit can only receive this designation if the manager or any other position utilizing a unit (i.e., maintenance) is full-time to that project. OHCS reserves the right to approve/disapprove any management units. The following criteria (not inclusive) may be considered in approving/disapproving units:

- Size of project
- Type of project (i.e., elderly, family etc.)
- Proximity of the project to property management offices
- Community resources available for maintenance/supportive services etc.

The owner must make a designation of the unit as common space or as a low-income residential unit. All developments must notify OHCS of the status of the full time resident manager's unit and any other staff units. As long as the number of previously approved management units are not increased, the owner shall be permitted to move the management units within the project as long as the change is reported on the owner's annual certification of compliance.

Developer Fee Policy

The Department acknowledges the applicants' needs to include fees, which support sound development practices and develop capacity. The developer fee includes other "soft" costs that go into putting a project together (e.g. development consultant fees, project management fee, developer's overhead and profit, etc) and any developer fees chosen to be deferred. The Department has established a maximum developer fee of 15% on all projects. However, the reasonableness of fees will be evaluated based on the risk and complexity of the proposed development.

Applications, which include limited or no cash development fees, may be financially infeasible. The Department recognizes the need for a project's viability to take into consideration cash development fees to cover unforeseen contingencies and the project's need to meet underwriting

criteria. The Department realizes that circumstances, often beyond the control of the developer or sponsor, may change the amount of the cash and/or deferred developer fees. Finally project sponsors may be able to adjust deferred and/or cash development fees depending on the sponsor's ability to develop a project within budget and the anticipated development period.

The Department realizes that deferred developers fees, as originally proposed, often fill a portion of a project's development cost gap. This figure often fluctuates significantly as the project progresses. If additional resources are identified that reduce the deferred developer fees the Department encourages sponsors to provide additional project amenities and/or reduce project debt.

A general framework adopted by the Department to determine developer's fee reasonableness is included in the CFC Application, 4% LIHTC Application, and/or the Multi-Family Rental Housing Risk Sharing and Elderly and Disabled Program Applications and/or any additional program materials adopted or used by the Department.

The calculation of developer fees as a percentage of project cost must net out the development fee from the total project cost. Specifically:

$$\frac{\text{Developer Fee}}{\text{(Total Development Cost - Developer Fee)}}$$

When testing for the reasonableness of developer fee, based on the complexity of the project, deferred developer fee will be excluded from computation. Please refer to CFC application materials for the reasonableness of deferred developer fee table. Deferred developers fee is defined by the Department as a portion of the developer fee that is being taken over a period not to exceed fifteen years and is being paid out of project cash flow. Developer fee paid from a final equity payment is not considered a deferred fee. Under no circumstances can the combined total of deferred fees and fees earned through the course of construction exceed the maximum of 15%.

To be included in tax credit basis, deferred developer fees must be due and payable at a date certain generally within a time period that does not exceed 15 years. Cash-flow projections must support the expectation of deferred fee payment within 15 years of a project's placed-in-service date. If fees are permanently contributed to the project, they must be paid to the developer and then contributed to the project if the fees are to be included in tax credit basis.

Developer's fees for acquisition and rehabilitation projects will be calculated for reasonableness on acquisition and all other costs. In general developer's cash fees will be limited to a maximum of 5% of the acquisition costs and fees for all other costs including rehabilitation as defined for other projects. However applicants for complex acquisitions such as expiring use projects or projects with Uniform Relocation Requirements (as required by the HOME Program) may be able to justify a higher developer fee due to the complexity of the transaction. In such instances, it is recommended that Department approval be requested and obtained prior to submission. Sponsors should contact their HCS Regional Advisor to the Department for more information.

Requesting Increases to Total Developer Fee

An increase in the total developer's fees through the course of development will require the prior approval of the Department and must be justified by a change in the scope of the development. Projects requesting increases to pay incentive fees or bonuses for early completion will not be considered as an increase in the scope of the project therefore will not be approved for an increase. Sponsors failing to request prior approval are at risk of Department resources being recaptured.

Requesting Changes Between Cash and Deferred Developer Fee

A large difference in the amount of deferred and cash development fees represented at final application or cost certification versus original application may be considered a misrepresentation of the original project application IF the Department is not provided with a reasonable explanation for the difference. The Department realizes project cost changes occur during the development process the Department will consider a deviation of the lesser of 25% of the original deferred fee or \$200,000 from the deferred or cash development fees represented in the original application to the Department to be de minimus and thus acceptable without Departmental approval. Changes in the deferred and/or cash development fees beyond the lesser of 25% or \$200,000 must be presented to the Department for approval 30 days prior to final application(s) or cost certification(s).

The Department's Finance Committee will make the final determination of developer fee reasonableness.

Environmental Review Policy

All tax credit project applicants are required to complete and submit the Department's environmental review form. This form can be found in all of the LIHTC application materials.

Scattered Site Policy

The Department will entertain proposals for scattered site housing developed under Section 42 if the project includes buildings, which would, but for their lack of proximity, qualify as a project for purposes of Section

To qualify the following Federally stipulated conditions must exist:

- Project must be under common ownership,
- Project must be developed under a common plan of financing,
- 100% of the units in each building must be rent restricted.

To be considered developed under a common plan of financing, the scattered site project must be considered as a single project by all financing partners.

130% Rule and Community Service Facilities

The IRS stipulates certain areas as “difficult development areas” as designated and identified by HUD. These areas, published in the CFC application and the LIHTC webpage of the OHCS website, allow a developer to request 130% of credits derived from the basis calculation. The Department will, at its sole discretion, determine the application of the 130% bonus to a project located in a HUD designated “Difficult Development Area (DDA)”. The award of the bonus will be made based upon the amount of credits required to make the project financially feasible and will not be unreasonably withheld.

The 130% bonus is also available to projects located in HUD determined Qualified Census Tracts. The Qualified Census Tracts are defined as census tracts in which 50% or more of the households are at or below 60% of area median income, as well as census tracts with a poverty rate of 25% or higher.

Eligible basis costs for new construction and rehabilitation only can qualify for this basis increase. Acquisition costs are specifically excluded by IRS code from the 130% bonus. Federal regulation permits the inclusion of a “community service facility” to serve non-residents in adjusted basis of a portion of a low-income building (not exceeding 25 percent of so much of the eligible basis of the qualified LIHTC project of which it is a part as does not exceed \$15,000,000 and 10 percent of any excess over \$15,000,000 of the eligible basis) located in a qualified census tract. Space could be used for purposes, including but not limited to, child daycare, senior programs and job training. Community service facilities are defined as facilities that are designed to primarily serve low-income households (60 percent or less of area median income.) Project employees could also use the facilities.

COMPLIANCE POLICIES

Policy on Property Management Units

IRS regulations define common areas in part as “areas reasonably required by the project”, and specifically includes staff units for full-time employees (see Treas. Reg. § 1.103-8(b)(4)(iii)). If deemed “reasonably required” and the employee does not income-qualify under the Tax Credit Program, the unit is removed from the applicable fraction, but still included in the eligible basis. OHCS does not scrutinize the activities of the manager in the approved on-site unit. However, the owner of the project must ensure that the use of the unit conforms to IRS regulations (see Policy on Property Management Units below for further discussion).

Rehabilitation Requirements/Replacement Reserve Policy

The Department requires all applicants for LIHTC acquisition and rehabilitation credits to complete a thorough rehabilitation assessment by an approved third party unless an exception is provided by OHCS. All projects are subject to inspection, by OHCS and/or an OHCS approved third party representative(s), to make certain work has been performed to the Department’s satisfaction. Architectural standards are included in the CFC and/or the Multi-Family Rental Housing Risk Sharing and Elderly and Disabled Program Applications and/or any additional program materials adopted or used by the Department.

Please consult 24 CFR, part 35 for additional specific information regarding lead-based paint requirements or contact OHCS LIHTC Program Representative.

IRS Audit Guide Policy

The Internal Revenue Service has adopted a Final Audit Guide. The Final Audit guide is the document used by the IRS to offer the IRS examiner technical support for identifying and developing issues related to IRC Section 42. The guide consists of chapters covering specific LIHTC topics and issues that describe in some detail how the Service is examining credits issues such as basis and developer fee. From time to time, the Department will rely upon the Audit Guide for assistance in evaluating projects. Developers should be aware of the contents of the Guide. It can be found on the Internet at www.novoco.com/audit_guide.htm or www.irs.gov/bus_info.

Memorandum of Understanding/IRS Form 8821 Policy

As the Housing Credit Agency for the state of Oregon, OHCS is responsible for taking and verifying LIHTC applications from developers, as well as monitoring health and safety violations and tenant eligibility, while the IRS is responsible for administering the program nationwide. The IRS is the only agency that can revoke or adjust the amount of LIHTC allocated to a given project. The IRS through the audit process disallows credits, which were not properly used to build affordable housing. Since disallowed credits cannot be re-used, OHCS has an interest in ensuring the proper usage of credits to increase the supply of affordable housing.

Although the IRS and OHCS share responsibility for the Credit program in Oregon, tax payer information cannot be disclosed to OHCS unless authorized by the taxpayer on IRS Form 8821, Tax Information Authorization (Rev. 9-98).

All applicants to the State of Oregon must provide with their applications a signed IRS Form 8821. The Form is found in the LIHTC application materials. The Form 8821 names the housing credit agency (OHCS) as the appointee to receive tax information. The IRS will provide OHCS with federal tax information relating to LIHTC, including audit findings and assessments, and enabling OHCS to make a more informed allocation of LIHTC.

The process:

- OHCS will require developers to complete Form 8821 as a condition of application for an allocation of LIHTC. The developer will name OHCS as the appointee to receive tax information. A completed Form 8821 will be forwarded to the IRS by OHCS within 60 days of receipt.
- Pursuant to Internal Revenue Code Section 6103(c) after receiving Form 8821, the IRS provides OHCS with any federal tax information pertaining to the LIHTC, including findings and assessments, for the tax periods specified on the Form. This includes a review of the Business Master File, revenue agent reports, and other sources of account data.
- OHCS will ensure that information provided by the IRS under the agreement is used solely for the purpose of awarding LIHTC and the information will be safeguarded by OHCS to prevent improper disclosure according to state and federal statutes.

Policy on Exceptions/Waiver Requests

All Department policies other than those mandated by Section 42 are considered to be guidelines and may be waived with justifiable reasons. To be considered for an exception or waiver of applicable policies or criteria, applicants, lenders and/or syndicators must request the waiver or exception in writing with a full justification.

IRS Waiver of Annual Income Recertification Policy

An amendment of the Omnibus Budget Reconciliation Act of 1993 allows for an Owner of a **100% LIHTC** project to request the IRS to waive the annual tenant income recertification requirement. Revenue procedure 2004-38 describes the annual recertification waiver procedure granted under §42(g)(8)(B), which became effective July 6, 2004. This procedure establishes and clarifies the IRS's right to grant the waiver upon (1) completion of IRS Form 8877, and (2) approval from the monitoring agency.

However, one of the provisions within the Housing and Economic Recovery Act of 2008 (H.R. 3221) grants an automatic tenant income recertification waiver to owners of **100% LIHTC** projects (can be coupled with tax-exempt bond financing), thus eliminating the formal waiver request process previously offered by the IRS. The provision within Bill H.R. 3221 **does not waive** recertification requirements for other programs that require additional monitoring, such as with the Section 8, HOME or Rural Development programs.

First-Year Certification by OHCS Mandate

As of October 16, 2008, OHCS has opted to exercise their right as the state's Housing Finance Agency responsible for monitoring Oregon's LIHTC properties, by establishing a policy requiring all owners of 100% LIHTC projects to continue to complete a formal certification at move-in, as well as a first-year annual certification (see [OHCS Letter 10/16/06](#)). Third-party verifications must be obtained to support the information reported for both the move-in and first-year annual certification. **This policy is effective immediately (no later than 01/01/09).**

OHCS Waiver of First-Year Certification

OHCS will consider, on a case-by-case basis, requests from owners to waive the State-mandated process of completing first-year annual certifications for **100% LIHTC** properties. A written request for the waiver should be submitted to the OHCS Compliance Officer assigned to the Project. The following is a summary of the conditions required by OHCS before it will release the waiver:

Qualifying for the Waiver:

The owner shall remain current with respect to the payment of all fees due and payable under any agreement with OHCS and may be requested to provide reasonable evidence documenting compliance.

For each building applying for the waiver, the owner must confirm: (1) that each building within the project was 100% tax credit eligible at the end of the previous credit year, (2) that each building within the project has been placed in service for a minimum of three years prior to submitting the waiver request, and (3) be willing to hire a third-party contractor (at the owner's expense) to conduct a file audit of 100% of the current tenant files ensuring 100% compliance.

Projects with uncorrected non-compliance issues will not be eligible for the OHCS waiver. Requests received from projects with multiple LIHTC buildings will only be considered for the waiver if the request applies to the entire project. Owners may not select certain buildings within the project for the waiver while excluding other buildings.

