

# Oregon Housing and Community Services

## 9% LIHTC Program Manual

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## OVERVIEW

The 1986 Tax Reform Act created the federal Low Income Housing Tax Credit (LIHTC or Credit) Program, under Section 42 of the Internal Revenue Code (Code or IRC), to assist the development of low-income rental housing. The LIHTC Program provides qualified Owners with LIHTCs to reduce their federal tax obligations. Oregon Housing and Community Services (Department) is the authorized Housing Credit Agent and issuer (Issuer) of LIHTCs for residential rental property located in the State of Oregon. LIHTCs are available to qualified Owners of Projects that meet LIHTC Program requirements (Program Requirements), including but not limited to, Internal Revenue Code (IRC) Section 42 regulations and certain low-income occupancy and rent restrictions.

As the Issuer, The Department is responsible, *inter alia*, for taking, evaluating and responding to LIHTC applications (Applications or Requests), documenting LIHTC Reservation commitments (Reservations), LIHTC allocations (Allocations) and Program obligations, and monitoring LIHTC Projects for affordability and habitability compliance, while the Internal Revenue Service (IRS) is responsible for administering the Program nationwide. The IRS and the Department are the only agencies that can revoke or adjust the amount of LIHTC allocated to a given Project. The IRS is the only Agency who can recapture credits.

The IRS, through the audit process, may disallow or recapture credits, which were not properly used to build or operate affordable housing. Since disallowed or recaptured credits cannot be re-used, the Department has an interest in ensuring the proper usage of credits to increase the supply of affordable housing. Although the IRS and the Department share responsibility for the LIHTC Program in Oregon, tax payer information cannot be disclosed to the Department unless authorized by the taxpayer on IRS Form 8821, Tax Information Authorization.

### A. PURPOSE OF THE POLICIES

The LIHTC Program and related policies are described in four (4) separate documents: *the Qualified Allocation Plan*, *The Department's Administrative Rules (OAR chapter 813)*, *the Department's 9% LIHTC Program Manual*, and *the Department's General Policies and Guidelines Manual*. All of these documents are available online at:

[http://www.oregon.gov/ohcs/Pages/MFH\\_Multifamily\\_Housing\\_Funding.aspx](http://www.oregon.gov/ohcs/Pages/MFH_Multifamily_Housing_Funding.aspx)

When requesting a Reservation of LIHTC, an Applicant must comply with applicable provisions of each document referenced above.

Pursuant to IRC Section 42(m)(1)(B), the Department has adopted a Qualified Allocation Plan (QAP) that sets forth in basic form: (i) the preferences of the Department in allocating LIHTCs; (ii) the selection criteria used to determine the Department's housing priorities; and (iii) the procedures the Department will follow in monitoring for compliance, including

compliance with affordability and habitability, and notifying the IRS of such Noncompliance.

The Department also has adopted administrative rules (Rules) governing the LIHTC Program. The Rules are codified in Oregon Administrative Rule (OAR) Chapter 813, Division 90. The OARs set forth the principles by which the Department administers the LIHTC Program and with which all Applicants under the LIHTC Program must comply.

In addition, the Department has published an OHCS *General Policy and Guidelines Manual* and this OHCS *LIHTC Program Manual* (collectively, Manuals), which have been incorporated into applicable Rules. The Manuals more fully elaborate applicable Program policies and guidelines. The Manuals are intended to provide further guidance to Applicants and Department staff in accessing and administering the LIHTC Program.

The Manuals, *inter alia*, describe certain processes and criteria that will be used by the Department to evaluate and rank Projects for recommendation for LIHTC Reservation commitments and recommended Allocations of Credit.

The Manuals also describe certain conditions, limitations, and requirements that must be satisfied in order for a Project to be eligible for a LIHTC reservation, carryover allocation or final allocation.

If there is a conflict between any requirement, condition, definition, or restriction of the QAP, the Manuals, the OARs, Department directives (Directives) IRS or Treasury regulations, or the Code, they generally will have this order of precedence: (1) the Code; (2) IRS or Treasury regulations; (3) OARs, without incorporated Manuals; (4) Directives; and (5) Manuals (first, the *General Policy and Guidelines Manual* then this *LIHTC Program Manual*). Recipients of allocated Credits and corresponding Projects will also be subject to related Program Documents, including but not limited to, the Reservation Letter, the Reservation and Extended Use Agreement (REUA), the Declaration of Land Use Restrictive Covenants (Declaration), and related Project Documents – all in form and substance satisfactory to the Department in its sole discretion. One or more of these Program Documents may include additional or more restrictive terms than reflected in the foregoing listed documents. If a requirement conflicts with the IRS Code or Treasury regulations, the Code or Treasury regulations, or both, will supersede any conflicting requirement unless the conflicting requirement is simply more restrictive or in addition to the Code or Treasury regulations. The Department reserves the right to establish the precedence of requirements in particular instances.

## **B. APPROVAL AND EFFECTIVE DATE OF THE PROGRAM MANUAL**

The effective date of this updated 9% LIHTC Program Manual (LIHTC Manual or Manual) is June 2, 2014. This Manual will remain effective until it is further amended, revoked, or superseded by action of the Department, which will ordinarily take the form of a Rule

change. This Manual will apply in its entirety to all Applications submitted on or after the effective date. It also governs, as applicable, all current Applicants, Credit Recipients and Projects.

#### **C. ADMINISTRATION AND INTERPRETATION OF THIS LIHTC MANUAL**

Department staff is authorized to interpret and administer the Manuals, related OARs, and other Program Requirements, including Code and IRS regulations, subject to any formal written guidance, rulings or precedents received from the IRS or relevant case law. The Department may accomplish interpretation and administration functions, *inter alia*, by issuing Directives requiring Applicant or Credit Recipient to comply with same.

The decisions to Reserve and to allocate Credits to a Project rest with the Department. Applicants and all Projects receiving Credit Reservations or Allocations must comply with applicable provisions of the Code, specifically Section 42 of the Code, together with applicable provisions of IRS and Treasury regulations, guidance and rulings, the OARs, the Manuals, any Directives, and related Program Documents (collectively, Program Requirements). This Manual should not be construed as impairing or limiting the rights of the Department, or act to release Program participants from any Program Requirement. The Department may exercise any and all remedies available to it under the Program Requirements or otherwise available at law to obtain redress or otherwise enforce Program Requirements.

This Manual is subject to change by the Department based on, among other things, developments in federal or state law. The Department may modify this Manual, as well as the forms, legal documents, and other material used by the Department in the LIHTC Program, at any time determined by the Department to be necessary or appropriate.

Applicants and other Program participants should stay informed of the actions of the Department that may amend, revoke or supersede this Manual or other applicable Program Requirements. A participant may ask Department staff for specific information or assistance.

The Department maintains a list of interested parties to whom certain notices and other information are distributed, including Multi-Family technical advisories issued by the Department. To be included on this list, click "sign up for Email updates" on the Department's website at:

[http://www.oregon.gov/ohcs/pages/mfh\\_multi\\_family\\_housing\\_announcements.aspx](http://www.oregon.gov/ohcs/pages/mfh_multi_family_housing_announcements.aspx)

#### **D. DEFINITIONS OF TERMS**

Capitalized terms have the meanings given to them throughout this Manual or in the Glossary. All section and page references refer to this Manual unless otherwise

specified. In addition, this Manual uses terms that are defined or used in Section 42 of the Code.

**E. PROGRAM DOCUMENTS AND FORMS**

The application packet for LIHTCs, the Qualified Allocation Plan, the OARs, General Policies and Guidelines, and Program Manual are available online at:

[http://www.oregon.gov/ohcs/Pages/MFH\\_Multifamily\\_Housing\\_Funding.aspx](http://www.oregon.gov/ohcs/Pages/MFH_Multifamily_Housing_Funding.aspx)

Likewise, sample copies of primary legal documents such as the Reservation Letter, the REUA, Carryover Allocation Agreement, and Regulatory Agreement are available upon request. The legal documents required to execute to participate in the LIHTC Program may vary from the sample documents.

**F. APPLICATION SCHEDULE AND DEADLINES**

The Department will announce deadlines for receiving Applications by public notice to all interested parties registered on the Multi-Family technical advisory list kept by the Department. Application materials may be obtained from the Department's website at:

[http://www.oregon.gov/ohcs/Pages/MFH\\_Multifamily\\_Housing\\_Funding.aspx](http://www.oregon.gov/ohcs/Pages/MFH_Multifamily_Housing_Funding.aspx)

**G. CORRESPONDENCE**

All of the Department's correspondence will be sent to the contact person identified in the Application. Applicants must notify the Department in writing of any changes of the contact person or address.

**H. PUBLIC RECORDS**

Materials and information submitted to the Department are subject to public disclosure unless otherwise exempt from disclosure under the Oregon Public Records Law, particularly ORS 192.502(24).

As of the date of this Manual, ORS 192.502(24) exempts the Department from releasing to the public the following records, communications, and information submitted to the Department by Requestors and recipients of loans, grants, LIHTCs, or other financial assistance:

- Personal and corporate financial statements and information, including tax returns;
- Credit reports,
- Project appraisals, excluding appraisals obtained in the course of transactions involving an interest in real estate that is acquired, leased, rented, exchanged,

transferred or otherwise disposed of as part of the project, but only after the transactions have closed and are concluded;

- Market studies and analyses,
- Articles of incorporation, partnership agreements and operating agreements;
- Commitment letters,
- Project pro forma statements,
- Project cost certifications and cost data,
- Audits,
- Project tenant correspondence (unless confidentiality is waived),
- Personal information about a tenant; and
- Housing assistance payments.

The purpose of ORS 192.502(24) is to promote the development of affordable housing by protecting from public disclosure the detailed personal and business information requestors and businesses must submit to the state as a condition of participating in subsidized housing programs.

The Department provides no assurance that any materials provided to it can be protected from public review and copying.

#### **I. WAIVERS**

If the Department acts contrary to or fails to take action in accordance with this Manual or any other Program Requirement, such act or omission does not constitute a waiver by the Department of a Project, person, or other entity's obligation to comply with the provisions of this Manual, other Program Requirements, or establish a precedent for any other Project, person or entity. In any event, no waiver, modification, or change of the Manuals, any other Department program manual, or any other Program Requirement will be binding upon the Department unless it is in writing, signed by an authorized agent of the Department, and consistent with law.

### **GENERAL REQUIREMENTS**

The Department has established the following general requirements with respect to its selection of Projects for LIHTC Reservations and Allocations. These requirements, in addition to the other conditions and requirements described in this Manual and other Program Requirements (including, but not limited to the execution, recording, and compliance with associated legal documents required by the Department with respect to a Project), must be satisfied in order to obtain and maintain an LIHTC Reservation and Allocation.

#### **A. COMBINING OTHER RESOURCES WITH 9% LIHTC ALLOCATION**

Competitive 9% LIHTCs may be combined with various other public and private resources including, but not limited to, the following:

- Home Investment Partnership Program (HOME),
- Oregon Affordable Housing Tax Credit Program (OAHTC),
- General Housing Account Program (GHAP),
- Low Income Weatherization Program (LIWP),
- Financing Adjustment Factor Savings Fund (HELP),
- Native American Housing Assistance and Self-Determination Act.

## B. FAIR HOUSING AND OTHER CIVIL RIGHTS COMPLIANCE

The Department requires all Applicants and Program participants: (i) comply with all applicable state and federal nondiscrimination laws, (ii) act affirmatively (including the use of appropriate outreach) to ensure those who may be, or are at risk of being, underserved with Department resources are provided appropriate accessibility, (iii) comply with Equal Opportunity Employment standards in hiring and retaining personnel, and (iv) satisfy any targeted population or services standards in Program Requirements. Accordingly, development and use of any Project must be consistent with all applicable Program Requirements with respect to nondiscriminatory conduct, including but not limited to, applicable federal, state, and local nondiscrimination laws. Applicable law includes, *inter alia*, the Federal Fair Housing Act Amendments of 1988 - that provide specific guidelines for multifamily dwellings with respect to minimum accessibility, adaptability and prohibition of discrimination.

Applicant and all Program participants shall comply with all applicable Federal Civil Rights legislation inclusive of the Fair Housing Laws, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act, as well as any state and local Civil Rights laws or regulations. Applicant and any Program participant shall comply with all applicable anti-discrimination laws and regulations relating to race, color, religion, sex, handicap, familial status, national origin and any other classifications protected by such laws and regulations. These laws and regulations include, but are not limited to, design requirements for construction and rehabilitation to accommodate persons with disabilities, Equal Opportunity in regard to marketing outreach and tenant selection, as well as other reasonable accommodation and modification for those persons covered under such laws and regulations.

The federal Housing and Economic Recovery Act of 2008 (HERA) allows Credits to be utilized for Projects that define occupancy to include preferences 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. Any such Project must continue to be consistent with federal Fair Housing Laws. The provision applies retroactively to Projects already placed in service, as well as Projects to be placed in service.

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 ALF's and others, considered in basis for Low Income Housing Tax Credits must meet the residential rental property criteria in Section 42, and as summarized in the QAP.

Please note that a unit will fail the general public test if, for instance, it is provided for use solely by members of a social organization or by an employer for its employees. IRS regulations adopt a general use requirement similar to the HUD housing policy governing non-discrimination. Therefore, preferences to certain classes of tenants (i.e., the homeless, disabled or handicapped) will not violate the general use requirement if such preference does not violate any HUD policy governing non-discrimination.

A hospital, nursing home, sanitarium, life-care 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 (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 a qualifying residential rental property.

1. Services are optional. Services may be considered optional on a facts and circumstances basis. Services are typically considered optional if:
  - Payment for the service is not a condition of occupying the residential unit,
  - Residents have the option to decline the services,
  - Residents have the right to obtain services from an alternative provider.
2. Services are not optional if:
  - They are continual or frequent medical or nursing services,
  - 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.

1. 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.
2. 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 Social Security Insurance (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 tenant's 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 disabled.

#### **C. IDENTITY OF INTEREST**

Applicant must disclose to the Department whether certain financial, familial, business or similar relationships exist between or among the parties participating in the development and operation of the Project (i.e., whether an "Identity of Interest" exists). Such disclosures shall be made when Applications are filed and at such other times during processing of the Application or development and operation of the Project as requested by the Department.

#### D. MISREPRESENTATION AND FRAUD

The Department may disqualify an Applicant and Project or cancel an LIHTC Reservation or allocation, if the Applicant, a Principal, or any other participant makes a material misstatement, omission, or misrepresentation to the Department, or has been convicted of or is currently indicted for fraud, theft, or other criminal activity involving the misappropriation of funds, false certifications, financial improprieties, moral turpitude or the like. The Department also may exercise one or more other remedies as it deems appropriate.

#### E. FINANCIAL SOLVENCY AND LITIGATION STATUS

As part of the Application and at such other times as required by the Department, the Applicant must provide a certification with respect to the financial solvency of the Applicant, the Project and certain Project participants in the form required by the Department.

If the certification discloses any financial difficulties, risks or similar matters the Department believes in its sole discretion might materially impair or harm the successful development and operation of the Project as intended, the Department may:

- Refuse to allow the Applicant or other participant to participate in the Tax Credit Program or other Department Programs,
- Reject or disqualify an Application and cancel any LIHTC Reservation or Allocation,
- Demand additional assurances that the development, Ownership, operation, or management of the Project will not be impaired or harmed (such as performance bonds, pledging unencumbered assets as security, or such other assurances as determined by the Department);
- Take such other action as it deems appropriate.

The Applicant must also immediately disclose throughout the Application process and throughout the development and operation of the Project if there is a material change in the matters addressed in the certification.

#### F. PROJECT CHANGES

An Applicant must notify the Department of any material change in a Project. An Applicant must notify the Department **in writing** when a material change is first identified. The Department will endeavor to respond within thirty (30) days after notice of a material change with respect to its requested consent. The Department may give or withhold its consent, or condition same, subject to its reasonable discretion. A “material change” includes, but is not limited to, a change in:

- the number of buildings or units,
- the Project contact person,
- the Identity of Interest disclosure,
- the Development Team,
- the Project's Total Project Costs of more than ten percent (10%),
- a financing source (whether debt or equity) of more than ten percent (10%),
- operating revenue or expenses for the Project of more than ten percent (10%),
- anything that would result in a change in Allocation Criteria.

The Department will determine whether or not a change in a Project is material. The Department's materiality determination is final.

Requested material changes must be consistent with Program Requirements and must not decrease the competitive ranking of the Project relative to other proposed Projects. The Department will not approve a material change in the Project's location or site.

The request for approval of a material change in a Project must be submitted in writing and include a narrative description and other supporting documentation, plus the applicable revised pages of the Request. If the Department grants the request, including as modified or conditioned, it may adjust the Credit Reservation or Allocation, particularly to the extent that the change results in a decrease in the equity gap or in the adjusted basis, eligible basis, or qualified basis of the Project.

Notwithstanding the foregoing, the Department may consider a change in the actual Allocation Criteria for which a Project has received scoring consideration, but only if: (i) the Project or Applicant qualified for the relevant Allocation Criterion when the Application was submitted; (ii) the Allocation Criterion is no longer feasible through no fault of the Applicant; and (iii) the Applicant can substitute another Allocation Criterion that would result in an equal or higher competitive scoring ranking. Generally, all direct and indirect transfers or assignments of an interest in a Project require the prior written consent of the Department and the payment of a transfer charge, as set forth in Section IX of this Manual.

#### **G. HOUSING CREDIT PERCENTAGE**

Under HERA, the Credit percentage was locked at nine percent (9%) for buildings allocated by December 31, 2013. Currently, the credit percentage is a monthly floating rate, using the rate from the month that the lock of rate is implemented by executing the Reservation and Extended Use Agreement. Credit percentage calculations are subject to applicable HERA or other controlling federal standards.

#### **H. FEASIBILITY AND VIABILITY ANALYSIS**

The Department will limit the Allocation of LIHTCs to any Project to the amount it determines is necessary for the financial feasibility and viability of the Project as outlined in Section 42(m)(2) of the Code. The Department will perform this analysis at each of the following times:

- When the Applicant submits an Application for LIHTCs,
  - When the Department makes a carryover allocation by entering into a Carryover Allocation Agreement; and
  - At final application for tax credits (submitted after placed-in-service and lease up).
- In order to allow the Department to perform these analyses, the Applicant must submit, among other things: (i) a comprehensive development budget showing all sources and uses of funds and the total financing plan for the Project and (ii) a fifteen (15) year operating pro forma for the Project. The form and detail of each of the budgets must be satisfactory to the Department and must be consistent with provisions of Treasury Regulation 1.42-17. The final application is needed for submittal to produce correct tax credits at project completion (about six (6)- nine (9) months after certification of occupancy, on average).

The Department will review the reasonableness of the development and operating budgets submitted by the Applicant. It may require the Applicant to submit documentation to substantiate that any or all of the Project's revenue or costs are reasonable and appropriate. In addition, the Applicant may be required to submit a copy of an appraisal with an effective date within six (6) months of the issuance of the LIHTC Reservation Letter to establish value of the land for the Project. Further, the maximum amount of LIHTCs allowable to a Project is subject to the other limitations of the LIHTC Program, such as the LIHTC Program Limits set forth in Section III.

Based on the feasibility and viability analysis performed by the Department, the amount of the Carryover Allocation may be less than the amount set forth in the Department's LIHTC Reservation Letter, and the amount of the final LIHTC Allocation reflected in IRS Form 8609 may be less than the amount of the LIHTC Reservation and/or Carryover Allocation.

#### **1. MARKET ANALYSIS**

A complete market analysis must be submitted prior to Equity Closing. The market analysis must satisfy Program Requirements, particularly the requirements of this section, and Section 42 of the Code. An independent third party analyst, using generally accepted principles and theory, must prepare the market analysis. The analyst must be included on the Department's list of approved providers. The analyst must have demonstrated experience in the proposed Project's market area and with the rent-restricted market. The rental analysis section included in the market analysis report must be completed by a State Certified General Appraiser.

The market analysis must have an effective date no more than six (6) months prior to the date of Equity Closing. An update of a market analysis will be accepted, at the Department's discretion, if the effective date of the original market analysis is within twelve (12) months of the date of Equity Closing.

The market analysis must demonstrate to the Department the Project is creating, preserving, or renovating housing that current market forces are not addressing. In addition, the market analysis must address current market conditions and determine the Project is viable and provides units at below market rents or gives some other public benefit.

The Department will accept a current FIRREA appraisal with an effective date of no more than six (6) months prior to the date of Equity Closing in lieu of the required market analysis provided that the market analysis and rent discussion sections include the information summarized below and detailed in the OHCS Market Analysis Requirements. In addition, at the Department's discretion the Department may require further market justification of the Project, or accept a market analysis in a different format. Any deviation from the market analysis requirements must be approved in writing by the Department prior to Equity Closing. The Department reserves the right to require such other information as it deems appropriate or to contact the market analyst as it deems appropriate.

The list of approved providers may be found on the Department website at:

**[www.oregon.gov/ohcs/PAGES/MFH\\_MULTI\\_FAMILY\\_HOUSING\\_SECTION.aspx](http://www.oregon.gov/ohcs/PAGES/MFH_MULTI_FAMILY_HOUSING_SECTION.aspx)**,

or by contacting the Department's Multi-Family Housing Resources Section.

All market studies should include the following information:

1. Executive Summary
2. Project Description
  - a. Description of Market Area (general and specific)
  - b. Site Amenities (include any unique characteristics),
  - c. Description of Improvements (as available in the case of new construction)
    - i. Unit mix, unit amenities, common amenities
    - ii. Comparison to market rate Projects (does Project have typical finish, amenities found in local market)
    - iii. Comparison to other rent restricted Projects
1. Market Area Economy

- a. Delineation of market area
  - b. Population and household trends
  - c. Housing trends, including proposed Projects and other new developments
  - d. Supply and Demand Analysis
    - i. Market Rate Supply
      - Existing
      - Potential/Developing
    - ii. Market Rate Demand
      - Vacancy rates, incentives
      - Rent Trends
      - Absorption
    - iii. Rent-Restricted Supply (discuss HUD-assisted housing, LIHTC Projects, other subsidized Projects, and public housing, as applicable)
      - Existing
      - Potential/Developing
    - iv. Rent-Restricted Demand
      - Vacancy Rates
      - Market Penetration Analysis (using income banding – minimum and maximum for Project)
      - Projected Absorption for Project
    - v. Analysis of Project’s special needs population, if applicable
      - Statistical and anecdotal information from appropriate social services agencies
      - Analysis of specific demand for special needs units
    - vi. Conclusion: Project’s competitive position
2. Competitive Rental Market
    - a. Description of Comparable Properties, both market rent and rent-restricted
      - i. Analysis of rent, including amenities and utilities
      - ii. Conclusion of Rents by unit type
    - b. Analysis of Rent Gap (Gap between maximum restricted rents, Projected restricted rents and market rents)
    - c. Analysis of Project’s effect on the market area, including the impact on Tax Credit and other existing affordable rental housing
  3. Conclusion
    - a. Specific Questions:
      - i. Is the Project, as proposed, viable?
      - ii. Does the Project meet a current or Projected market need?
      - iii. Does the Project supply units below market?
      - iv. If not, does the Project provide some other public benefit?
    - b. Summary
      - i. Recap of Project

ii. Conclusion and Recommendations

**I. LIHTC RESERVATION AND CARRYOVER ALLOCATION**

All Projects that receive an Allocation of Credit normally will receive a Carryover Allocation. To receive a Carryover Allocation, the Applicant must meet all of the LIHTC Reservation and Carryover Allocation requirements in Section VII of this Manual as well as other applicable Program Requirements. If any building in a Project will be placed-in-service in the same year as the Application, that building does not need a Carryover Allocation, but the Applicant will be required to comply with all of the placed-in-service Allocation requirements before the end of the calendar year, in addition to meeting other applicable Program Requirements.

All LIHTC Carryover Allocations will be made on a “Project” basis. The LIHTC amount that qualifies for a Reservation to any Project is the lump sum amount of that available to each qualified building in the Project. The actual amount of LIHTCs available for any specific building will be apportioned from the lump sum Carryover Allocation of Credit and determined when that building satisfies the placed-in-service Allocation requirements.

**J. EQUITY CLOSING**

The Applicant must give the Department at least thirty (30) days’ notice of the scheduled Equity Closing. At least ten (10) days prior to the scheduled Equity Closing, but after the general contractor bids have been received, the Applicant must submit the Project’s final development budget, final sources of funds, and documentation to substantiate the final LIHTC pricing – all to the satisfaction of the Department. Using the final budget, Department will evaluate the balance of sources and uses and confirm the final Developer Fee (see Section III.D).

**K. RESERVATION AND EXTENDED USE AGREEMENT (REUA)**

As a condition of receiving an Allocation from the Department, the Applicant must enter into an REUA satisfactory to the Department that applies to each building in the Project. The REUA addresses, among other things, the requirements of Section 42 of the Code, federal and state law, the LIHTC Program, and the terms of the Application and of the Reservation Letter and/or Carryover Allocation Agreement.

The provisions of the REUA will apply for an “Affordability Period” of sixty (60) years from the date the Project is placed-in-service (the fifteen (15) year compliance period and an additional forty-five (45) year period, referred to as the “extended low-income use period”). This is in excess of the federal regulations in Section 42 of the Code that requires a minimum period of thirty (30) years from the date the Project is placed-in-service (the fifteen (15) year compliance period and an additional fifteen (15) year referred to as the “extended low-income use period”). The Department reserves the right

to modify, suspend, waive or release provisions of the REUA, including without the consent of third-party beneficiaries..

#### **L. FINAL ALLOCATION AND FORM 8609**

For Projects receiving a Carryover Allocation, the Applicant will have until the deadline(s) set forth in the LIHTC Reservation Letter or Carryover Allocation Agreement to ensure each building in the Project is placed-in-service and meets all the placed-in-service Allocation requirements in Section VIII of this Manual. If the Applicant complies with the terms and conditions of the LIHTC Reservation Letter and Carryover Allocation Agreement, all other Program Requirements, and all requirements of other Department resources, the Department will make a final Allocation of LIHTCs for each qualified building by issuing IRS Form 8609.

The Regulatory Agreement (or “Declaration of Land Use Restrictive Covenants” or “Declaration”), in form and substance satisfactory to the Department, must be executed and recorded by Applicant as part of the Permanent Loan Closing/Permanent Loan Conversion. It must be recorded in first lien position as a restrictive covenant running with the land and binding upon the Applicant’s successors in interest.

If liens are recorded prior to the Regulatory Agreement, those liens must be subordinate to the interests of the Department as shown in the Regulatory Agreement.

If the Applicant has established a long-term lease in lieu of Ownership, the Owner of the land and relevant improvements and holders of any liens or encumbrances with respect to same established before the recording of the Regulatory Agreement must execute and record a subordination agreement satisfactory to the Department. The subordination agreement, *inter alia*, shall specify the Owner’s interest is subject to, and any other parties’ security interest is subordinate to, the interests of the Department as shown in the Regulatory Agreement.

The Department reserves the right to modify, suspend, waive or release provisions of the Regulatory Agreement, including without the consent of third-party beneficiaries.

#### **M. MINIMUM AND ADDITIONAL LOW-INCOME HOUSING ELECTIONS**

In order to qualify for LIHTCs, an eligible building must be part of a Qualifying Low-Income Project. A Project is qualifying under the Code only if it meets one of the following minimum elections:

1. At least twenty percent (20%) of its units are rent-restricted and rented to households with incomes at fifty percent (50%) or less of area median gross income, adjusted for family size (the “20-50” test) OR,

2. At least forty percent (40%) of its units are rent-restricted and rented to households with income at sixty percent (60%) or less of area median income, adjusted for family size (the “40-60” test).

Furthermore, a Project is qualifying under Program Requirements only if the income limits for the selected minimum low-income housing commitment above apply to all residential units in the Project, with the exception (if allowed by the Department) of a unit in a Project building reserved for occupancy by an onsite manager.

Each such low-income housing unit must be rent-restricted, with the maximum gross rent of each housing unit not to exceed thirty percent (30%) of the applicable area median income (AMI). Gross rents for LIHTC housing units for which Section 8 vouchers are utilized may exceed thirty percent (30%) of the applicable AMI allowed by the public housing authority providing the Section 8 voucher and applicable law, but the tenant portion of such rent cannot exceed the lesser of thirty percent (30%) of the applicable AMI or the tenant’s calculated rent based on the tenant’s income as established by the public housing authority.

In addition, the Applicant may commit to serve tenants at a lower percentage of AMI for all or a selected portion of the total low-income housing units in the Project.

Income and rent restrictions must be identified at the time of Application and are irrevocable, unless modified, suspended, or released by the Department at its sole discretion consistent with law. Such income and rent limitations constitute restrictive covenants running with the land and are binding upon the Applicant and the Applicant’s successors in interest.

#### **N. DEVELOPER FEE AND ELIGIBLE BASIS LIMITATIONS**

Generally, that portion of the developer fee related to the construction or rehabilitation of a low-income building is capitalized as part of a building’s basis and, therefore, is eligible for LIHTCs. In the case of an acquisition/rehabilitation Project, the developer fee must be allocated among the various Project components. For example, the portion of the developer fee that is earned with respect to the acquisition of the land is ineligible for Credit. The portion of the developer fee earned for the acquisition of the existing building may be eligible for 4% LIHTC.