Request Process:

If an owner meets the qualification for waiver conditions stated above, the owner shall submit to OHCS: (1) the Owner's written request to proceed with the First-Year Annual Certification Waiver process and (2) detailed information regarding the qualifications of the third-party contractor (or auditor) chosen by the owner.

The auditor must have at least 5 years of experience with tax credit compliance monitoring, possess current LIHTC accreditation, and can certify that there is no conflict of interest with the owner, owner representatives, and/or management company.

OHCS will review the application request to ensure that the project meets all qualifying conditions. Should this be the case, the Compliance Officer will issue a notice to the owner explaining that all pre-qualifying conditions have been met and that the owner can proceed

with contracting services of the third-party contractor (or auditor) to conduct a full audit of 100% of the current tenant files.

Auditors must review the initial certification and supporting documentation for each low income resident residing in the property at the end of the most recent credit year. If the property has vacant units at the end of the most recent credit year, the auditor will review the initial certifications and supporting documentation for the households who last occupied the unit prior to vacancy. Upon completion of reviewing 100% of the project's tenant files, the auditor must provide to the owner a written statement (signed and dated by the auditor) that the current tenant files are in 100% compliance with the Section 42 Program. Upon receipt, the owner will provide a copy of the auditor's statement to the assigned OHCS Compliance Officer for further review.

Approval Process:

If the auditor statement of 100% LIHTC compliance is accepted and approved, OHCS will complete a waiver release and submit the original to the owner. Until the waiver is formally approved, the owner must continue fulfilling first-year annual tenant certification requirements (for 100% LIHTC projects) as mandated by OHCS.

The Department reserves the right to establish administrative fees associated with processing the request for first-year annual tenant income certification waivers. Such fees would be based largely on the project size and the amount of processing time.

Mixed Use Project Policy

The Department is interested in pursuing mixed residential/commercial developments where appropriate. As a part of the LIHTC application, the Department will require full disclosure on the financing, ownership and management of the commercial spaces in addition to all required information for the residential spaces. Sponsors must be prepared to provide detailed sources and uses statements that clearly delineate the commercial and residential costs and sources of funds.

The Department will underwrite both residential and commercial spaces in its evaluation of the project and the project's future feasibility. Release of the IRS Form 8609 will be contingent upon successful leasing of the commercial space, a guarantee of commercial space rent, or a clear demonstration that the commercial financing is in all respects separate from the residential financing.

Mixed Income Policy

The Department is interested in pursuing mixed income projects where appropriate. Note that all LIHTC requirements and state policies must be met.

Policy on Short Term Use of Tax-Exempt Bond Financing

As a general principle, the Department is not in favor of the use of tax-exempt financing subject to the bond cap, on a short-term basis. However, in specific situations where the use of such short term financing on a portion of the tax exempt financing can provide a demonstrated benefit that furthers affordability, the Department is willing to make an exception to this principle. In evaluating this benefit, the Department will examine the affordability of a project with and without the use of the short term financing, and will, in its sole discretion, determine if the affordability warrants the use of the tax-exempt financing. All projects proposing such a use must adhere to requirements of Section 42 as well as state requirements.

Acquisition/Rehabilitation Tenant Certification Policy

Projects that receive an allocation of credits for both acquisition and rehabilitation will not be required by the Department to complete tenant certifications for both sets of credits for the same households. Instead, one of the following will occur:

1. Existing households occupying units at the time the acquisition credits are allocated that LIHTC income-qualify should be initially certified within 120 days of the acquisition date. Owners should use the income limits in effect at the time of acquisition. The effective date of the initial tenant income certification will be the date of acquisition,
2. Existing households occupying units at the time of acquisition, but certified more than 120 days past the date of acquisition would be treated as new move-ins, using the income limits in effect at the time the initial certification is completed. The effective date of the tenant income certification would be the date the last adult household member signed the certification, or
3. For purposes of Rev. Proc. 2003-82, existing households occupying units at the time of acquisition, where the household income was “tested” within 120 days before the beginning of the first year of the credit period, and the household income exceeded the current income limit, the Next Available Unit Rule would be initiated (under IRC §42(g)(2)(D)(ii) and Treas. Reg. 1.42-15).

Starting at initial lease-up, OHCS may request from owners compliance reports identifying low-income occupancy for each building in a project. The reports will reflect month-end information for each month of the first year of the credit period. The reports will identify each unit, all adult tenant names in each unit, and the income level at move-in or initial certification. Additional information may be requested.

Relocation/Displacement Policy

Permanent displacement or relocation due to Department funding is strongly discouraged. If any relocation or displacement might occur as a result of a project applicants must include the following:

- Provide a complete survey of existing tenants using the format provided by OHCS. This survey must include third party income verification and be completed and approved by the Department prior to the close of project financing.
- Indicate if over crowding exists in any of the units.
- Describe the type of displacement that will occur, permanent or temporary (if temporary can the work be achieved without displacement?)
- Describe the process used to inform tenants of displacement or relocation.
- Describe the proposed relocation/displacement process. Indicate compensation and advance notice provided to those subject to displacement.
- Describe the availability of comparable units in the community.
- Indicate the source of funds for relocation expenses.
- Describe any community policies regarding tenant displacement or relocation
- Describe how tenants with disabilities will be assisted regarding relocation or displacement
- Describe how the completed units will be affordable to income qualified tenants
- Provide monthly documentation on each resident to be relocated or displaced. This information should be included in monthly project reports to OHCS.
- Copies of all notices and documentation shall be forwarded to OHCS.
- The relocation plan must be reviewed and approved by the Department
- For project receiving federal funds, the Uniform Relocation Act (URA) may apply. The URA requirements will super cede the above.

Compliance Monitoring Policy

As the allocating agency for the State of Oregon, OHCS is responsible for compliance monitoring of all Low-Income Housing Tax Credit projects for adherence to Section 42 as well as adherence to conditions stated in the project application. The Department is responsible for establishing compliance monitoring procedures and must report incidences of noncompliance to the Internal Revenue Service (IRS). Monitoring each project is an ongoing activity that extends throughout the Credit compliance period (a minimum of 30 years). Projects with funding sources obtained from the Department in addition to the credit will be monitored for the most restrictive requirements of all combined programs. Owners must be aware of the differences in program regulations.

The Compliance Monitoring Process is based upon the following components:

- IRC Section 42 and promulgated regulations Oregon Administrative Rules for LIHTC Programs
- Qualified Allocation Plan for projects with Building Identification Numbers (BIN) beginning with OR90
- The Compliance Manual
- Compliance Training Workshops
- Owner's Certification of Continuing Project Compliance and Project Charges
- Utility Allowance Documentation
- Use of Correct Rents and Incomes
- LIHTC Compliance Forms

- Lease and Tenant Selection Criteria Review and Approval
- Tenant File Review and Project Site Inspections
- Exemptions & Special Circumstances
- Record Keeping and Record Retention
- Noncompliance/Plans to Correct Noncompliance/Form 8823
- Monitoring Charges
- Current approved Resident Services Plan
- Uniform Physical Conditions Standards as per HUD (24 CFR 5.703)

The owner of a qualified low income tax credit project is required to comply with the following:

Record Keeping

The owner is required to maintain accurate records for each building in the development. These records must include:

- The total number of residential rental units in the building, including the number of bedrooms and the square footage of each residential rental unit.
- The total number of low-income units in the building.
- The total number of occupants in each low-income unit.
- The rent charged on each residential rental unit in the building, including any utility allowance.
- The low-income unit vacancies in the building.
- The rentals of the next available unit in each building and to whom they were rented to.
- The character and use of the non-residential portion of the building that was included in the building's eligible basis (i.e., facilities that are available on a comparable basis to all residents and for which no separate fee is charged for the use of the facilities).
- Documentation regarding the eligible and qualified basis of each building as of the end of the first year of the tax credit period.
- Income certification for each low-income household.
- Documentation supporting each household's income certification (third-party verifications, asset certification, etc).
- The original local health, safety or building code violation reports or notices that were issued by the State or local governmental unit.
- Documentation that all units are available to the general public.

Record Retention

Owners are required to keep all records for each building for a minimum of six years after the due date (with extensions) for filing the federal income tax return for that year. However, the records for the first year of the credit period must be retained for the entire compliance period and at least six 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.

Annual Certification of Continuing Compliance

The owner must certify the following, under penalty of perjury, at least annually through the end of the compliance period (due by April 15th of each year):

- The project meets the requirements of the 20/50, 40/60 or other elected set-aside test.
- There was no change in the applicable fraction, as defined in IRC Section 42(c)(1), of any building, or, if so, a description of the change.
- The owner has received an annual tenant income certification form from each low-income household, along with supporting documentation.
- That each low-income unit in the project is rent-restricted.
- That each building in the project is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards). Furthermore, that the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low-income unit in the project. Additionally, all low-income units have been continually occupied, vacant but rent-ready, or vacant for redecorating and/or minor repairs for a period of less than 30 days, throughout the reporting period.
- There has been no change in eligible basis, as defined in IRC Section 42(d), of any building, or, if so, the nature of the change.
- All resident facilities included in the eligible basis of any building are provided on a comparable basis without a separate fee to all residents of the project.
- Resident services are being provided as described in the application for credits, or suitable alternative resident services are being provided.
- If a low-income unit becomes vacant during the year, reasonable attempts are made by the owner to rent it to a resident with a qualifying income and while it is vacant, no units of comparable size or smaller are rented to residents not having a qualifying income.
- If any low-income household's income increases above the limit (140% of the area median income adjusted for family size), the next available unit of comparable size or smaller will be rented to households having a qualified income.
- No tenants have been evicted for other than good cause.
- A Declaration of Land Use Restrictive Covenants is in effect for all projects.

Note: OHCS is currently in the process of developing an on-line reporting system that allows owners access (with a password) to submit all required documentation involved to annual certify that program compliance has been met. Once the on-line compliance website is available, owners will be notified and given instructions.

Monitoring of a project will occur as follows:

An on-site inspection of all buildings in a project will occur by the end of the second year following the date the last building is placed in service. This will include a physical inspection of at least 20% of the units (occupied and vacant) and an audit of at least 20% of the resident files (including tenant income certifications and supporting documentation). Subsequently, at least once every three years, the Department will conduct an on-site inspection of each building exterior and all common areas in a project and will review tenant files and complete a physical inspection of at least 20% of the project's low-income units.

When a project is scheduled for review, the Department will:

- Perform the tenant file review on-site, as well as conduct a physical inspection of the building exteriors and units, and
- Inform the owner within 30 days from the date of inspection of any finding of noncompliance with regard to such review.

Liability - Compliance with the requirements of Section 42 and state regulations is the responsibility of the owner (OHCS is not liable).

Correction of Non-Compliance

The Department will provide written notice of non-compliance to the owner if:

- The Owner's Annual Certification report (with required attachments) is not received by the due date (on or prior to April 15th of each year).
- The project is found to be out of compliance, through inspection, file review or other means, with the provisions of Section 42 or state regulations. The owner will have 30 days from the date of notice to supply any missing information for the Owner's Annual Certification Report. The owner will have 30 days from the date of notice to correct any non-compliance issues.
 - The Department may grant an extension of up to 90 days (from the date of original owner notification) if good cause is demonstrated as determined by the Department. At the end of the allowable correction period, the Department is required to file Internal Revenue Service Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the IRS. All non-compliance issues must be reported whether corrected or not. The Department will explain the nature of the non-compliance or failure to certify and state whether the non-compliance has been corrected. The IRS will make any determinations as to the applicability of recapture penalties, not the Department.

Compliance Status Tracking

One intent of the monitoring policy is to track owner non-compliance with Section 42 and OHCS requirements, for use by the Department, at its discretion. Issues that will be tracked and information to be compiled include, but are not limited to:

- Any Form 8823 events as a result of monitoring
- Owner compliance with Department-required reporting deadlines
- Performance of management agents employed by the owner

Compliance Monitoring Charges: The IRS requires inspection of projects every three years. Monitoring charges are assessed at \$35.00 per unit per year and will apply to all LIHTC projects regardless of the placed in service date.

Participatory Requirements: Oregon Housing & Community Services requires that all projects comply with the participatory requirements as described in the Consolidated Funding Cycle, 4% LIHTC application(s) and/or the Multi-Family Rental Housing Risk Sharing and Elderly and Disabled Program Applications and/or any additional program materials adopted or used by the Department.

As provided in the IRS compliance monitoring regulations, the Department has a right to review tenant files on-site and/or to perform physical inspections of LIHTC Projects as deemed necessary throughout the term of affordability.