Expenses for activities occurring prior to the start of construction may or may not be included in eligible basis. You are therefore advised to consult with your tax advisor who is familiar with the tax law as it pertains to LIHTC Projects in this regard. In cases where there is an unusually large amount of pre-construction expenditures being treated as included in eligible basis, the Applicant may be asked to provide a written explanation from their tax advisor as to why this is the case and the technical basis for inclusion.

**O. COMPLIANCE WITH LAW AND COMMITMENTS**

Each building in the Project must be owned, managed, and operated as a residential rental property consistent with Section 42 of the Code and other Program Requirements.

**P. USE OF DEPARTMENT'S CONTRACTS, AGREEMENTS, AND OTHER LEGAL DOCUMENTS**

Applicant must execute and (if requested) record all documents required by the Department (in form and substance satisfactory to the Department), including but not limited to the Carryover Allocation Agreement and Regulatory Agreement, binding it and the Project to comply with Program Requirements.

Most required documents have been approved in template form by the Oregon Department of Justice (DOJ). It is expected that documents will be executed by Applicant as provided by the Department.

Any proposed changes must be submitted in writing. Any changes are subject to the Department's sole discretion. Applicants must allow adequate time for review and comment by the Department. All changes must be expressly approved by the Department, in consultation with DOJ, prior to execution and recording. Applicant is responsible for legal and administrative costs of the Department in negotiating required documents.

**Q. PROJECT DISQUALIFICATION/CANCELLATION**

The Department may disqualify the Project and Application as well as cancel or modify an LIHTC Reservation and any Allocation of Credit or approval of any other Department funding for a Project, and exercise other available remedies as it deems appropriate, if:

- The Applicant fails to comply with any Program Requirement including, but not limited to, the timely payment of charges and fees and the execution and recording of documents satisfactory to the Department;
- The Department determines the Applicant or other Program participant made a material misrepresentation, directly or by omission; or
- The Department determines the Applicant or other Program participant is debarred from accessing Program resources or otherwise is not a qualifying Applicant.
- The Department determines that the Applicant, other Program participant, or the Project is not in compliance with any Program Requirement.

The Department will have no duty, obligation, or liability to the Applicant, the lender, the Credit investor, or other related Program participant for such disqualification or cancellation. Applicant and related Program participants, including lenders and Credit

equity investors, expressly waive any claims, causes of action or other remedies against the Department with respect to a disqualification, cancellation, or modification as described above as a condition of Applicant's filing of its Application or their participation in the Program.

**R. ENFORCEMENT**

If the Applicant, Owner, or other Program participant defaults with respect to any Program Requirement or other obligation to the Department, the Department may elect to pursue any and all remedies available to it, including but not limited to those provided under executed documents, established in Program Requirements, or otherwise available to it at law. These remedies include, but are not limited to, cancellation of an Application, revocation or modification of an Allocation Credit or other award of Department resources, debarment of person or entity from accessing Department Programs, recoupment of allocated or disbursed resources, specific enforcement, actions for general, specific or punitive damages, appointment of a Project receiver, foreclosure of secured interests or otherwise. Furthermore, the Department may, and specifically reserves the right to, modify, waive, or postpone any created restrictive covenants or equitable servitudes with respect to the Project or any part thereof.

In addition, the Applicant should understand the Department is required to report events of Noncompliance to the IRS regardless of whether or not any non-compliance with Program Requirements is corrected.

Nothing in the Program Requirements is intended, or shall be construed, to create a duty or obligation of the Department to enforce any term or provision of the Program Requirements or exercise any remedy on behalf of, at the request of, or for the benefit of, any former, present, or prospective resident. The Department assumes no direct or indirect obligation or liability to any former, present, or prospective resident for violations by the Applicant, Owner or any other Program participant.

**S. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (DIRECT RECIPIENT)**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 CFR Part 67, for prospective participants in primary covered transactions, as defined at 28 CFR Part 67, Section 67.510:

1. The Applicant certifies that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal Court, or voluntarily excluded from covered transactions by any Federal Department or agency;

- b. Have not within a three (3) year period preceding this Application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and (d) have not within a three (3) year period preceding this Application had one (1) or more public transactions (Federal, State, or local) terminated for cause or default; and

Where the Applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

## **PROGRAM LIMITS**

The Department has established the following LIHTC Program limits (Program Limits) for selecting Projects for LIHTC Reservations and Allocations. The Applicant must demonstrate in the Application its compliance with all Program Limits to the Department's satisfaction. In determining the amount of LIHTCs to allocate, the Department may reduce the budget and/or LIHTCs to comply with the Program Limits listed below.

### **A. MAXIMUM LIHTCS**

As required by Section 42 of the Code, the Department will allocate no more than the minimum amount of LIHTCs needed to ensure that the Project will be financially feasible and viable as a qualified low-income housing development throughout the Credit or Affordability Period. Currently, this Affordability Period commitment is a minimum of sixty (60) years from the date the Project is placed in service as described in IRC §42.

As part of the Department's LIHTC determination, the Department will evaluate each Project based upon the Project's feasibility and viability, which includes but is not limited to examining the development and operational costs of each Project as well as the market need and demand.

### **B. MAXIMUM CONSTRUCTION CONTINGENCIES**

The maximum amount of LIHTCs reserved or allocated to a Project will be determined after limiting the rehabilitation contingency to ten percent (10%) of the rehabilitation costs and the new construction contingency to five percent (5%) of new construction

costs. Rehabilitation costs include rehabilitation hard costs, site work costs, and contractor profit and overhead. New construction costs include new construction hard costs, site work costs, and contractor profit and overhead.

**C. MAXIMUM LIHTCS PER PROJECT**

Credit Reservations and Allocations to a single Project are limited to not more than ten percent (10%) of the Per Capita Annual Authority Available in a given year (Application Cap), rounded up to the nearest \$10,000.

**D. MAXIMUM DEVELOPER FEES**

The Department will consider Developer fees in the aggregate, up to fifteen percent (15%) of Total Project Costs less reserves, and less the requested developer fee amount. For this purpose, developer fees shall be deemed to include all consultant fees (other than arm's length architectural, engineering, appraisal, market study and syndication costs), and all other fees paid in connection with the Project for services that would ordinarily be performed by a developer, as determined by the Department.

The Developer Fee will be set at the time of the construction/equity closing based on the Project's final budget after construction bids have been accepted and final sources and uses have been balanced. The fee presented in the Placed in Service documentation may not exceed the amount finalized at closing. It is expected that a Project with excess funds will return those funds to one or more of the public funders involved upon Project completion. Other Department resources will have a priority for return upon the determination of excess funds for the Project.

To be included in tax credit basis, deferred developer fees must be due and payable at a certain date generally within a time period that does not exceed fifteen (15) years. Cash-flow Projections must support the expectation of repayment. If repayments are not illustrated annually, the portion not illustrated to be repayable will be removed from eligible basis.

For acquisition/rehabilitation Projects where the cost of rehabilitation is less than twenty-five percent (25%) of the reasonable "as-is value" of the building, the Department will only allow developer fees up to ten percent (10%) of Total Project Costs less reserves, and less the requested developer fee amount. Total rehabilitation costs consist of the budget categories of site work, rehabilitation, contractor overhead and profit, and contingency. The Department may require a current third-party FIRREA compliant appraisal to establish the building's as-is value to be ordered by the Department or third-party lender and to be paid for by Applicant.

For the purposes of this policy, Reserves, Developer Fee and any amounts attributed to commercial areas or other non-residential areas are not considered part of the Total Costs upon which the Developer Fee is determined.

Using the final budget at Equity Closing, the Department will evaluate the balance of sources and uses and confirm the amount of the final Developer Fee.

**E. MAXIMUM CONTRACTOR'S PROFIT, OVERHEAD AND GENERAL CONDITIONS**

When the general contractor is a Principal, Related Party or otherwise has an Identity of Interest with the Applicant or Project Owner, the Department will limit the contractor's combined profit, overhead and general conditions to ten percent (10%) of total rehabilitation/construction costs plus site work costs. All others will be limited to a combined profit, overhead and general conditions amount of fourteen percent (14%) of construction costs plus site work.

**F. STATE DESIGNATED ELIGIBLE BASIS BOOST**

HERA authorized allocating agencies to extend the one hundred thirty percent (130%) eligible basis boost to buildings the state designates as requiring an increase in the LIHTC amount to be financially feasible, effective for buildings placed in service after the July 30, 2008 date of enactment. Prior to HERA, only U.S. HUD designated Difficult to Develop Areas (DDA) and Qualified Census Tracts (QCT) were eligible for the one hundred thirty percent (130%) basis boost.

Buildings in DDAs or QCTs that already qualify for the "boost" in eligible basis do not qualify for an additional state designated increase.

Projects with one (1) or more of the following characteristics may qualify for the State's Basis Boost:

- Involves the acquisition or rehabilitation of Preservation Projects with at least twenty-five percent (25%) of the units having federal Project-based rent subsidies.
- Projects serving permanent supportive housing goals.
- Projects located in an area where workforce housing needs are identified or community needs show a preference for the housing in the area.
- Projects located in Transit Oriented Districts (TOD's) or Economic Development Regions (EDR's) as designated by local governments, or Projects in a designated state or federal empowerment/enterprise zone or Public Improvement District (PID's), 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.
- Projects that result in the de-concentration of poverty by locating low-income housing in low poverty areas, which are Census Tracts where less than ten percent (10%) of the population lives below the poverty level.

Projects seeking the State's Basis Boost must submit the Request to Use the 130 % State Basis Boost. The form is located in the LIHTC Supplemental Application Forms. Determinations by the Department with respect to requested Basis Boosts are at the Department's sole discretion.

**G. HOUSING CHOICE SECTION 8 VOUCHERS**

In relation to Housing Choice Section 8 vouchers utilized within LIHTC units, the tenant portion of the rent cannot exceed the calculated rent based on the tenant's income as established by the public housing authority.

**H. LIHTC PROJECTS COMBINED WITH HOME FUNDING REQUIREMENTS**

HOME funding will be provided directly to the owner of the Project. In the case of LIHTC funded project, HOME funding must be provided to the limited partnership. HOME funds are awarded in the form of a grant or loan, and in an amount appropriate to the scope of a proposed Project.

Department loans will be offered with either interest only or interest and principal annual payments depending upon the debt coverage ratio (DCR) in the application for HOME funds. Projects with a DCR greater than a 1.15 to 1 (based on permanent loan after OAHTC plus HDGP loan) will be charged annual interest payments plus principal payments. Projects with a DCR less than 1.15 to 1 will be charged only annual interest payments. Payments will be due 120 days after the calendar year end. Prepayments will be accepted with no penalty and any unpaid principal remaining at the end of the loan period will be immediately due.

**MINIMUM THRESHOLD REQUIREMENTS**

All Projects must meet the minimum threshold requirements listed below (Minimum Threshold Requirements) by the Application deadline in order to be considered for a LIHTC Reservation and Allocation.

The Applicant is responsible for demonstrating to the satisfaction of the Department that the Project meets all of the Minimum Threshold Requirements. Projects determined by the Department to not meet all of the Minimum Threshold Requirements will be disqualified and will not be eligible for a LIHTC Reservation or Allocation.

**A. ADMINISTRATION REVIEW; COMPLETE APPLICATION AND APPROPRIATE CHARGE**

The Applicant must submit a complete, legible, and executed Application satisfactory to the Department. The Applicant must include all required attachments and the appropriate Application charge by the deadlines established by the Department. The

Applicant must use the Department's Application forms. Please see Schedule of Charges Section for details on the Application charge.

The Application, attachments, and Application charge must be received by the Department at its main office no later than 4:00 pm Pacific Time on the Application deadline. No late Applications will be accepted.

The Applicant may pay the charge with a business or personal check, a money order, or a cashier's check. Cash is not accepted. An Application submitted with a check that is returned for insufficient funds will be disqualified and not considered further.

The Applicant must include all of the required attachments to show the Project meets the Minimum Threshold Requirements and all Allocation Criteria the Applicant has selected for the Project.

For purposes of considering Project eligibility for LIHTCs, satisfaction of the Minimum Threshold Requirements, Scoring Criteria scoring, and Project rankings, the Department will only consider the material and information included in the Application when it is first submitted, except for (i) changes permitted by the Department in its discretion, and (ii) material accepted during a Correction Period (as described in Section B below).

#### **CORRECTION PERIOD**

If the Department determines an Application is substantially complete, but a minor item is missing, incorrect, or needs clarification, the Applicant will have five (5) business days from receipt of written notice from the Department to deliver the required information to the Department. At the discretion of the Department, additional time may be permitted to submit the required information. The written notice will be sent to the address of the contact person identified in the Application. If the Applicant fails to submit the required information within the required time period (including extensions); the Department may disqualify the Application.

The Correction Period does not apply to any Application determined to be materially incomplete by the Department.

#### **B. QUALIFICATION REVIEW; REQUIREMENTS, DISCLOSURES AND PROGRAM LIMITS**

The Applicant and the Project must comply with all of the requirements and disclosures listed in Sections II and III.

#### **C. TOTAL DEVELOPMENT COST PER UNIT**

In order to begin assessing and containing costs, the following cost-per-unit limits have been established. The costs are based on the total development and construction costs

(excludes acquisition). The limits are established using recently funded (five (5) year) history of Department projects and based on unit size.

Once completed, the Department pro forma will calculate the cost per unit using the correct methodology on the Summary page of the Excel document.

Most Project units should have costs per unit well below the listed limits. However there are occasionally exceptions. If the Applicant’s Project costs exceed those listed in the table, a letter explaining the costs will need to be submitted in the Application. It will not need to be approved, just submitted. Excessive costs may impact scoring of the Application.

<b>2014 Oregon LIMIT cost / unit</b>	<b>Studio</b>	<b>1 Bedroom</b>	<b>2 Bedroom</b>	<b>3 Bedroom</b>	<b>4 Bedroom</b>
Urban	\$200,000	\$222,000	\$272,000	\$306,000	\$325,000
Balance of State	\$145,000	\$162,000	\$205,000	\$258,000	\$275,000

Urban definitions apply to Projects in the Metro Region and to any Project where the Project meets two urban project criteria (e.g. more than four (4) stories, elevator, required structured parking, located on urban infill site).

**D. ASSET MANAGEMENT COMPLIANCE**

Applicant’s current portfolio of Projects monitored by the Department must be in compliance with Program Requirements and other applicable Department regulations. Each Applicant will be evaluated using a standardized internal process reviewing asset management and compliance categories with portfolio thresholds and will be evaluated based on the size of the portfolio. Compliance categories evaluated will include the following:

- Most recent rating received for management reviews;
- Physical inspections;
- Tenant file reviews;
- REAC scores;
- Submission of required reporting including financial audits and certifications of program compliance (CCPC’s);
- Owner and Management cooperation with reporting and communication; and
- Need or outcome for a community evaluation within the last year.

## **E. PROGRAM COMPLIANCE**

Applicants must satisfy the Program Requirements for all applicable Department funding sources requested as necessary for the financial feasibility. Each Department funding source has separate requirements within the Application, including forms and exhibits that must be submitted simultaneously with the Application. These Applications, forms and exhibits are more particularly described and available in the NOFA Application Manual. The Application must be in compliance with all relevant Program Funding Requirements in order to be competitively scored.

## **F. RESIDENT SERVICES**

The Applicant is required to provide a Resident Services Description at the time of Application, in accordance with the goals and guidelines below.

### **1. Resident Services Description Goals**

The anticipated outcomes and overall goals of the Resident Services Description and subsequent plan are as follows:

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

### **2. Resident Services Description Guidelines**

A Resident Services Plan must include these general guidelines:

- General low-income population support and services may include improving residents' ability to maintain their lease obligations, enhance quality of life through programs for employment, education, income/asset building, child and youth development, community building and improving access to services.
- Elderly support and services should include improving residents' ability to uphold their lease throughout the aging process through better access to health and other services, enhanced quality of life through community building, socialization, and other programs.
- Support and services for special needs population should focus on the strengths and needs of the target population to provide for not only the daily support but to be part of the larger community.

## G. READINESS TO PROCEED

### 1. Site Control

The Applicant must have control of the land and other real property necessary for the Project by the Application deadline and submit evidence of that control with the Application. Acceptable evidence of site control is a document that has a complete and accurate legal description and is either:

- a recorded deed or conveyance showing the Applicant has Ownership,
- a valid purchase and sale agreement,
- a valid option to purchase,
- a valid option for a long-term lease, or
- other evidence satisfactory to the Department.

The name on the evidence of site control and the Application must be **exactly** the same. The site control document also must identify the exact same area as the Project site listed in the Application and the exact same cost for the land and/or existing buildings for the Project referenced in the development budget provided with the Application. If the site description in the Application and the site control document are not exactly the same, the Applicant must provide a narrative description and supporting documentation satisfactory to the Department to clarify how the area and cost for the Project were established. The proposed use of a lease for site control may impact scoring of the Application.

The Department will only accept one Application for a specific site or for any part of the same site, regardless of whether Applications are submitted by the same Applicant or by multiple Applicants. If there is more than one (1) Application received for the same site, or any part of the same site, the Department may disqualify one (1) or all of the Applications. The *non-refundable* Application charge for each Applicant will be retained by the Department.

### 2. Additional Federal Project Resources Status

If the Applicant has identified additional federal resources, such as rental or capital assistance from Housing and Urban Development (HUD), US Department of Agriculture Rural Development (RD), or Veteran's Administration, as part of the funding structure, the Applicant will be required to provide evidence satisfactory to the Department that an application for these resources has been submitted and remains active.

### 3. Adequacy of Development Schedule

Within the development schedule provided, will the Applicant be able to meet the required deadlines for LIHTC, HOME, GHAP, OAHTC HELP, and LIWP Programs?

The Applicant's development schedule must clearly demonstrate that funds will be invested and the Project will be constructed, leased and stabilized within all required Program(s) time frames. These deadlines are published in the appropriate Department program manuals.

#### **4. Adequacy of Environmental Checklist**

If there is any adverse Environmental factors established at the time of the Department's Environmental review, the Applicant must provide a satisfactory mitigation plan.

#### **H. RELOCATION PLAN**

Permanent displacement or relocation due to Department funding is strongly discouraged. If any relocation or displacement might occur as a result of an Allocation, the Application must contain a relocation plan satisfactory to the Department including, but not necessarily limited to all of the following:

- A complete survey of existing tenants using the format provided by the Department. This survey must be augmented to include third party income verification and be completed and approved by the Department prior to the Equity Closing.
- Type of displacement that will occur (permanent or temporary).
- Proposed relocation/displacement process. Indicate compensation and advance notice provided to those subject to displacement.
- Availability of comparable units in the community.
- Describe the local jurisdiction displacement/relocation policies, if applicable.
- Describe how tenants with disabilities will be assisted regarding relocation or displacement.
- Provide regular updates on each resident to be relocated or displaced; and
- For Projects receiving federal funds, the Uniform Relocation Act (URA) may apply. URA requirements, if inconsistent, will supersede any of the above.

#### **I. CONSISTENCY WITH STATE OR LOCAL CONSOLIDATED PLAN**

The Department is required to develop a comprehensive state plan for low-income Oregonians (OAR 456.572). The Department has adopted the state and local Consolidated Plans as its comprehensive state plan.

All Projects must be consistent with the state and local Consolidated Plans at the time the Application is submitted.

**J. GREEN BUILDING STANDARDS**

One of the following Green Building Standards of construction must be included in the development of low-income housing:

- Enterprise Green Communities;
- Earth Advantage Homes; or
- LEED for New Construction

Applicants must comply with all the standards and requirements of their selected Program. Upon completion of the Project, the Applicant will be required to provide a Certification and appropriate documentation that the Project was completed according to the applicable Green Building Program. The Department reserves the right to rescind LIHTCs and exercise other available remedies if Green Building Standards are not timely satisfied.

**K. DEVELOPMENT TEAM CAPACITY**

Construction, Financing, and Development Team Experience

The Applicant must demonstrate to the satisfaction of the Department that the Applicant, developer, and/or development consultant under contract:

- has successfully completed a multi-family housing Project of a comparable number of housing units, of similar complexity, and for a similar target population as the proposed Project;
- has the necessary level of staffing and financial capacity to successfully manage development and operations of the current Project portfolio, including but not limited to, all current and pending LIHTC Projects and applications; and
- has successfully completed previous LIHTC Projects for which a LIHTC allocation was received in Oregon or other states.

If the Applicant is using a development consultant to show this capacity, the Applicant must also submit a copy of the executed contract detailing terms, conditions, and responsibilities between the Applicant and the development consultant.

Consultant Contract: If consultant services and corresponding fees are not detailed in the developer agreement, the Applicant must submit a copy of each consultant contract that itemizes the services to be performed by each consultant and the amount of the consultant fee for each service or group of services.

**L. PROPERTY MANAGEMENT CAPACITY**

If the Applicant is going to employ a property manager with respect to the Project, the Applicant must provide a document detailing the experience level of the proposed property management firm that demonstrates it has successfully managed:

- a multi-family housing Project of a comparable number of housing units and/or of a similar complexity as the proposed Project; and
- a multi-family assisted or subsidized housing Project with local, state, and/or federal operating requirements comparable to those of the LIHTC Program.

**M. OWNERSHIP INTEGRITY**

The Applicant and any member or principal within the Project ownership or management needs to meet the following criteria:

- Neither Applicant nor any member or principal within the Project ownership or management will have been convicted of fraud or moral turpitude within the previous ten (10) years
- Neither Applicant nor any member or principal within the Project ownership or management will have been involved in a bankruptcy proceeding within the previous five (5) years
- Neither Applicant nor any member or principal within the Project ownership or management will have been debarred or otherwise sanctioned by the Department

**N. FINANCIAL FEASIBILITY**

The Applicant must submit a proposed source and use of funds and a fifteen (15) year operating pro forma for the Project demonstrating financial feasibility and viability for the initial fifteen (15) year compliance period. In addition, the Applicant must demonstrate the Project will continue to be economically feasible and have adequate replacement reserves for an additional fifteen (15) years after the initial fifteen (15) year compliance period. The operating pro forma must list each of the fifteen (15) years separately and include assumptions, notes and explanations regarding the income and expense Projections.

Absent a long-term commitment, Projects with rental assistance must demonstrate financial feasibility excluding the rent subsidy.

If the Project includes commercial and/or other non-residential space, the Applicant must submit the following information and supporting documentation in addition to the residential pro forma requested above:

- a breakdown of the total residential and commercial Project costs,
- a list of the financing sources for the commercial areas,

- Ownership entity and management agent of the commercial areas, and
- a fifteen (15) year operating pro forma for both the residential and commercial areas.

Forms an Applicant will need to submit for residential and commercial/non-residential Applications are incorporated into the Application form provided by the Department and can be found at:

[http://www.oregon.gov/ohcs/Pages/MFH\\_Multifamily\\_Housing\\_Funding.aspx](http://www.oregon.gov/ohcs/Pages/MFH_Multifamily_Housing_Funding.aspx).

#### O. REHABILITATION AND REPLACEMENT RESERVES

At the time of Application, requests for rehabilitation Projects are required to provide a thorough Capital Needs Assessment (CNA) satisfactory to the Department. The CNA must address the following components:

1. **Critical repair items:** All health and safety deficiencies, or violations of Housing Quality Standards (or Uniform Physical Condition Standards), requiring immediate remediation.
2. **Two (2) year physical needs:** Repairs, replacement and significant deferred and any other maintenance items that need addressing within twenty-four (24) months of the date of the report.
  - Include any necessary redesign of the Project and market amenities needed to restore the property to a reasonable standard of livability.
  - Include these repairs in the development budget and fund with construction-period fund sources.
3. **Long term physical needs:** Repairs and replacements beyond the first two (2) years required to maintain the Project's physical integrity over the next thirty (30) years, such as major structural systems that will need replacement during that period. These repairs are to be funded from the Replacement Reserves Account.
4. **Analysis of reserves for replacement:** An estimate of the initial and monthly deposit of the Replacement Reserves Account needed to fund long-term physical needs, accounting for inflation, the existing Replacement Reserves Account balance, and the expected useful life of major building systems. This analysis should not include the cost of critical repair items, two (2) year physical needs or any work items that would be treated as normal maintenance or repair expense.

The Department, or third-party representative, may perform inspections prior to, during and following an initial Reservation of LIHTCs by the Department. The Department, based on such inspections or otherwise, may disqualify an Applicant from advancing their Application, terminate or revoke a Reservation or Allocation, or exercise other available remedies including, but not limited to, requiring changes to the Application or Project scope of work or budget. A replacement reserve or holdback of other funding capitalized in advance may be required. The Department may verify if work has been performed to its

satisfaction. The Department may require remediation of unsatisfactory work or conditions.

In accordance with the Code, there must be minimum expenditures of at least \$6,600 per unit or twenty percent (20%) of the unadjusted basis of the building, whichever is greater. The Department, however, will require that actual expenditures be sufficient to complete all the recommend improvements in the CNA.

## **DISQUALIFICATION**

The Department may disqualify any Application that does not meet the requirements and disclosures listed in Section I, the Program Limits in Section II, and the Minimum Threshold Requirements listed in Section III by the Application deadline.

## **PROJECT RANKING POLICIES**

This section explains the Department's procedures for ranking Projects and awarding LIHTCs within the Regional LIHTC Funding Allocations. The Allocation Criteria and scoring system used by the Department are set forth in Section IV.

### **A. DEPARTMENT PRIORITIES**

For the purposes of ranking Projects and allocating credit dollar amounts, the Department will give preference to projects that: serve lowest incomes; are located in HUD identified Qualified Census Tracts or OHCS identified Low Poverty Census Tracts that would serve to de-concentrate poverty; are intended for eventual tenant ownership; have historic value to the community; and commit to marketing to public housing wait lists.

In addition to these preferences, Application scoring weight may be given to Projects that, *inter alia*, to the Department's satisfaction:

- Demonstrate local preference and alignment with local, regional or state plans;
- Are aligned with strategic state initiatives or policies that strive to advance long-term statewide human service policy objectives,
- Provide services that are appropriate to the target population needs, demonstrate focus on outcomes and include collaboration and innovation in service delivery design;
- Are located in walkable areas in proximity to healthy food, transit, education and health services and are part of a main street revitalization effort;
- Are preservation Projects that have an impact on tenants, are at risk of loss, and are prudent investments;

- Are financially viable given the development and operating pro forma submitted; demonstrating realistic analyses of resources, costs, timeline and funding requests;
- Have identified leverage where available;
- Involve sponsors, owners and management agents with high level of historic performance complying with program requirements;
- Demonstrate reasonable expectations and plans to proceed with the development within twelve (12) months; and
- Incorporate fee ownership of the Project.

## B. REGIONAL ALLOCATION APPLICATION RANKING

LIHTCs are awarded on a competitive basis to Projects of qualifying Applications that first meet the Minimum Threshold Requirement and then rank highest in overall scoring within each Geographic Region until all available LIHTCs are reserved for Allocation.

### 1. REGIONAL LIHTC FUNDING ALLOCATIONS

The Department established Geographic Regions based on areas with similar ability to leverage federal HOME funds as well as having the greatest project comparability

- **Metro Oregon** (Clackamas, Multnomah, and Washington Counties)
- **non-Metro HUD HOME Participating Jurisdictions** (the cities of Eugene, Springfield, Salem, Keizer, and Corvallis)
- **Balance of State Oregon** (Baker, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lincoln, Linn, Malheur, Morrow, Polk, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler, and Yamhill Counties as well as the balance of Benton, Lane, and Marion counties);

In order to allocate Credits in a way that is commensurate with need around the state, the Department evaluated:

- a. The number of renter households in each county earning sixty percent (60%) or less county median family income.
- b. The number of severe rent burdened households in each county with a rent burden of fifty percent (50%) or more total household income.

The results were summarized by geographic region and weighted evenly when determining the percent of the state's need. The percentage of the state's LIHTC allocation targeted to each region in the Notice of Funding Availability is based on the region's percentage of need.

In addition a thirty-five percent (35%) soft set aside has been established for Preservation projects, where at least twenty-five percent (25%) of the units have federal Project-based rent subsidies. This thirty-five percent (35%) set aside will be calculated out of each regions LIHTC allocation; if no Preservation Projects score high enough in competitive scoring to be funded, the credits will be returned to the regional pool.

## **2. APPLICATION RANKING PROCESS**

Applications are first ranked by Geographic Region. The preservation Applications with the highest in overall scoring within each Geographic Region will be funded as allocated resources allow; if no preservation Applications score adequately to be funded in the region the funds will be put back into the regional pool. Once preservation Projects are funded, the Applications with the highest overall score within each Geographic Region will be allocated LIHTCs until the balance of available LIHTCs or other Department funding sources are not adequate to support any other Applications within the Geographic Region.

If there are remaining LIHTCs in any of the Geographic Regions, such remaining LIHTCs will be pooled, along with any remaining Department funding sources, for further consideration for the remaining unfunded Applications. Applications would then be ranked statewide by overall score and additional reservations may be issued until the balance of available LIHTCs or other Department funding sources are not adequate to support any other Applications.