Non-Compliance Requiring Additional OHCS Staff Time

The scope of non-compliance detected during any monitoring activity will be evaluated by the Department. At its discretion, the Department will expand the audit sampling for additional review. This expansion could extend to 100% of the units and/or files deemed to have noncompliance issues. The Department reserves the right to require the ownership entity to hire a third-party auditor acceptable to the Department, at the expense of the owner, to complete all or part of any additional monitoring and assessment of correction status for excessive non-compliance.

Other items that may be requested by the Department as a means to track project health include, but are not limited to:

- Audited annual financial statements for each project.
- Annual project operating statements showing actual income and expenses as they relate to the real property.
- Documentation that all state requirements are being met.
- The Department will review all changes in Management Agent. OHCS policy requires 60 days prior to any change. The owner must submit the proposed new agent's plan and qualifications to Asset & Property Management. APM will review the materials and approve or disapprove the proposed agent. Any exceptions to this policy will be made at the discretion of the Department.

Housing Credit Properties After Year 15

The federal Low-Income Housing Tax Credit (LIHTC) was created by Congress in 1986 and is administered in Oregon by Oregon Housing & Community Services (OHCS).

Properties that were awarded Housing Credits on or after January 1, 1990 must comply with restrictions as embodied in the recorded Reservation and Extended Use Agreement (EUA) and the Declaration of Land Use and Restrictive Covenants (Declaration). After the initial 15-year LIHTC Compliance Period has expired for these allocations, the Internal Revenue Service (IRS) no longer receives notification of noncompliance (on Form 8823). Instead, at the request of the IRS, OHCS will prepare a letter documenting issues of noncompliance during the post-15 year monitoring period and submit it to the IRS. However, the onus for dealing with most

noncompliance during the remainder of the affordability period rests with the state-allocating agency.

OHCS has determined that during the Extended Use Period the administrative burden to owners can be reduced by relaxing some of the inspection, audit, reporting, and eligibility criteria, providing a more palatable way to operate tax credit properties and maintain compliance when the tax benefits have been exhausted. Monitoring for compliance during the Extended Use Period will ensure the spirit of the program is preserved, that housing will continue to serve the people for whom it was intended, and that the mission of OHCS continues to be met.

Definitions

Compliance Period: With respect to any building, the period of 15 taxable years, beginning with the first taxable year of the credit period. The first year of the Compliance Period is the first year in which the owner claimed credits. The first year must be either the year the building is placed in service or, at the owner's election, the year following the placed in service year. All requirements of the Internal Revenue Code, Section 42, including the 1.42-5 monitoring regulations are in effect during the 15-year Compliance Period.

Extended Use Period: The period beginning on the last day in the Compliance Period in which such building is part of a qualified low-income housing project and ending on the date specified by OHCS in the Extended Use Agreement (EUA).

Extended Use Period (Post-15 Year) Compliance

Compliance rules will be greatly simplified during the Extended Use Period. The owner agrees to:

- Maintain the applicable fraction by leasing units to households whose income at placement is 50% or 60% or less of the area median gross income, as adjusted for family size;
- Maintain the rent and income limit restrictions in accordance with the current reservation and extended use agreement;
- Lease, rent, or make available to the general public (who qualify under the applicable election) all units subject to the credit;
- Comply fully with the requirements of the fair housing act;
- Not refuse to lease a unit to a section 8 voucher holder solely because of the prospective tenant's status as a voucher holder;
- Maintain all units as suitable for occupancy;
- Certify tenants initially at move-in (for units subject to income qualification requirements stated within the Reservation and Extended Use Agreement);
- Continue to update utility allowances annually. Revised utility allowances must be implemented within 90 days of their published effective date;
- Comply with other restrictions as required under the specific year's Qualified Allocation Plan (QAP) or representations made during the application process and

- Make their best effort to provide tenant services as stated in the initial application.
1. Tenant Income Certifications
 - a) Move-in certification
 - The initial income certification is still required. Income will be verified by third-party sources and calculated in a manner consistent with the determination of income as defined under Section 8 requirements. Owners/Agents will check the box labeled “Extended Use Period - Initial” at the top of the first page of the certification.
 - b) Annual certifications
 - **The completion of annual tenant income certifications will no longer be required.**
 - c) Changes in household composition
 - Any additions to household composition (not including births or adoptions) that take place in the first six months of occupancy will require the completion of a new initial certification, along with obtaining appropriate third-party verifications of income and assets, to determine the eligibility of the newly formed household.
 2. Student status rules will no longer apply, and therefore will not be monitored during the Extended Use period.
 3. Unit transfers anywhere within a project (even building to building) are allowed regardless of the household’s income at the point of transfer, provided the household initially qualified at move-in.
 4. Projects will no longer be subject to the Next Available Unit Rule but will be required to maintain the unit set-aside agreed upon in the Extended Use Agreement.
 5. Housing Credit projects with RD, HOME or Section 8 funding will continue to be subject to comply with the applicable rules as established by the corresponding Program.

Monitoring - Extended Use Period (Post-15 Year)

The following is the revised monitoring procedure OHCS will follow during the Extended Use Period:

Inspections

OHCS will continue to inspect and audit projects but at a reduced frequency. Projects will be inspected and audited a minimum of every five years. At the discretion of the assigned Compliance Officer, inspections and audits may occur more frequently. Depending on the size of the project and other factors, the number of units and files inspected will range from 5 – 10% each, or a minimum of 5 units and files. More units and files (over the 10%) may be inspected if the Compliance Officer deems it necessary.

Annual Reporting

Once projects have entered the extended use affordability period, owners will be required to complete a Certificate of Extended Use Compliance (CEUC) ([Required Form OHCS.1a](#)) on an annual basis, throughout the term of the Extended Use period. This form was created to reflect the end of the initial compliance period and the shift in focus to compliance under the provisions within the Reservation and Extended Use Agreement.

The owner will also be required to complete an annual summary spreadsheet and submit it with the Owner's CEUC ([Recommended Form R.2a](#)).

Monitoring Charges

Monitoring charges will be reduced from \$35 per unit per year to \$25 per unit per year, as outlined in Exhibit H of this document. Invoices will continue to be sent to the Owner and Managing Agent of record at the end of the calendar year with a due date the following January.

OHCS reserves the right to adjust the monitoring charges due to changing circumstances.

Project-Based Subsidy Programs

Inspections and monitoring charges will be waived for projects with project-based subsidy programs in effect. Ownership must notify OHCS of the type and duration of the subsidy program(s) for a written waiver of these requirements. Inspections and charges will resume if the subsidy program expires prior to the expiration of the terms of the Extended Use Agreement.

Transfer of Ownership or Ownership Interest

A transfer agreement is required in the event of a transfer of ownership or ownership interest. Such agreement will place the new owner or partner on notice that it is subject to the terms of the Declaration and Extended Use Agreement, including all compliance restrictions and annual compliance monitoring.

Record Retention

Once the project has entered into the extended use affordability period, the owner is subject to any and all record retention rules (if such rules exist) as stated within all documents prepared to enforce compliance throughout the Post-15 Year compliance period. If no such reference is made within the extended affordability documents, the owner must maintain the original move-in documentation for each household **on-site** for at least three (3) years. At the point a household's occupancy exceeds three years, the owner may choose to keep the file off-site or stored electronically on disc. If a household moves out prior to the three year timeframe, the owner must maintain the file on-site until the full three (3) year timeframe has been exhausted.

Expiration of Extended Use Period

Once the Extended Use Period has expired (or has been terminated), the owner may not evict or displace any households (other than for "good cause"), and must maintain restricted rents for the following three years, as stated within IRC Section 42(h)(6)(E)(ii).

Consequences of Noncompliance

Owners will be given the same timeline for correction of noncompliance as during the initial Compliance Period (30 days from the date of the inspection and audit report).

Extensions are available by request but must not exceed a total of six months (including the initial 30 day correction period). Uncorrected noncompliance may result in the following progressive actions:

- The status of owners, managing agents, and/or general partners will be designated as “Not-in-Good Standing” with the agency.

Note: OHCS reserves the right to publish a list of “Not-in-Good Standing” entities on our website for future reference if deemed necessary.

- OHCS may choose to enforce compliance with the Reservation and Extended Use Agreement through the courts.
- Future applications for housing credits may be subject to automatic denial.
- Major or patterns of minor noncompliance will continue to be reported to the IRS (per their request) in the form of written reports, not by completing and submitting Form 8823.

DISCLAIMER

Issuance of a Tax Credit Reservation, Tax Credit Carryover Allocation or Placed-In-Service Allocation (IRS Form 8609) by the Department shall not constitute or be construed as a representation or warranty as to the feasibility or viability of the project, or the project's ongoing capacity for success, or any conclusions with respect to any matter of federal or state income tax law. All tax credit allocations are subject to the Internal Revenue Service regulations governing the tax credit program, and applicants are responsible for the determination of their project's eligibility and compliance. If statements in this QAP are in conflict with the regulations set forth in Section 42 of the IRC or its amendments, the regulations shall take precedence. Applicants should not rely solely upon this guide or the Allocating Agency's interpretations of the IRC requirements relating to the tax credit.

EXHIBIT B

OREGON AFFORDABLE HOUSING POLICY STATEMENT

Oregon State Housing Council

WHEREAS, pursuant to ORS 456.555(6)(a), the State Housing Council (the “Council”) shall, with the advice of the Director of the Housing and Community Services Department (the “Director”), set policy and approve or disapprove rules and standards for housing programs of the Housing and Community Services Department (the “Department”); and,

WHEREAS, pursuant to ORS 456.571(1), the Council shall develop policies to aid in stimulating and increasing the supply of housing for persons and families of lower income; and,

WHEREAS, pursuant to ORS 456.571 (2)(a), the Council must review each single-family home ownership loan in excess of \$150,000 and all other housing loans or grants in excess of \$100,000 which are proposed to be made by the Director for approval or disapproval; and,

WHEREAS, pursuant to ORS 458.620(3), as amended by 1995 Oregon Law, Section 1, Chapter 174, the Council shall establish a policy for distributing funds of the Home Ownership Assistance Account, in accordance with said statute, to assist persons of low and very low income, as defined in ORS 458.610, until December 31, 2002, at which time said statute is repealed; and,

WHEREAS, pursuant to ORS 458.620(3) and ORS 458.650, the Council shall establish a policy for distributing funds of the Housing Development and Guarantee Account and the Emergency Housing Account, in accordance with said statutes, to assist persons of low and very low income, as defined in ORS 458.610; and,

WHEREAS, the Council recognizes the need to develop affordable housing policy which provides a comprehensive plan for the success of a proposed housing project as well as to the individuals or families who occupy said project; and,

WHEREAS, the Council has adopted the following mission statement: The Oregon State Housing Council shall promote a positive quality of life for Oregonians through the development of high quality affordable housing.”

NOW THEREFORE, the State Housing Council adopts the following policy:

All things within the scope of the Council’s statutory authority and projects submitted to the State Housing Council for approval, shall be reviewed in light of, but not limited to, the following areas; i) Financing and Need; ii) Integrated and Quality Development; iii) Property Management; iv) Long Term Program/Services Scope and Management; v) Capacity Building; and vi) Council adopted plans and policies that target state and federal resources in support of moderate and low income Oregonians.

The State Housing Council, with the advice and assistance of the Director, will design specific criteria for project approval, in accordance with the above referenced statutes. The criteria will be reviewed on an annual basis by the State Housing Council at the Council’s Fall retreat, or as otherwise designated by the chair of the Council.

OREGON AFFORDABLE HOUSING POLICY CRITERIA

In concert with its mission and statutory authority to set housing policy for the State of Oregon (ORS 456.555 (6) (a), and to protect the public interest in affordable housing development and related programs, the Oregon State Housing Council supports initiates and approved funds for proposals that address the following criteria:

i. FINANCING AND NEED

Assure the long-term viability of projects through accurately determining the need and doing a present value economic analysis versus the cost of dollars.

ii. INTEGRATED AND QUALITY DEVELOPMENT

Assure a thorough and multidimensional review of site specific planning considerations and encourage the integration of incomes and densities in communities, neighborhoods, or geographic locations. Proposals to create affordable housing shall demonstrate how they contribute to positive community climates with adopted comprehensive plans.

iii. PROPERTY MANAGEMENT

Assure the maintenance of properties in a decent, safe, sanitary condition that assures long-term stewardship of the property.

iv. LONG TERM PROGRAM/SERVICES SCOPE AND MANAGEMENT

Assure the ongoing viability and implementation of an appropriate resident service program.

v. CAPACITY BUILDING

Utilize and foster the further development of capacities in the community for the development and maintenance of affordable housing options.

vi. COUNCIL ADOPTED PLANS AND POLICIES THAT TARGET STATE AND FEDERAL RESOURCES IN SUPPORT OF MODERATE AND LOW INCOME OREGONIANS

Assure private, local, state and federal resources are applied in an integrated, collaborative, community supported and coordinated manner.