In the event of a tie throughout the ranking process, Tie Breaking Rules will be applied.

If LIHTCs and/or other Department funding sources remain after all reservation processes are complete, the Department may choose, at its sole discretion, whether or not to award any or part of the remaining LIHTCs/resources.

## **3. FORWARD LIHTC COMMITMENT**

If due to insufficient Annual Authority, the last Project to receive an LIHTC Reservation or Carryover Allocation in any round receives a Carryover Allocation for only a portion of the LIHTC needed, the Department may choose to provide the Project a Forward Credit Commitment for the balance of LIHTCs needed from the year after the majority funding allocation year. If most are funded, for example, from the 2015 allocation year, one (1) or more project may receive a 2016 allocation instead to fully fund a qualifying project. The Forward Credit Commitment will be contingent upon having Annual Authority available in the following year. Thus, the Forward Credit Commitment contract may be executed even though it is uncertain whether there will

be any available Annual Allocation Authority. The Applicant should be aware of and assumes the risks of proceeding with a Project given this uncertainty.

The Department may choose to provide a Forward Credit Commitment to one (1) or more Projects. The Department may, in its discretion, commit up to ten percent (10%) of the following year's anticipated Annual Authority for this purpose.

If an Applicant receives a Reservation commitment of current funding cycle resources and receives additional LIHTCs in a subsequent year, the applicable Qualified Allocation Plan and LIHTC Program Manual will be those in place for the earliest funding cycle in which an award of funds is received.

#### **4. SCATTERED SITE PROPOSALS**

Applications consisting of multiple sites in different counties that cross between Geographic Regions will be treated as follows: The proposal would be evaluated in and funded from the Geographic Region where the greatest number of units is sited.

#### **5. QUALIFIED NON PROFITS (QNP)**

Section 42(h)(5) of the Code requires ten percent (10%) of the total amount of the Annual Authority be allocated to Projects owned directly or indirectly by an organization that is a Qualified Non-Profit Organization (QNP). To be considered a QNP, the organization must be described in Section 501(c)(3) or Section 501(c)(4) of the Code and have as one (1) of its exempt purposes the "fostering of low-income housing." Furthermore, the organization must materially participate in the development and operation of the Project throughout the compliance period. The organization must not be Affiliated With, or Controlled By, a for-profit organization, entity, or individual. For a partnership, all general partners must be QNPs. For a limited liability company, all members, other than the investor/member, and managers must be QNPs. Further, the investor/member must not actively participate in the day-to-day management of the Company.

Material participation of the nonprofit must be demonstrated if the Applicant is applying under the ten percent (10%) Non-Profit Set-Aside. In order to document an Applicant's QNP status, the Applicant must submit the following:

- A. A copy of the QNP's IRS determination letter,
- B. A complete and current-as-amended copy of the QNP's articles of incorporation as filed with the Secretary of State. The articles of incorporation must have as one (1) of its exempt purposes the "fostering of low-income housing";
- C. Complete and current-as-amended copies of the bylaws and other governing instruments of the QNP,

- D. Evidence the QNP has an Ownership interest in the Project, and the QNP will materially participate in the development and operation of the Project throughout the Project compliance period;
- E. A certification by the QNP that is not Affiliated With, or Controlled By, a for-profit organization, entity, or individual; and
- F. A current list of names of all board members and officers of the QNP and any affiliation (plus the nature of the affiliation) such board member or officer has with any for-profit entities or individuals.

## **6. ALLOCATION CRITERIA**

Projects that meet Minimum Threshold Requirements, outlined in Section III, will move to competitive scoring. The competitive scoring application has identified components that will be scored by OHCS staff as well as components that will be scored by a high-level Scoring Committee based on scoring criteria. This Scoring Committee will be developed for each Geographic Region and will be comprised of Department leadership, industry professionals, and regional representatives. There will be one (1) or more committee members from Department leadership that will participate in all regional evaluation committees to ensure consistent processes.

Scoring Committee members will be vetted by the State Housing Council and will receive thorough training on the objectives and mechanics of the scoring process.

OHCS staff scored question results and summaries will be provided to Scoring Committee along with the competitive application questionnaire.

Applications will be reviewed and ranked by individual Scoring Committee members. Individual member scoring and rationale will be reviewed and discussed by the full Scoring Committee. Final ranking will be established and Reservation recommendations made to the Department Director.

The Applicant is responsible for demonstrating in the Application that the Project meets the requirements of the Allocation Criteria selected.

## **7. TIEBREAKERS**

If the total evaluation scores of two (2) or more Applications result in a tie and LIHTC allocation availability is insufficient to fund all tied Applications, the following criteria will be used to break the tie:

- If the tied Projects are in different Regions and more than fifty percent (50%) of the remaining funds comes from one of those Regions; that Project will be funded.

- If the tied Projects are in the same Region, or from Regions whose allocation contributes less than fifty percent (50%) of the remaining funds, the Project with the highest Impact score will be funded.
  - If the Impact scores are tied, the Project with the highest Need Severity score will be funded.
    - If the Need Severity scores are tied, the Project with the highest Financial Viability score will be funded.
      - If the Financial Viability scores are tied, the Project with the highest Capacity score will be funded.

## C. RETURNED AND UNUSED LIHTC ALLOCATION AUTHORITY

### 1. REISSUING RETURNED AWARDS

In the event an Application being considered for a LIHTC Reservation or Allocation either withdraws or is cancelled, or was not originally allocated during the funding cycle, the Department, at its sole discretion, may do any of the following:

- a. If needed and available, fill Project gaps for previously funded Projects that have not met Carryover;
- b. Fund the next highest ranking Application from the current funding cycle that matches or is closest to the amount of LIHTCs and other Department funding sources available. The Applicant will be given thirty (30) days to reevaluate the financial feasibility and determine whether or not the proposed Project can move forward. Once the Department has published the Application Rankings, such rankings will be used to allocate LIHTCs during the annual funding cycle until October 1. At that time, funding order will be relinquished until re-established in a subsequent Notice of Funding Availability re-establishes it.
- c. The Department may issue a Request for Proposals, or special application process for Projects to complete for the unused LIHTCs.

To the best of its ability, the Department will maintain the desired funding split between Geographic Regions.

Applications will remain eligible for the funding cycle for which they applied for LIHTCs only if:

- The Applicant has not applied as a four percent (4%) non-competitive Project and received a reservation of non-competitive credits.

If a funded Project cannot meet Carryover requirements, or becomes ineligible for the LIHTC for any other reason, the next highest ranking and eligible Project will be

notified. Other Department funding sources for possible replacement Projects may also be reserved based upon any availability.

## **2. RE-EVALUATION OF RESERVATION**

The following events will result in a re-evaluation of a previously issued Reservation:

- a. Failure to close within two hundred forty (240) days of the Reservation,
- b. A material adverse change so the Project or Applicant no longer meets the Minimum Qualification Threshold or any of the competitively scored criteria,
- c. The proposed Project will not be placed in service by the date mutually agreed upon,
- d. Other material causes at the Department's reasonable discretion.

In the event of a re-evaluation of Reservation, the Agency, at its reasonable discretion, may do any of the following:

- Revoke the Reservation,
- Approve requested changes to the original Application as proposed,
- Take no action.

## **ALLOCATION SCORING CRITERIA**

If the Application passes the Minimum Threshold Requirements, then a Scoring Committee will score the competitive portion of the application based on the criteria listed below. The scored sections are:

- Need,
- Impact,
- Preferences,
- Financial Viability,
- Capacity.

The Department is committed to investing public resources in a way that makes best use of the funds considering all benefits to the community as well as the viability of the Project. The Department is also committed to ensuring resources are invested in a way that is geographically equitable, and responsive to the diversity of low-income housing needs around the state.

The scoring criteria are designed to measure the severity of need, and overall impact to the community as well as to prioritize those Projects that best meet established preferences, demonstrate dynamic partnerships and outcome based service delivery, and who involve sponsors, owners, and management agents with demonstrated high levels of performance.

A total of one hundred (100) maximum points is possible, weighted fifteen (15) for Need, forty (40) for Impact, fifteen (15) points to Financial Viability, fifteen (15) to Preferences, and fifteen (15) to Capacity.

Any Application that does not have the minimum overall score of seventy-five (75) points will be disqualified, and the Application charge will not be refunded.

Both quantitative and qualitative factors are considered in the scoring. The criteria to be used, and the scoring group, for each scored section will be as follows:

**A. NEED: 15 POINTS**

**1. Target Population**

Applicable Criteria: Percentage of units to serve households with children and special needs populations

**2. Severity of Need**

Applicable Criteria:

- i. Population Growth rate;
- ii. Rental Housing Age,
- iii. Severe Housing Burden rate;
- iv. Affordable Housing Gap;
- v. If Preservation; Community Affordable Housing Percent

**3. Underserved Geography**

Applicable Criteria: Need Distribution of Affordable Housing Units Vs Actual Distribution of Affordable Housing Units

**B. IMPACT: 40 POINTS**

**New Construction and Acquisition / Rehabilitation Project Impact Criteria**

**1. Local Preference**

Applicable Criteria: Project Applicants are required to provide a letter from an applicable jurisdiction, indicating priority for the Project in the community.

**2. Plan Alignment –**

Applicable Criteria: Project applicants are asked to identify connections between the proposed Project and established local, regional or state published plans, including Consolidated Plans and planning efforts of Regional Solutions Teams, Coordinated Care Organizations, Early Learning Hubs, or Workforce Investment Boards.

**3. HOME Leverage in Balance of State**

Applicable Criteria: whether Project includes a request for HOME funds that lowers or eliminates the request for other state gap funding to a large extent

**4. State initiative / policy alignment**

Applicable Criteria: Project applicants are asked to identify the way in which the proposed Project advances long-term statewide human service policy priorities as articulated by the Governor or in enacted legislation and can demonstrate a specific plan for improving human service outcomes.

**5. Appropriate Services**

Applicable Criteria: Project applicants are asked to identify service delivery information. If the Project is advancing human service policy priorities, they should provide more detailed information about the way in which services will be provided and why those services are expected to lead to improved outcomes. For Projects without a specific human service component, sponsors should provide more general information about who will be served and why and about the strength of those general outcomes.

**6. Collaboration and Innovation in Service Provision**

Applicable Criteria:

- i. Collaboration of multiple partners to deliver services
- ii. Planning for funding for services
- iii. Innovation in service delivery design

**7. Location Efficiency**

Applicable Criteria:

- i. Walk-ability
- ii. Food Access
- iii. Medical Access
- iv. Public Transit
- v. Education for family housing

**8. Ownership Efficiency**

Applicable Criteria:

- i. Fee ownership of Project site
- ii. Ownership entity not publicly traded
- iii. Oregon based ownership entity

**Preservation Project Impact criteria**

**1. Tenant Impact**

Applicable Criteria:

- i. Vulnerable Tenant Displacement;
- ii. Extremely Low Income;
- iii. Rental Assistance;
- iv. Tenant Protections;
- v. Voucher utilization;
- vi. Available and affordable rental housing in the community;

**2. Risk of Loss**

Applicable Criteria:

- i. Opt-out / Market conversion risk;
- ii. Physical Condition Risk

3. **Prudence of Investment**

Applicable Criteria:

- i. Total Cost Per Unit
- ii. Narrative Description of Costs; applicants are asked to describe the cost of the Preservation Project including providing context for the investment and assessing the Prudence of Investment

4. **Plan Alignment**

Applicable Criteria: Project applicants are asked to identify connections between the proposed Project and established local, regional or state published plans, including Consolidated Plans and planning efforts of Regional Solutions Teams, Coordinated Care Organizations, Early Learning Hubs, or Workforce Investment Boards.

5. **HOME Leverage in Balance of State**

Applicable Criteria: whether Project includes a request for HOME funds

6. **Appropriate Services**

Applicable Criteria: Project applicants will be asked to identify service delivery information. If the Project is advancing human service policy priorities, they should provide more detailed information about the way in which services will be provided and why those services are expected to lead to improved outcomes. For Projects without a specific human service component, sponsors should provide more general information about who will be served and why and about the strength of those general outcomes.

7. **Location Efficiency**

Applicable Criteria:

- i. Walk-ability
- ii. Food Access;
- iii. Medical Access;
- iv. Public Transit;
- v. Education for family housing;

C. **PREFERENCE: 15 POINTS**

1. **Serving Lowest Incomes**

Applicable Criteria:

- i. Average Gross Median Income
- ii. Subsidy

2. **Qualified Census Tract or De-concentrating Poverty**

Applicable Criteria: location within a HUD identified Qualified Census Tract or an OHCS identified Census Tract with a poverty rate of 10% or less

**3. QAP Preference**

Applicable Criteria:

- i. intended for eventual tenant ownership
- ii. energy efficient measures employed
- iii. evidence of historic value for the community
- iv. established commitment to marketing to public housing wait lists

**D. FINANCIAL VIABILITY: 15 POINTS**

**1. Development pro forma review**

Criteria; points will be assigned based on the following concepts:

- i. Pro forma includes only realistic and available resources on the Sources of Funding
- ii. Explanation of how the development budget will still be valid at the start of construction
- iii. Relocation Plan completed if warranted and aligns to development budget
- iv. Developer's fee is within the OHCS desired range
- v. If URA, the budget line item accurately reflects the project cost based on the sufficient Relocation Plan
- vi. If Commercial Real Estate is included in the Project, Sources and Uses are provided on a separate pro forma page

**2. Operating pro forma review**

Criteria:

- i. Affordable rents begin at 10% below market
- ii. Year one debt coverage ratio is 1.1 to 1.15 with OAHTC or 1.20 to 1.25 without OAHTC
- iii. Cash flow within OHCS guidelines or adequately explained (1.25 or below, unless adequately explained or declining cash flows require a higher debt coverage)
- iv. Vacancy rate at 7% or adequately explained
- v. Submitted reserve or replacement analysis and included adequate amount for replacement items in pro forma
- vi. Income inflation factor is less than expenses inflation factor

**3. Reasonable request and demonstrated need for resources**

Criteria:

- i. Eligible Basis analysis is based on reasonable project pro forma line items

**4. Well documented and explained construction costs**

Criteria:

- i. Construction documents, including CNA, provide enough detail to adequately calculate project hard costs

- ii. Construction and rehabilitation estimates substantially agree with the pro forma
- iii. Green building costs reflected in construction costs
- iv. Contractor overhead, profit and general conditions are within the required range for LIHTC

**5. Explained exit strategy at year 15**

Criteria:

- i. Exit strategy explanation adequate and acceptable. Safe harbor guidelines used in strategy.