EXHIBIT D

RD MOU

MEMORANDUM OF UNDERSTANDING

Between the Oregon Housing and Community Services Department and Oregon USDA Rural Development Rural Housing Services

INTRODUCTION

The Rural Housing Service of Rural Development, Oregon, an Agency of the U.S. Department of Agriculture, hereinafter referred to as “RHS”, and the State of Oregon Housing and Community Services, hereinafter referred to as “OHCS”, wish to enter into the following Memorandum of Understanding (MOU) regarding: 1) the general sharing of housing development information, 2) architectural requirements for joint funded RHS and OHCS developments, 3) the sources and uses of funds in projects receiving RHS funding and low income housing tax credits, 4) the monitoring of low income housing tax credit compliance in RHS funded projects, and 5) the availability of low income housing tax credits for proposed RHS funded projects.

RHS administers loan and grant programs authorized by Sections 514, 515, 516, 533, and 538 of the Housing Act of 1949, which provides financing for housing for very low and low income tenants in rural areas. The Section 515, 514/516, and 538 programs are administered at the State Office level and complies with all applicable Civil Rights and Fair Housing laws. The Internal Revenue Service (IRS), through Section 42 of the Internal Revenue Code, provides tax credits which are administered through the OHCS to encourage developers to provide affordable housing and participate in programs such as Section 515, 514/516 and 538.

BACKGROUND

The IRS published regulations on September 2, 1992 to guide State agencies in monitoring compliance with the low-income housing tax credit requirements by owners of affordable housing properties. These regulations allow the State agency to implement review requirements that allow exceptions to the requirements to review tenant certifications, supporting documentation, and rent records of such properties to owners of RHS financed properties. However, for OHCS to grant review exceptions on RHS financed properties, OHCS must enter into an agreement identified as a Memorandum of Understanding (MOU) with RHS whereby RHS will agree to provide OHCS with information concerning the income and rent of the tenants in the project. OHCS may assume accuracy of the information provided by RHS without verification. The original OHCS-RHS MOU signed 5-17-1993, and extended on 6-17-1994, expired on May 17, 1995. This year 2000 MOU reinstates the original MOU provisions and identifies additional considerations related to the exchange of project information and reservation of tax credits for RHS financed projects.

SCOPE OF AGREEMENT

Under this agreement, the RHS, through the Oregon State Office of USDA Rural Development, and OHCS agree to engage in cooperative efforts to 1) identify housing development activity which is mutually supportive of agency missions or is in conflict with similar housing, 2) enable RHS to assure that only the necessary financing is provided through the section 515, 514/516 and 538 programs, 3) enable OHCS to fully evaluate the tax credit project request of RHS funding applicants, including architectural requirements of OHCS, 4) enable OHCS to effectively monitor compliance of RHS borrowers who have tax credit requirements, as provided in Section 42 of the IRS Code, and 5) assure a minimum amount of low income housing tax credits are available to qualified RHS funded projects.

PURPOSE

The purpose of this document is to establish the general conditions under which RHS and OHCS agree to cooperate, exchange information, and provide mutually beneficial project support.

BOTH PARTIES AGREE

GENERAL INFORMATION

The general information shared under this MOU is for internal analysis and will not be disclosed to other than the appropriate RHS and OHCS employees. Specific information regarding individual proposals may be shared with the applicant/sponsor and other providers of funds for respective projects as appropriate and authorized by the proposal sponsor.

RHS and OHCS will inform any applicants seeking both low income housing tax credits and RHS loan assistance that the MOU will be applied to the processing of their applications with OHCS and RHS.

RHS will participate in public meetings/hearings each year as held by OHCS to assist in the development of the Housing Credit Allocation Plan. OHCS will accept within the limitations of the public solicitation for Allocation Plan comments, RHS material presented in efforts to retain the USDA Rural Development set-aside of credits.

RHS will inform OHCS each fiscal year of the amount of program funds allocated to Oregon or available as part of any Notice of Funding Availability (NOFA) issued by RHS National Office. A copy of the NOFA published in the Federal Register will be provided OHCS upon request.

RHS will provide OHCS information concerning any 533 Housing Preservation Grant (HPG) funds awarded in Oregon for rehabilitation of a multi-family project or single-family rehabilitation program.

In order to avoid duplicative or competitive local housing development, after selection of Sections 514, 515, 516, 533, or 538 loan requests for further processing, RHS will forward basic project information to OHCS for review and comment. OHCS will similarly forward a list of project funding considerations for RHS review and comment.

PROJECT SPECIFIC INFORMATION

Information will be shared on estimated and/or actual project costs for properties financed by RHS that are anticipated to receive low-income housing tax credits. RHS agrees to provide OHCS the following information/forms, as applicable, for projects being considered for or receiving RHS program(s) funding:

- Current processing list of pre-applications and applications updated at least semi-annually.
- Copy of any AD-622, “Notice of Pre-application Review Action” issued to the applicant requesting a complete application.
- Copy of Form SF 424, “Application for Federal Assistance”; Form FmHA 1930-7 “MFH Project Budget”; Form FmHA 1924-13 “Estimate and Certificate of Actual Cost”; legal description; market value determined by appraisal.
- Copy of Form FmHa 1944-51 MFH Obligations – Fund Analysis for each loan approved and obligated.
- Copy of Form FmHA 1944-7 MFH Interest Credit Agreement indicating the borrower’s 1% monthly loan payment.
- Copy of Form FmHA 1924-13 “Estimate and Certificate of Actual Cost” indicating actual costs when construction is complete, including any cost analysis performed.

The following fee limitations will be adhered to:

- a) builder’s profit: up to 6% (as per QAP) of the construction cost as established by contract(s);
- b) general overhead: up to 2% (as per QAP) of the construction cost as established by contract(s);
- c) general requirements: up to 6% (as per QAP) of the construction cost as established by contract(s);
- d) developer’s fee: up to 15% of the total development costs for tax credit purposes for new construction and rehabilitation costs; up to 5% of the acquisition cost for acquisition/rehab projects.

(See attachment 1, Developer Fee Schedule.)

Rural Development staff and OHCS staff will review, at least annually, the fee norms on builder or general contractor charges (builder’s profit, builder’s overhead, and general requirements) established by this MOU. The developer’s fee or any other fees allowed will also be reviewed. Any revised fee norms will be added as an amendment to this agreement and be used in subsequent analysis of loan or credit requests.

The above fee norms will be used in the OHCS analysis of the amount of assistance that is necessary for a proposed project. In all cases where the results of an analysis indicate that there will be excess assistance (defined as more than the lesser of \$25,000 or 1 percent of the total development cost as authorized by OHCS), RHS will consult with the applicant and OHCS to strive to reach an agreement for reducing the excess assistance. The following are examples of actions that can be taken:

- reducing the amount of tax credit units requested, or

- reducing the level of assistance provided by one or more of the funding sources, or
- revising the uses to include eligible costs for any funding participants, provided the project enhancement is consistent with the intent of the RRH program and will assist the resident population being served by the housing.
- Parties to this agreement understand that in the event that excess assistance is not reduced through other means, RHS will adjust the amount of equity contribution (through the reduction of the loan) to ensure that RHS assistance provided is not more than is necessary to provide affordable housing, after taking account of assistance from all Federal, State, and local sources. Any reduction pursuant to this paragraph will require formal notification to the applicant, OHCS, and RHS National Office.

OHCS will provide RHS with:

- A list of all funded tax credit applications including project name and location, number of units, tax credits requested, amount of reservation, and project preference(s), if any.
- A copy of the reservation letter sent to the applicant/sponsor.
- A copy of the detailed cost breakdown used to estimate the amount of tax credits for which the developer would be eligible for those applicants that are seeking RHS financing.
- IRS Form 8609 “Low Income Housing Credit Allocation Certification” with a copy of the cost data used to determine the development cost of the RHS financed projects.

RHS will provide OHCS with the name of Section 515, 514/516, 538 borrowers receiving tax credits who are in default on their RHS loan. OHCS will provide RHS with information concerning borrowers who, to the knowledge of OHCS, are in non-compliance with tax credit requirements.

TENANT AND MONITORING INFORMATION

RHS will require signatures of all household members 18 years of age and over, as required by IRS Code on tenant certifications. RHS will require as a part of project management, and consistent with OHCS policy, use OHCS .1, Low Income Housing Tax Credit Program Tenant Certification (Form TIC-1) for all placement and move-in certifications, in addition to any other administrative forms required by RHS. The OHCS initial certification form will be required to be dated effective on or before tenant move-in.

Parties to this agreement understand RHS does not certify tenant tax credit income eligibility, nor does RHS certify to the owner’s compliance with the requirements of Section 42, only that RHS tenant income is based upon certification or annual recertification, and that certification and recertification requires third-party verification. The owner certifies the information to RHS as being true and correct representations, and RHS performs periodic reviews and analysis of the data to verify compliance with RHS requirements.

RHS will provide OHCS with annual data concerning tenant income on affected RHS properties. Such data will be in a standard report format from the Multiple Family Housing Tenant File System (MTFS) database. The report will be signed and dated by RHS Servicing Specialist and will indicate the data is considered correct by RHS.

OHCS will accept the RHS physical inspection findings in lieu of conducting a separate inspection. Such findings shall be available for review prior to any OHCS audit and OHCS shall reserve the right to inspect as necessary to satisfy IRS code. File audits will continue to be conducted by OHCS as established by OHCS policy and procedures.

TAX CREDIT SET ASIDE FOR RHS PROJECTS

OHCS will set-aside 15% of the state allocation of credits for USDA Rural Development 515, 514/516, 538 (interest credit, only) program eligible projects and other rural/farmworker targeted projects. A reservation or allocation of tax credits from this set-aside will be limited to projects that receive direct funding from RHS or meet rural/farmworker housing targets. The following additional conditions apply:

Projects receiving support in the way of a loan guarantee only, or other similar support, will not be considered for a reservation or allocation from the USDA Rural Development set-aside solely due to the loan guarantee participation.

Tax credit applications will be processed in the regular OHCS funding competition cycle. If RHS is unable to issue a certification of the availability of funding by the date OHCS receives notice that National Pool Tax Credits will be available, the RHS project related tax credit reservation may be canceled and that portion of the Rural Development set-aside reallocated as appropriate.

The Rural Development set-aside is not an “entitlement” pool, but rather a “reserve” of credits for RHS project proposals that meet the OHCS scoring criteria. The purpose of the set-aside is to assure tax credits are available for RHS projects that meet scoring thresholds, but otherwise would not receive credits due to the competition from other higher scoring projects.

HOME Designated Units with RD Rental Assistance

HOME designated units in Rural Development financed projects will be treated as ‘tax credit’ units as described in Administrative Notice No. 3209 (1930-C). Accordingly:

Such treatment will allow tenant selection to be deferred until applicants for occupancy are available whose eligibility will allow the borrower/sponsor to meet HOME program obligations. Rural Development Rental Assistance (RA) assigned to the designated HOME unit(s) will be retained; transfer of the RA to other eligible project tenants will not occur as otherwise would be required with RD financed developments.

The project owner is responsible for any cash flow deficits in the annual project budget as a result of applying this practice so far as Rural Development is concerned.

OHCS Architectural Requirements

In RHS/OHCS jointly funded projects, OHCS architectural standards will be adhered to as applied by the OHCS Architectural Consultant with consideration for RHS architectural constraints. OHCS architectural standards are published annually in both the OHCS funding application packages and in the Low Income Housing Tax Credit Qualified Allocation Plan.

PERIOD OF AGREEMENT

This agreement will remain in effect until terminated by written 30 day notification to either party.

MODIFICATION OR AMENDMENT PROVISION

This agreement may be modified by written agreement of RHA and OHCS. Requests for amendments to the agreement will be initiated by either party through written notification.

ACCEPTANCE AND SIGNATURE OF EACH APPROVING PARTY

Director
Oregon Housing and Community Services
Department

Date

State Director
USDA Rural Development Rural Housing
Services

Date

EXHIBIT E

RESIDENT SERVICES PLAN

- * It is optional to submit this Plan with the Application. It will be required for submission if the project receives a reservation of funding

Date: _____ Project Name: _____
Sponsor: _____
Sponsor Contact: _____
Sponsor Address: _____
Sponsor Phone: _____ Sponsor Fax: _____
Management Agent: _____
Project Location: _____
Number of Units: _____ Bedroom Sizes: _____
Target Population: _____ Income Levels: _____
Projected number of children on-site at full occupancy: _____

Department Funding:			
Trust Fund:	\$	HOME:	\$
HELP:	\$	LIHTC:	\$
OAHTC:	\$	ADF/Other:	\$

Policy Statement

Sponsors who receive Department Resources must include in their affordable housing development a provision for residents to access services appropriate to the identified needs of the target population.

The anticipated outcomes of the Resident Services Plan are:

- 1) Through coordination, collaboration, and community linkages, provide residents the opportunity to access appropriate services which promote self-sufficiency, maintain independent living, and support residents in making positive life choices; and
- 2) To effectively maintain the fiscal and physical viability of the development by incorporating into the ongoing management appropriate services which address resident issues as they may arise.