**E. CAPACITY: 15 POINTS**

**1. Owner, sponsor, management performance**

Criteria: Project applicants with projects in the Department portfolio will be reviewed on the performance of all projects in the portfolio, the average score of all projects will be used; Project applicants without projects in the Department portfolio will be asked to submit a letter indicating their compliance status with any existing projects (if unreported noncompliance is discovered later, it will be grounds for rescinding awarded credits or carry to future applications for funding).

Portfolio project criteria will be calculated for each relevant project and summed and apportioned based on portfolio size.

**ii. Federal Reporting Criteria**

- 1. 8823s status

**iii. OHCS Portfolio Compliance Criteria**

- 1. Most recent REAC score;
- 2. Most recent Physical Review;
- 3. Most recent File Review;
- 4. Most recent Resident Services Review;
- 5. Most recent Response Review;
- 6. CCPC submission received for current year shows compliance;
- 7. Ongoing compliance issues;

**iv. OHCS portfolio viability Criteria**

- 1. Financial submission as requested;
- 2. Most recent audited financial is closed;
- 3. Most recent audited financial Debt Coverage Ratio;
- 4. Asset management community evaluation completed satisfactorily;

**2. Readiness to proceed**

Criteria: points will be awarded based on the following elements

- i. Funding commitment for planned Project funds;

- ii.** Demonstrated ability to begin construction within 12 months
- iii.** Proposed Project schedule appears adequate and reasonable
- iv.** Explanation of why Project must be funded now as opposed to in a future NOFA is reasonable
- v.** Explanation of when other sources of funds will be available to the Project if not already committed is reasonable

## **LIHTC RESERVATION AND CARRYOVER ALLOCATION REQUIREMENTS**

Those Projects selected by the Department as eligible for LIHTCs will be issued a LIHTC Reservation and Carryover Allocation only if they meet the requirements set forth in this Section, the Application and the LIHTC Program. The Department may disqualify the Project/Application and cancel the LIHTC Reservation and Carryover Allocation for any Project if these requirements are not met by the deadlines set by the Department.

### **A. LIHTC RESERVATION**

#### **1. Initial Offer to Reserve LIHTCs**

Those Projects receiving a conditional offer to reserve LIHTC must comply with all conditions outlined in the LIHTC Reservation Letter within two hundred forty (240) days in order to retain its LIHTC reservation. LIHTC Reservation offered to, but not accepted or completed (by satisfying all the conditions outlined in the offer letter) by the Applicant may be available for Reservation and Allocation to other qualified Projects.

#### **2. Reservation of LIHTC Requirements**

Documentation requirements for reservation of tax credits shall include:

- a. Receipt of all applicable Application items.
- b. All documentation required to evidence compliance with the Reservation and Extended Use Agreement conditions.
- c. LIHTC Reservation Letter outlining the conditions of funding will be sent to the Applicant. An LIHTC Reservation Letter acknowledging such conditions shall be submitted to the Department.
- d. Reservation and Extended Use and Hold Harmless Agreements. If not previously filled out, an 8821 will be completed at this time. If a letter from the accountant or tax attorney is needed, it will be completed at this time (or at construction closing if later).
- e. A nonrefundable LIHTC Reservation charge must be paid at the execution of the REUA.
- f. Regular progress reports.
- g. An approved Carryover Application and Agreement for Projects receiving competitive credits that will not be placed in service in the allocation year.

- h. A completed and approved Final Application and executed/recorded Declaration of Land Use Restrictive Covenants will be required prior to the release of the IRS Form 8609 by the Department.
- i. All Applicants to the State of Oregon must provide with their applications a signed IRS Form 8821.

## **B. RESERVATION PERIOD**

Applicants who receive a Reservation will have a maximum timeframe of two hundred forty (240) days (Reservation Period) to submit additional materials and fulfill specific Project milestones that address conditions of the LIHTC Reservation Letter and Carryover Allocation Agreement. If the Applicant does not satisfactorily complete the conditions of the LIHTC Reservation Letter and/or the Carryover Allocation Agreement within the Reservation Period, the Project will be subject to review and may, *inter alia*, have the LIHTC Reservation rescinded.

The Department may reallocate LIHTCs in accordance with its Unused Credit Authority policy.

The Department will require each Applicant that has received a LIHTC Reservation to demonstrate the Project is making satisfactory progress towards completion through regular progress reports. The Project will convert to an Allocation upon completion of the conditions in the LIHTC Reservation Letter and/or the Carryover Allocation Agreement on or before the end of the Reservation Period. The progress reports are required to report on critical events and timelines such as site acquisition, meeting or failing to meet the ten percent (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.

## **C. CARRYOVER ALLOCATION AGREEMENT**

Applicants, on or before December 1<sup>st</sup> of the LIHTC Allocation Authority year, must submit either an application for LIHTC Carryover Allocation (if the Project is still in the construction phase), or a Final Application indicating placed-in-service.

If a completed Carryover Application has not been received by the Department by December 1<sup>st</sup> of the LIHTC Allocation Authority year, the Department may assess a Late Carryover charge. The Carryover Application can be found at:

<http://www.oregon.gov/ohcs/HD/HRS/LIHTC/2013CarryoverAllocation.pdf>

Applicants who are not able to perform according to their Project schedules for any reason after they have received a LIHTC Carryover Allocation will be required to return LIHTCs previously awarded and re-compete in a subsequent competitive process.

#### **D. EQUITY CLOSING**

The Applicant is required to give the Department at least thirty (30) days' notice of the scheduled Equity Closing. At least ten (10) days prior to the scheduled Equity Closing, but after the general contractor bids have been received, the Applicant must submit the Project's final development budget, final sources of funds, and documentation to substantiate the final LIHTC pricing. Using the final budget, Department will evaluate the balance of sources and uses and confirm the final Developer Fee.

Once the Equity Closing is completed, the Applicant is responsible for ensuring the Department receives a copy of the final title report and the executed Partnership or Limited Liability Company Agreement.

#### **E. CARRYOVER**

The Applicant must meet each of the following requirements within twelve (12) months of the date of the Carryover Allocation Agreement. The Department will endeavor to complete its review within sixty (60) days of receipt of all requirements.

##### **1. Ten Percent (10%) Carryover Test**

The Applicant must demonstrate to the satisfaction of the Department that it has incurred more than ten percent (10%) of the reasonably expected basis of the Project, as required by Section 42(h)(1)(E) of the Code and Treasury Regulation 42.6. Specifically, the Applicant must certify to the Department that it has fulfilled this requirement and must also submit a CPA's certification that satisfies the requirements of Treasury Regulation 42-6(c)(2).

The CPA's certification should itemize all of the costs incurred to satisfy the ten percent (10%) requirement. If the Applicant is itemizing any portion of the developer fee or consultant fees for purposes of satisfying the ten percent (10%) requirement, the certification must contain a detailed breakdown of the services performed by the developer and each consultant and the amount of the fees apportioned to each service. The Applicant must also submit a copy of all developer and consultant contracts as well as an itemized statement apportioning the fees earned to each service provided.

The Department may require the Applicant to submit additional documentation of the costs reflected in the certification and the Department may limit or exclude certain costs if it cannot determine that they are reasonable and appropriate.

**2. Election Regarding Calculation of Gross Rent Floor**

If the Applicant desires to use the placed-in-service date of the building for purposes of calculating the gross rent floor under Section 42(g)(2)A of the Code and the Applicant did not make an effective election to do so as part of the Carryover Allocation Agreement, the Applicant must affirmatively elect to use the placed-in-service date by giving written notice to the Department. This notice should be received by the Department no later than the date the building is placed in service. Otherwise the IRS will treat the gross rent floor as taking effect on the date at which the Department initially allocated LIHTCs to the Project at carryover.

**F. COMPLIANCE WITH CODE AND DEPARTMENT REQUIREMENTS**

The Applicant, each Principal, each member of the Development Team, each Related Party to the Project Owner, and the Project must be in compliance with any requirements of the Code and all other applicable Program Requirements before being issued a Carryover Allocation Agreement. Further, the Department may choose not to issue a Carryover Allocation Agreement if the Applicant, a Principal, or any member of the Development Team is in Noncompliance with any applicable Program Requirement. If the Department decides to disqualify the Project/Application and cancel the LIHTC Reservation, any LIHTCs reserved to the Project will be automatically returned to the Department without further action of the parties and the Applicant will have no further right to such LIHTCs. The LIHTCs will be available for Reservation and Allocation to other qualified Projects.

**G. DETERMINATION OF LIHTC ALLOCATION AUTHORITY YEAR**

When making a Reservation of LIHTC, the Department reserves the right to decide whether a Project will receive an Allocation from the closest forward allocated years' credit ceiling or an Allocation from the next following year's credit ceiling (Forward Allocation). This decision may 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 ten percent (10%) spent of expected basis test. The Department reserves the right to exchange a current year Allocation with a future year's credit Allocation if the Department, in its judgment, is at risk of not allocating its entire current year credit ceiling.

#### **H. EXCHANGE A 9% CREDIT AWARD FOR SUBSEQUENT YEAR'S CREDIT ALLOCATION**

Once an Applicant has received a Reservation of LIHTCs, the Applicant has the responsibility to complete the Project by the timelines identified in the IRC Section 42 and as outlined in the LIHTC Program Manual.

At the sole discretion of the Department, and to the extent an appropriate analysis shows a Project continues to be financially feasible, the Department may work collaboratively with an Applicant. The Department reserves the authority to exchange an Allocation of Credits from one (1) year for the exact same amount of Credits in a subsequent credit year.

Applicants must determine good cause to return their Reservation to the Department, and as such the Applicant has a one (1) time option to return their Allocation to the Department, as follows:

1. No later than March 31 of the year following the Reservation of LIHTCs, an Applicant may request to return its 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 2013 awarded Project that receives a forward reservation of 2014 tax credits of the exact same amount can transfer if requested by March 31, 2014, to get an allocation of 2015 credits. This is necessary if the Project will not be placed in service by December 31, 2016 and needs to wait to place in service until the end of 2017.
2. After LIHTCs have been returned, an Applicant may apply for additional LIHTCs only when in accordance with the LIHTC Program Manual.
3. Projects must comply with the requirements in the LIHTC Program Manual applicable in the initial year of award and all representations made in the initial application (unless specifically and explicitly waived by the Department).
4. The Department will not consider filling gaps resulting from increased costs when evaluating a requested exchange of credit reservation years.

#### **PLACED-IN-SERVICE ALLOCATION REQUIREMENTS**

All LIHTC Applicants are required to complete a Final Application. Any changes from the Equity Closing are subject to Department review and approval prior to the issuance of IRS Form 8609. Any change to developer fee from the Equity Closing will require written approval from the Department prior to the submittal of 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, as long as the developer fee does not exceed the Department's approved maximum developer fee.

LIHTCs are considered awarded to a Project at the time the Department issues a 9% Carryover Agreement or in the case of a Project with bond financing, at IRS Form 8609 execution. Owners must place the Project in service no later than December 31 of the credit year, unless a LIHTC Carryover Allocation is obtained. If a LIHTC Carryover Allocation is obtained, the Project must be placed in service no later than December 31 of the second year following LIHTC Allocation Authority Year (aka year of Carryover Agreement).

The Department will accept and process Final Application documents and issue IRS Form 8609(s) throughout the year. However, a Project Owner must submit a complete application with all Placed-In-Service documentation, including the independent Certified Public Accountants Report (Cost Certification) and the certificates of occupancy for each building in the Project at least sixty (60) days prior to when they expect to receive the IRS Form 8609(s).

#### **A. COMPLIANCE TRAINING**

The Department will conduct periodic Compliance Training Workshops, as scheduling permits. The Department strongly recommends all persons directly involved in the Ownership and/or management of the Project, including site staff, attend the workshops.

Compliance Training Workshops are not intended to substitute for income and asset certification or other technical recordkeeping training. The Owner is responsible for ensuring Project management is capable of these tasks. If workshops are not currently being offered by the Department, outside contractors are available to provide LIHTC training opportunities. Such contractors include, but are not limited to:

- National Center for Housing Management (NCHM),
- Quadel Consulting,
- Spectrum Enterprises, Inc.,
- TheoPRO Compliance & Consulting.

#### **B. MASTER LEASE; LEASE RIDER**

The Applicant must provide a copy of the master form of resident lease or rental agreement in a form acceptable to the Department at least sixty (60) days prior to the first building in the Project being placed-in-service. The Lease Rider must be attached to the master lease or rental agreement.

#### **C. PROPERTY MANAGEMENT AGREEMENT**

The Applicant must provide an executed copy of the property management agreement or related documents. The agreement must include specific terms, conditions, and

responsibilities. If the Applicant has previously submitted a property management agreement and amended it, the Applicant must provide a copy of the agreement.

**D. LONG-TERM LEASE COVENANT**

If the Applicant has established a long-term lease in lieu of Ownership, the Applicant must execute, notarize, and record an agreement between the Applicant and the Owner of the land. The Owner must agree to allow the Applicant to record the Regulatory Agreement as a restrictive covenant on the land and all improvements on it that is binding upon the current Owner and any successors in interest to the Owner.

**E. RESERVATION AND EXTENDED USE AGREEMENT**

The Applicant must confirm all Project specific information in the Reservation and Extended Use Agreement accurately reflects the Project as completed. If the Project has changed, an amendment to the REUA must be executed and notarized. Fulfillment of Code and Department Requirements

Before the Department will issue IRS Form 8609 to any building in a Project, the Project Owner, each of the Principals, each member of the Development Team, all Related Parties to the Project Owner and the Project must be in compliance with any requirements of the IRS Code and other applicable Program Requirements. Further, the Department may choose not to issue IRS Form 8609 for a building if the Project Owner is in Noncompliance with respect to any Project subject to the LIHTC Program. In addition, the Department may, *inter alia*, cancel any LIHTC Reservation or Carryover Allocation for any Noncompliance. For example, the failure to pay any charges assessed by the Department with respect to the Project could cause a reservation cancelation.

**F. PROGRAM REQUIREMENTS**

All applicable LIHTC Program requirements and disclosures set forth in this document and the Carryover Allocation Agreement and all applicable LIHTC Program Limits must be met. All Funding and Allocation Criteria Commitments must be satisfied.

**G. OCCUPANCY PERMIT**

The Applicant must get a certificate of occupancy or temporary certificate of occupancy for each building and provide a copy of each certificate to the Department. In some cases, only a permit sign off by the county is required. In such circumstances, this will suffice for placed-in-service or the date the property ends compilation of the twenty-four (24) month period of rehabilitation for the project. Your tax attorney or accountant can help in the determination of the end of the twenty-four (24)-month date to be used by the property. Applicants must place each building in service by the deadlines set by the Department.

Generally, a building will be deemed to be Placed-In-Service when it is issued a certificate of occupancy by a governmental permitting locality/agency or as otherwise defined by the Code.

**H. FINAL COST CERTIFICATION**

The Applicant must provide a certification, addressed to the Department and prepared by an independent CPA, of the eligible basis of each building and, based on the Applicant's sworn representation about the low-income use of each building, its qualified basis. The certifications must also list sources and uses of all funds for the Project. The independent CPA's certification must be accompanied by executed copies of the developer agreement, each consultant contract, and an itemized statement earmarking the developer's fees and/or consultant fees earned for the services provided.

**I. PARTNERSHIP AGREEMENT**

If the Applicant is a partnership or a limited liability company, the Applicant must provide the most current Partnership Agreement or Limited Liability Company Agreement.

**J. FINANCING DOCUMENTS**

The Applicant must provide financing documents, not previously submitted, for all loans or grants made to the Project. For loans, a copy of the promissory note will fulfill this requirement.

**K. OPERATING PRO FORMA**

The Applicant must provide a copy of a current thirty (30) year operating pro forma for the Project.

**L. GREEN BUILDING STANDARD**

The Applicant must provide a copy of the Final Architect Certification and all required backup documentation.

**PROJECT TRANSFER OR ASSIGNMENT REQUIREMENT**

Generally, all direct and indirect Project transfers or assignments require the prior written consent of the Department. If the Applicant fails to obtain the Department's written consent, the Department may, *inter alia*, disqualify the Project/Application and cancel the Credit Reservation and/or Carryover Allocation. The Applicant should contact the Applicant's legal counsel and or tax advisor about the effect of a Project transfer or assignment.

**A. PROJECT TRANSFER OR ASSIGNMENT REQUIRING DEPARTMENT CONSENT**

A Project transfer of assignment means any direct or indirect sale, contribution, assignment, lease, exchange, or transfer, or other change in:

- An interest in the land, the Project, or any building;
- An Ownership interest in the entity that is the Applicant or Project Owner;
- The rights, title, or interest of the Applicant or Project Owner in any agreement in which the Department and the Applicant or Project Owner are parties.

Only a few types of Project transfers or assignments do not require the prior written consent of the Department; they include:

- The grant of a security interest or lien junior to the interest of the Department,
- The issuance, redemption, or transfer of stock or shares of a corporation that is not a closely held corporation.

#### **B. PROCESS AND REQUIREMENTS FOR OBTAINING THE DEPARTMENT'S CONSENT**

The first step in obtaining the Department's written consent is to advise the Department in writing of the proposed Project transfer or assignment. At a minimum the Applicant should describe: (i) the name of the Project; (ii) the names of the Applicant and/or the Owner, the proposed transferor and transferee, and all other relevant parties; (iii) a complete description of the proposed transfer or assignment, including the proposed effective date; and (iv) any special circumstances related to the proposed transfer or assignment.

After receiving the written request, Applicant will be advised of the Department's requirements and conditions that must be satisfied in order to obtain consent, including payment of document preparation charges and applicable legal fees.

If the Applicant made a commitment to participate under the set-aside category for QNP, any transfer or assignment must be such that the Project continues to qualify for applicable set-aside.

### **PROJECT MONITORING**

Pursuant to the QAP, the Department has established certain compliance monitoring requirements for the Owners of Projects. These requirements described in the QAP and in a Project's relevant Regulatory Agreement, specify the requirements and process an Owner must follow to make sure the Project is in compliance with section 42 of the Code and the LIHTC Program. They also specify the process the Department or its representatives will follow in monitoring for compliance with the provision of Section 42 of the Code and the requirements of the LIHTC Program, and in notifying the IRS of any Noncompliance.

Federal and state laws, together with Department policies, governing the compliance monitoring are frequently amended. The Owner must ensure its Project is in continuous

compliance with Program Requirements throughout the Project Affordability Period, including both the Compliance Period and Extended Use Period.

#### **A. OWNER'S RESPONSIBILITIES AND REQUIREMENTS**

The Owner's responsibilities and obligations for maintaining Project compliance are set forth in the Qualified Allocation Plan and other Program Requirements, including the Regulatory Agreement. In addition, the Department has prepared an LIHTC Compliance Manual that will help an Owner understand its responsibilities and obligations for compliance monitoring under the LIHTC Program. The Department also provides LIHTC Compliance workshops throughout the year for Owners, managers, and on-site managers in order to support compliance monitoring.

In addition to such other rights the Department may exercise in connection with compliance monitoring, as a condition of participation in the LIHTC Program, by filing an Application, a Project Owner agrees that the Department may perform an on-site review of any building in the Project, interview residents, review residents' applications and financial information, and review and copy an Owner's books and records relating to the Project as it determines to be appropriate. Project Owner must provide the Department reasonable access to the Project and its books and records and reasonably cooperate in all such compliance monitoring in order, *inter alia*, to allow the Department to perform compliance monitoring, appropriate repairs and maintenance, and to assure health and safety of tenants. In connection with its obligation, an Owner must take all action determined appropriate by the Department to allow the Department, consistent with law, to inspect housing units occupied by residents.

The Department will report identified events of Noncompliance with Program Requirements (whether the Noncompliance relates to a violation of federal or state requirements) to the IRS regardless of whether or not the Noncompliance is corrected timely. Noncompliance may result in the loss and recapture of LIHTCs, in addition, the Department may exercise other rights and remedies available to it at law, under applicable documents (including, but not limited to the REUA or Regulatory Agreement), or under the LIHTC Program Manual, the General Policies and Guidelines Manual, and other applicable Program Requirements. The procedures set forth for the Department to report Noncompliance to the IRS are not intended to and will not limit or restrict any other rights or remedies available to the Department under applicable Program Requirements or otherwise.

The Department will endeavor to communicate regularly with Owner's where material compliance concerns exist.

## **SCHEDULE OF CHARGES**

The Department has set the charge schedule listed below for the LIHTC Program. The Department may make additions and modification to the charge schedule. Charges paid are not refundable once submitted to the Department at the time required according to the schedule below.

### **A. APPLICATION CHARGE**

The Application charge is the lesser of:

- Twenty-five dollars (\$25) per unit; or
- 0.5% of the total funds requested.

The minimum Application charge is one hundred dollars (\$100). The Application charge is nonrefundable and must be paid upon submission of the Application. A new Application fee must be paid each time a new Application is submitted, regardless of whether that Application is for the same building(s) or Project

### **B. RECIPIENT CHARGE**

The recipient charge is assessed on the cumulative total of Department funding sources requested in the Application.

- Any request for LIHTCs, charge equal to \$2,500.
- Other Department funding sources less than \$300,000, charge is equal to \$1,000.
- Other Department funding sources greater than \$300,000, charge is equal to \$2,000.

The recipient charge is nonrefundable and must be paid at the execution of the LIHTC Reservation Letter.

### **C. DOCUMENT PREPARATION CHARGE**

The document preparation charge is assessed in escrow at Equity Closing, and at permanent loan closing.

- One hundred dollars (\$100) per recorded document.

The document preparation charge is nonrefundable and must be paid at Equity Closing or permanent loan closing.

### **D. LIHTC PROGRAM CHARGES**

**1. LIHTC Reservation Charge**

The LIHTC Reservation charge is calculated based on total number of Project units as stated below:

- Thirty (30) units or less, charge is equal to 5.5% of the reservation of LIHTCs.
- More than thirty (30) units, charge is equal to 6.5% of the reservation of LIHTCs.

The LIHTC Reservation charge is nonrefundable and must be paid at the execution of the REUA.

**2. Late Carryover Charge**

The Late Carryover charge is assessed if the Carryover Application is received after December 1<sup>st</sup>:

- Base charge equal to two thousand dollars (\$2,000); and
- An additional two hundred dollars (\$200) for each business day after December 1<sup>st</sup> until date Carryover Application is received.

The Late Carryover Charge is nonrefundable and must be paid upon submission of the Carryover Application.

**3. Late Final Application Charge**

The Late Application charge is assessed if the Final Application is received more than six (6) months past placed-in-service date.

- Base charge equal to one thousand dollars (\$1,000); and
- An additional one hundred dollars (\$100) for each month past the due date of six (6) months after placed-in-serve until month Final Application is received.

The Late Final Application charge is nonrefundable and must be paid upon submission of the Final Application.

**E. ANNUAL COMPLIANCE MONITORING CHARGE**

The Department is required to monitor compliance of Projects with applicable laws, regulations, and agreements. The annual compliance monitoring charge for Projects placed-in-service is as assessed as follows:

- Thirty-five dollars (\$35) per unit per year for the first fifteen (15) years, Twenty-five dollars (\$25) per unit per year for years post initial fifteen (15) year period. The full annual compliance monitoring fee must be paid annually by the Department

deadline. The current deadline for the full fee for all Projects is the first working day in January of each year, although the Department may change the date.

**F. DISQUALIFICATION, CANCELLATION, NOTIFICATION TO IRS OF NONCOMPLIANCE, AND DEBARMENT**

If an Applicant or Project Owner fails to pay any LIHTC Program charge on time and in full, the Department may disqualify the Project and Application, cancel the LIHTC reservation or carryover allocation, assess a late charge, report the Noncompliance to the IRS, or prevent the Applicant, Project Owner, and parties associated with the Project from any participation in the LIHTC Program.

**G. OTHER CHARGES**

Fees and charges for negotiation of documents: Legal and administrative costs related to such negotiation.

The Department may assess other charges as described in this Manual or otherwise in other Program Requirements. NOTE: Bond Projects may assess additional monitoring fees per the agreements executed.

## **PUBLISHED QCT/DDA AREAS**

**1. Qualified Census Tracts or Difficult Development Area as Identified by HUD**

This section lists below the 2014 Difficult to Develop Areas (DDAs) as published by the United States Department of Housing and Urban Development (HUD) in Fall, 2013. HUD DDAs are subject to change without prior notice. A revised list is typically published in the Federal Register in the middle of December each year, in preparation for the following year. This year, it was later than expected by several months, which occasionally occurs.

The eligible basis of a project located within a DDA may be increased up to thirty percent (30%). Only the eligible basis attributable to new construction or rehabilitation qualifies for the basis boost. Acquisition expenses (land and existing buildings) do not qualify for the HUD basis boost.

Projects in the following counties are eligible for the DDA basis boost increase, according to HUD's designation: **Clatsop, Coos, Curry, Douglas, Hood River, and Josephine.**

Projects receiving a forward reservation of Low Income Housing Tax Credits are always at risk of losing their HUD DDA status prior to receiving the allocation of tax credits. A project receives the official allocation of tax credits through execution of the Carryover Agreement, not at the time of funding reservation. Should the DDA status of a project change prior to

carryover allocation, i.e., a project is no longer located in an area with DDA status due to HUD revisions.

The qualified census tract areas are listed below for the following listed counties. To find the census tract number for a particular address, visit the HUD User GIS Service – LIHTC Qualified Census Tract Locator at: <http://qct.huduser.org/QCTGIS/USMainLand/Map.aspx>.

Metropolitan Qualified Census Tracts

Benton County (Corvallis)	10.02,11.01, 11.02, 106.00
Jackson (Medford- Ashland)	1.00, 5.02, 13.01, 16.01, 19.00
Lane County	21.02, 31.02, 32.02, 33.01, 33.02, 37.00, 38.00, 39.00, 40.00, 42.00, 44.03, 45.02, 48.00, 51.00
Marion County (Salem)	2.00, 3.00, 4.00, 5.02, 7.01, 9.00, 10.00, 16.00, 103.5
Polk County (Salem PMSA)	51.00 203.03
Clackamas County	222.01, 9800.00
Multnomah County (Portland)	9.02, 11.01, 21.00, 22.03, 33.01, 34.01, 34.02, 40.01, 40.02, 49.00, 51.00, 52.00, 55.00, 56.00, 74.00, 76.00, 77.00 83.01, 83.02, 84.00, 86.00, 90.00, 93.01, 95.01, 96.04, 96.06, 97.01, 98.01, 100.01, 103.04, 106.00
Washington County	307.00, 310.05, 312.00, 316.13, 317.05, 320.05, 324.09, 325.01, 331.01, 332.00
Yamhill County	308.01, 308.02

Non-Metropolitan Qualified Census Tracts

Baker	9504.00, 9505.00
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Douglas County	100.00, 1200.00
Jefferson County	9400.00
Josephine County	3607.01, 3616.00
Klamath County	9702.00, 9705.00, 9712.00, 9716.00, 9718.00, 9719.00
Linn County	204.00, 208.01
Malheur County	9704.00, 9709.00
Union County	9705.00, 9707.00
Wasco County	9708.00

To determine if the project is located in a qualified census tract (QCT) or a Difficult to Develop Area (DDA), consult the latest information available from the United States Department of Housing and Urban Development (HUD) or visit their web site:  
<http://qct.huduser.org/QCTGIS/USMainLand/Map.aspx>.

**OHCS Basis Boost Policy**

If a project is not in a HUD DDA/QCT, the new construction or substantial rehabilitation eligible basis of a project may be eligible for the state’s basis boost up to thirty percent (30%). The acquisition basis of a project (the eligible basis portion associated with acquisition expenses) is not eligible for this basis boost.

**DECISIONS AND REVIEWS**

Applicants will be notified in writing of the Department’s Intent to Issue a Reservation Letter which will also be posted on the Department’s website.

Reservations, Allocations or Awards (collectively, Determinations) subject to State Housing Council review under ORS 456.561, and Determinations where additional Department funding supporting such Determinations are subject to Council review, are contingent, *inter alia*, upon Housing Council approval of those Determinations or supporting funding. The Housing Council may approve, reject, modify, or further condition funding awards submitted for its review, thereby directly or indirectly impacting Department Determinations.

## **XII. GLOSSARY OF TERMS**

Allocation of Funds:	These are the amounts of Program resources determined for each NOFA.
Allocation of Tax Credits:	The amount of tax credits that are awarded to a Project.
Allocation Criteria:	These are the standards by which the Department will competitively rank Projects in a NOFA funding round.
Allocation Authority Year:	The year in which the tax credit allocation begins its two (2) year allocation period.
Annual Tax Credit:	The amount of annual tax credit allocated to a Project. The credit is available annually to the sponsor for a period of ten (10) years. The amount of credit cannot exceed what the Department deems necessary for the Project's financial feasibility, or the amount the Project is eligible to receive.
Applicable Fraction:	This equals the lesser of the "unit fraction" or the "floor space fraction." The "unit fraction" is calculated by dividing the number of low-income units in a building by the total units in the building, and the "floor space fraction" is calculated by dividing the total floor space of the low-income units in a building by the total floor space of the residential units in the building.
Applicable Tax Credit Percentage:	This is the percentage used in the calculation of the amount of tax credit available to a Project, depending upon its development and financing characteristics.
Application:	This means the NOFA Application and all required Exhibits and Forms, if any, submitted by an Applicant for a Project.
Applicant:	This means the party that submits an Application to the Department for a Credit reservation and/or allocation, including its successors in interest.
Award:	This is a stage when a reservation is fundable after meeting all conditions of the Reservation Letter. Projects that convert to an award will be offered an allocation at the end of the year in which the allocation of credits resides.
Carryover:	The process whereby an allocation recipient can request an extension of its Placed in Service requirements for one (1) year.