Developing the Resident Services Plan

The Resident Services Plan contains four sections, each beginning with a statement of intent. Complete each section thoroughly and completely. There is no limit to the number of pages that can be submitted, but conciseness is encouraged.

PLEASE READ ALL QUESTIONS AND TRY TO ANSWER EACH ONE THOROUGHLY

Section One: Needs Assessment

The intent of this section is to ensure that the Sponsor will employ a thorough and creative process to research, identify and describe the target population and assess their potential service needs. Contact with the local community including schools, churches, businesses, neighbors, service providers, and other affordable housing developments may be necessary in order to define the needs specific to potential residents. The Sponsor is encouraged to research additional sources, including census information, market studies, and the OHCS OMNIPLAN. Assumptions based on the Sponsor’s prior experience in designing services for this target population are also valuable.

Describe the overarching goal for housing and services as the project is envisioned. How do support services fit in the mission statement as a non-profit housing developer, or in the housing portfolio, if a for-profit developer:

X _____

Describe in detail the target population and their service needs:

X _____

Describe the methods used, and identify the sources consulted in determining the service needs of the target population:

X _____

Section Two: Identification and Coordination

The intent of this Section is to demonstrate that the Sponsor has made linkages in the local community and the network of service providers in order to establish roles and relationships in coordination of services for this development. The Sponsor is encouraged to initially investigate an array of possible services and then refine and select those most appropriate to the target population.

Describe the methods used to identify the available services in the community, including efforts to coordinate and collaborate on the design of the Resident Service Plan:

X _____

X _____

Section Four: Evaluation and Coordination with Management

The intent of this section is to establish a method of evaluating the effectiveness of the Resident Services Plan and create the essential link to ongoing management of the development.

Evaluating the plan will ensure that as resident populations are often in flux, the services can be adapted to changing needs. Effective delivery of services must be coordinated with the management agent, especially the on-site staff.

Describe the methods used to evaluate the specific services offered, including how and when the anticipated results will be measured:

X _____

If results are not as anticipated, describe what corrective action will be taken:

X _____

Describe the criteria used for selecting a management agent committed to coordination of resident services, including the hiring and training of “service sensitive” staff:

X _____

Describe the process of ensuring ongoing coordination of the Resident Services Plan with the proposed management agent:

X _____

EXHIBIT F

PROPOSED CHANGES TO THE QUALIFIED ALLOCATION PLAN FOR 2009 UNTIL FURTHER AMENDED

Page 7	Inserted disclaimer language in the Introduction
Page 8	Inserted the word “sole”
Page 9	Temporary Public Notices to the Qualified Allocation Plan
Page 10	Updated descriptions of Types of Credits
Page 10	Introduced Eligible Basis section title and outlined in more detail the changes resulting from Section 3003 of the Housing and Economic Recovery Act of 2008 (per HERA)
Page 13	Updated rehab expenditures minimums, (per HERA), in Overview of the Credit Application and Allocation Process section
Pages 15-16	Added clarifying language regarding general requirements for the 4% credit
Page 16	Replaced the word discrimination with non-discrimination
Page 17	Replaced the phrase “best practices” with the phrase “current real estate underwriting practices” Included wording “financial feasibility for both 4% and 9% project consideration” in the introduction of Financial Feasibility section
Page 18	Replaced “as a means to verify” with “to confirm”
Page 20	Inserted the word “sole”
Page 23	Added selection criteria, (per HERA), such as historic nature of buildings and energy efficiency guidelines Replaced the word “statue” with the word “statute” and the word “policy” with the word “policies” Inserted the article “a” next to the word “project”
Page 25	Inserted the word “sole” Replaced “will hold” with “generally holds”
Page 26	Deleted “(interest credit, only)” Deleted “This Memorandum is attached as”
Page 27	Updated timeline information on carryover deadlines (point #4)
Page 30	Inserted cross-reference to Exhibit H
Page 31	Deleted the word “non-“ next to competitive Replaced “identical” with “similar”
Page 35	Inserted “competing for 9% and competitive 4% credits”
Page 36	Moved paragraph above Threshold Requirements section to below the section name
Page 36	Replaced “Director” with “Department”
Page 37	Inserted “or decrease”
Page 39	Reservation Period language regarding specific timeframes has been removed
Page 40	Added information regarding the Competitive Allocation Limitations (Per Project Tax Credit Cap)
Pages 43-44	Update (per HERA) of Policy on Use of LIHTC for Public Purposes
Page 44	Update (per HERA) of Policy on the use of LIHTC with other Funding Sources, including HOME

Page 45-46	Clarify Next Available Project List Policy (Wait List)
Page 46	Insert NEW (per HERA) Policy on the Use of the 9% Applicable Credit Percentage
Page 46-47	Insert NEW (per HERA) Policy on the State's Use of the 130% Basis Boost
Page 47-48	Insert NEW Policy On Returning Awarded 9% Credit Reservations In Exchange For A Subsequent Year's Credit Reservation
Page 48	Policy on Voluntary Return of Credits
Pages 48-49	Amended and updated Policy on Applications by Sponsors Who Request Additional Tax Credits after an Initial Award
Page 50	Clarified Policy of Split Year Tax Credit Allocations Replaced "allocate" with "reserve" in the Policy on Applicable Percentage Rate Lock Replaced "building" with "project" Replaced "bond issuance" with "the month in which the bonds are sold"
Page 52	NEW Policy on Negative Timing Adjusters
Page 56	Deleted the sentence "Deferred developer's fee will not be included in computations for the reasonableness of the proposed fee."
Page 58	Updated, (per HERA) 130% Rule and Community Service Facilities Replaced "each application for LIHTC" with "the CFC application"
Page 60	Updated, (per HERA) Waiver of Annual Income Recertification Policy Inserted "(see Policy on Property Management Units below for further discussion)"
Page 61	Inserted First-Year Certification by OHCS Mandate
Page 61-63	Updated OHCS Waiver of First-Year Certification Policy
Page 69	Deleted cross reference "see attached Exhibit H)"
Page 69	Updated Extended Use Period (Post-15 Year) Compliance Policy
Page 70	Updated Monitoring - Extended Use Period (Post-15 Year)
Exhibit C	Updated Form 8821 with the most recent available (Rev. 8-2008)
Exhibit H	Deleted language regarding Housing Credit Properties after year 15 which was a repeat of language in the body of the QAP; Added, for general reference, OHCS Charge Adjustments table approved by Housing Council April 2006

EXHIBIT G

COMMENTS AND RESPONSE LETTERS TO THE AMENDED 2009 QUALIFIED ALLOCATION PLAN

Minutes and Comments from the Public Hearing:

Monday, January 5, 2009, 1:00 to 3:00 p.m.

Salem, Oregon Housing and Community Services, Room 124a/b

Attending from Oregon Housing and Community Services Department (OHCS or the Department) are Mariana Negoita, Betty Markey, and Susan Bailey. In attendance for the hearing:

Anna Geller, Geller, Silvis and Associates
Theresa Auld, Housing Authority of Portland
Joey Castleberry, Housing Authority of Portland
Betty Dominguez, Housing Authority of Portland
Will Levenson, The Richmond Group
Terry Gentry, The Richmond Group

Mariana Negoita: Hi, My name is Mariana Negoita. I am the LIHTC Program Representative for the State of Oregon. This is the LIHTC QAP Hearing. With me today is Betty Markey, Housing Resources Section Manager and Susan Bailey, our recorder. Today is Monday, January 5, 2009. It is 1:10 p.m. and the hearing is now in session. I will very briefly go through the 2007 Technical Amendment to the QAP and then the 2009 Amendment to the QAP.

The Technical Amendment to the QAP applies to those 2008 credit projects that have just completed carryover. A couple changes have been made to it. There is a temporary public notice that gives us the opportunity to put out temporary public notices or guidance so that we can efficiently administer the LIHTC program. There are changes to the policy of the use of the LIHTC for public purpose as enacted through the Housing and Economic Recovery Act (HERA) of 2008. There is a policy on the use of LIHTC with HOME as with HERA 2008, HOME is now included in basis. There is a policy on the use of 9% applicable percentage rate for those projects that will place in service between July 30, 2008 and December 31, 2013. We also have a policy on returning 2008 9% credit allocations in exchange for 2009 9% credit allocation. The policy states that this is a one time opportunity if a project is still financially feasible to return their allocation once they've received their carryover allocation and receive the same amount of credits that they've been allocated. They must place in service within two years from their new allocation, and they must comply with the requirements of the qualified allocation plan when they received their original award. There is a policy on a voluntary return of credits. Return of credits cannot be predicated on any other condition. There is a policy on negative timing adjusters that we do not fund negative timing adjusters.

The more extended changes are to the Draft Amended 2009 QAP. I hope everyone received the Exhibit F, on page 91 of the Draft Amended 2009 QAP. There are quite a few changes. There is a disclaimer line added to the introduction. There is again the temporary public notice to the qualified allocation plan that allows us to procedurally administer the program. There is an updated description of the types of credits. On page 12, it introduces a section about eligible basis, which outlines in more detail the results from Section 3003 of the Housing and Economic Recovery Act. We've updated rehab expenditure minimums as per HERA in the overview of the credit application and allocation process section. On pages 15-16, we've added clarifying language regarding general requirements for 4% credits. According to HERA, we've added selection criteria, on page 24, such as historic nature of buildings and energy efficiency guidelines. On page 28, we've updated timeline information on carryover deadlines. On page 36, we've moved a paragraph above Threshold Requirements section to below the section. Page 40, there is reservation period language that has been clarified and broadened to include timeframes without specifically referring to the exact time. We've added information regarding competitive allocation limitation on page 41 with the credit cap now being \$825,000 for projects applying for 2009 credits. We've updated

the HERA policy use of LIHTC for public purpose, much like we did in the 2007 Technical Amendment to the QAP. There is updated policy on the use of LIHTC with other funding sources including HOME. On pages 46 and 47, we've clarified the next available project list policy (otherwise known as the Wait List). On page 47, we've inserted a new policy on the use of the 9% credit rate for projects placed in service between July 30, 2008 and December 31, 2013. On pages 48-49, we've inserted a new policy on returning 9% credit reservation in exchange for a subsequent year's credit reservation. On page 49, we've added the policy on voluntary return of credits. On pages 50-51, we've amended and updated a policy on application by sponsors who request additional tax credits after an initial award. On page 52, we've clarified the policy of split year tax credit allocations. On page 54, we've added a new policy of negative timing adjusters, much like the policy in the 2007 Technical Amendment to the QAP. On page 60, we've updated, per HERA, the 130% rule and community service facilities. Page 62, we've updated, per HERA, the waiver of annual income recert policy. Page 63, we've inserted first year certification by OHCS mandate. Also on page 63, we've updated the OHCS waiver of first year certification policy. On page 72, we've updated the extended use period for post-15 year compliance period. On page 73, we've updated our monitoring of extended use period projects. Exhibit C received an updated form 8821, and in Exhibit H, we deleted repeat language regarding housing credit properties after year 15, and added a reference to the OHCS charge adjustments.

At this time I open the hearing up to public comment:

Betty Markey: As you give public comment, if you would state whether it is for the 2007 or 2009 amended QAP.

Mariana Negoita: Some changes are repeated in both amendments.

Will Levenson, Richmond Group: This might be a good opportunity to talk about 2009 change to increase the cap to \$825,000. That seems like a good idea. Maybe it could be considered to remove all caps, or at least moving it up to a million dollars might allow an opportunity for a development that might not otherwise be able to pencil in the current tax credit environment. Maybe it is something you could look to adjust next time you make changes to the QAP, if the tax credit market does not straighten out by then. At this point, at Richmond Group, we are seeing prices for LIHTC in the low 70s. If there are more tax credits given to a project, it may allow a project to work that otherwise wouldn't. I imagine the argument for putting the cap on has to do with allowing that one extra project to get done. But in this case, if you flip it around, that one other project is not going to get done anyway in this current environment. So, a good adaptation would be to increase the tax credits.

Terry Gentry, Richmond Group: Going along with that comment is the policy on negative timing adjusters. In our market right now, when we are continuing to be increasing deal requirements and decreasing price per credit that having a policy within the 2009 QAP that says whatever the yield is at the original time the partnership agreement is difficult. That was fine two years ago or five years ago. Now the market is such that having some flexibility on where prices are and what happens from the time the letter is written, or even the time you start to negotiate the partnership agreement. We've been in the process of negotiating a partnership agreement with a single investor, and the single investor has a general policy of getting 9 yield on everything. So it needs to be a 9 on that. The market is so tenuous that not allowing that... for instance, in Texas, they just went across the board and gave everyone an additional 10% credits just to accommodate these types of issues.

Betty Markey: Just so that you are aware, as part of the hearing process, we only listen to public comment. We do not respond to comments at this time.

Terry Gentry: My other comment relates to the use of the discretionary 30% bonus that States are allowed. Taking a more proactive use of the 30% bonus where there are opportunities to do that, for instance in New Mexico, as part of their 2009 QAP, the whole state gets the 30% bonus there. They found that was the fairest approach. Wyoming, for instance, any project that is averaging an AMFI of 40% or below, they get a 30% boost. So my comment is to look at using that more directly as a policy, or including something that gives more discretion to use it.

Mariana Negoita: I can present that now and go over it as it is outlined in the QAP, if you have not had an opportunity to read it, on Page 47-48. The 130% boost policy relates to the 9% credit only, because that is our HERA limitation. The state will look to designate the difficult to develop area and allocate additional credits to

projects that need to be financially feasible such as preservation projects, projects serving permanent supportive housing goals, projects that address workforce housing needs, as per the Needs Analysis currently included in the Consolidated Funding Cycle, projects that are located in Transit Oriented Districts (TODs) or Economic Development Regions (EDRs) as designated by local governments, or projects in a designated state or federal empowerment/enterprise zone or Public Improvement District (PIDs), or other area or zone where a city or county has, through a local government initiative, encouraged or channeled growth, neighborhood preservation, redevelopment, or encouraged the development and use of public transportation. Given that, we realize and given the current financial market conditions, of course testing the financial feasibility of each project, we will consider the issuance of the basis boost outside of both HUD designated qualified census tracts or difficult to develop areas and also not characterized above. We are hoping to return to this policy upon ample public notice as soon as market conditions improve or within 12 months of the date of this amended QAP, whichever is later. So in order to qualify for the 130% basis boost for projects receiving a boost to their eligible basis in the 2009-10 award cycles, that are not currently HUD designated DDA/QCT, they will need to submit to us the following prior to a carryover process: An explanation of how and why the use of the boost is needed for the specific project. The most recent proforma and explanations of their assumptions which identify the need for the additional basis boost to support the narrative. In that there will be no substantial changes to the proforma from the original application or from the latest available to OHCS. These will not be accepted without valid explanation of the reasons that have led to the substantial changes. Also changes in the project income and project expenses will not be accepted. The Department will not consider a request for the use of the state's basis boost to fill gaps resulting from increased costs in the uses of funding. I hope that addresses a little bit your point. Thank-you.

Betty Markey: Any other comment? Otherwise we will close the hearing, unless someone wants to re-open it, or someone else comes in.

Anna Geller: I have a question about the hearing itself. Is it going to continue until 3:00 p.m.? We will wait to see if others arrive and give them the correct opportunity to provide testimony?

Betty Markey: Yes. We will be here until 3:00 p.m.

Anna Geller: So if we close the hearing now, we might re-open it if someone wishes to testify. If I wanted to testify later, I could?

Betty Markey: Yes, you could. So, does anyone else want to testify now? Then we will close the hearing and re-open it if someone wants to testify before 3:00 p.m.

Hearing closed at 1:30 p.m.

Hearing is re-opened at 2:31 p.m.

Anna Geller: This is Anna Geller and my information is on the sign-up sheet. My testimony today regarding the QAP amendment really has to do with the OHCS 2009 QAP. I will follow up with written comments on the proposed changes, but there is one comment in particular that I want to talk about in a little more informal way here today in our hearing where my comments can be not necessarily just in writing but perhaps give a little bit more illustration than one might be able to in writing. This has to do with the issue on page 51 with commitment letters from investors. The issue itself begins on page 50 with the amended and updated policy on applications by sponsors who request additional tax credits after an initial award. It's tremendous timing for this topic because HERA was passed about three days after the CFC deadline of last fall, so it is possible that many awardees including an award that our firm has, are in a situation where either their investor has gone out of business, or pricing has changed so dramatically that they are probably going to have to apply for additional credits. So, in anticipation of that, I assume you've proposed these changes. It says, in the summary, that in the new process for additional LIHTC, the sponsor must submit a "commitment letter" from an investor, a Letter of Intent (LOI) from a construction lender, an LOI from a permanent lender, and state the project has not substantially changed in scope or scale from the original CFC application. All of that makes sense to me. In our case, we have those letters of interest already in place at the CFC, and actually had a fixed rate commitment from our investor. Unfortunately, when Merrill Lynch was closed they were no longer able to invest at all, at any price. The issue for us as we journey out to work with new investors and

to try to get a price from them (and we want to get the highest price that we can, because it is certainly in our interest as developers to get the highest price that we can.) It is a little bit of a chicken and egg problem. We have a gap, so the investors don't want to issue a commitment letter. They don't know how that gap is going to be filled. They don't know if it is going to be filled with additional loan, which would potentially increase losses. They don't know if it is going to be filled entirely with additional credits. If it is, that should be known right away, because they need to line that credit amount up with their other acquisitions to make sure they have the appetite for that amount of credits. So when we have a gap and it is not clear how it is going to be filled, they simply will not issue a commitment letter. We have obtained three letters; two from syndicators and one from a direct investor. At least the direct investor issued an actual price, and has not objected to our closing date, and is readily underwriting our project. Their staff is working on it. We know they have their own money. They don't have to be syndicating the transaction. So, we remain somewhat confident that we will have a commitment letter, maybe even a month before closing, but we can't come to the State and request additional credits with a commitment letter, because the influence on the yield is simply not known. Our RAD is familiar with this. One of the direct investors, and also to some degree a syndicator, has come out and written us and we've copied [our RAD] that they cannot tell us what they could possibly pay us for our existing credits when they have no idea how this gap, the pricing drop from \$0.88 to whatever it is today, is going to be closed. What kind of instruments will be used? Debt? Additional credits? How will it be handled? So, my testimony really is about just doing one's best to think that through. I have a feeling that this is going to become a bit more of an art than a science for the Department, and in our case, we are doing everything we can. It is in our interest to get the most specific letter that we can from any investor we can close with. Our interests with you are aligned, but we will not be able to get a commitment letter until we know that we don't have a gap, and we have something fixed to get ready to close, and to bid upon. I am not sure that I am giving you an answer to this dilemma, but I hope that you'll use your best judgment and talents. I know you are actively involved in the market place... to recognize those patterns and those challenges, and to talk directly to investors, and do what ever it takes to help us to get to a commitment letter. On our 75-day, and also on request for additional credits to close our gap, we are hoping that you will recognize that the commitment letter will not be a commitment letter with a capital "C". That is the end of my testimony.

Betty Markey: We will close the hearing again at 2:39 p.m.

Betty Markey: It is now 3:05 p.m. and we are formally closing the hearing.

Hearing concluded 3:05 p.m.

Written Comments and Responses:

From: Dan Steffey [dsteffey@guardian-mgmt.com]

Sent: Friday, December 19, 2008 5:07 PM

To: Victor Merced

Cc: susan.e.bailey@state.or.us

Subject: Proposed Amendments to QAP

My compliments to you and your staff for the thoughtful work that is evident in the Draft Amended 2009 Qualified Allocation Plan. Incorporating the HERA legislation into the Plan is an important accomplishment. Also important, at this time of unprecedented uncertainty in the debt and equity markets, it is both encouraging and refreshing to find the Department prepared to establish the clear authority to exercise its “sole discretion (to) disregard any section of the Plan, which interferes with the necessary or appropriate” response to major unexpected events. I believe this authority, accompanied as it is by the proposed Temporary Public Notices provisions and the strategic use of the term “sole discretion”, is critically important. In my opinion The Department must be prepared to timely take appropriate action as necessary to support those projects that meet the intent of the QAP and have, almost miraculously in these difficult times, managed to line up both the debt and equity to be ready to close.

Specific to the Plan as proposed in the Draft Amendments, I believe it would be useful to make it clear that 4% projects earn credits and fees without limits other than those in the Code. More specifically:

- I will once again make the point that 4% credit projects should be allowed to take whatever credit is available once the cost certification has been completed. There is nothing gained by imposing any limits on the amount of credit allocated once all eligible costs have been certified.
- Likewise, any restrictions on the amount of the developer fee allowed on a 4% deal does nothing more than leave credits unused. Placing an administrative restriction, other than the statutory 15%, constrains the ability to use all credit potentially available. Since the credit is earned by the tax-exempt nature of the financing, the issue of whether the fee is deferred or not should not matter. Taking the full 15% does not use up a limited amount of credits. If all other conditions of an award are met, the fee should be as much as the code allows and not further restricted by the QAP.

Thank you for the hard work you and your staff do and for consideration of my thoughts about the proposed amendments to the QAP.

Have a Happy Holiday.

J. Daniel Steffey

Vice President, Development

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January 15, 2009

Guardian Management LLC
Attn: J. Daniel Steffey
710 NW 14th Ave. 2nd Floor
Portland, Oregon 97209

RE: Amended 2009 Low Income Housing Tax Credit Qualified Allocation Plan (QAP).

Dear Mr. Steffey,

Thank you for taking the time to comment on the Amended 2009 Low Income Housing Qualified Allocation Plan and the kind words. We appreciate your support in our efforts to provide affordable rental housing in Oregon and we will continue to evaluate your points. While we do so, the Department's position so far has been that credits are awarded in a specific dollar amount. Additional 4% credits can typically be approved for a larger award subject to the Department's assessment, on a case by case basis.

In regards to developer fees, there is an established policy to limit developer fee based on a set criteria that quantifies project difficulty, appropriateness and adequacy of developer fee, in light of a project's development difficulty. Further, the Department has established policies not to award the maximum allowable fee for that portion of development attributable to acquisition. This notwithstanding, the Department believes that reasonable developer fees commensurate to the work and project risk should be awarded.

Thank you again for your comments and suggestions and look forward to working with you in the development of affordable housing in Oregon.

Sincerely,

Mariana Negoita
LIHTC Program Representative
Housing Division

Cc: QAP

Amended 2009 Qualified Allocation Plan

Feedback

LIHTC PROGRAM ELEMENTS

1. Page 18- Financial Feasibility

- Projects serving extremely low-income populations should not be expected to meet the “current real estate underwriting” standard of a Debt Coverage Ratio between 1.15 and 1.2.

ALLOCATION PROCEDURE

1. Page 38 – Financial Feasibility

- After “tax attorney,” please insert “at final application.”

2. Page 40 - Reservation Period

- Investor and lender uncertainties pose a challenging issue in meeting the 75-day Reservation Period. Propose extension of 75-day requirement to the next application round. Please delete “on that list” and insert “that scored next on the list.”

3. Page 41 – Competitive Allocation Limitations

- The first two paragraphs related to raising the credit cap to 125% and then waiving the project ceiling seemed to use inconsistent language, making the statements unclear regarding the intentions of this ruling.

4. Page 48 – Policy on the State’s Use of the 130% Basis Boost

- We support the additional language related to explanation of project cost changes in sections (1) and (2)(a). OHCS’s concerns related to cost increases seem to be covered in section (2)(a), but sections (2)(b)(c) should be deleted. In the past five years, construction costs have increased considerably at unprecedented rates, requiring the need for additional credits in some limited cases to make the projects move forward.

5. Pages 48-49 – Policy on Returning 9% Credits

- We support OHCS’s policy to allow projects to exchange a subsequent year’s tax credit allocation. However, project sponsors should be allowed to request an exchange in credits if costs increase in some limited cases to make the projects move forward (delete item 4).

6. Pages 50 – Policy on Applications by Sponsors

- It is not likely that projects sponsors will have final design and construction bids within 75 days of award based on the current design and construction business processes. Propose extension of 75-day requirement to the next application round.
- Page 51(a) – Delete commitment letter requirement to request additional credits. It is not likely that projects sponsors will have investor commitment in this current economic environment within 75 days.

COMPLIANCE POLICIES

1. Page 63-OHCS Waiver of the First-Year Certification

- Need sentence completion for clarification of submission of written requests.

January 15, 2009

Housing Development Center
Attn: Molly Rogers, Program Manager
2627 NE Martin Luther King Jr. Blvd.
Portland, OR 97212

RE: Comments on Amended 2009 Low Income Housing Tax Credit (LIHTC) Qualified Allocation Plan (QAP)

Dear Ms. Rogers,

Thank you for taking the time to provide us feedback on the Amended 2009 Low Income Housing Qualified Allocation Plan. I would like to take this opportunity to respond to your concerns expressed in your email received at OHCS the evening of January 13, 2009.

Page 18

The change made to this paragraph was from “best practices” to “current real estate underwriting” practices. Your concern over the “current real estate underwriting” standards of Debt Coverage Ratio (DCR) of 1.15 to 1.20 is an issue that has troubled affordable housing developers all along. OHCS understands that not all projects can meet that requirement with absolute exactitude, however if a project DCR needs to be higher, applicants will need to explain this in the context of the specific project application and provide support for the need to increase the DCR in their CFC or Bond and 4% applications to the Department.