Carryover Allocation:	The amount of tax credits approved for carryover.
Code or IRC:	These are the rules and regulations of Section 42 of the Internal Revenue Code.
Compliance Period:	This is the period of fifteen (15) taxable years beginning with the first year of a building's ten (10) year "credit period." In addition, each building must have an extended low-income housing commitment which requires, at a minimum, a fifteen (15) year extended use period that begins on the first day of the compliance period and ends fifteen (15) years after the close of the compliance period.
Credit Period:	The period of ten (10) taxable years beginning with the taxable year in which the building is placed-in-service or, at the election of the sponsor, the succeeding taxable year, but only if the building is a qualified low-income building at the close of the first year of the period. The credit period for the acquisition of an existing building may not begin until the first year of the credit period for the rehabilitation expenditures for that building.
Department:	The section of Oregon Housing and Community Services that is responsible for the funding and administration of the LIHTC, Home and related affordable housing Programs.
Deferred Developer Fee:	The portion of the developer fee taken over a ten (10) to fifteen (15) year period of time. The deferred fee must be able to be repaid within the specified timeline, and is considered a secondary debt.
Depreciable Costs	The development costs incurred in connection with a capital asset that is subject to a loss of value brought about by age, physical deterioration, or functional or economic obsolescence.
Development Team:	This means the Applicant, the developer, the Project management consultant, the general contractor and includes all persons or organizations materially involved in the acquisition, construction, rehabilitation, development, or improvement of the Project.
Eligible Basis:	This consists of the eligible expenditures, new construction, rehabilitation and acquisition, incurred up to the close of the first taxable year of a Project's "credit period." Eligible basis includes: the adjusted basis of depreciable property (without regard to depreciation); certain deductions from these costs must be made, including but not limited to: (1) the cost or value of the land underlying the Project; (2) the value of federal grants used to finance the Project; (3) tax credits

received under certain provisions of state and federal tax law; and (4) the amount of "nonqualified non-recourse financing" used in the Project.

Eligible basis also includes the cost of personal property for use by the residents, such as major appliances. A Project owner may also include the cost of facilities and extra amenities such as common areas, parking facilities and recreation equipment in the Project's eligible basis if there is no separate fee for the use of the facilities and they are available to all residents on a comparable basis. Costs of the residential units in a building which are not low-income units may be included, but only if such units are not above the average quality standard of the low-income units, or if such excess costs are deducted from the eligible basis. Project buildings located in "qualified census tracts or difficult to develop areas" are entitled to an increase in their eligible basis.

**Eligible Existing Building:** A taxpayer may normally receive a 30 percent (30%) NPV credit for the acquisition of an existing building if: (1) it was purchased from an unrelated entity that owned it for at least ten (10) years and kept it in active use; (2) for the ten (10) year period preceding the purchase it did not undergo any rehabilitation in excess of 25 percent (25%) of its basis; and (3) no fifteen (15) year compliance period is in effect for any previously received low-income housing tax credits.

**Equity Closing:** Typically, this is the stage in the funding process when all the conditions of the Reservation Letter and the Partnership Agreement are satisfied and the Project is ready to commence construction.

**Federally Subsidized Building:** A building is federally subsidized if it is financed by federal tax-exempt bonds or federal grants.

**Geographic Regions:** These are the three (3) areas of the state (Metro, non-Metro HUD HOME Participating Jurisdictions, Balance of State) that are grouped for the purpose of identifying needs and allocating funds to Projects through the NOFA Process.

**Gross Rent:** This is an amount that does not exceed 30 percent (30%) of the applicable income limitation for a tenant in an LIHTC Project. Gross rent includes an utility allowance determined by the Secretary of the U.S. Department of Treasury; but does not include any payment under Section 8 or any comparable rental assistance program; and does not include fees for supportive services paid by governmental or nonprofit organizations if such programs include rental assistance and rent is not separable from the amount of assistance provided for supportive

services; and does not include any rental payments to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers Home Administration under Section 515 of the Housing Act of 1949.

Supportive services, as used in the paragraph above, means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in hospitals, nursing homes or intermediate care facilities for the mentally or physically handicapped. In the case of a single-room occupancy unit or a building providing transitional housing to the homeless, this term includes any service provided to assist residents in locating and retaining permanent housing.

Identity of Interests: Identity of Interest means a financial, familial, or business relationship that permits less than arm's length transactions. For example: Related Parties; persons, entities, or organizations Affiliated With or Controlled By or In Control Of another; existence of a reimbursement program or exchange of funds; common financial interests; common officers, directors, stockholders, or managers; or family relationships between officers, directors, or stockholders.

LIHTC: Low Income Housing Tax Credits (aka Tax Credits).

LIHTC Program: The Program specifically designed to provide the policies and procedures for the allocation, awarding and administration of LIHTCs.

LIHTC Program Manual: This is the Program Manual specifically designed to provide the policies and procedures for the allocation, awarding and administration of LIHTCs that has been approved and adopted under Oregon's Administrative Rules.

Minimum Threshold Requirements: These are standards all Projects are required to meet on a pass or fail basis. Failure to meet any one (1) of the standards disqualifies the application.

Need Distribution: A data based calculation that is used to distribute LIHTC funding across regions as well as evaluate the equitable distribution of funded affordable housing. It is based on most recent five (5) year American Community Survey data. The formula equally weights the number of renter households earning sixty percent (60%) of county median family

	income and the number of severely rent burdened (fifty percent (50%) or more of income on housing) households.
NOFA:	The Notice of Funding Availability (NOFA) is a uniform set of requirements for sponsors to apply and compete for Program funds.
NOFA Funds:	The collective name of the amounts of tax credits, grants or loans requested in a NOFA from various Programs to finance a Project.
Noncompliance:	Noncompliance means a failure to meet any covenant, condition or term of any agreement between the Applicant or Project owner (including their officers, employees, agents, and assignees) and the Department, a failure to meet the requirements of Section 42 of the Code, or failure to meet any other Program requirements from which a Project received funding.
Nonqualified Non-recourse Financing:	This is any non-recourse financing which is not "qualified commercial financing." Financing is non-recourse if the borrower is not personally at risk to repay the loan or if the lender has an interest in the financed Project (other than as a creditor). The borrower may be protected against loss on a loan through guarantees, stop-loss agreements or other similar arrangements.
Oregon Administrative Rules (OARs):	The OARs are the principles by which the Department administers the LIHTC Program that are approved from time to time through the State Administrative rule process.
Placed-In-Service:	This is the date for a new or existing building on which the building is ready and available for its specifically-assigned function. This is usually the date the first unit in the building is certified as being suitable for occupancy under state or local law. Substantial rehabilitation expenditures are treated as Placed-In-Service at the close of any twenty-four (24) month period over which the expenditures are aggregated.
Principal(s):	This means: (1) with respect to a Project owned by a partnership, the partners; (2) with respect to a Project owned by a limited liability company, the members and managers; and (3) with respect to a closely-held corporation, the shareholders.

Program Funds:	The amount of funds identified in a specific Program to finance a Project or Projects.
Program(s):	A Program is a specific source of state or federal funds subject to a set of required codes or statutes that provide a methodology to award funds to the public for the development of affordable housing Projects.
Program Limits:	These are the financial limits set by regulation and the Department on the amount of debt service, LIHTCs, loan amounts, construction contingency, developer fee, eligible basis, contractor's profit and overhead, and basis boost allowed per Project in the LIHTC Program.
Program Requirements:	All terms, conditions, covenants, or other obligations of a Requestor or Owner (including through their officers, employees, contractors, agents, and assignees) with respect to a Program from which funding is sought or provided with respect to a Project, including as contained in relevant statutes, regulations, administrative rules, manuals, codes, Department directives, policies, applicable documents, or otherwise.
Project:	A low-income multifamily housing development for which funding, in whole or in part, is sought from or obtained from the Department, normally including related land and amenities.
Project Need Severity:	This is the need for a Project in a community as measured by evaluating the affordable housing gap in the county or city, the rate of population growth in the county comparison to the state, the age of the rental housing in the county, the rate of severe rent burden in the county or city in comparison to the state.
Qualified Allocation Plan (QAP):	The plan, required by IRS Section 42 Code, signed by the Governor, which establishes the process and policies by which the Department will allocate Tax Credits to qualified Projects.
Qualified Basis:	The portion or percentage of the eligible basis that may receive an annual allocation of the tax credit becomes the qualified basis. The "eligible basis" is multiplied by the "applicable fraction" to obtain the amount of "qualified basis" attributable to the housing Project.
Qualified Census Tract (QCT) or Difficult Development Area:	Projects located in difficult to develop areas and qualified census tracts are eligible for additional credit. The maximum credit to such Projects is

calculated by increasing the eligible basis by one hundred thirty percent (130%).

#### Qualified Commercial

##### Financing:

Financing generally constitutes qualified commercial financing when: (1) seller of the financed property is not a "related person" to the borrower; (2) amount of the non-recourse financing does not exceed eighty percent (80%) of the property's credit base; and (3) financing is borrowed from a "qualified person" party or is borrowed or guaranteed by a governmental entity. A "qualified person" is a party actively and regularly engaged in the business of lending money that is not: (1) a "related person" to the borrower; (2) the seller of the financed property or a "related person" to the seller; or (3) a party receiving a fee from the borrower's investment in the property or a "related person" to such a party. Certain "qualified commercial financing" and "qualified person" requirements do not apply when the borrower is a qualified nonprofit organization.

#### Qualified Low-Income

##### Housing Project:

Any Project qualifies for residential rental property that meets the "20-50 Test" or the "40-60 Test," as elected by the taxpayer. This election, once made, is irrevocable. This test represents the minimum percentage of units required to qualify to receive the LIHTC credit.

##### The 20-50 Test:

This test is satisfied if at least twenty percent (20%) of the residential units in a Project are both rent-restricted and occupied by individuals whose household income is no more than fifty percent (50%) of the area median gross income.

##### The 40-60 Test:

This test is satisfied if at least forty percent (40%) of the residential units in a Project are both rent-restricted and occupied by individuals whose household income is no more than sixty percent (60%) of the area median gross income.

#### Qualified Nonprofit

##### Organization:

This is an organization described in IRC Section 501(c)(3) or 501(c)(4) that is exempt from federal income tax under IRC Section 501(a) if OHCS determines the organization is not affiliated with or controlled by a for profit organization and an exempt purpose of such organization includes fostering low-income housing.

##### Related Entity/Person:

These include, but are not limited to: (1) members of a family; (2) a fiduciary and either a grantor or a beneficiary of a trust; (3) a party and a federally tax-exempt organization that the party, or members of the

party's family, controls; (4) a party and either a corporation or a partnership in which the party has more than a fifty percent (50%) interest; (5) two (2) business entities, either corporations or partnerships, where a party has more than a fifty percent (50%) interest in each; (6) two (2) corporations that are members of the same controlled group; and (7) two (2) parties engaged in trades or businesses under common control.

- Regions:** These are the three (3) areas of the State that are known as Metro Oregon, non-Metro HUD HOME Participating Jurisdictions, Balance of State.
- Reservation Letter:** When a Project is selected to receive a reservation of Program Funds, the award is documented in a Reservation Letter aka the "Reservation". The Reservation Letter is a form of conditional commitment whereby the state agrees to fund an award when a sponsor has completed all the requirements listed in the Reservation Letter.
- Reservation and Extended Use Agreement (REUA):** This is a document that contains the terms and conditions of the obligatory period of affordability, which is incorporated by reference into the recorded Declaration of Land Use Restrictive Covenants. This Declaration is recorded after project completion.
- Reservation Period:** The maximum time frame allowed for fulfilling all the terms and conditions of the Reservation Letter.
- Regulatory Agreement:** This is any and all documents establishing Project operating obligations and standards including, but not limited to, restrictive covenants and equitable servitudes. It is commonly called a "Declaration" or "LURA" (Land Use Restrictive Agreement).
- Scoring Committee:** This is the committee for each region that will be comprised of Department personnel, industry leaders and regional representatives responsible for the competitive scoring and ranking the Projects.
- Substantial Rehabilitation:** Rehabilitation Projects qualify for the seventy percent (70%) present value credit if they have not received any federal financing subsidies and have total rehabilitation and related expenditures attributable to or benefiting one (1) or more units (incurred over a twenty-four (24) month period ending when the buildings are placed-in-service) in an

amount equal to the greater of: not less than ten percent (10%) of the adjusted basis of the building; or \$6,600 or more per low-income unit.

**Tax Credit:** Under the federal income tax code, a tax credit is a dollar-for-dollar reduction in the tax liability. A tax credit is subtracted after the amount of taxes is calculated. The use of tax credits can be limited by the application of the passive loss provisions, the alternative minimum tax and limits on the use of general business credits.

**Tax Credit Syndication:** Owners of an LIHTC Project may sell (syndicate) the tax credits to limited partner investors who contribute equity for the Project in return for the use of the tax credit and other tax benefits generated by the Project. The Project developer usually retains ownership in the Project and acts as the general partner. The limited partner investors are usually not involved in the management of the Project, but have concerns that the Project be maintained in compliance with tax credit regulations. If not, they may be subject to tax credit recapture and penalties.

**Transitional Housing for Homeless:** A housing unit does not qualify for the LIHTC program as a low-income unit if it used on a transient basis. Transitional housing for the homeless is not considered to be used on a transient basis if the units contain sleeping accommodations, bathroom and kitchen facilities and are located in a building in which a governmental entity or qualified nonprofit organization provides residents with temporary housing and supportive services designed to assist them in locating and retaining permanent housing and is used exclusively to facilitate the transition of homeless individuals (as the term is used in Section 103 of the Stewart B. McKinney Homeless Assistance Act) to independent living within twenty-four (24) months. The qualified basis of a building that provides transitional housing for the homeless may be increased by the amount of the eligible basis of the building that is used throughout the year to provide supportive services designed to assist residents in locating and retaining permanent housing to the extent this amount does not exceed twenty percent (25%) of the building's other qualified basis that does not exceed \$15,000,000 in costs, and ten (10 %) of any excess over \$15,000,000 in basis for all projects Placed in Service after July 30, 2008..

**Underserved Area:** This is a Region, county, city whose existing affordable housing are identified as underfunded relative to its affordable housing need