Page 38

The paragraph you are referring to is essentially unchanged from the original 2009 QAP, except for the inclusion of the words ‘or decrease’ in the sentence: “Repayment of must pay debt, e.g., principal amount of deferred developer fee, may increase *or decrease* primary debt service ratio.” This depends on the structure or restructure of must pay debt. The intent of the QAP amendment was primarily to include the substantial changes The Housing and Economic Recovery Act of 2008 (HERA) has imposed on the program; to a lesser extent, create some flexibility to address current market conditions in the equity markets that are affecting the program; and to a much lesser extent make necessary clarifications to the document, where information could be easily clarified or updated.

Page 40

The paragraph was changed only to indicate that there will continue to be a reservation period for competitive 9% credits, as far as the QAP is concerned. While that timeframe is currently set at 75 days, any changes to that timeframe will be outlined more specifically in CFC materials.

Page 41

OHCS has taken into consideration your feedback regarding inconsistent language on page 41, in regards to Competitive Allocation Limitations. We have included language that identifies what is an application cap, and what is an additional credits cap. Your feedback was crucial to our process and we are grateful for it.

Pages 48 and 49

Regarding the issue of hard cost increases, this policy was included in support of the reservation period processes in the CFC (the 75 day period). OHCS requested and received feedback on this point from various partners in this industry, including architects, builders and lenders who stated that in a 75 day time period costs could be accurately determined. OHCS will continue to accept requests for additional credits due to cost increases for projects that experience unforeseen circumstances.

Page 50 and 51

We appreciate your feedback regarding the changes made to the Policy on Applications by Sponsors who request additional tax credits after an initial reservation award. Again, the 75 day reservation issues are a CFC requirement. In light of your feedback concerning the commitment letter we realize we were potentially creating a requirement that could not be fulfilled. We have changed the language to better outline our intent.

OHCS will not require a commitment letter but instead will require written confirmation that the investor is interested in the additional credits. In the current market, OHCS needs to know that it deploys its limited resources to viable projects and that an investor already involved in the project is willing and able to absorb all the credits the project delivers.

Page 63

Thank you for pointing to us our error, we have completed the sentence.

We appreciate your suggestions, as well as the time you took to review the draft Amended 2009 QAP and the thoroughness of your comments.

Sincerely,

Mariana Negoita
LIHTC Program Representative
Housing Development Division

Cc: QAP



January 13, 2009

Bob Gillespie
Housing Division
Oregon Housing and Community Services
725 Summer Street, NE, Suite B
Salem OR, 97309-1266

Re: Oregon's Draft 2009 Qualified Allocation Plan

Dear Mr. Gillespie:

The National Housing Trust is a national nonprofit organization formed to preserve and revitalize affordable homes to better the quality of life for the families and elderly who live there. Saving affordable housing is the essential first step in addressing our nation's housing dilemma. **Preservation is integral to building and maintaining sustainable, economically vibrant and healthy communities.**

The National Housing Trust engages in housing preservation through real estate development, lending and public policy. Over the past decade, NHT and our affiliate, NHT-Enterprise Preservation Corporation, have preserved more than 22,000 affordable apartments in all types of communities, leveraging more than \$1 billion in financing.

We appreciate the opportunity to comment on Oregon's draft 2009 Qualified Allocation Plan. The Trust fully acknowledges and appreciates the entire set of preservation policies and programs established by Oregon Housing and Community Services. The comments below refer directly and specifically to OHCS's draft QAP as it relates to the tax credit program and are in no way meant to imply a lack of appreciation for your other successful preservation programs and policies or the current challenges in the tax credit market.

In summary, we urge OHCS to:

- Maintain its **25% set-aside** for proposals involving the preservation and rehabilitation of existing multifamily rental housing in the final 2009 QAP.
- **Continue including green building practices**, healthy building materials and energy efficient design features in Oregon's tax credit program.

National Preservation Initiative

1101 30th Street, N.W., Suite 400 ■ Washington, D.C. 20007 ■ 202-333-8931 ■ FAX: 202-833-1031

Low Income Housing Tax Credits and Preservation in Oregon

Our nation faces a serious shortage of housing for low- and moderate-income families. Over the last decade, more than 15% of our affordable housing nationwide has been lost to market-rate conversion, deterioration, and demolition. **Critical affordable housing units are at risk in Oregon** (see table). These affordable apartments currently provide homes for some of Oregon’s lowest-income families and elderly citizens. By prioritizing preservation, Oregon’s Qualified Allocation Plan can provide the incentives necessary to prevent the loss of this indispensable affordable housing. Property owners, nonprofit organizations, developers, and local governments depend on state housing finance agencies to provide the financial and technical assistance necessary to preserve affordable housing for future generations.

At-risk properties in Oregon

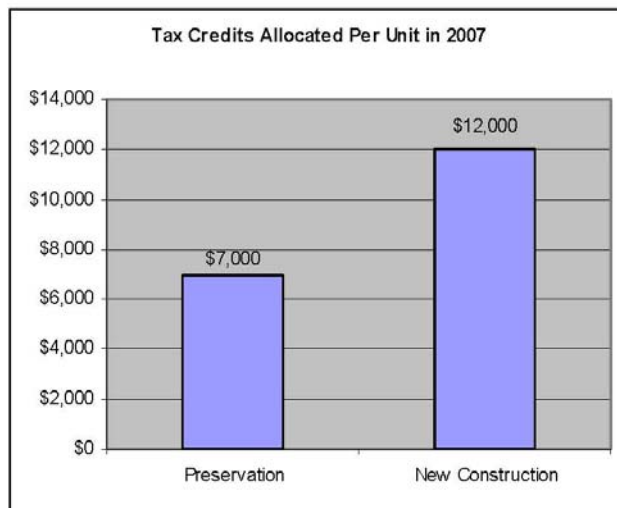
Project-based Section 8 properties with contracts expiring by 2013:

- 9,463 assisted units in 270 properties
- 56% of which are owned by for-profit owners

Rural Section 515 properties that may be at risk due to high operating costs, low rents and physical deterioration:

- 6,415 units in 214 properties

In Oregon, the Trust estimates that more than 1,343 HUD-assisted apartments may have been lost between 1995 and 2006.



Preserving and rehabilitating existing housing has proven to be a cost-effective method to provide rental housing to low-income families and seniors. Nationwide, rehabilitation projects require almost 40% less tax credit equity per unit than new construction developments. In addition, preservation prolongs federal investment in affordable housing properties. As such, states around the nation have recognized that preservation is a common sense response to America’s affordable housing shortage, and have prioritized preservation and rehabilitation in their QAPs. **Forty-six state agencies set aside or**

prioritize competitive 9% tax credits for the preservation of existing affordable housing. This trend has led to increased preservation each year, with more than 65,000 affordable units preserved nationwide in 2007, a 300% increase from 2000.

We strongly support OHCS’s efforts to encourage preservation by setting aside 25% of Oregon’s competitive tax credits for preservation and rehabilitation proposals. Oregon’s past preservation efforts have been highly successful. **From 2003 – 2007, at least 57 properties with 3,519 apartments were preserved in Oregon with 9% and 4% Low Income Housing Tax Credits.** Oregon is a leader in the nation in prioritizing preservation.

Housing and Economic Recovery Act of 2008

As you know, the Housing and Economic Recovery Act (HERA) of 2008 provides significant opportunities to preserve existing affordable rental housing. The temporary increase (from \$2 per capita to \$2.20 per capita) of the number of low income housing tax credits states can allocate as well as the additional \$11 billion in tax-exempt bond authority provide additional resources that may be targeted to the preservation of existing affordable housing.

As Oregon develops its response to this landmark legislation, the National Housing Trust urges OHCS to direct some of the resources this new law makes available to preserve vital at-risk affordable rental properties located in neighborhoods most affected by the current foreclosure crisis. We commend OHCS's forward thinking in targeting preservation projects to make use of the authorized 30% basis boost.

In addition, we urge OHCS to:

- Utilize the increased tax credit authority and \$11 billion in tax-exempt bond authority to provide new avenues for preserving existing affordable housing.
- Promote the allocation of tax credits to properties now eligible to receive housing tax credits such as Mod Rehab and IRP properties.

Affordable Housing Helps Build Sustainable Communities

The continuing loss of affordable apartments is being made even worse by the current foreclosure crisis. The result affects more than just the families residing in at-risk properties or those being foreclosed upon. It destabilizes entire neighborhoods and threatens the sustainability of communities in Oregon and across the country. **The renovation of existing affordable housing and the commitment to its long-term affordability not only helps maintain sustainable communities in strong markets, it can also catalyze investment and development in struggling neighborhoods or those neighborhoods most affected by foreclosure.** Preserving existing affordable housing provides an opportunity to reinvest in and improve our communities while protecting historic investments made by federal and state governments.

Even as the smart growth movement gains broad national support, communities around the country face a critical choice: preserve existing affordable housing or lose this valuable resource forever. Preservation is economically efficient, socially responsible and environmentally sustainable:

- Preservation maintains a mix of income profiles and housing options – even in strong markets – promoting diverse, sustainable communities.
- As existing housing is often located near jobs and transportation, preservation supports smart growth development initiatives.
- Replacing existing housing with new construction is often unrealistic due to land use restrictions, material and labor costs, NIMBYism, and other political constraints.

The National Housing Trust supports the state established selection criteria in OHCS's draft QAP for access to community amenities, especially public transportation, as well as the stated program goal to preserve expiring use projects.

Preservation is Environmentally Friendly

State and local agencies are increasingly encouraging, and in some cases requiring, affordable housing developers to adopt green building practices. Using green building strategies, preservation projects can deliver significant health, environmental, and financial benefits to lower-income families and communities. Green technologies promote energy and water conservation and provide long-term savings through reduced utility and maintenance costs, all while providing residents with a healthier living environment and reducing carbon emissions.


We enthusiastically support the green building practices, healthy building materials and energy efficient design features included in OHCS's tax credit program, specifically the Green Building Standards included in the Consolidated Funding Cycle applicable to the tax credit program. These inclusions place Oregon among the more than 30 states that give priority to proposals that include green building practices.

Conclusion

It is fiscally prudent for states to balance tax credit allocations between new construction and preservation/rehabilitation. In addition to helping to build sustainable communities, preservation is significantly more cost-efficient and environmentally friendly than new construction. The National Housing Trust urges the Oregon Community to continue its support for sustainable communities and the preservation of Oregon's existing affordable housing by maintaining Oregon's tax credit set-aside at current levels in the final QAP.

Thank you for the opportunity to comment on this important issue in the State of Oregon.

Sincerely,



Michael Bodaken
President

Enclosures

January 15, 2009

National Housing Trust
Attn: Michael Bodaken
1101 30th Street, NW Suite 400
Washington DC 20007

RE: Amended 2009 Low Income Housing Tax Credit Qualified Allocation Plan (QAP).

Dear Mr. Bodaken,

Thank you for taking time to comment on the Amended 2009 Low Income Housing Qualified Allocation Plan. We appreciate your support in our efforts to preserve and improve multi-family affordable rental housing. The additional information you provided on activities that Oregon has undertaken to support the preservation of multi-family housing is also helpful.

It is reassuring to know that our efforts are being noticed and that our proposals to provide the basis boost for preservation projects as well as projects with access to community amenities especially public transportation receive your support. The State Housing Council has provided strong support for the Department's efforts to preserve project based rental subsidies on existing affordable housing properties.

Sincerely,

Mariana Negoita
LIHTC Program Representative
Housing Division

Cc: QAP



DEVELOPMENT
AND
COMMUNITY
REVITALIZATION

HOUSING AUTHORITY
OF PORTLAND

135 S.W. Ash Street
Portland, OR 97204

Tel 503.802.8525
Fax 503.802.8579

www.hapdx.org



January 8, 2009

Ms. Mariana Negoita,
LIHTC Program Representative
Oregon Housing & Community Services
725 NE Summer Street NE, Ste. B
Salem, Oregon 97301-1266

Re: Amended 2009 Qualified Allocation Plan

Dear Ms. Negoita:

Thank you for the opportunity to comment on the proposed changes to the 2009 Qualified Allocation Plan. We appreciate the effort it takes to maintain this complicated document and to ensure that it is responsive to and reflective of the on-going changes in the industry, particularly today.

Upon review of the draft changes to the Plan, the Housing Authority of Portland would like to offer the following comments and/or suggestions:

INTRODUCTION

We're pleased to see the various changes on pages 8-11 which reflect the provisions of the Housing and Economic Recovery Act of 2008 and which also recognize the potential effects any extraordinary acts either natural or financial, may have on housing in Oregon. We appreciate the Department's willingness to be flexible in response to changes as they may occur.

TYPES OF CREDIT

Page 12, Eligible Basis, Ph. 1: "This third type is defined as any building designated by OHCS..." It may be helpful to add a reference here to sections further on in the Plan which describe how the Department will make such designations.

LIHTC PROGRAM ELEMENTS

Page 18, Financial Feasibility: While "current real estate underwriting practices" may define an optimal debt coverage ratio (DCR) as 1.15 to 1.20, it has been our experience that projects which start with that ratio in the early years, fall far short in subsequent years (either through the life of the tax credit partnership and/or term of any primary debt) and the project goes negative. In order to be prudent in our underwriting and to ensure a project's long term financial viability, it has been our practice to look for a 1.15-1.20 DCR in the later years which means that the early years may have a DCR larger than that ratio. This is especially important when you consider that in most instances a project's income trends upward at a rate of 2% and while the expenses trend up at 3-4% causing the cash flow to go negative much sooner than year 15 or 30. We would suggest that you consider a provision for higher up-front ratios if it's in the long term best interest of the project.

ALLOCATION PROCEDURE

Page 38, Financial Feasibility, 1st bullet: We suggest adding language that allows for a letter from your tax credit investor as an acceptable opinion on the expectation of repayment of any subordinate debt.

Page 40, Reservation Period: The 75 Day Reservation Period letter requires a letter of conditional commitment from the equity investor. In today's tax credit market this may either be difficult to get at all, or quite vague in its wording. In our conversations with various investors over the past few

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Page 1 of 2

months they have advised that are not able to deliver commitments on pricing until (best case) 30-60 days prior to closing - far beyond the 75 day reservation period. We ask that you consider allowing great flexibility on the equity investor commitment requirement.

Page 41, Competitive Allocation Limitations: The first and second bullets seem to say similar things but are a bit confusing. For example: Bullet #1 states that OHCS may approve additional credits above the cap but that "*no project may be allocated more than 125% of the credit cap per project...*" Bullet #2 says that if credits are available and a project needs additional funding to be financially viable, that "*the project ceiling for 9% credits may also be waived, at the sole discretion of the Department.*". Could you please clarify whether this means that a project can only receive an amount of credits up to the 125% cap or that a project can exceed that cap at the Department's discretion?

STATE & FEDERAL LIHTC POLICIES

Page 47-48, 130% Boost for State's Use: We fully support the Departments' efforts to meet its housing goals. Please also consider utilizing this boost to support non-PSH projects with deep skewed rent that may not feasibly support hard debt without additional basis and the associated additional tax credit equity. A broader approach to applying this boost may provide more favorable terms for rural deals and help them compete for equity with metro deals.

Page 50, Policy on Applications for Additional Credits after Initial Award: This section states that after the 75 Day Reservation Period ends the Department will not accept requests to fill financing gaps that result from increased construction costs that are not attributable to an "unforeseen hardship" as defined in the footnote. While every effort is made to have reasonable estimates of construction costs during application and the reservation period, true costs aren't known until plans are more finalized, including review by the Department's architects, jurisdictional design review and/or land use processes, and receipt of final bids. In the interval between expiration of the reservation period and receipt of final bids, construction numbers are best estimates. This maturation of the construction costs process would not qualify under your definition of an unforeseen hardship and consequently any increased costs could not be covered by a request for additional credits under this section. We ask that you reconsider this position.

Page 55, Policy on Negative Timing Adjusters: Negative timing adjusters can be caused by events beyond a sponsor's control. Please consider allowing for "unforeseen hardship" such as natural or economic disasters here also. An example might be the effect of the hurricane in New Orleans or more locally, flooding, has on projects that are not yet completed. The destruction and ensuing delay in this example would result in a negative adjuster.

Page 60, 130% Rule and Community Service Facilities: Additional clarity on this section would be appreciated. On one hand this section affirms that projects located in a HUD designated "difficult development area" are entitled to the 130% basis boost. In the next sentence it goes on to say that "*The Department will, at its sole discretion, determine the application of the 130% bonus to a project located in a HUD designed "Difficult Development Area".*" It seems to imply that the Department could potentially withhold the boost. Our recommendation is that the designation be the firm determinate. This allows developers certainty in the application of this rule.

Again, thank you for allowing us an opportunity to provide input to the 2009 Plan. Thank you also for your consideration of our comments and suggestions. We look forward to seeing the final product. Until then, should you have any questions of HAP, please don't hesitate to contact us.

Sincerely,



Michael Andrews, Director
Development & Community Revitalization

Cc: Betty Dominguez

January 11, 2009

Housing Authority of Portland
Attn: Michael Andrews
Director, Development and Community Revitalization
135 SW Ash Street
Portland, Oregon 97204

RE: Amended 2009 Low Income Housing Tax Credit Qualified Allocation Plan (QAP)

Dear Mr. Andrews:

Thank you for taking the time to provide us written comment on the 2009 Amended QAP. Oregon Housing and Community Services (OHCS) is always interested in our stakeholders comments or suggestions regarding the Low Income Housing Tax Credit Program.

Below are specific responses to your points:

Page 12, Eligible Basis and Third Type of High Cost Areas

We appreciate your suggestion to cross reference sections that are related throughout the document and have tried to do that to some extent in this document. We will implement better cross referencing within the document when we complete a more extensive re-write of the plan. The intent of the QAP amendment was primarily to include the substantial changes HERA has imposed on the program; to a lesser extent, create some flexibility to address current market conditions in the equity markets that are affecting the program; and to a much lesser extent make necessary clarifications to the document, where information could be easily clarified or updated.

As to how OHCS made the 130% state basis boost designations introduced on page 12 and expanded on page 47, in the *POLICY ON THE STATE'S USE OF THE 130% BASIS BOOST*, the draft did not outline each of the steps of the evaluation process. As such these are summarized below.

First, OHCS reviewed the areas within the state that are HUD designated DDAs and QCTs and have been eligible for the basis boost. The remaining communities continue to experience housing challenges, but these challenges are far more localized and may affect one sector or neighborhood within a community more dramatically than the others.

Second, Department's research concentrated first on which areas and which types of projects are in need of the state's basis boost designation. This step provided various insights into the acute but different housing needs of Oregon's communities. OHCS used the same standards as in its needs analysis currently used in Consolidated Funding Cycle (CFC) and identified several housing challenges across communities in Oregon, especially as it related to preserving current

affordable housing units and providing permanent supportive housing in all communities. The need for more affordable workforce housing is greater in some communities than others but all Oregon communities benefit from a sufficient supply of workforce housing. This is best outlined in the Needs Analysis and accounted for in the scoring criteria of the CFC.

Third, OHCS integrated in its analysis the cost of projects that capitalize on investments currently made by local communities, on access to transportation, employment centers and enterprise zones as well as infrastructure. A project's land cost is typically higher and correlates to its proximity to transportation, services and employment. The absence of these present various cost burdens on affordable housing tenants. This represents that third type of high costs area, however, unlike HUDs DDA/QCT designations these parcels of more desirable land are far more localized to a neighborhood or community and will likely change with progress.

Page 18, Financial Feasibility

“Current real estate underwriting practices” define the debt coverage ratio as 1.15 to 1.20 but real estate underwriting practices change and adapt in light of market conditions. The change made to this paragraph was from “best practices” to “current real estate underwriting” practices.

Certainly OHCS looks to the long term viability of a project beyond the first year of the credit and does take into consideration that trending income at a lower percentage than expenses will cause cash flow to go negative sooner rather than later in a project's cash flow, especially if rents are deeply skewed. Even if rents are not skewed, trending expenses at a higher rate than income will have a negative cash flow effect on the project, in time. OHCS staff does review a project for long term affordability and viability and the analysis reflects a project's ability to cash flow.

Page 38, Financial Feasibility and Investor opinion letter

The paragraph you are referring to is essentially unchanged from the original 2009 QAP, except for the inclusion of the words ‘or decrease’ in the sentence: “Repayment of must pay debt, e.g., principal amount of deferred developer fee, may increase or decrease primary debt service ratio.” Current policy on who provides the opinion letter regarding expectation of repayment remains unchanged.

Page 40, Reservation Period

The requirements for an investors' commitment is not addressed in this paragraph, nor in any portion of the Qualified Allocation Plan. The change in this paragraph is removal of the wording “75 days.” Reservation Period is referred to as “timeframes” but the paragraph does not specifically identify the Reservation Period as a ‘75 day period’, it simply uses that time frame as an example. This is a process used in the Consolidated Funding Cycle of which the LIHTC program is a part of. The removal of specific timelines such as 75 days has been completed to allow for any adaptations to that timeline in future CFC rounds, should that be necessary, in light of market conditions.

Page 41, Competitive Allocation Limitations

Your comment to this paragraph was helpful to our process and we are grateful you provided it to us. We have revised the paragraph and included language that identifies what is an application cap, and what is an additional credits cap. We also included an example in the final amended plan.

Page 47-48, 130% Boost for State's Use

We will continue to evaluate the basis boost to support the development of low income housing in Oregon. Our evaluation of preservation projects and workforce housing projects in this policy took into account the point you are making that the boost may lead to more favorable equity terms to projects in rural areas.

Page 50, Policy on Applications for Additional Credits After Award

During CFC discussions regarding the 75 day reservation period, OHCS spoke with many partners in the construction field, including architects, builders and lenders and their feedback from the streamlining process was that in a 75 day time period costs could be determined. In certain unforeseen circumstances, OHCS may consider requests for additional credits associated with construction costs increases.

Page 55, Policy on Negative Timing Adjusters

The practice of not providing additional resources due to negative timing adjusters has been in use for sometime at OHCS. Its addition was inadvertently omitted in the original 2009 QAP. Its inclusion in the QAP at this time is recognition that the practice should be formalized in writing.

Page 60, 130% Rule and Community Service Facilities

The inclusion of this rule in the QAP was a result of past IRS determination that a portion of costs attributable to the development of community service facilities may be included in eligible basis if the project is located in a Qualified Census Tract, as outlined in the policy. The change to this policy is to update and clarify the distinction between HUD DDA's and now State DDA's determinations, per HERA.

Generally, the policy indicates the Department's responsibility to test for financial feasibility when a project uses the 130% HUD DDA/QCT basis boost and this remains the OHCS policy. The percentage of that portion of hard costs of the community service facility that can be included in basis has increased per HERA.

We appreciate your comments and suggestions, as well as your time and consideration when reviewing the draft Amended 2009 QAP and look forward to working with you in the development of affordable housing in Oregon.

Sincerely,

Mariana Negoita
LIHTC Program Representative
Housing Division

Cc: QAP

From: Christine Lewis [mailto:clewis@housing-works.org]
Sent: Wednesday, January 14, 2009 9:42 AM
To: 'susan.e.bailey@hcs.state.or.us'
Subject: Comments on the draft Amendment to the 2009 QAL

Susan,

Thank you for this opportunity to comment on the draft amendments to the 2009 Qualified Allocation Plan. After careful review by our staff, Housing Works has no substantive comments. We feel the department did a thorough job of incorporating the necessary elements from the Housing & Economic Recovery Act.

Best regards,

Christine Lewis
Housing Affairs Manager
Housing Works
405 SW 6th Street
Redmond, OR 97756
541-323-7404

EXHIBIT H

OHCS CHARGES

Payment of the applicable charges must accompany the CFC application when submitted. These application charges are non-refundable. Checks should be made payable to Oregon Housing and Community Services Department.

PROGRAM	CHARGE
1 CFC Application Charge	\$25/ unit - \$100 minimum
2 LIHTC Application Charge (4%, 9%)	See CFC Application Charge
3 LIHTC Reservation Charge (4%, 9%)	5.5% of Tax Credit amount for projects with 30 units or less; 6.5% of Tax Credit amount for projects with over 30 units.
4 LIHTC Monitoring Charge (9%) and 4% credit projects that are non-risk sharing and non-conduit.	\$35/unit/yr for first 15 yrs; \$25/unit/yr. for last 15 yrs
7 Request for additional resources	1% of addtl. amt. requested or 1% of addtl. LIHTC equity
8 Change of Ownership for Grants and Tax Credits	\$100 plus any additional Department of Justice charges
10 Carryover application received after December 1 deadline	\$1,000 plus \$200 / business day plus \$100/ hr for re-evaluation
11 8609 application received more than six months after Placed In Service.	\$1,000 plus \$100/ hr for re-evaluation. Also \$100/ mo. charge for each month after the initial six months.
12 OAHTC Application Charge	See CFC Application Charge

- The charge for submitting a CFC application is \$25 per proposed unit. \$25 per door is the total application charge, even if the project is requesting multiple funding sources from the department.
- The minimum application charge is \$100. The maximum charge is equal to .5% of the total value of the CFC funds requested. Group homes with five or less bedrooms are considered one unit. Projects with a combination of Risk Sharing loans, grants and/or tax credits will be charged only the Risk Sharing application charge.
- If LIHTC is requested in either a 4% or 9% application, the LIHTC reservation charge will be based upon the number of units in the project. Projects with 30 or less units will be charged 5.5% of the tax credit allocation; projects with more than 30 units will be billed 6.5% of the tax credit allocation.